DOUG GUTTERMAN,
Richmond, CA, September 30, 2002.
IMMIGRATION AND NATURALIZATION SERVICE,
San Francisco, CA.
Re Alfredo Plascencia Lopez and.or Maria Plascencia

TO WHOM IT MAY CONCERN:

I've worked at my present job at Vince's Shellfish for some twelve years. Thru the years I have come to know Alfredo as a gifted, trusted co-worker, and a loyal friend. He truly has been with me thru thick and thin.

Alfredo's presence at work and at home with his family will surely be missed. Please understand a man of his character deserves to stay with us.

Thank you for your attention.

DOUG GUTTERMAN,
Co-Worker & Friend.

VINCE'S SHELLFISH CO., INC.,
San Bruno, CA, September 30, 2002.
IMMIGRATION AND NATURALIZATION SERVICE,
San Francisco, CA.
Re Alfredo Plascencia Lopez and/or Maria Plascencia

Alfredo Plascencia Lopez has been employed here at Vince's Shellfish for the past 11 years. Alfredo started as a part-time employee 01/91 and I was so impressed with his work ethic and loyalty that I was quick to hire him full-time within a year and a half. Alfredo started full-time employment at Vince's Shellfish 07/92. Throughout the past 11 years I have observed Alfredo as a responsible, dependable individual. I can count on him in any type of situation that arises in my day-to-day business. Alfredo always handles himself in a very professional manner.

Alfredo Plascencia Lopez is in charge of my entire packing operation, which consists of managing ten employees. This is an enormous part of my business and Alfredo is accountable and running this operation with no problem. The employees under him have the utmost respect for Alfredo. He is a role model to many. He has learned the fish business throughout his past 15 years with great enthusiasm.

I know how important Alfredo's family is to him. I have seen through the past years how he has worked hard and has always placed his family first. His wife and children are always first and important in his life. He has provided a wonderful life for his family; if Alfredo were to be deported a beautiful happy family would suffer and be broken up.

At this time I would like to close by saying Alfredo is a valuable individual to his immediate family and second, a valuable and respected employee here at Vince's Shellfish.

Sincerely,

CHRISTOPHER N. SVEDISE,
President.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL:

S. 2555. A bill to authorize the use of judicially enforceable subpoenas in terrorism investigations; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce a bill that would authorize the Justice Department to issue judicially enforceable subpoenas in terrorism investigations.

Here is how the JETS Act would work: it would allow the FBI to subpoena documents and records ''in any investigation of a Federal crime of terrorism.'' The bill would require the FBI to go to Federal court to enforce the subpoena in the event that the recipient declines to comply with it. It would also allow the recipient to make the first move and go to court to challenge the subpoena. The JETS Act also would allow the Justice Department to temporarily bar the recipient of a JET subpoena from disclosing to anyone other than his lawyer that he has received it. The FBI could bar such disclosure, however, only if the Attorney General certifies that ''otherwise there may result a danger to the national security of the United States.'' Also, the recipient of the subpoena would have the right to go to court to challenge the nondisclosure order. And finally, the JETS Act would protect the recipient from any civil liability that might otherwise result from his good-faith compliance with a JET subpoena.

At the outset, it bears mention that the FBI already has ways of obtaining a subpoena when it needs one for a terrorism investigation: it simply finds an Assistant U.S. Attorney and asks him to issue a grand-jury subpoena to investigate a potential crime of terrorism. The advantages of the JETS Act—of giving the FBI direct authority to issue subpoenas—are not so much substantive as procedural. These advantages principally are two: 1. A grand-jury subpoena's ''return date''—the date by which the recipient of the subpoena is asked to comply—can only be a day on which a grand jury is convened. Therefore, a grand-jury subpoena issued on a Friday evening cannot have a return date that is earlier than the next Monday. The JETS Act would allow the FBI to set an earlier return date, so long as that date allows ''a reasonable period of time within which the records or items [to be produced] can be assembled and made available.'' 2. Only an AUSA can issue a grand-jury subpoena. Therefore, whenever the FBI wants to use a grand-jury subpoena in a terrorism case, it must find an AUSA. This can be difficult and time consuming in remote locations. The JETS Act would allow the FBI to forego this exercise.

The Justice Department recently made its case as to why it should be given JETS authority in its answers to Senator BIDEN's written questions to Christopher Wray, the Assistant Attorney General for the Criminal Division, following Mr. Wray's testimony before the Judiciary Committee on October 21, 2003. Senator BIDEN asked Mr. Wray to cite ''instances where your terrorism investigations have been thwarted due to an inability to secure a subpoena from a grand jury in a timely fashion.'' While Mr. Wray declined to provide the details of those instances when the lack of direct authority has posed a problem, he did offer the ''following hypothetical situations, which could well arise, [and which] illustrate the need for this investigative tool:''

''In the first scenario, anti-terrorism investigators learn that members of an Al Qaeda cell recently stayed at a particular hotel. They want to know how the cell members paid for their rooms, in order to discover what credit cards they may have used. When investigators ask the hotel manager to produce the payment records voluntarily, the manager declines to do so, explaining that company policy prohibits him from revealing such information about customers without legal process. If investigators had the authority to issue an administrative subpoena, the hotel manager could disclose the records about the Al Qaeda cell immediately without fear of legal liability. In this situation, where the speed and success of the investigation may be matters of life and death, this disclosure would immediately provide investigators with crucial information—such as the location of the terrorists and the nature of their purchases—with which to disrupt and prevent terrorist activity.

''In the second hypothetical situation, anti-terrorism investigators learn on a Saturday morning that members of an Al Qaeda cell have bought bomb-making materials from a chemical company. They want to obtain records relating to the purchase that may reveal what chemicals the terrorists bought, as well as delivery records that might reveal the terrorists' location. The investigators might seek quickly to contact an Assistant United States Attorney, who might immediately obtain a grand-jury subpoena for the records. However, the third party who holds the records could lawfully refuse to furnish them until the subpoena's 'return date,' which must be on a day the grand jury is sitting. Because the grand jury is not scheduled to meet again until Monday morning, investigators may not be able to obtain the information for two days—during which time the Al Qaeda cell may execute its plot. If investigators had the authority to issue an administrative subpoena, which can set a very short or immediate response deadline for information, they may be able to obtain the records immediately and neutralize the cell.''

Mr. Wray concluded his answer by noting that ''[g]ranting FBI the use of [JETS authority] would speed those terrorism investigations in which subpoena recipients are not inclined to contest the subpoena in court and are willing to comply. Avoiding delays in these situations would allow agents to track and disrupt terrorist activity more effectively.''

To place the JETS Act in context, it bears noting that granting the FBI direct authority to issue subpoenas in terrorism cases would hardly be anomalous. As the Justice Department's Office of Legal Policy recently noted in a published report, ''Congress has granted some form of administrative subpoena authority to most federal agencies, with many agencies holding several such authorities.'' (Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, Pursuant to Public Law 106–544, Section 7.) The Justice Department ''identified approximately 335 existing administrative subpoena authorities held by various executive-branch entities under current law.'' Ibid.

Among the more frequently employed of existing executive-subpoena authorities is 18 U.S.C. § 3486's permission for the Attorney General to issue subpoenas ''[i]n any investigation of a Federal health care offense.'' According to the Public Law 106–544 Report, in the year 2001 the federal government used § 3486 to issue a total of 2,102 subpoenas in health-care-fraud investigations. These subpoenas uncovered evidence of ''fraudulent claims and false

statements such as 'upcoding,' which is billing for a higher level of service than that actually provided; double billing for the same visit; billing for services not rendered; and providing unnecessary services.''

Executive agencies already have direct subpoena authority for many types of investigations. Thus it would not be exceptional for Congress to grant the same authority to the FBI for terrorism cases. Indeed, as Mr. Wray noted in his above-cited answers to questions, ''[b]ecause of the benefits that administrative subpoenas provide in fast-moving investigations, they may be more necessary in terrorism cases than in any other type of investigation.'' One can hardly contend that although the federal government can use subpoenas to investigate Mohammed Atta if it suspects that he is committing Medicare fraud, it should not be allowed to use the same powers if it suspects that he is plotting to fly airplanes into buildings.

Granting direct subpoena authority to the FBI for terrorism cases first was proposed by the President last year, near the time of the second anniversary of the September 11 attacks. There is one criticism of the President's proposal that was made at that time that I believe needs to be addressed. The New York Times, in a September 14 story, described unnamed ''opponents'' as denouncing the proposal for ''allow[ing] federal agents to issue subpoenas without the approval of a judge or grand jury.''

This criticism reflects a misunderstanding of grand-jury subpoenas. The anonymous opponents of the President's proposal appear to be under the impression that the grand jury itself issues a grand-jury subpoena. This is not the case. Instead, a grand-jury subpoena is issued by an individual federal prosecutor, without any prior involvement by a judge or grand jury. As the U.S. Court of Appeals for the District of Columbia has noted, ''[i]t is important to realize that a grand jury subpoena gets its name from the intended use of the . . . evidence, not from the source of its issuance.'' Doe v. DiGenova, 779 F.2d at 80 n. 11 (1985).

Like the grand-jury subpoenas currently used to investigate potential crimes of terrorism, JET subpoenas also would be issued directly by investigators, without pre-approval from a court. It is thus important to keep in mind that a subpoena is merely a request for information—a request that cannot be enforced until its reasonableness has been reviewed by a federal judge. As Mr. Wray noted on behalf of the Justice Department in his answers to Senator BIDEN's questions:

The FBI could not unilaterally enforce an administrative subpoena issued in a terrorism investigation. As with any other type of subpoena, the recipient of an administrative subpoena issued in a terrorism investigation would be able to challenge that subpoena by filing a motion to quash in the United States District Court for the district in which that person or entity does business or resides. If the court denied the motion to quash, the subpoena recipient could still refuse to comply. The government would then be required to seek another court order compelling compliance with the subpoena.

This system guarantees protection for civil liberties. The courts take very seriously their role in reviewing subpoena-enforcement requests. As the Third Circuit has emphasized, ''the district court's role is not that of a mere rubber stamp, but of an independent reviewing authority called upon to insure the integrity of the proceeding.'' Wearly v. FTC, 616 F.2d at 665 (1980). The prospect of judicial oversight also inevitably restrains even the initial actions of executive agents. As the Public Law 106–544 Report notes, ''an agency must consider the strictures of [a motion to quash or a challenge to an enforcement order] before issuing an administrative subpoena.'' And finally, the system of separated authority to issue and review subpoenas has itself been recognized to guard civil liberties. The federal courts have found that ''[b]ifurcation of the power, on the one hand of the agency to issue subpoenas and on the other hand of the courts to enforce them, is an inherent protection against abuse of subpoena power.'' United States v. Security State Bank and Trust, 473 F.2d at 641 (5th Cir. 1973).

The administrative subpoena is a well-established investigative tool with built-in protections for civil liberties. Its use in antiterrorism investigations should not pose a threat to individual freedom.

Finally, although the constitutionality of a tool so frequently used for so long might safely be assumed, it nevertheless merits describing exactly why subpoena power is consistent with the Fourth Amendment. A thorough explanation recently was provided by Judge Paul Niemeyer of the U.S. Court of Appeals for the Fourth Circuit. As Judge Niemeyer noted, the use a subpoena does not require a showing of probable cause because a subpoena is not a warrant—it does not authorize an immediate physical intrusion of someone's premises in order to conduct a search. Rather, subpoenas are subject only to the Fourth Amendment's general reasonableness requirement—and they are reasonable in large part because of the continuous judicial oversight of their enforcement. As Judge Niemeyer stated in his opinion for the court in In re Subpoena Duces Tecum, 228 F.3d at 347–49 (2000) (citations omitted):

While the Fourth Amendment protects people ''against unreasonable searches and seizures,'' it imposes a probable cause requirement only on the issuance of warrants. U.S. Const. amend. IV (''and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,'' etc.). Thus, unless subpoenas are warrants, they are limited by the general reasonableness standard of the Fourth Amendment (protecting the people against ''unreasonable searches and seizures''), not by the probable cause requirement.

''A warrant is a judicial authorization to a law enforcement officer to search or seize persons or things. To preserve advantages of speed and surprise, the order is issued without prior notice and is executed, often by force, with an unannounced and unanticipated physical intrusion. Because this intrusion is both an immediate and substantial invasion of privacy, a warrant may be issued only by a judicial officer upon a demonstration of probable cause—the safeguard required by the Fourth Amendment. See U.S. Const. amend. IV (''no Warrants shall issue, but upon probable cause''). The demonstration of probable cause to a neutral judicial officer places a checkpoint between the Government and the citizen where there otherwise would be no judicial supervision.

''A subpoena, on the other hand, commences an adversary process during which the person served with the subpoena may challenge it in court before complying with its demands. As judicial process is afforded before any intrusion occurs, the proposed intrusion is regulated by, and its justification derives from, that process.

