''Of the funds made available in this Act may be used by the Occupational Safety and Health Administration to promulgate, issue, implement, administer, or enforce any proposed, temporary, or final standard on ergonomic protection.

''This section shall take effect on October 4, 2000.''

Mr. LOTT. Mr. President, I ask consent there be 2 hours equally divided in the usual form prior to a vote in relation to amendment No. 3599.

Mr. REID. I object.

Mr. LOTT. I ask there be 4 hours equally divided in the usual form prior to a vote in relation to amendment No. 3599 and the Democrats' motion to commit with instructions.

Mr. REID. Reserving the right to object, we have just finished several hours on other matters and we have a number of Senators with whom I need to check before we can agree to this unanimous consent agreement. Therefore, I object.

Mr. LOTT. Mr. President, I certainly understand that the Senator would want to consider the situation, where we are, and consult with a number of Senators. In fact, we need to do the same thing on our side.

I ask my colleagues on the Democratic side to see if we can't come to an agreement that is suitable on both sides of the aisle with regard to the amount of time and that we get a direct vote on this very important issue of ergonomics. It is germane to this Department of Labor, HHS, and Education appropriations bill.

We have had a good working relationship together over the past 2 weeks. There is no question we couldn't have made the progress on the appropriations bills if we hadn't had diligent work on the Republican side and a lot of cooperation on the Democratic side including, specifically, the Democratic leader, Senator DASCHLE, and the whip and assistant leader, HARRY REID. All have done good work.

I worry now that we are into a situation where we have an amendment that Members feel very strongly about, that is going to have dramatic impact on business and industry in this country, which is germane, and that we are being told we can't give you a time agreement, we are not going to give you a direct vote.

We have had direct votes over the past couple of weeks on the Patients' Bill of Rights issue, on hate crimes, on gun violence, on the Cuba commission, on abortion issues, on education class size—even though on some of the issues we would have preferred not to have voted or voted not on them with regard to that particular bill. It would also include, of course, the disclosure issue, which we think is a good issue, which should get voted on, but it was a problem being offered on the Defense authorization bill.

We were able to work through that. We got a reasonable agreement. We got a direct vote, and we moved on.

I have already talked with Senator DASCHLE. We are looking for a reasonable way to get this done. I hope we can find it because this is one of the biggest and one of the most important bills the Senate will consider this year. It is the funds for education, for the National Institutes of Health, for the Departments of Health and Human Services and Labor.

I would hate for it to stop at this point. We can make progress this afternoon. We can make progress on Friday. We can make progress on Monday. We could be having votes. With a little focus, maybe we can even finish this bill by Tuesday night or Wednesday. That is what I want to see happen, but we need to get it done and then go on to the Interior appropriations bill, a bill that also is very important and a bill, by the way, Senator GORTON has worked very hard to keep off controversial issues. The so-called rule XVI points will be objected to.

I urge Senator REID and my friend, Senator DASCHLE, to think about this. This is not the end of the trail, but we can have a vote on this important germane amendment, and then we can move on to other amendments and get our work done. I know we will be working together in the next few hours to see what we can come up with. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. We have been able to complete, under great difficulty, five appropriations bills. They have had hundreds of amendments. We have been able to finish those bills.

I suggest the best thing to do, as I think the leader has already said he is going to do, is move forward with the debate on this amendment. There are tremendous feelings on both sides of the issue. People feel strongly about it. We should debate it for a while and see if something can be resolved. I hope, if we cannot do that, we might be able to move on to something else that needs to be completed.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3594, AS MODIFIED

Mr. BOND. Mr. President, I rise today to support in the strongest possible way the Enzi-Bond amendment to the Labor-HHS appropriations bill relating to ergonomics. This amendment will save businesses, small businesses particularly, and other employers, and primarily their employees, from the ravages of OSHA's regulatory impulses running rampant.

As many in this body know, I have questioned OSHA's approach to formulating an ergonomics regulation for several years. Last year, I introduced a bill, which currently has 48 cosponsors, to force OSHA to wait for the results of the study that we and the President—and the President—directed the National Academy of Sciences to conduct on whether there is sufficient scientific evidence to support this regulation.