''If [the appellant in this case] were correct in his assertion that investigative subpoenas may be issued only upon probable cause, the result would be the virtual end to any investigatory efforts by governmental agencies, as well as grand juries. This is because the object of many such investigations—to determine whether probable cause exists to prosecute a violation—would become a condition precedent for undertaking the investigation. This unacceptable paradox was noted explicitly in the grand jury context in United States v. R. Enterprises, Inc., where the Supreme Court stated:

''[T]he Government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable cause because the very purpose of requesting the information is to ascertain whether probable cause exists.''

The U.S. Supreme Court first upheld the constitutionality of subpoena authority in 1911. United States v. Wilson, 31 S.Ct. at 542, concluded that ''there is no unreasonable search and seizure when a writ, suitably specific and properly limited in scope, calls for the production of documents which . . . the party procuring [the writ's] issuance is entitled to have produced.''

The Wilson Court also noted that the subpoena power has deep roots in the common-law tradition roots—that stretch at least to Elizabethan times:

''no doubt can be entertained that there must have been some process similar to the subpoena duces tecum to compel the production of documents, not only before [the] time [of Charles the Second], but even before the statute of the 5th of Elizabeth. Prior to that statute, there must have been a power in the Crown (for it would have been utterly impossible to carry on the administration of justice without such power) to require the attendance in courts of justice of persons capable of giving evidence, and the production of documents material to the cause, though in the possession of a stranger.''

The Supreme Court also has explicitly approved the use of subpoenas by executive agencies. In Oklahoma Press Pub. Co. v. Walling, 66 S.Ct. 494 (1946), the Court found that the investigative role of an executive official in issuing a subpoena ''is essentially the same as the grand jury's, or the court's in issuing other pretrial orders for the discovery of evidence.'' Nearly fifty years ago, the U.S. Supreme Court in Walling was able to conclude that

Fourth Amendment objections to the use of subpoenas by executive agencies merely ''raise[] the ghost of controversy long since settled adversely to [that] claim.''

Because granting direct subpoena authority to antiterror investigators would aid them in their important work, and would neither intrude upon civil liberties nor conflict with the Constitution, I propose the following bill, which would authorize judicially enforceable terrorism subpoenas.

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

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

S. 2555

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Judicially Enforceable Terrorism Subpoenas Act of 2004''.

SEC. 2. ADMINISTRATIVE SUBPOENAS IN TERRORISM INVESTIGATIONS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332f the following:

''§ 2332g. Judicially enforceable terrorism subpoenas

''(a) AUTHORIZATION OF USE.—

''(1) IN GENERAL.—In any investigation concerning a Federal crime of terrorism (as defined under section 2332b(g)(5)), the Attorney General may issue in writing and cause to be served a subpoena requiring the production of any records or other materials that the Attorney General finds relevant to the investigation, or requiring testimony by the custodian of the materials to be produced concerning the production and authenticity of those materials.

''(2) CONTENTS.—A subpoena issued under paragraph (1) shall describe the records or items required to be produced and prescribe a return date within a reasonable period of time within which the records or items can be assembled and made available.

''(3) ATTENDANCE OF WITNESSES AND PRODUCTION OF RECORDS.—

''(A) IN GENERAL.—The attendance of witnesses and the production of records may be required from any place in any State, or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

''(B) LIMITATION.—A witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpoena.

''(C) REIMBURSEMENT.—Witnesses summoned under this section shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

''(b) SERVICE.—

''(1) IN GENERAL.—A subpoena issued under this section may be served by any person designated in the subpoena as the agent of service.

''(2) SERVICE OF SUBPOENA.—

''(A) NATURAL PERSON.—Service of a subpoena upon a natural person may be made by personal delivery of the subpoena to that person, or by certified mail with return receipt requested.

''(B) BUSINESS ENTITIES AND ASSOCIATIONS.—Service of a subpoena may be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association that is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

''(C) PROOF OF SERVICE.—The affidavit of the person serving the subpoena entered by that person on a true copy thereof shall be sufficient proof of service.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—In the case of the contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or the subpoenaed person resides, carries on business, or may be found, to compel compliance with the subpoena.

''(2) ORDER.—A court of the United States described under paragraph (1) may issue an order requiring the subpoenaed person, in accordance with the subpoena, to appear, to produce records, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as contempt thereof.

''(3) SERVICE OF PROCESS.—Any process under this subsection may be served in any judicial district in which the person may be found.

''(d) NONDISCLOSURE REQUIREMENT.—

''(1) IN GENERAL.—If the Attorney General certifies that otherwise there may result a danger to the national security of the United States, no person shall disclose to any other person that a subpoena was received or records were provided pursuant to this section, other than to—

''(A) those persons to whom such disclosure is necessary in order to comply with the subpoena;

''(B) an attorney to obtain legal advice with respect to testimony or the production of records in response to the subpoena; or

''(C) other persons as permitted by the Attorney General.

''(2) NOTICE OF NONDISCLOSURE REQUIREMENT.—The subpoena, or an officer, employee, or agency of the United States in writing, shall notify the person to whom the subpoena is directed of the nondisclosure requirements under paragraph (1).

''(3) FURTHER APPLICABILITY OF NONDISCLOSURE REQUIREMENTS.—Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

''(4) ENFORCEMENT OF NONDISCLOSURE REQUIREMENT.—Whoever knowingly violates paragraphs (1) or (3) shall be imprisoned for not more than 1 year, and if the violation is committed with the intent to obstruct an investigation or judicial proceeding, shall be imprisoned for not more than 5 years.

''(5) TERMINATION OF NONDISCLOSURE REQUIREMENT.—If the Attorney General concludes that a nondisclosure requirement no longer is justified by a danger to the national security of the United States, an officer, employee, or agency of the United States shall notify the relevant person that the prohibition of disclosure is no longer applicable.

''(e) JUDICIAL REVIEW.—

''(1) IN GENERAL.—At any time before the return date specified in a summons issued under this section, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons.

''(2) MODIFICATION OF NONDISCLOSURE REQUIREMENT.—Any court described under paragraph (1) may modify or set aside a nondisclosure requirement imposed under subsection (d) at the request of a person to whom a subpoena has been directed, unless there is reason to believe that the nondisclosure requirement is justified because otherwise there may result a danger to the national security of the United States.

''(3) REVIEW OF GOVERNMENT SUBMISSIONS.—In all proceedings under this subsection, the court shall review the submission of the Federal Government, which may include classified information, ex parte and in camera.

''(f) IMMUNITY FROM CIVIL LIABILITY.—Any person, including officers, agents, and employees of a non-natural person, who in good faith produce the records or items requested in a subpoena, shall not be liable in any court of any State or the United States to any customer or other person for such production, or for nondisclosure of that production to the customer or other person.

''(g) GUIDELINES.—The Attorney General shall, by rule, establish such guidelines as are necessary to ensure the effective implementation of this section.''.

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332f the following:

''2332g. Judicially enforceable terrorism subpoenas.''.

By Mr. BINGAMAN (for himself and Mr. LIEBERMAN):

S. 2556. A bill to amend chapter 7 of title 31, United States Code, to provide for a technology assessment capability within the General Accounting Office, and for other purposes; to the Committee on Governmental Affairs.

Mr. BINGAMAN. Mr. President, I rise today with my colleague Senator LIEBERMAN to introduce a bill that would give the Congress a modest capability to assess the impacts of science and technology on the formulation of public policy.

All of us in the Senate are all too aware how science and technology affects almost every aspect of policy we debate.

For instance, advances in science and technology are critical to our homeland defense oversight duties. There are many legislative proposals to deploy biological detection sensors in our cities. Yet, Congress does not get timely, in-depth advice on the policy implications on such issues as how many would be needed in a large city, or how will the data be integrated into a communications network, and would such a large volume of data be accurately analyzed and disseminated in a timely fashion. In another area of homeland defense, we are not confident on what the policy implications are for biometrics applied to border control. What are the costs for applying biometrics to the millions of visas we issue every year? How might these biometrics, which record our physiological features into a single database, invade our notions of privacy?

In the jurisdiction of my committee, Energy and Natural Resources, we would like to know how technology could mitigate the threat of wildfires, especially on urban regions adjacent to our national forests. We know that there are improvements in building materials and construction techniques that can reduce the danger of homes

suddenly catching fire and spreading to adjacent homes. However, the effect of such technology improvements on policy matters involving building codes, fire and disaster insurance, and coordination of communications between federal and local emergency response are unknown, yet critical to our law making duties.

There are other areas where technology affects law making and oversight duties. The Congress has supported efforts to integrate technology into one of the most crucial elements of democracy—voting. Nevertheless, questions remain on the accountability of each vote, and the cyber-security of electronic voting systems. These voting technology issues directly affect the public confidence in any law we may write to bring electronic voting into the mainstream.

I could go on and on, but these examples lead me to the bill I am introducing today.

Congress abolished the Office of Technology Assessment (OTA) in 1995. While I disagreed with this decision, the bill I am proposing today seeks to establish a smaller, less costly capability in the General Accounting Office (GAO).

The Congressional Research Service (CRS) and GAO have many technology-competent personnel, but neither assesses the effects of technology on policy-making. The CRS or GAO may study or catalog various technologies, they may assess the merits of one technology versus another, or even its economic benefits and costs, but they do not analyze how the technology can affect policy.

Some may assert the National Academy of Sciences performs such a function. The National Academies independently, through outside advisory committees, evaluates the technological merits of programs that involve technology, usually funded by the executive branch, and not directly by the Congress. The majority of the technology evaluations by the National Academies are not technology assessments, they do not consider what consequences a technology will have on the policies that the Congress considers. Because the Academy maintains a strong independence, the timing of their reports are not, and should not be, linked to the Congressional calendar.

I believe it is possible have an existing legislative branch agency such as the GAO give to neutral, objective technology assessments to the Congress in a timely fashion. I am of the opinion that the GAO can undertake this function without creating a large bureaucracy.

Let me first outline the history of the legislation I am proposing.

Three years ago, with the help of Senator BENNETT, who then chaired the Legislative Branch Subcommittee on Appropriations, I was able to initiate a pilot program at the GAO to perform technology assessments of interest to the Congress. It was Senator BENNETT who first suggested placing this pilot at the GAO, and when contacted, the GAO stepped forward to accept that challenge.

Since that time, the three-year pilot program at the GAO has conducted, or has underway, technology assessments on a wide range of topics, from biometrics for border control, cyber-security, cargo container security, and technology to mitigate the impact of wildfires on urban boundaries. All of these assessments were initiated by bipartisan and bicameral letters to the GAO.

I believe this pilot program to be a success. The first report on biometrics for border control has received good evaluations from industry and congressional staff. The GAO still testifies on the results from the report. The second report on cyber-security has just been released, experts across government and the private sector believe it is of high quality. A technology assessment on cargo container security is underway. A wildfire technology assessment has just been initiated.

In addition, this pilot program has undergone several reviews.

The first review occurred in October of 2002, when the first technology assessment on biometrics ended. A group of distinguished scientists, familiar with the technology assessment process, reviewed the GAO's organizational capability to conduct future technology assessments. While they were impressed with the quality of the GAO's effort, they made positive suggestions on how the GAO could improve the policy analysis phase of the technology assessment, as this crucial feature was new to the GAO. The group of experts reviewed the organizational mix of the GAO, and its ability to absorb the technology assessment process within their traditional audit and quality control structure. These experts found that the GAO's Center for Technology and Engineering, which performed the first biometrics assessment, was a capable organization, as it was accustomed to undertaking a wide range of technology-oriented problems. Finally, the experts commented on how the GAO could utilize nongovernmental entities to perform the data collection, thus reducing the potential to create a new bureaucracy. For the first biometrics report, the experts supported the GAO working with the National Research Council to conduct stakeholder workshops to gather a wide range of data, while the report writing would be by a legislative branch entity—the GAO.

The second review was a workshop held in July of 2003, at the National Academy of Sciences. A wide array of nongovernmental attendees evaluated the pilot program at the GAO in the context of other organization models for technology assessment, from recreating the old OTA to simply using the National Academies. This was the first time many nongovernmental persons were exposed to the GAO pilot and many were surprised that the GAO was willing to undertake such a program, and that its staff quickly adapted to the technology assessment process.

The third review occurred in December of 2003 at the request of the Senate Legislative Branch Appropriations Subcommittee. This review was conducted by the GAO. The subcommittee asked what would be required to conduct this pilot on a sustained basis. The GAO concluded that four full time staff would be required at a cost of $420,000, plus $125,000 for additional expenses to work with outside groups such as the National Research Council to collect data. This request has appeared as part of GAO's Fiscal Year 2005 budget submission. The GAO also requested additional legislative authorities so that the assessments could be part of their annual budget process.

This bill is in response to the December 2003 findings of GAO; it has been fully coordinated with the GAO and their findings. This bill also reflects the comments from the July 2003 National Academies workshop and the first review of the GAO by the expert panel in October of 2002.

Let me now outline several feature of this bill, and then I will comment on what this bill does not have.

First, the bill proposes to modify the GAO's organic act to give it the statutory authority to perform technology assessments as part of its advice to the Congress. In doing so, the GAO is directed make such technology assessments in a timely and objective fashion. One of the major issues with the OTA was that many of its reports were so in-depth that they missed the legislative cycle to make a substantive impact on a bill under consideration by the Congress. In addition to the longer, more in-depth reports, I expect that the GAO will give quick turn-around phone consultations on singular technology assessment questions by staff.

Second, it directs the Comptroller General to ensure that the GAO has the human resources expertise in technology and policy to ensure a high quality product.

Third, it directs the Comptroller General, to the maximum extent practicable, to be apprised of other ongoing efforts that may be providing information to the Congress.

Fourth, it directs the Comptroller to peer review all the technology assessment reports.

Fifth, it directs the Comptroller General to establish an advisory board in consultation with the National Academy of Sciences. This board shall provide external advice on the assessment topics, how they are selected, and methods to their improve timeliness and quality. Many times advisory boards are an extra overhead burden, but in this case, where the GAO is acting as a bridge between the outside technical community and the Congress, I feel it is important that some form of external peer review of the technology assessment process be present.

Sixth, it gives the GAO the necessary authority to enter into contracts with outside groups to obtain the information and technical feedback that does not reside within the GAO, thus avoiding the creation of a bureaucracy within the GAO.

Finally, it requires the GAO to submit an annual report to the Congress on its technology assessment activities from the prior year.

Let me explain what this authorization does not do.

First, it does not create a Technology Assessment Board consisting of members of Congress to help select topics. There was much concern that the OTA became almost beholden to its Technology Assessment Board to the dismay of other members of Congress. I have left the topic selection process to the GAO within their existing authorities, similar to the way they currently schedule and produce reports for members and committees. This process has been refined and tested over many years, and it is flexible enough to accommodate sudden high priority demands. I see no reason why scheduling technology assessments cannot be part of this bigger scheduling process, so that its demands are reflected in the overall scheduling priorities of the GAO.

Second, this legislation does not create a large legislative branch entity. The OTA had upwards of 200 people and a $30 million budget before it was disbanded in 1995. This authorization relies on a core internal group at the GAO that relies on outside entities to provide information where needed and to be a technical sounding board through workshops on a particular technology and its various policy implications.

This legislation strikes an important balance. It establishes some internal legislative branch capability to analyze how technology affects our policymaking duties. It fills a void left when the OTA was abolished by relying on a core team at the GAO using their existing authorities for topic selection. Finally, it provides an important bridge to the many nongovernmental entities and societies that give advice to the executive branch and Congress, while ensuring legislative branch objectivity and quality.

I hope my colleagues join me in supporting this legislation. I hope that it receives a hearing in the Governmental Affairs Committee, so that all sides of the fact finding process can be brought to bear on this bill's strengths and weaknesses, and in so doing, be improved and reported to the floor of the Senate for its full consideration and passage.

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

S. 2556

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

SECTION 1. GENERAL ACCOUNTING OFFICE TECHNOLOGY ASSESSMENTS.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress finds that—

(A) it is important for Congress to be better informed regarding the impact of technology on matters of public concern, including implications for economic, national security, social, scientific, and other national policies and programs;

(B) on a pilot basis, the General Accounting Office has demonstrated a capacity to perform independent and objective technology assessments for Congress; and

(C) the development of a cost-effective and efficient capacity for timely and deliberate technology assessments by the General Accounting Office requires the commitment of additional resources and administrative flexibility given the current resource constraints of the General Accounting Office.

(2) PURPOSES.—The purposes of this Act are to—

(A) direct the establishment of a technology assessment capability in the General Accounting Office;

(B) ensure the quality of such technology assessments in order to enhance the ability of Congress to address complex technical issues in a more timely and effective manner; and

(C) condition the development of a technology assessment capability in the General Accounting Office on the provision of adequate additional resources and administrative flexibility.

(b) TECHNOLOGY ASSESSMENTS.—Chapter 7 of title 31, United States Code, is amended by inserting after section 720 the following:

''§ 721. Technology assessments

''(a) The General Accounting Office shall establish a technology assessment capability to coordinate and prepare information for Congress relating to the policy implications of applications of technology.

''(b) The Comptroller General may establish standards and procedures to govern technology assessments performed under this section as the Comptroller General determines necessary.

''(c) Technology assessments performed under this section shall—

''(1) provide Congress with timely and objective information to contribute to legislative consideration of technology applications and their policy implications, including thorough reports, in-depth studies, and short-term consultations;

''(2) be undertaken by the Comptroller General with special attention to the technical expertise and policy analysis skills needed to perform a prospective assessment of technology applications and policy implications;

''(3) be designed, to the extent practicable, to review an application of technology to an issue of public interest, including consideration of benefits, cost, and risks from such technology; and

''(4) include peer review by persons and organizations of appropriate expertise.

''(d) In performing technology assessments, the Comptroller General shall be properly apprised of Federal and non-Federal entities providing information to Congress to—

''(1) enable effective coverage of critical issues; and

''(2) avoid duplication of effort.

''(e) Technology assessments performed under this section may be initiated as provided under section 717(b).

''(f)(1) In consultation with the National Academy of Sciences, the Comptroller General shall establish a technology assessment advisory panel to provide advice on technology assessments performed under this section, methodologies, possible subjects of study, and the means of improving the quality and timeliness of technology assessment services provided to Congress.

''(2) The advisory panel shall consist of 5 members, who by reason of professional background and experience, are specially qualified to advise on technology assessments.

''(3) Terms on the advisory panel shall—

''(A) be for a period of 2 years; and

''(B) begin on January 1, on each year in which a new Congress is convened.

''(4) Notwithstanding section 1342, for the purposes of establishing a technology assessment advisory panel, the Comptroller General may accept and use voluntary and uncompensated services (except for reimbursement of travel expenses). Individuals providing such voluntary and uncompensated services shall not be considered Federal employees, except for purposes of chapter 81 of title 5 and chapter 171 of title 28.

''(g)(1) In order to gain access to technical knowledge, skills, and expertise necessary for a technology assessment performed under this section, the Comptroller General may utilize individuals and enter into contracts or other arrangements to acquire needed expertise with any agency or instrumentality of the United States, with any State, territory, or possession or any political subdivision thereof, or with any person, firm, association, corporation, or educational institution.

''(2) Contracts and other arrangements under this subsection may be entered into—

''(A) with or without reimbursement; and

''(B) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or section 3324 of this title.

''(h) The Comptroller General shall submit to Congress an annual report on technology assessment activities of the General Accounting Office.

''(i)(1) There are authorized to be appropriated to the General Accounting Office to carry out the activities described in this section, $2,000,000 for each of fiscal years 2004, 2005, and 2006.

''(2) Technology assessments under this section may not be performed during fiscal years 2004, 2005, and 2006, unless a sufficient annual appropriation is provided for such fiscal years.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 7 of title 31, United States Code, is amended by inserting after the item relating to section 720 the following:

''721. Technology assessments.''.

Mr. DURBIN. Mr. President, today, I am introducing a bill that would repeal a provision in the Consolidated Appropriations Act of 2004, regarding the amount of time that records of approved gun sales can be retained.

This provision, which will be enacted within the next month, was a measure that the House and Senate conferees agreed to drop, but nonetheless was inserted at the last minute into the Conference Report. That provision is opposed by law enforcement and threatens public safety because each year, it would allow hundreds of convicted felons, fugitives, and possibly even terrorists, to have firearms—even though they are prohibited by Federal law from having one.

Under the Brady Handgun Violence Prevention Act, licensed firearms dealers generally are prohibited from transferring firearms to an individual until a search of the National Instant Criminal Background Check System (NICS) determines that the transfer would not violate applicable Federal or

State law. For example, these background checks determine if someone is a convicted felon; convicted of a crime of domestic violence or under a domestic violence restraining order; or a fugitive. Current regulations allow the records of approved firearms sales to be retained in a computer database, known as the NICS Audit Log, for up to 90 days, after which the records must be destroyed.

The NICS Audit Log provides many useful and necessary functions. First, it allows examiners to determine if, based on new information, someone who was allowed to receive a firearm is in fact prohibited by federal law from doing so. Second, the NICS Audit Log allows the FBI to search for patterns of fraud and abuse by both gun dealers and purchasers. Finally, it can help determine if gun buyers have submitted false identification in order to thwart the background check system.

The provision that my legislation today would repeal reduced the time these records may be retained from 90 days to 24 hours. This will decrease the effectiveness of the NICS Audit Log and have a dramatic, negative impact on public safety.

In July 2001, the Department of Justice proposed an almost-identical change to the NICS regulations. In response to that proposal, I asked the non-partisan General Accounting Office to conduct a study on its possible effects. The key finding of this study was: ''Regarding public safety, the FBI would lose certain abilities to initiate firearm-retrieval actions when new information reveals that individuals who were approved to purchase firearms should not have been. Specifically, during the first 6 months of the current 90–day retention policy, the FBI used retained records to initiate 235 firearm-retrieval actions, of which 228, 97 percent, could not have been initiated under the proposed next-day destruction policy.''

Therefore, if this provision is not repealed, each year, more than 450 people who are prohibited by federal law from having a firearm nonetheless will have one.

This number could even be much higher. In the 6 months examined by the GAO, the FBI determined that an additional 179 transactions were initially approved and reversed more than one day later, but did not result in actual firearm sales. In other words, during this six-month period, the background checks yielded a total of 407 mistakes that would not have been caught if the NICS record retention period had been shortened to 24 hours.

Given this negative effect on public safety, many law enforcement agencies and officials have expressed their opposition. For example, the Law Enforcement Steering Committee (LESC), a nonpartisan coalition of organizations representing law enforcement management, labor, and research, is ''concerned with provisions included in the omnibus bill addressing firearms purchasing and the reduction of law enforcement oversight.'' The nine organizations in the LESC are the following: the Federal Law Enforcement Officers Association, the International Brotherhood of Police Officers, the Major Cities Chiefs Association, the Major County Sheriff's Association, the National Association of Police Organizations, the National Organization of Black Law Enforcement Executives, the National Troopers Coalition, the Police Executive Research Forum, and the Police Foundation.

The Federal Bureau of Investigation Agents Association, a non-governmental professional association with a membership of nearly 9,000 current and more than 2,000 retired FBI agents nationwide has written: ''The more the retention period is reduced, the more difficult it would become to use the paperwork to investigate or prosecute crimes related to the use of sales of the firearms in question. Any such efforts can only complicate the already difficult task of law enforcement and jeopardize public safety.''

Although the FBI Agents Association does not speak for the official FBI, it is worth noting that the FBI's NICS Operations Report in March 2000 recommended extending the retention period from 90 days to one year and noted that the Advisory Policy Board concurred with that recommendation.

Finally, the International Association of Chiefs of Police, the world's oldest and largest association of law enforcement executives, with more than 19,000 members in 90 countries, stands behind its 2001 letter to the FBI, in which the IACP wrote: ''We believe that decreasing the amount of time the purchase records are kept will weaken the background check system and allow more criminals to illegally obtain weapons. . . . The IACP believes that the 90-day retention period should not be shortened. Decreasing the retention period of these records to one business day will not provide law enforcement with sufficient time to perform the necessary audits on the NICS system as established by the Brady Act.''

In addition to the threat to public safety, this provision will have monetary costs. According to the GAO report, the FBI has determined that when this change in the NICS retention policy is implemented, many of the audits currently conducted on a monthly or quarterly basis would have to be conducted on a real-time basis—either hourly or daily. The FBI has said it would need to add 10 staff members to conduct these real-time audits, which would bring the total number of audit staff to 19.

Especially in this time of increased attention to homeland security, this is not the proper allocation of our limited resources. Unless we repeal this provision, we will be funding ten additional FBI staff members to implement a policy that would allow hundreds of convicted felons and fugitives to keep their firearms. That clearly does not make sense.

The clock is ticking: this provision will go into effect in less than a month, before July 21, 2004. We must act now to keep firearms out of the hands of hundreds of convicted felons, fugitives, and terrorists each year. I urge my colleagues to join me in support of this important, commonsense legislation to promote public safety and to ensure that similar provisions are not enacted in future appropriation legislation.

By Mr. HARKIN (for himself and Mr. SPECTER):

S. 2558. A bill to improve the health of Americans and reduce health care costs by reorienting the Nation's health care system towards prevention, wellness, and self care; to the Committee on Finance.

Mr. SPECTER. Mr. President, I have sought recognition to introduce the Health Care Assurance Act of 2004, which is legislation designed to cover the 43 million Americans who are currently not covered, and to provide for offsets in cost to cover the expenditures in covering the 43 million Americans who are now not covered.

The United States has the greatest health care system in the world, and it is desirable, in my opinion, to incrementally change the health care system to cover those who are now not covered as opposed to having some vast bureaucracy take over, with the Government taking all of the responsibility.