This measure is known as the Sensible Ergonomics Scientific Evidence Act, or the SENSE Act. Sadly, this issue, as administered by OSHA, has been lacking in common sense in the years that OSHA has been working on it.

We were not able to move the SENSE Act last year, nor were we able to convince OSHA they needed to put some common sense into their regulatory process before going forward with the proposed rule. At this time last year, we were fearful of what OSHA might come up with because it did not look as if they were going about it in a reasonable, responsible way. When the proposed rule was finally published in November and we found out what they wanted to do, it was worse than we could have imagined.

It is tragic that OSHA and this administration have all but disregarded the protections for the rulemaking process that are needed for sound regulations. They moved at an unprecedented pace, and it looked as if they were trying to get this regulation finalized before they even left office.

This is a classic example of ready, fire, aim. OSHA needs to be told they have gone too far and they must suspend the regulation so that it can be redrafted and put into some reasonable, workable approach.

The Enzi-Bond amendment to the Labor-HHS appropriations bill must be adopted, and I urge my colleagues to strongly support it.

I have the honor of serving as chairman of the Small Business Committee, and I have heard from literally thousands of small businesses and their representatives about the utter terror they face of having to comply with an impossible regulation that they cannot figure out and they cannot implement.

Let me be clear, their fear is not that they will have to protect their employees or even that they will have to spend some money to achieve that goal—they are doing that already because they do not want to see their employees have repetitive motion injuries or ergonomic injuries. They want to do what is right for their employees. In many cases, these employees in the smallest businesses are like family. They treat them like family members because they work closely with them.

Instead, this fear, this terror is that they will be forced to figure out what this regulation means, what is expected of them, whether they can satisfy the requirements, whether they will get any results from the huge costs of this regulation, and whether they can convince an OSHA inspector they have satisfied a regulation which gives no clear guidelines.

In some cases, the alternative to complying with the regulation may be to close the company or to move it to another country where they do not have such regulations, or, which is also extremely sad, they may be required to get rid of employees and buy equipment and replace their employees with equipment.

None of these regulatory efforts has to do with assuring protection for employees from repetitive motion injuries. The simple truth is, there is nothing the regulation says that will protect employees. It does not do what OSHA would have us believe it does. It does not tell employers how they can help their employees. On this basis alone, the proposed regulation fails and must be withdrawn.

OSHA likes to say this regulation is flexible. So is a bullwhip. What OSHA calls flexible is really a level of vagueness such that no employer, no matter how well intentioned, would be able to tell what is required of them or if they have done enough. Let me give a couple examples to help illustrate the degree of vagueness that permeates this proposal. These terms come directly from the language of the proposed rule:

Throughout the standard, employers are directed to implement provisions and establish program elements ''promptly.''

In analyzing a ''problem job,'' employers are instructed to look for employees ''exerting considerable physical effort to complete a motion,'' or employees ''doing the same motion over and over again.''

Engineering controls are to be used ''where feasible.'' When implementing the ''incremental abatement'' provisions, employers are to ''implement controls that reduce MSD hazards to the extent feasible.''

For an employer to evaluate its ergonomics program, it is to ''evaluate the elements of [its] program to ensure they are functioning properly; and evaluate the program to ensure it is eliminating or materially reducing MSD hazards.''

Ergonomics risk factors are defined as: ''(i) force (i.e., forceful exertions, including dynamic motions); (ii) repetition; (iii) awkward postures; (iv) static postures; (v) contact stress; (vi) vibration; and (vii) cold temperatures.''

Anytime one lifts a garbage can outside in the winter, one probably goes through all those.

To be effective, however, this regulation must tell employers when their employees will be injured, when an employee will have lifted too much, when the employee will have done too many repetitions, what an employer can do to prevent injuries or to help an employee recover from an injury.

OSHA loves to say this proposal is supported by adequate science and many studies. Unfortunately, none of these studies have answered these critical questions, or at least OSHA has not bothered to include any of that information in this proposed rule.

All other OSHA regulations provide a threshold of exposure to a risk beyond which the employer must not let the employee be exposed without protection or taking a corrective measure.