I have introduced health care legislation in some detail during the course of my tenure in the Senate and have been privileged to be the chairman of the Appropriations Subcommittee on Health and Human Services since 1995, where, working collaboratively with Senator HARKIN, the ranking, senior Democrat on the subcommittee, we have increased funding in the National Institutes of Health, done extensive work on stem cell research, and provided a great many health care programs. The legislation which I am introducing today I introduce on behalf of Senator HARKIN and myself.

The essence of this legislation would provide for small employer and individual group purchasing so small employers or individuals can have the benefit of what large companies get by virtue of more purchasing power. That expenditure would run, over a 10-year period, at $300 million.

There is considerable loss of coverage when people change jobs. On the so-called portability, this legislation provides in some detail for covering people between jobs, at a cost of about $101 billion over the course of the 10-year period.

Financial incentives for young adults are provided. There is an outreach program for Medicaid-eligible low-income families. There is expanded coverage for the State Children's Health Insurance Program and their families.

The total cost of the programs over a 10-year period would be $540 billion. There are savings specified and identified in the course of this bill to make

up for that money, for one thing, improving the program integrity and efficiency in the Medicare Program by having more audits to stop fraud in a very active way by reducing medical errors. The Institute of Medicine published a report identifying up to 98,000 deaths a year due to medical errors. They specified a program for saving up to $150 billion over a 10-year period by reducing medical errors.

The Subcommittee on Health and Human Services, which I chair, had provided funding to move ahead in implementing the reduction in those errors. There would be savings from improving health care quality, efficiency, and consumer education, and there would be considerable savings in primary and preventative care providers.

There needs to be a great deal of additional education. One statistic which I found of concern was that there are 14 million Americans who qualify for Medicaid programs, being below the 200 percent of poverty, who don't seek the coverage and don't know of its availability. In our Health and Human Services bill, we are providing funding to try to move ahead with an educational program.

Last month, a nonpartisan campaign was launched to call attention to the plight of more than 43 million Americans under age 65 who lack health insurance coverage. Two former presidents—Gerald Ford and Jimmy Carter—cochaired the effort. They were supported by nine former Surgeons General and Department of Health and Human Services Secretaries, as well as some of the most influential organizations in this country, including the AFL–CIO and the U.S. Chamber of Commerce. Nearly 1,500 public events took place throughout the country, all designed to bring together diverse interests around a single objective: to insist that all Americans have access to health insurance coverage.

Here in the Senate, a special task force appointed by Majority Leader FRIST and headed by my distinguished colleague Senator JUDD GREGG issued a series of recommendations for addressing this problem.

Well before last month, we knew that, contrary to what some assume, the ranks of the uninsured consisted primarily of working families with low and moderate incomes—not just the unemployed.

We knew that the lack of insurance ultimately compromises a person's health because he or she is less likely to receive preventive care, is more likely to be hospitalized for avoidable health problems, and is more likely to be diagnosed in the late stages of diseases.

And we knew that the lack of insurance coverage leaves individuals and their families more financially vulnerable to higher out-of-pocket costs for their medical bills.

As I have said many times, we can fix the problems felt by uninsured Americans without resorting to big government and without completely overhauling our current system, one that works well for most Americans—serving over 82 percent of our non-elderly citizens. We must enact reforms that improve upon our current market-based health care system, as it is clearly the best health care system in the world.

When you hear the term ''uninsured'' you immediately think of men and women who are unemployed and their children. The unemployed make up approximately 18 percent of Americans who lack health insurance. However, nearly 26 million individuals are employed and still are without health care coverage. Approximately 14 million employed individuals have household incomes below 200 percent of the Federal poverty level and are eligible for public health insurance programs, but have not applied. This statistic includes 4 million children who are eligible for Medicaid and the State Children's Health Insurance program.

Because of early retirements, nearly 10 percent of people between the ages of 55 and 64, are uninsured.

Approximately 25 to 30 percent of young adults between the ages of 18 and 34 are uninsured.

Immigrants and their U.S.-born children represent more than 90 percent of the increase in the uninsured population since 1989.

In the United States, in 2003, $1.7 trillion was spent on health care or more than $5,800 per person. It is projected that annual health care expenditures will exceed $3.4 trillion by 2013 or 18 percent of gross domestic product. Costs of covering the uninsured in 2004 dollars is approximately $48 billion or $500 plus billion over 10 years. These costs are in addition to the $125 billion per year currently spent for Medicare and Medicaid payments, out of pocket expenses paid by the uninsured and other state and local programs.

Accordingly, today I am introducing the Health Care Assurance Act of 2004. This legislation would provide health care coverage for all Americans who are currently uninsured. The bill's $540 billion price tag, over the next 10 years, would be offset by improving program integrity and efficiency, a reduction in medical errors, increasing the use of medical technology, and preventive health measures, including improving health care quality and consumer education. Let me briefly summarize the provisions of this legislation.

(1) Small Employer and Individual Purchasing Groups: This legislation establishes voluntary small employer and individual purchasing groups designed to provide affordable, comprehensive health coverage options for employers, their employees, and other uninsured individuals and their families. Health plans offering coverage through such groups will: (1) provide a standard, actuarially equivalent health benefits package; (2) adjust community rated premiums by age and family size in order to spread risk and provide price equity to all; and (3) meet guidelines for marketing practices. This provision would cost $300 million over 10 years and provide coverage to approximately 15.6 million Americans who are currently uninsured.

(2) COBRA Portability Reform: For those persons who are uninsured between jobs and for insured persons who fear losing coverage should they lose their jobs, this legislation would reform the existing COBRA law by: (1) extending to 24 months the minimum time period in which COBRA may cover individuals through their former employers' plan; (2) expanding coverage options to include plans with a lower premium and a $1,000 deductible—saving a typical family of four 20 percent in monthly premiums—and plans with a lower premium and a $3,000 deductible—saving a family of four 52 percent in monthly premiums. This provision would cost $101.7 billion over 10 years and would cover 8.5 million people.

(3) State Based Program of Financial Incentives to Young Adults: This legislation creates a $4 billion a year grant program which consists of financial incentives for full-time independent college students, part-time students, recent graduates and other young adults without health insurance coverage. Coverage would be offered through existing State programs, such as State high risk insurance pools and would be limited so that when individuals are hired, they receive health insurance through their employer. This provision would cost $40 billion over 10 years and would cover 4 million people who are currently uninsured.

(4) Outreach Programs for Low-Income Families Who are Eligible to Enroll in Medicaid: This program is designed to improve coverage through existing public and private health care programs by making low-income parents aware of State child health insurance programs. The legislation would also improve knowledge concerning public health benefits of health insurance coverage, including the advantages of receiving prevention and wellness services. This new outreach program would involve the Departments of Agriculture, Health and Human Services, the Social Security Administration and other Federal agencies to improve knowledge about health insurance coverage available through public programs. Outreach will be targeted to eligible populations and be designed in a culturally appropriate manner and identify particularly hard to reach populations, including recent immigrants and migrant and seasonal farm workers. This provision would cost $4 billion over 10 years and would cover up to 3 million previously uninsured individuals.

(5) Expansion of the State Children's Health Insurance Program and Family Coverage: The legislation would increase the income eligibility to families with incomes at or below 235 percent of the Federal poverty level,

$44,486 annually for a family of four, and would also, for the first time, provide health insurance to the child's family. This provision would cost $394 billion over 10 years and would cover 12.4 million children and extend coverage to their families.

(6) Improving Program Integrity and Efficiency in the Medicare Program: The bill would raise the cap on Medicare contractor audit funding/program integrity from $720 million to $1 billion over a 5-year period. This provision would save an estimated $60 billion over the next 10 years.

(7) Reducing Medical Errors and Increasing the Use of Medical Technology: A provision is included that would provide for demonstration programs to test best practices for reducing errors, testing the use of appropriate technologies to reduce medical errors, such as hand-held electronic medication systems, and research in geographically diverse locations to determine the causes of medical errors. To assist in the development by the private sector of needed technology standards, the bill would provide for ways to examine use of information technology and coordinate actions by the Federal Government and ensure that this investment will further the national health information and infrastructure. This section of the legislation is projected to save $150 billion over the next 10 years.

(8) Improving Health Care Quality, Efficiency and Consumer Education: The legislation would set up demonstration projects to educate the public regarding wise consumer choices about their health care, such as appropriate health care costs and quality control information. The Department of HHS would be tasked with developing public service announcements to educate the public about their coverage choices, eligibility and preventive care services. Also included in this title is a provision on ways to improve the effectiveness and portability of advance directives and living wills. Projected cost savings of this section of the bill is $70 billion over the next 10 years.

(9) Primary and Preventive Care Services: Language is included to encourage the use of nonphysician providers such as nurse practitioners, physician assistants, and clinical nurse specialists by increasing direct reimbursement under Medicare and Medicaid without regard to the setting where services are provided. The bill also seeks to encourage students early on in their medical training to pursue a career in primary care and it provides assistance to medical training programs to recruit such students. The savings from this provision is estimated at $260 billion over a 10 year period.

The bill I am introducing today is distinct from my longstanding efforts regarding managed care reform. During the 105th, 106th, and 107th Congresses, I joined a bipartisan group of Senators to introduce the Promoting Responsible Managed Care Act of 1998, 1999, and 2001 balanced proposals which would ensure that patients receive the benefits and services to which they are entitled, without compromising the savings and coordination of care that can be achieved through managed care.

I have advocated health care reform in one form or another throughout my 24 years in the Senate. My strong interest in health care dates back to my first term, when I sponsored S. 811, the Health Care for Displaced Workers Act of 1983, and S. 2051, the Health Care Cost Containment Act of 1983, which would have granted a limited antitrust exemption to health insurers, permitting them to engage in certain joint activities such as acquiring or processing information, and collecting and distributing insurance claims for health care services aimed at curtailing then escalating health care costs. In 1985, I introduced the Community-based Disease Prevention and Health Promotion Projects Act of 1985, S. 1873, directed at reducing the human tragedy of low birth weight babies and infant mortality. Since 1983, I have introduced and cosponsored numerous other bills concerning health care in our country.

During the 102nd Congress, I pressed the Senate to take action on the health care market issue. On July 29, 1992, I offered an amendment to legislation then pending on the Senate floor, which included a change from 25 percent to 100 percent deductibility for health insurance purchased by self-employed individuals, and small business insurance market reforms to make health coverage more affordable for small businesses. Included in this amendment were provisions from a bill introduced by the late Senator John Chafee, legislation which I cosponsored and which was previously proposed by Senators Bentsen and Durenberger. When then-majority leader Mitchell argued that the health care amendment I was proposing did not belong on that bill, I offered to withdraw the amendment if he would set a date certain to take up health care, similar to an arrangement made on product liability legislation, which had been placed on the calendar for September 8, 1992. The majority leader rejected that suggestion, and the Senate did not consider comprehensive health care legislation during the balance of the 102nd Congress. My July 29, 1992 amendment was defeated on a procedural motion by a vote of 35 to 60, along party lines.

The substance of that amendment, however, was adopted later by the Senate on September 23, 1992, when it was included in a Bentsen/Durenberger amendment which I cosponsored to broaden tax legislation, H.R. 11. This amendment, which included essentially the same self-employed tax deductibility and small group reforms I had proposed on July 29 of that year, passed the Senate by voice vote. Unfortunately, these provisions were later dropped from H.R. 11 in the House-Senate conference.

On August 12, 1992, I introduced legislation entitled the Health Care Affordability and Quality Improvement Act of 1992, S. 3176, that would have enhanced informed individual choice regarding health care services by providing certain information to health care recipients, would have lowered the cost of health care through use of the most appropriate provider, and would have improved the quality of health care.

On January 21, 1993, the first day of the 103rd Congress, I introduced the Comprehensive Health Care Act of 1993, S. 18. This legislation consisted of reforms that our health care system could have adopted immediately. These initiatives would have both improved access and affordability of insurance coverage and would have implemented systemic changes to lower the escalating cost of care in this country. S. 18 is the principal basis of the legislation I introduced in the last five Congresses as well as this one.

On March 23, 1993, I introduced the Comprehensive Access and Affordability Health Care Act of 1993, S. 631, which was a composite of health care legislation introduced by Senators COHEN, KASSEBAUM, BOND, and MCCAIN, and included pieces of my bill, S. 18. I introduced this legislation in an attempt to move ahead on the consideration of health care legislation and provide a starting point for debate. As I noted earlier, I was precluded by majority leader Mitchell from obtaining Senate consideration of my legislation as a floor amendment on several occasions. Finally, on April 28, 1993, I offered the text of S. 631 as an amendment to the pending Department of the Environment Act, S. 171, in an attempt to urge the Senate to act on health care reform. My amendment was defeated 65 to 33 on a procedural motion, but the Senate had finally been forced to contemplate action on health care reform.

On the first day of the 104th Congress, January 4, 1995, I introduced a slightly modified version of S. 18, the Health Care Assurance Act of 1995, also S. 18, which contained provisions similar to those ultimately enacted in the Kassebaum-Kennedy legislation, including insurance market reforms, an extension of the tax deductibility of health insurance for the self employed, and tax deductibility of long term care insurance.

I continued these efforts in the 105th Congress, with the introduction of Health Care Assurance Act of 1997, S. 24, which included market reforms similar to my previous proposals with the addition of a new Title I, an innovative program to provide vouchers to States to cover children who lack health insurance coverage. I also introduced Title I of this legislation as a stand-alone bill, the Healthy Children's Pilot Program of 1997, S. 435, on March 13, 1997. This proposal targeted the approximately 4.2 million children of the working poor who lacked health insurance at that time. These are children

whose parents earn too much to be eligible for Medicaid, but do not earn enough to afford private health care coverage for their families.

This legislation would have established a $10 billion/5-year discretionary pilot program to cover these uninsured children by providing grants to States. Modeled after Pennsylvania's extraordinarily successful Caring and BlueCHIP programs, this legislation was the first Republican-sponsored children's health insurance bill during the 105th Congress.

I was encouraged that the Balanced Budget Act of 1997, signed into law on August 5, 1997, included a combination of the best provisions from many of the children's health insurance proposals throughout this Congress. The new legislation allocated $24 billion over 5 years to establish State Child Health Insurance Programs, funded in part by a slight increase in the cigarette tax.

During both the 106th and 107th Congresses, I again introduced the Health Care Assurance Act. These bills contained similar insurance market reforms, as well as new provisions to augment the new State Child Health Insurance Program, to assist individuals with disabilities in maintaining quality health care coverage, and to establish a National Fund for Health Research to supplement the funding of the National Institutes of Health. All these new initiatives, as well as the market reforms that I supported previously, work toward the goals of covering more individuals and stemming the tide of rising health costs.

My commitment to the issue of health care reform across all populations has been consistently evident during my tenure in the Senate, as I have taken to this floor and offered health care reform bills and amendments on countless occasions. I will continue to stress the importance of the Federal Government's investment in and attention to the system's future.

As my colleagues are aware, I can personally report on the miracles of modern medicine. Nearly 10 years ago, an MRI detected a benign tumor, meningioma, at the outer edge of my brain. It was removed by conventional surgery, with 5 days of hospitalization and 5 more weeks of recuperation.

When a small regrowth was detected by a follow-up MRI in June 1996, it was treated with high powered radiation using a remarkable device called the ''Gamma Knife.'' I entered the hospital on the morning of October 11, 1996, and left the same afternoon, ready to resume my regular schedule. Like the MRI, the Gamma Knife is an innovation, coming into widespread use only in the past decade.

In July 1998, I was pleased to return to the Senate after a relatively brief period of convalescence following heart bypass surgery. This experience again led me to marvel at our health care system and made me more determined than ever to support Federal funding for biomedical research and to support legislation which will incrementally make health care available to all Americans.

My concern about health care has long pre-dated my own personal benefits from the MRI and other diagnostic and curative procedures. As I have previously discussed, my concern about health care began many years ago and has been intensified by my service on the Appropriations Subcommittee on Labor, Health and Human Services, and Education, which I now have the honor to chair.

My own experience as a patient has given me deeper insights into the American health care system beyond my perspective from the U.S. Senate. I have learned: (1) our health care system, the best in the world, is worth every cent we pay for it; (2) patients sometimes have to press their own cases beyond doctors' standard advice; (3) greater flexibility must be provided on testing and treatment; (4) our system has the resources to treat the 40.9 million Americans currently uninsured, but we must find the way to pay for it; and (5) all Americans deserve the access to health care from which I and others with coverage have benefited.

I have long been convinced that our Federal budget of $2.4 trillion could provide sufficient funding for America's needs if we establish our real priorities. Over the past 10 years, I believe we have learned a great deal about our health care system and what the American people are willing to accept from the Federal Government. The message we heard loudest was that Americans do not want a massive overhaul of the health care system. Instead, our constituents want Congress to proceed at a slower pace and to target what is not working in the health care system while leaving in place what is working.

While I would have been willing to cooperate with the Clinton administration in addressing this Nation's health care problems, I found many areas where I differed with President Clinton's approach to solutions. I believe that the proposals would have been deleterious to my fellow Pennsylvanians, to the American people, and to our health care system as a whole. Most importantly, as the President proposed in 1993, I did not support creating a large new government bureaucracy because I believe that savings should go to health care services and not bureaucracies.

On this latter issue, I first became concerned about the potential growth in bureaucracy in September 1993 after reading the President's 239-page preliminary health care reform proposal. I was surprised by the number of new boards, agencies, and commissions, so I asked my legislative assistant, Sharon Helfant, to make me a list of all of them. Instead, she decided to make a chart. The initial chart depicted 77 new entities and 54 existing entities with new or additional responsibilities.

When the President's 1,342-page Health Security Act was transmitted to Congress on October 27, 1993, my staff reviewed it and found an increase to 105 new agencies, boards, and commissions and 47 existing departments, programs and agencies with new or expanded jobs. This chart received national attention after being used by Senator Bob Dole in his response to the President's State of the Union address on January 24, 1994.

The response to the chart was tremendous, with more than 12,000 people from across the country contacting my office for a copy; I still receive requests for the chart nearly ten years later. Groups and associations, such as United We Stand America, the American Small Business Association, the National Federation of Republican Women, and the Christian Coalition, reprinted the chart in their publications—amounting to hundreds of thousands more in distribution. Bob Woodward of the Washington Post later stated that he thought the chart was the single biggest factor contributing to the demise of the Clinton health care plan. And during the November 1996 election, my chart was used by Senator Dole in his presidential campaign to illustrate the need for incremental health care reform as opposed to a big government solution.

The Department of Health and Human Services has stated that the health care, education, and child care for the 3.5 to 4 million low-birth-weight infants and children from their births to the time they reach 15 years old costs between $5.5 and $6 billion more than what it would have cost if those children had been born at normal weight. We know that in most instances, prenatal care is effective in preventing low-birth-weight babies. Numerous studies have demonstrated that low birth weight does not have a genetic link, but is instead most often associated with inadequate prenatal care or the lack of prenatal care. The short and long-term costs of saving and caring for infants of low birth weight are staggering.

It is a human tragedy for a child to be born weighing 16 ounces with attendant problems which last a lifetime. I first saw one pound babies in 1984 when I was astounded to learn that Pittsburgh, PA, had the highest infant mortality rate of African-American babies of any city in the United States. I wondered how that could be true of Pittsburgh, which has such enormous medical resources. It was an amazing thing for me to see a one pound baby, about as big as my hand. However, I am pleased to report that as a result of successful prevention initiatives like the Federal Healthy Start program, Pittsburgh's infant mortality has decreased 20 percent.

To improve pregnancy outcomes for women at risk of delivering babies of low birth weight and to reduce infant mortality and the incidence of low-birth-weight births, as well as improving the health and well-being of mothers and their families, I initiated action that led to the creation of the

Healthy Start program in 1991. Working with the first Bush administration and Senator HARKIN, as chairman of the Appropriations Subcommittee, we allocated $25 million in 1991 for the development of 15 demonstration projects. This number grew to 22 in 1994, to 75 projects in 1998, and the Health Resources and Services Administration expects this number to continue to increase. For fiscal year 2004, we secured $98 million for this vital program.

To help children and their families to truly get a healthy start requires that we continue to expand access to Head Start. This important program provides comprehensive services to low income children and families, including health, nutritional and social services that children need to achieve the school readiness goal of Head Start. I have strongly supported expanding this program to cover more children and families. Since FY'00, funding for Head Start has increased from $5.3 billion to the FY'04 level of $6.8 billion. Additional funding has extended the reach of this important program to the current level of approximately 920,000 children.

Our attention to improved health of children shifts to the school house door, as all children enroll in schools throughout the Nation. And it is in the schools where we have taken our next steps to improve the overall health of the Nation and reduce preventable health care expenditures. In the past 15 years, obesity has increased by over 50 percent among adults and in the past 20 years, obesity has increased by 100 percent among children and adolescents. A recent analysis by the National Institute of Child Health and Human Development, NICHD, Study of Early Child Care and Youth Development found that third grade children in the study received an average of 25 minutes per week in school of moderate to vigorous activity, while experts in the United States have recommended that young people should participate in physical activity of at least moderate intensity for 30 to 60 minutes each day. That is why I have supported increased funding for the Carole M. White Physical Education for Progress program. Since it was first funded at $5 million in FY 2001, this program has grown to $70 million in FY 2004. These funds help school districts and community based programs across the country improve and expand physical education programs in school, while also helping children develop healthy lifestyles to combat the epidemic of obesity in the Nation.

The Labor-HHS bill also has made great strides in increasing funding for a variety of public health programs, such as breast and cervical cancer prevention, childhood immunizations, family planning, and community health centers. These programs are designed to improve public health and prevent disease through primary and secondary prevention initiatives. It is essential that we invest more resources in these programs now if we are to make any substantial progress in reducing the costs of acute care in this country.

As chairman of the Labor, HHS and Education Appropriations Subcommittee, I have greatly encouraged the development of prevention programs which are essential to keeping people healthy and lowering the cost of health care in this country. In my view, no aspect of health care policy is more important. Accordingly, my prevention efforts have been widespread.

I joined my colleagues in efforts to ensure that funding for the Centers for Disease Control and Prevention, CDC, increased $3.9 billion or 390 percent since 1989, for a fiscal year 2004 total of $4.9 billion. We have also worked to increase funding for CDC's breast and cervical cancer early detection program to $209.5 million in fiscal year 2004, almost double its 1993 total.

I have also supported programs at CDC which help children. CDC's childhood immunization program seeks to eliminate preventable diseases through immunization and to ensure that at least 90 percent of 2-year-olds are vaccinated. The CDC also continues to educate parents and caregivers on the importance of immunization for children under 2 years. Along with my colleagues on the Appropriations Committee, I have helped ensure that funding for this important program together with the complementary Vaccines for Children Program has grown from $914 million in 1999 to $1.8 billion in fiscal year 2004. The CDC's lead poisoning prevention program annually identifies about 50,000 children with elevated blood levels and places those children under medical management. The program prevents the amount of lead in children's blood from reaching dangerous levels and has grown from $38.2 million in fiscal year 2000 to $41.7 million in fiscal year 2004.

In recent years, we have also strengthened funding for Community Health Centers, which provide immunizations, health advice, and health professions training. These centers, administered by the Health Resources and Services Administration, provide a critical primary care safety net to rural and medically underserved communities, as well as uninsured individuals, migrant workers, the homeless, residents of public housing, and Medicaid recipients. Funding for Community Health Centers has increased from $1 billion in fiscal year 2000 to $1.6 billion in fiscal year 2004.

As former chairman of the Select Committee on Intelligence and current chairman of the Appropriations Subcommittee with jurisdiction over nondefense biomedical research, I have worked to transfer CIA imaging technology to the fight against breast cancer. Through the Office of Women's Health within the Department of Health and Human Services, I secured a $2 million contract in fiscal year 1996 for a research consortium led by the University of Pennsylvania to perform the first clinical trials testing the use of intelligence technology for breast cancer detection. My Appropriations subcommittee has continued to provide funds to continue these clinical trials.

In 1998, I cosponsored the Women's Health Research and Prevention Amendments, which was signed into law later that year. This bill revised and extended certain programs with respect to women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention.

In 1996, I also cosponsored an amendment to the Fiscal Year 1997 VA–HUD Appropriations bill which required that health plans provide coverage for a minimum hospital stay for a mother and child following the birth of the child. This bill became law in 1996.

I have also been a strong supporter of funding for AIDS research, education, and prevention programs.

During the 101st Congress I cosponsored the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 which amended the Public Health Service Act to direct the Secretary of Health and Human Services, through the administrator of the Health Resources and Services Administration, to make grants in any metropolitan area that has reported and confirmed more than 2,000 acquired immune deficiency syndrome, AIDS, cases or a per capita incidence of at least 0.0025, eligible area. This legislation requires that the grants be directed to the chief elected official of the city or urban county that administers the public health agency serving the greatest number of individuals with AIDS in the eligible area. This bill became law in 1990.

During the 104th Congress I cosponsored the Ryan White CARE Reauthorization Act of 1995 which provided federal funds to metropolitan areas and states to assist in health care costs and support services for individuals and families affected by acquired immune deficiency syndrome, AIDS, or infection with the human immunodeficiency virus, HIV. This bill became law in 1996.

Funding for Ryan White AIDS programs has increased from $757.4 million in 1996 to $2.02 billion for fiscal year 2004. Within the fiscal year 2004 funding, $73 million was included for pediatric AIDS programs and $749 million for the AIDS Drug Assistance Program, ADAP. AIDS research at the NIH totaled $742.4 million in 1989, and has increased to an estimated $2.9 billion in fiscal year 2004.