This proposal is unique in its complete absence of any thresholds. I guess that is what they mean by ''flexible.'' That bullwhip they use can come down at any time and give them the full benefits of flexibility. There is not a single threshold.

OSHA is telling employers: We think you have a problem. We cannot define it. We cannot tell you how to fix it. But you have to go fix it. We will hold you accountable for how well you fix it, even though we cannot tell you how to fix it.

This is absurd. It would be like driving down a highway where the sign said, ''Don't drive too fast,'' but not specifying what the speed limit is. You would never know if you had gone too fast until the highway patrolman pulled you over and told you whether you had gone too fast, according to that patrol person's view of what was ''too fast.''

This is no way to create an enforceable, workable, worker safety regulation in a country that prides itself on being a country governed by laws, not people.

This proposal is simply unenforceable as it is written. It amounts to nothing more than a regulatory trap which will result in more citations, more fines, more litigation, more legal fees, more confusion, and more problems without protecting a single worker or making a single workplace safer. It is a big bullwhip to threaten employers without telling them how to avoid that which they seek to prevent.

Whatever other problems this regulation may cause for large employers, the problems will be catastrophic for many small businesses. It is impossible to overstate the complications and the burden this regulation could impose on small businesses. Small business owners simply do not have the time, expertise, resources, staff, or understanding of the issue to deal with this regulation while still performing all the other roles that are demanded of them as businesspeople as well as family members.

The same person who may handle sales, accounting, inventory, customer relations, and environmental compliance may also be responsible for safety compliance. With the vagueness of this proposal, the lack of a scientific consensus on what causes these injuries, the lack of a medical consensus on what is an effective remedy, and the naturally complicated nature of this issue, the typical small business owners will be so overwhelmed with this regulation, it will be a wonder if they decide they can both comply with the regulation and stay in business. Every hour they spend on this regulation—and despite OSHA's claims, there will be many—is an hour they will not use to do something that will further increase their business or create more jobs. For small business owners, time really is money. And if they are not dealing with all these roles in their business, they are probably trying to set aside a few hours a day to spend with their children and families.

The Small Business Administration did an analysis of this proposed rule. One of the points they made is that small businesses are not just large businesses with fewer employees, they function in an entirely different way. In addition to their lack of resources and staff, they may also have a different cash-flow structure, which means that the financial burden of this regulation cannot be absorbed as easily.

In many small businesses, they are more dependent on financing for their operating capital, so the cost of implementing this regulation will require the company to take on more debt, thus eroding further its opportunity to make a profit and grow and hire more employees.

Also, small businesses often exist as niche businesses to serve very special needs. They may not be able to pass costs along to their customer easily because the customer may be able to do without the niche product or be able to find it cheaper or more easily from a larger source.

Small businesses are the engine of this great economic expansion we have been enjoying recently. They are the ones that are creating the jobs. They are the ones that are creating the opportunity and creating the wealth for many families around this country. This rule will be sand that can cause this engine to seize up and stop dead in its tracks.

The Small Business Administration's study on this proposal found that OSHA underestimated the cost of this regulation by a factor of anywhere between 2 and 15 times. OSHA simply has no idea how much this regulation will cost businesses, and particularly small businesses. And businesses have no idea what they will get for the money they will be forced to spend.

Employers have no problem investing in safety to protect their employees, but when you ask them to spend excessive amounts, with no guarantee of what they will get in return, they are going to object, and object strenuously.

This weekend, when I was in Missouri, I talked to small businesses, small businesses that are very much concerned about this. Do you know what they said to me? They said to me: Look, we don't want to see repetitive motion injuries. We are very much concerned if one of our employees comes up with carpal tunnel syndrome.

One small business owner said: I have hired two different safety engineers to come in and work with the employees and me to find out where there might be an injury, to help us develop ways of preventing those injuries. We talk with and listen to our workers and say: What are we doing? What can we do differently?

He also said: I have paid a lot of money trying to find an answer. Wherever we can find an answer, we implement it, because it doesn't make any sense for me to lose good workers or to have them suffer the physical pain, which is great, or to have the loss of income which can come from one of

these on-the-job injuries. And it certainly does my business no good to be without a valued employee.