The health care community continues to recognize the importance of prevention in improving health status and reducing health care costs. The Balanced Budget Act of 1997 and the Consolidated Omnibus Appropriations Act of fiscal year 2001 established new and enhanced preventive benefits within the Medicare program, such as flu

shots, bone mass measurements, yearly mammograms, biennial pap smears and pelvic exams, and coverage of colonoscopy for high risk patients. However, some of these ''wellness'' benefits have cost obligations, such as co payments or deductibles. In this bill, I have also included provisions which refine and strengthen preventive benefits within the Medicare program, including coverage of yearly pap smears, pelvic exams, and screening and diagnostic mammography with no copayment or Part B deductible; and coverage of insulin pumps for certain Type I Diabetics.

During the 102nd Congress, I cosponsored an amendment to the Veterans' Medical Programs Amendments of 1992 which included improvements to health and mental health care and other services to veterans by the Department of Veterans Affairs. This bill became law in 1992.

During the 106th Congress, I sponsored the Veterans Benefits and Health Care Improvement Act of 2000 which increased amounts of educational assistance for veterans under the Montgomery GI Bill and enhanced health programs. This bill became law in 2000.

I also sponsored the Department of Veterans Affairs Long-Term Care and Personnel Authorities Enhancement Act which improved and enhanced the provision of health for veterans. This bill became law in 2003.

I cosponsored the Jobs and Growth Tax Relief Reconciliation Act which became law in 2003. This Act provided $20 billion in fiscal relief to the states, half of which went toward Medicaid relief.

In 1996, I cosponsored the Health Coverage Availability and Affordability Act, which improved the portability and continuity of health insurance coverage in the group and individual markets, combated waste, fraud, and abuse in health insurance and health care delivery, promoted the use of medical savings accounts, improved access to long-term care services and coverage, and simplified the administration of health insurance. This bill became law in 1996.

On November 29, 1999, the Institute of Medicine, IOM, issued a report entitled ''To Err is Human: Building a Safer Health System.'' The IOM Report estimated that anywhere between 44,000 and 98,000 hospitalized Americans die each year due to avoidable medical mistakes. However only a fraction of these deaths and injuries are due to negligence; most errors are caused by system failures. The IOM issued a comprehensive set of recommendations, including the establishment of a nationwide, mandatory reporting system; incorporation of patient safety standards in regulatory and accreditation programs; and the development of a nonpunitive ''culture of safety'' in health care organizations. The report called for a 50 percent reduction in medical errors over 5 years.

After the report was issued I held a series of three LHHS hearings on medical errors: Dec. 13, 1999—to discuss the findings of the Institute of Medicine's report on medical errors; Jan. 25, 2000—a joint hearing with the Committee on Veterans' Affairs to discuss a national error reporting system and the VA's national patient safety program; Feb. 22, 2000—a joint hearing with the HELP Committee to discuss the Administration's strategy to reduce medical errors.

After hearing from Government witnesses and experts in the field on medical errors, I included $50 million in the FY 2001 Senate Labor, Health and Human Services and Education for a patient safety initiative. In the Senate report I also directed the Agency for Healthcare Research and Quality, AHRQ, to: (1) develop guidelines on the collection of uniform error data; (2) establish a competitive demonstration program to test ''best practices;'' and (3) research ways to improve provider training.

The committee also directed AHRQ to prepare an interim report to Congress concerning the results of the demonstration program within 2 years of the beginning of the projects. The FY 2002 Senate report directed AHRQ to submit a report detailing the results of its initiative to reduce medical errors. HHS combined both reports into one, which it submitted to me earlier this year.

Since FY 2001 the Labor/HHS Subcommittee has included within the Agency for Healthcare Research and Quality funding for research into ways to reduce medical errors. The FY 2002 appropriation was $55 million, in FY 2003 another $55 million was provided, in FY 2004 the appropriation was increased to $79.5 million and in FY 2005, while still pending Senate action a figure of $84 million is proposed.

Statistics find that 30 percent of Medicare expenditures occur during a person's last year of life and beyond the last year of life, a tremendous percentage of medical costs occur in the last month, in the last few weeks, in the last week, or in the last few days.

A New England Journal of Medicine article stated that as much as 3.3 percent of national health care costs could be saved yearly by reducing the use of end of life interventions. While some estimates of the end of life costs have been projected to be over $500 billion, over a 10-year period, the cost analysis in this bill does not include any of these estimates in the projected savings calculations.

The issue of cutting back on end of life treatments is such a sensitive subject and no one should decide for anybody else what that person should have by way of end-of-life medical care. What care ought to be available is a very personal decision.

Living wills give an individual an opportunity to make that judgment, to make a decision as to how much care he or she wanted near the end of his or her life and that is, to repeat, a matter highly personalized for the individual.

As part of a public education program, I included an amendment to the Medicare Prescription Drug and Modernization Act of 2003 which directed the Secretary of Health and Human Services to include in its annual ''Medicare And You'' handbook, a section that specifies information on advance directives and details on living wills and durable powers of attorney regarding a person's health care decisions.

As chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I have worked to provide much-needed resources for hospitals, physicians, nurses, and other health care professionals. The National Institutes of Health provides funding for biomedical research at our Nation's universities, hospitals, and research institutions. I led the effort to double funding for the National Institutes of Health over 5 years. Funding for the NIH has increased from $11.3 billion in fiscal year 1995 to $28 billion in fiscal year 2004.

An adequate number of health professionals, including doctors, nurses, dentists, psychologists, laboratory technicians, and chiropractors is critical to the provision of health care in the United States. I have worked to provide much needed funding for health professional training and recruitment programs. In fiscal year 2004, these vital programs received $436 million. Nurse education and recruitment alone has been increased from $58 million in fiscal year 1996 to $142 million in fiscal year 2004.

Once recruited and trained, health professionals must be given the resources to provide quality health care in all areas of the country. Differences in reimbursement rates between rural and urban areas have led to significant problems in health professional retention. During the debate on the Balanced Budget Refinement Act 2, which passed as part of the FY 2001 consolidated appropriations bill, I attempted to reclassify some Northeastern hospitals in Pennsylvania to a Metropolitan Statistical Area with higher reimbursement rates. Due to the large volume of requests from other states, we were not able to accomplish these reclassifications for Pennsylvania. However, as part of the FY 2004 Omnibus Appropriations bill, I secured $7 million for twenty northeastern Pennsylvania hospitals affected by area wage index shortfalls.

As part of the Medicare Prescription Drug and Medicare Improvement Act of 2003, which passed the Senate on November 25, 2003, a $900 million program was established to provide a one-time appeal process for hospital wage index reclassification. Thirteen Pennsylvania hospitals were approved for funding through this program in Pennsylvania.

The following table outlines the $540 billion in projected health care costs offset by the $540 billion in health care saving assumptions contained in the

provisions of the Health Care Assurance Act of 2004. These costs and savings are for a 10-year period.

	Projected health care costs
Small Employer and Individual Purchasing Groups	$300,000,000
COBRA Portability Reform	101,700,000,000
Financial Incentives for Young Adults	40,000,000,000
Outreach Program for Medicaid Eligible Low-Income Families	4,000,000,000
Expanded Coverage for the State Children's Health Insurance Program and Their Families	394,000,000,000
Total—Projected Health Care Costs	540,000,000,000
	Projected health care savings
Improving Program Integrity/Efficiency in the Medicare Program	$60,000,000,000
Reducing Medical Errors and Increasing Medical Technology	150,000,000,000
Improving Health Care Quality, Efficiency and Consumer Education	70,000,000,000
Primary and Preventive Care Providers	260,000,000,000
Total—Projected Health Care Savings	540,000,000,000

The provisions which I have outlined today contain my ideas for a framework to provide affordable, quality health care for all Americans. I am opposed to rationing health care. I do not want rationing for myself, for my family, or for America. I believe we can provide care for the 43 million Americans who are now not covered by savings in other areas of the $1.7 trillion currently being spent on health care. The time has come for concerted action in this arena. I urge my colleagues to move this legislation forward promptly.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. FRIST, Mr. DASCHLE, Mr. GRAHAM of South Carolina, and Mrs. BOXER):

S. 2560. A bill to amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise with my esteemed colleague and friend, Senator LEAHY, ranking Democrat Member of the Senate Judiciary Committee, to introduce the ''Inducing Infringement of Copyrights Act of 2004.'' This Act will confirm that creative artists can sue corporations that profit by encouraging children, teenagers and others to commit illegal or criminal acts of copyright infringement. Senator LEAHY and I are pleased that Majority Leader FRIST and Minority Leader DASCHLE and Senators GRAHAM and BOXER are co-sponsoring this important bipartisan legislation.

It is illegal and immoral to induce or encourage children to commit crimes. Artists realize that adults who corrupt or exploit the innocence of children are the worst type of villains. In ''Oliver Twist'', Fagin and Bill Sikes profited by inducing children to steal. In the film ''Chitty-Chitty Bang-Bang'', the leering ''Child-Catcher'' lured children into danger with false promises of ''free lollipops.'' Tragically, some corporations now seem to think that they can legally profit by inducing children to steal—that they can legally lure children and others with false promises of ''free music.''

Such beliefs seem common among distributors of so-called peer-to-peer filesharing (''P2P'') software. These programs are used mostly by children and college students—about half of their users are children. Users of these programs routinely violate criminal laws relating to copyright infringement and pornography distribution. Criminal law defines ''inducement'' as ''that which leads or tempts to the commission of crime.'' Some P2P software appears to be the definition of criminal inducement captured in computer code.

Distributors of some P2P software admit this. The distributors of EarthStation 5 state, ''While other peer 2 peer networks like Kazaa or Imesh continue to deny building their programs for illegal file sharing, at ES5 we not only admit why we built ES5, we actually promote P2P, endorse file sharing, and join our users in swapping files!''

Recently, in the Grokster case, a Federal court drew similar conclusions about the intent of other distributors of P2P software. It warned that some P2P distributors ''may have intentionally structured their businesses to avoid secondary liability for copyright infringement, while benefiting financially from the illicit draw of their wares.'' In other words, many P2P distributors may think that they can lawfully profit by inducing children to break the law and commit crimes.

They are dead wrong. America punishes as criminals those who induce others to commit any criminal act, including copyright infringement. The first sentence of our Criminal Code states:

> Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal . . . .

Indeed, it is absurd to think that our law might be otherwise. No civilized country could let sophisticated adults profit by tempting its most vulnerable citizens—its children—to break the law.

I think we must understand how some corporations came to confuse child endangerment with a legal business model. Their confusion seems to arise from court cases misinterpreting a well-intended Supreme Court decision that tried to clarify two critical components of federal law: the law of secondary liability and the law of copyright.

The Supreme Court states that secondary liability is ''imposed in virtually all areas of the law.'' Secondary liability is universal because its logic is compelling. It does not absolve lawbreakers of guilt. But it recognizes that we are all human: We are all more likely to break the law if encouraged or ordered to do so. Secondary liability thus discourages lawlessness by punishing people who manipulate others into doing the ''dirty work'' of breaking the law. Secondary liability usually targets two types of persons: 1. those who induce others to break the law, and 2. those who control others who break the law.

Though secondary liability is nearly ubiquitous, it has almost always remained as a judge-made, common-law doctrine—and for a good reason. Secondary liability prevents the use of indirect means to achieve illegal ends. Consequently, the scope of secondary liability must be flexible—otherwise, it would just instruct wrong-doers on how to legally encourage or manipulate others into breaking the law. The common-law judicial process is ideally suited to evolve flexible secondary-liability rules from the results of many individual cases.

As a result, Congress rarely codifies secondary liability. It has codified secondary liability to narrow it, as in the Patent Act. Congress has codified secondary liability in the Criminal Code to ensure that the narrow construction given criminal statutes would not foreclose secondary liability. In the Digital Millennium Copyright Act, Congress codified a complex balance between opposed interests that expanded one type of secondary liability and narrowed another.

Congress has always assumed that infringers could readily induce consumers to accept infringing copies of works. It thus created ''a potent arsenal of remedies against an infringer . . . .'' But secondary liability often arises if a third party can be ordered or induced to make the infringing copies. Consequently, only after copying devices became available to people who might be induced to infringe did questions about secondary liability for infringement become pressing.

In 1984, these questions reached the Supreme Court in Sony Corp. v. Universal City Studios, Inc. Sony held that the makers of the Betamax VCR could not be held secondarily liable in a civil suit brought by copyright holders—even though some consumers would use VCRs to make infringing copies of copyrighted TV broadcasts.

Sony also created a broader limitation on secondary liability by importing a limitation that that Congress had codified only in the Patent Act; this was the substantial-noninfringing-use rule, also called the ''staple article of commerce'' doctrine. Sony intended this rule to strike, as between creators of works and copying equipment, the same ''balance'' that it had struck under the Patent Act between the

rights of patent holder and makers of staple products.

Under the Patent Act, the substantial-noninfringing-use rule bars secondary liability for selling a ''staple'' product that has a ''substantial noninfringing use''—even if that staple could also be used as a component in an infringing copy of a patented invention. This rule protects makers of staples without changing the nature of secondary liability. In particular, it does not immunize bad actors who intend to distribute ''patent-infringement kits.'' Even in the rare case of a novel invention that consists only of ''staple'' components, an ''infringement kit'' must bundle components and include assembly instructions. Neither the bundle nor the instructions will likely have a ''substantial noninfringing use.''

Sony intended this rule to strike the same admirable ''balance'' under the Copyright Act. Unfortunately, Sony also proposed that if this rule proved problematic, Congress should alter it on a technology-by-technology basis. This proposal was flawed: In 1976, Congress redrafted the Copyright Act to avoid the need to re-adjust copyrights on a technology-by-technology basis because legislation could no longer keep pace with technological change. Returning to this impractical technology-based approach would create an endless procession of ''tech-mandate'' laws that discriminate between technologies Congress deems ''good'' or ''bad.'' But technologies are rarely inherently either ''good'' or ''bad.'' Most can be used for either purpose; the effect depends on details of implementation impossible to capture—or predict—in prospective legislation.

Of course, the dysfunctional corrective mechanism that Sony proposed would have become problematic only if the Sony limitation was misunderstood or misapplied by lower courts. Unfortunately, that has now happened.

In cases like Napster and Grokster, lower courts misapplied the substantial-non-infringing-use limitation. These courts forgot about ''balance'' and held that this limitation radically alters secondary liability. In effect, these cases retained secondary liability's control prong but collapsed its inducement prong. The results of these cases prove this point: Napster imposed liability upon a distributor of copying devices who controlled infringing users; Grokster did not impose liability upon distributors who appeared to induce and profit from users' infringement.

A secondary-liability rule that punishes control and immunizes inducement is a public policy disaster. It seems to permit the distribution of ''piracy machines'' designed to make infringement easy, tempting, and automatic. Even Harvard's Berkman Center for Internet and society suggests that this is happening. The Center warns that ''it can be extremely difficult for a non-expert computer user to shut down'' the viral redistribution that can otherwise automatically make the user an international distributor of infringing works. The Center notes that the ''complexity of KaZaA's installation and disabling functions'' may leave many users unaware that they have become a contributor to global, for-profit copyright piracy. Unfortunately, ''piracy machines'' designed to mislead their users are just one of the perverse effects of a secondary liability rule that punishes control and immunizes inducement.

Perhaps the least perverse of these effects has been years of conflict between the content and technology industries. Content creators sought the tech-mandate ''corrections'' that Sony proposed. Technology industries opposed such laws because they too easily foreclose innocent or unforeseen applications. P2P software illustrates the problem: Today, most P2P software functions like Earthstation 5's ''piracy machine.'' Yet all agree that non-piracy-adapted implementations of P2P could have legitimate and beneficial uses.

A rule that punishes only control also produces absurd results. Secondary liability should focus on intent to use indirect means to achieve illegal ends. A rule that punishes only control degenerates into inane debate about which indirect means was used. Thus Napster and Grokster are regulated differently—though they function similarly from the perspective of the user, the distributor, or the copyright holder.

A rule that punishes only control also acts as a ''tech-mandate'' law: It mandates the use of technologies that avoid ''control''—regardless of whether they are suited for a particular task. Napster was punished for processing search requests efficiently on a centralized search index that it controlled. Grokster escaped by processing search requests less efficiently on a decentralized search index that it did not control. Rewarding inefficiency makes little sense.

A secondary-liability rule that punishes only control also punishes consumers: It encourages designers to avoid ''control'' by shifting risks onto consumers. For example, Napster incurred billion-dollar liability because it controlled computers housing a search index that located infringing files. Programs like Kazaa avoid Napster's ''control'' by moving their search indices onto computers owned by unsuspecting consumers. Consumers were never warned about the risks of housing these indices. As a result, many consumers, universities, and businesses now control computers that house ''mini-Napsters''—parts of a search index much like the one that destroyed Napster. These indices could still impose devastating liability upon anyone who ''controls'' a computer housing them. A secondary-liability rule that punishes only control thus rewards Kazaa for shifting huge risks onto unsuspecting consumers, universities and businesses.

And search indices are just one of the risks that designers of P2P software seem to impose upon their young users to avoid control. For example, the designers of most filesharing software choose to lack the ability to remove or block access to files known to contain viruses, child pornography or pornography mislabeled to be appealing to children. This ability could create ''control'' and trigger liability. Aiding distributors of viruses and pornography may be just an unfortunate side effect of avoiding control while inducing infringement.

A secondary-liability rule that immunizes inducement also encourages attempts to conceal risks from consumers: It is easier to induce people to take risks if they are unsure whether they are incurring a risk or its severity. The interfaces of most P2P software provide no warnings about the severe consequences of succumbing to the constant temptation of infringement.

Another risk to users of P2P software arises when pornography combines with the ''viral redistribution'' that thwarts removal of infringing copies of works. Most filesharing networks are awash in pornography, much of it mislabeled, obscene, illegal child pornography, or harmful to minors. Anyone risks criminal prosecution if they distribute pornography accessible to minors over these child-dominated networks. As a result, one P2P distributor who does distribute ''adult'' content demands that it be protected by access controls. But every adult who uses this distributor's software as intended to download one of millions of unprotected pornographic files automatically makes that pornography available for re-distribution to millions of children. This distributor has sat silently—knowing that its software exposes millions of its users to risks of criminal prosecution that the distributor cannot be paid to endure.

Perhaps the worst effect of punishing control and rewarding inducement is that it achieves precisely what Sony sought to avoid: It leaves copyright holders with an enforcement remedy that is ''merely symbolic'': It seems real, but it is illusory.

In theory, a rule that immunizes inducement still permits enforcement against those induced to infringe. At first, this remedy seems viable because copyrights have traditionally been enforced in lawsuits against direct infringers who actually make infringing copies of works.

But a fallacy lurks here: The ''direct infringers'' at issue are not the traditional targets for copyright enforcement. In fact, they are children and consumers: They are the hundreds of millions of Americans—toddlers to seniors—who use and enjoy the creative works that copyrights have helped create.

There is no precedent for shifting copyright enforcement toward the end-

users of works. For nearly 200 years, copyright law has been nearly invisible to the millions who used and enjoyed creative works. Copyright law was invisible to consumers because the law gave creators and distributors mutual incentives to negotiate the agreements that ensured that works reached consumers in forms that were safe to use in foreseeable ways. Now, those incentives are collapsing. As a result, artists must now waive their rights or sue consumers—their fans.

Worse yet, artists must sue their fans for the sin of misusing devices designed to be easy and tempting to misuse. That is unfair: When inducement is the disease, infringement can be seen as just a symptom. Yet artists must ignore inducers who profit by chanting, ''Hey, kids, infringement is cool, and we will help you get away with it.'' Instead, artists can only sue kids who succumb to this temptation. They must leave Fagin to his work—and sue Oliver Twist.

This sue-Oliver ''remedy'' is a debacle. For example, immunizing inducement ensures that artists will have to sue their fans: Inducers will have both the incentive and the means to thwart less extreme measures, like educational campaigns. For example, RIAA tried to avoid lawsuits against filesharers by sending educational instant messages to infringers. Kazaa, for ''privacy'' reasons, disabled instant messaging by default in the next version of its software. Lawsuits then followed.

And imagine the poor parent who tries to tell a teenager that free downloading of copyrighted music is illegal. The teenager, confused because ''everyone is doing it,'' consults a leading technology-news site promising a ''trusted source of information for millions of technology consumers.'' There, the teenager finds a P2P distributor promoting ''Morpheus 4.0, the only American filesharing software ruled legal by a U.S. federal court.'' This statement is false: Grokster did not rule Morpheus ''legal''; in fact, the case only confirmed that downloading copyrighted works is illegal. Below this misinformation, the teenager will find an independent editorial review rating Morpheus 4.0 as a ''Recommended'' download and ''an excellent choice'' for those seeking ''the latest and greatest.'' Who will the teenager believe?

Worse yet, if artists must sue only the induced, they just feed the contempt for copyrights that inducers breed. Inducers know that people induced to break a law become that law's enemies: Once you break a law, you must either admit wrongdoing or rationalize your conduct. Rationalization is often so easy. You can blame the law: Copyright is a stupid law needlessly enshrined in the Constitution by naives like James Madison. You can blame the victim: Some rock stars still make money; I do not like the ''business model'' of the record labels. You can blame the randomness of enforcement: Everyone else was doing it, so why not me? Anyone who has talked to young people about filesharing has heard such rationalizations time and again.

And forcing artists to ignore inducers and sue the induced locks artists into a war of attrition that they are unlikely to win. If you imagine inducement as a bush, this ''remedy'' forces artists to spend their money to sever each leaf—while the inducer makes money by watering the root. Artists may not be able to sustain this unending battle.

This may let inducers attempt an extortionate form of ''outsourcing.'' Inducers can increase or decrease their devices propensity to encourage piracy. Inducers can thus tell American artists that if the artists pay the inducers to become licensed distributors of their works, perhaps fewer bad things will happen. Implicitly, if artists do not pay, perhaps more bad things will happen. Were artists to succumb to such tactics, jobs and revenues created by the demand for American creative works would go overseas to some unsavory locales.

Worst of all, inducers will inevitably target children. Children would be easily induced to violate complex laws like the Copyright Act. Any child is a terrible enforcement target. And because most adults never induce children to break laws, children induced to infringe copyrights would not even be ''bad kids.'' Indeed, they would probably be smart, mostly law-abiding young people with bright futures. Innocent, mostly law-abiding children make the worst enforcement targets—and thus the best ''human shields'' to protect an inducer's business model.

This threat to children is real. Today, artists are suing high-volume filesharers who cannot be identified until late in the process. One filesharer sued for violating federal law over 800 times turned out to be a 12-year-old female honor student. This otherwise law-abiding young girl and her family then faced ruin by the girl's favorite artists. The public knew that something was wrong, and it was outraged. So the people who gave that girl an easily misused toy—and profited from her misuse of it—exploited public outrage with crocodile tears about the tactics of ''Big Music.'' And then, I imagine, they laughed all the way to the bank.

The Supreme Court could not have intended to force artists to sue children in order to reduce the profits that adults can derive by encouraging children to break the law. No one would intend that. Yet it seems to be happening.

These are the inevitable results of a secondary-liability rule that immunizes inducement. This ''rule'' has created the largest global piracy rings in history. These rings now create billions of infringing copies of works, and reap millions in profits for leaders who insulate themselves from direct involvement in crime by inducing children and students to ''do the dirty work'' of committing illegal or criminal acts. These rings then thwart deterrence and condemn attempts to enforce the law. These rings may now use profits derived from rampant criminality to extort their way into the legal Internet distribution market—a market critical to the future of our artists and children.

This must stop—and stop now. Artists have tried: They targeted for-profit inducers. But artists were thwarted by a court ruling that held, in effect, that although artists can sue exploited children and families into bankruptcy, courts need ''additional legislative guidance'' to decide whether artists can, instead, sue the corporations that profit by inducing children to break the law. I find this assertion wholly inconsistent with the intent of both Congress and the Supreme Court. But until this fundamentally flawed ruling is overruled by legislation or higher courts, artists cannot hold inducers liable for their actions.

Fortunately, Congress has charged the Department of Justice to enforce the Criminal Code. In the Criminal Code, Congress made it a Federal crime to willfully infringe copyrights or to distribute obscene pornography or child pornography. Congress also made it a crime to induce anyone—child or adult—to commit any Federal crime.

Indeed, Congress codified many forms of criminal secondary liability in the Criminal Code. I have already quoted its first sentence. Here is its second: ''Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.'' One court has said that this ensures that ''[a] crime may be performed through an innocent dupe, with the essential element of criminal intent residing in another person.'' Not coincidentally, some Federal prosecutors worry that P2P software makes infringement so tempting, easy and automatic that many of its users will lack criminal intent. Perhaps—but their relative innocence will not protect their inducers.

The Criminal Code also codifies other forms of secondary liability, like this one:

> If two or more persons conspire to injure, oppress, threaten any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States, . . . [t]hey shall be fined under this title or imprisoned not more than ten years, or both. . . .

These examples of laws imposing secondary criminal liability have something in common: Congress codified no exceptions for ''substantial non-criminal uses.'' The message is clear: Those who induce others to commit crimes cannot avoid prison by showing that some of them resisted. I will work with my colleagues in Congress to ensure that the Department of Justice enforces the Federal laws that prevent

anyone from inducing violations of any Federal law by our citizens, our students, or our children.

Congress, too, must do its part by enacting the Inducing Infringement of Copyrights Act, S. 2560. This bill will protect American artists, children and taxpayers by restoring the privately funded civil remedy crippled by the Grokster ruling. Congress must act: A Federal court has held that artists can only enforce their rights by suing exploited children and students pending ''additional legislative guidance'' about whether artists can, instead, sue the corporations that profit by inducing children to break laws and commit crimes. Silence could be misinterpreted as support for those who profit by corrupting and endangering others. This bill will restore the tried, privately funded civil enforcement actions long used to enforce copyrights.

This bill will also preserve the Sony ruling without reversing, abrogating or limiting it. The Inducement Act will simply import and adapt the Patent Act's concept of ''active inducement'' in order to cover cases of intentional inducement that were explicitly not at issue in Sony. The Inducement Act also preserves the Section 512 safe harbors for Internet service providers.

The bill also contains a savings clause to ensure that it provides the ''guidance'' courts have requested—not an iron-clad rule of decision for all possible future cases. This flexibility is critical because just as infringement cases are fact specific, so should inducement cases center on the facts of a given case, with courts endowed with the flexibility to impose just results. This bill does not purport to resolve or affect existing disagreements about when copies made and used within an individual's home environment are permissible and when they are infringing.

Rather, this bill is about the intentional inducement of global distribution of billions of infringing copies of works at the prodding and instigation of sophisticated corporations that appear to want to profit from piracy, know better than to break the law themselves, and try to shield themselves from secondary liability by inducing others to infringe and then disclaiming control over those individuals.

I also want to thank everyone who has worked with us to craft a bill that addresses this serious threat to children and copyrights without unduly burdening companies that engage in lawful commerce in the wide range of devices and programs that can copy digital files. As Sony illustrates, clear knowledge that a copying device can be used to infringe does not provide evidence of intent to induce infringement. It was critical to find a way to narrowly identify the rare bad actors without implicating the vast majority of companies that serve both consumers and copyright-holders by providing digital copying devices—even though these devices, like all devices, can be misused for unlawful purposes. In particular, I would like to thank the Business Software Alliance for its invaluable assistance in crafting a bill that protects existing legitimate technologies and future innovation in all technologies—including peer-to-peer networking.

Senator LEAHY and I look forward to working with all affected parties to enact this bill and restore the balance and private enforcement that Sony envisioned. But until Congress can enact the Inducing Infringement of Copyrights Act, the duty and authority to stop inducement that targets children and students resides in the Department of Justice that Congress has charged to protect artists, commerce, citizens and children. The Department must act now to clarify some simple facts: America has never legalized the ''business model'' of Fagin and Bill Sykes. Modern ChildCatchers cannot lawfully profit by luring children into crime with false promises of ''free music.''

Mr. President, I urge all of my colleagues to support S. 2560, the Inducing Infringement of Copyrights Act.

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

S. 2560

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Inducing Infringement of Copyrights Act of 2004''.

SEC. 2. INTENTIONAL INDUCEMENT OF COPYRIGHT INFRINGEMENT.

Section 501 of title 17, United States Code, is amended by adding at the end the following:

''(g)(1) In this subsection, the term 'intentionally induces' means intentionally aids, abets, induces, or procures, and intent may be shown by acts from which a reasonable person would find intent to induce infringement based upon all relevant information about such acts then reasonably available to the actor, including whether the activity relies on infringement for its commercial viability.

''(2) Whoever intentionally induces any violation identified in subsection (a) shall be liable as an infringer.

''(3) Nothing in this subsection shall enlarge or diminish the doctrines of vicarious and contributory liability for copyright infringement or require any court to unjustly withhold or impose any secondary liability for copyright infringement.''.

Mr. LEAHY. Mr. President, nobody can deny that the digital age has brought many benefits and many challenges to all of us.

In my home state of Vermont, the Internet has revolutionized how we work and how we learn: Distance learning brings the best teaching tools right into rural communities, and new business models let Vermont businesses reach new and far-flung customers. As suppliers who use the Internet, we enjoy access to a range of goods and services unimagined when I was growing up, and the vast panoply of information and entertainment offerings on the World Wide Web are at the fingertips of many Vermonters. Of course, we must work to ensure that everyone can reap the benefits of the digital age, and I am striving both here in Washington and in my state to do what is necessary to bring affordable and reliable Internet access to every household.

I am confident that, with continued focus and perseverance, the day of universal access is coming and we will all take part in the many advantages of the digital age. But there are other problems that require immediate attention, because they threaten the development of the web. We will never be able to make the Internet an entirely trouble-free zone, but we will also never be justified in failing to make efforts to defend and improve it.

One important effort to improve it is the bill that I am proud to introduce today—along with Senators HATCH, DASCHLE, FRIST, BOXER, and GRAHAM of South Carolina—the ''Inducing Infringement of Copyright Act of 2004.''

The ''Inducing Infringement of Copyright Act of 2004'' is a straightforward bill. Our legislation treats those who induce others to violate copyrights as infringers themselves. This is not a novel concept; it is the codification of a long-standing principle of intellectual property law: that infringement liability reaches not only direct infringers but also those who intentionally induce illegal infringement. And while the legal principle is an old one, the problems of inducement for copyright are a relatively new byproducts of the digital age—an age in which it is easy, and often profitable, to induce others to violate copyrights through illegal downloading from the Internet.

The principle at the heart of this bill—secondary copyright liability—has long been in the common law. In fact, such secondary liability is provided for by statute in the patent law. The patent code provides liability for inducing infringement and for the sale of material components of patented machines, when the components are not a staple article of commerce suitable for substantial non-infringing use. This is because it has long been relatively simple and economically worthwhile to induce patent infringement. By contrast, until recently the ability to illegally download music, books, software, and films has not existed. Recent developments, however, now make it necessary for Congress to clarify that this principle also applies to copyrights.

What the inducement bill does not do is just as important as what it does: It does not target technology. Useful legislation on this topic must address the copyright issue and not demonize certain software. As a practical matter, if a law is targeted at certain software, the designers will simply design around the law and render it useless. And as a matter of effectiveness, if the law addresses only well-understood present threats, it will necessarily be too narrow to encompass future technologies that may pose the same threat to copyrights. A law that deals simply with

the copyrights—and their violation—is far less likely to be circumvented or out-dated before it can do any good. It will be both broad enough and sufficiently flexible to accommodate situations we cannot foresee.

This legislation is also carefully crafted to preserve the doctrine of ''fair use.'' Indeed by targeting the illegal conduct of those who have hijacked promising technologies, we can hope that consumers in the future have more outlets to purchase creative works in a convenient, portable digital format. Similarly, the bill will continue to promote the development of new technologies as it will not impose liability on the manufacturers of copying technology merely because the possibility exists for abuse. Finally, the bill will not affect Internet service providers who comply with the safe harbor provisions of the Digital Millennium Copyright Act.

Copyright law protecting intellectual property is one of the taproots of our economy and of our creativity as a nation. For copyright law to work as the Founders intended, it needs effective enforcement. That means adapting enforcement tools to meet new challenges, in the digital age or in any age. And that is the straightforward purpose of this bill.

I would like to take a moment also to emphasize another important, if obvious, point about this bill that some detractors have ignored. The law only penalizes those who intentionally induce others to infringe copyrights. Thus, the makers of electronic equipment, the software vendors who sell email and other programs, the Internet service providers who facilitate access to the Web—all of these entities have nothing to fear from this bill. So long as they do not conduct their businesses with the intention of inducing others to break the law—and I certainly have not heard from anyone who makes that claim—they should rest easy. The only actors who have anything to fear are those that are already breaking the law; this bill simply clarifies and codifies that long-standing doctrine of secondary liability.

The ''Inducing Infringement of Copyright Act of 2004'' is a simple fix to a growing problem. The bill protects the rights inherent in creative works, while helping to ensure that those same works can be easily distributed in digital format.

Mr. FRIST. Mr. President, I rise in support of the Inducing Infringement of Copyrights Act of 2004 introduced today by Senators HATCH and LEAHY. I am proud to be an original cosponsor. The Inducement Act addresses the growing problem of online piracy—the illegal downloading of copyrighted music. Piracy is devastating the music community and threatening other forms of copyrighted work. This commonsense, bipartisan legislation takes important steps in protecting our Nation's intellectual property.

When I return home to Nashville and drive down Music Row, my heart sinks as I see the ''For Sale'' and ''For Rent'' signs everywhere. The once vibrant music community is being decimated by online piracy. No one is spared. It is hitting artists, writers, record companies, performing rights organizations, and publishers.

Every month 2.6 billion music files are illegally downloaded using peer-to-peer networks, and it is not unusual for albums to show up on the Internet before they make it to the record store. The effect of this theft of intellectual property is disastrous to the creative industry. In the end, rampant piracy dries up income and drives away professional musicians. We get fewer artists and less music.

Online piracy affects more than just the music industry. It affects a broad swath of the creative field, including the movie and software industries. Music, movies, books, and software contribute well over half a trillion dollars to the U.S. economy each year and support 4.7 million workers. When our copyright laws are blatantly ignored or threatened, an enormous sector of our economy and creative culture is threatened.

The intent of the anti-piracy bill being introduced today is simple. It holds liable those who intentionally induce others to commit illegal acts of copyright infringement. In other words, it targets the bad actors who are encouraging others to steal. In addition, the general cause of action in this bill is not new or revolutionary. It is based on the theory of secondary liability that is found squarely in our Nation's laws.

This bill should not and does not threaten in any manner the further advancement of technology. It is not a technology mandate. Only individuals or organizations which profit from intentionally encouraging others to violate our copyright laws should fear this legislation. It has been carefully crafted and will be thoroughly reviewed to ensure that its language accurately reflects its sound intent.

The future of the music community is with advancing technology, and I encourage those in the music field to continue to offer innovative choices to consumers. It is important to recognize, however, that no one in the music industry or any other intellectual property field can survive when his or her work is being stolen. Those who are intentionally and actively encouraging this theft should be held accountable.

I would like to thank Senator HATCH for his hard work on this bill and his dedication to this issue. I would also like to thank Senator LEAHY for his work. This is truly a bipartisan issue, and I look forward to working with Members on both sides of the aisle to ensure that our intellectual property laws are respected and enforced.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 387—COMMEMORATING THE 40TH ANNIVERSARY OF THE WILDERNESS ACT

Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. HAGEL, Mr. DURBIN, Mrs. BOXER, Mr. MCCAIN, Mrs. MURRAY, Mr. LUGAR, Mr. WARNER, Mr. CHAFEE, Ms. SNOWE, and Ms. COLLINS) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 387

Whereas September 3, 2004, will mark the 40th Anniversary of the enactment of the Wilderness Act (16 U.S.C. 1131 et seq.), which gave to the people of the United States an enduring resource of natural heritage as part of the National Wilderness Preservation System;

Whereas great American writers such as Ralph Waldo Emerson, Henry David Thoreau, George Perkins Marsh, and John Muir joined poets like William Cullen Bryant, and painters such as Thomas Cole, Frederic Church, Frederic Remington, Albert Bierstadt, and Thomas Moran to define the United States' distinct cultural value of wild nature and unique concept of wilderness;

Whereas national leaders such as President Theodore Roosevelt reveled in outdoor pursuits and sought diligently to preserve those opportunities for molding individual character, shaping a nation's destiny, striving for balance, and ensuring the wisest use of natural resources, to provide the greatest good for the greatest many;

Whereas luminaries in the conservation movement, such as scientist Aldo Leopold, forester Bob Marshall, writer Howard Zahniser, teacher Sigurd Olson, biologists Olaus and Adolph Murie, and conservationist David Brower believed that the people of the United States could have the boldness to project into the eternity of the future some of the wilderness that has come from the eternity of the past;

Whereas Senator Hubert H. Humphrey, a Democrat from Minnesota, and Representative John Saylor, a Republican from Pennsylvania, originally introduced the legislation with strong bipartisan support in both bodies of Congress;

Whereas with the help of their colleagues, including cosponsors Gaylord Nelson, William Proxmire, and Henry ''Scoop'' M. Jackson, and other conservation allies, including Secretary of Interior Stewart L. Udall and Representative Morris K. Udall, Senator Humphrey and Representative Saylor toiled 8 years to secure nearly unanimous passage of the legislation, 78 to 8 in the Senate, and 373 to 1 in the House of Representatives;

Whereas critical support in the Senate for the Wilderness Act came from 3 Senators who still serve in the Senate as of 2004: Senator Robert C. Byrd, Senator Daniel Inouye, and Senator Edward M. Kennedy;

Whereas President John F. Kennedy, who came into office in 1961 with enactment of wilderness legislation part of his administration's agenda, was assassinated before he could sign a bill into law;

Whereas 4 wilderness champions, Aldo Leopold, Olaus Murie, Bob Marshall, and Howard Zahniser, sadly, also passed away before seeing the fruits of their labors ratified by Congress and sent to the President;

Whereas President Lyndon B. Johnson signed into law the Wilderness Act in the Rose Garden on September 3, 1964, establishing a system of wilderness heritage as