And he said: When we look at what OSHA is telling us, how come, if they are so smart, they can't tell me what specific things I can do? What are the standards? I paid these safety engineers to come in and help me, and they have done everything they can. And OSHA doesn't even come close. They are not even trying. They are just going to pull out that big bullwhip and whack me across the back if there is something I missed and something nobody understands can be done to prevent it.

Small businesses are such a vital part of the economy that, 5 years ago this month, I introduced what we call the Red Tape Reduction Act, but it is technically known as the Small Business Regulatory Enforcement Fairness Act, or SBREFA. This act was passed by the Senate without a dissenting vote and signed by the President in March of 1996.

Among other provisions, the Red Tape Reduction Act requires OSHA to convene panels of small businesses to review regulations before they are proposed, at the time when their input can have the most impact.

OSHA convened their SBREFA panel for the ergonomics regulation in March 1999. It should be no surprise that the small businesses that reviewed this regulation thought it would be a nightmare to comply with. Even those businesses that were generally in favor of doing something about an ergonomics regulation, because of the possible ergonomics injuries and the pain they cause, believed that this proposal was seriously flawed and totally inadequate. In every category of question, the small businesses that reviewed this regulation found serious problems. The report was issued, and it contained many criticisms and complaints about the proposal. I will mention a few of them:

Many [small businesses] felt that OSHA's preliminary cost estimates had underestimated costs.

Some [small businesses] felt that there may be substantial costs for firms to understand the rule and to determine whether they are covered by the rule, even for firms not required to have a basic program and who have not had an MSD.

Many [small businesses] expressed doubt over their capability to make either the initial determination about whether they need an ergonomics program or to implement an ergonomics program itself. Many [small businesses] felt that they would need the assistance of consultants to set up an ergonomics program and to assist them in their hazard identification and control activities.

Almost all of the [small businesses] stated that they would not be able to pass on the costs of an ergonomics program to their customers. The ability to pass through costs may be dependent on the level of domestic and foreign competition.

Many [small businesses] questioned OSHA's estimate that consultants would not be necessary for any element of the program except in 10% of those cases involving job fixes.

Many [small businesses] had difficulty understanding OSHA's criteria for determining the work-relatedness of MSDs. Many [small businesses] interpreted OSHA's criteria for determining the work-relatedness of MSDs in such a way that, in practice, the two criteria in addition to a recordable MSD would be unworkable or ignored.

Some [small businesses] expressed concerns about how certain terms and provisions of the draft rule would be interpreted and enforced by OSHA compliance personnel. Many [small businesses] found it difficult to apply the concepts of feasibility, similar jobs and manual handling, as these are defined in the draft rule.

Many [small businesses] . . . were concerned about perceived overlaps between State workers' compensation laws and the draft standards' medical removal protection requirements.

Some [small businesses] suggested that employers' increased concern about MSDs could create additional incentives for employers to discriminate against individuals who may be members of protected classes of employees based on the perceived likelihood that such workers would have more MSDs than other workers.

Many [small businesses] suggested that non-regulatory guidance would be preferable to a rule.

Some [small businesses] recommended that OSHA delay the ergonomics rule until the completion of the National Academy of Sciences study that is now underway.

Mr. President, those are some of the comments the small business panels offered when they looked at this atrocity. You would think with all these concerns and recommendations, OSHA would have made major changes to the proposed rule to take into account, as they were supposed to, the legitimate concerns of small business. Unfortunately, that was not the case. The changes that were made were merely cosmetic, not substantive, and did not address any of these issues raised by the small businesses. In fact, OSHA made so few changes to the draft that when thousands complained about the short comment period after it was published in November, OSHA claimed the fact that it had been released to the panel qualified as giving interested parties sufficient time to help them develop their comments. OSHA ignored the concerns raised by small businesses that gave up their time to participate in this process in the hopes of helping OSHA fashion a reasonable and responsible, better regulation.

They didn't want to know. They didn't pay attention. This is precisely what the Red Tape Reduction Act was meant to stop, when a Federal agency says: Ready, fire; we will worry about the aim later, and they didn't care about what aim they took. They didn't care about listening to the small businesses. This is a clear-cut example of abuse of the law that is designed to protect small businesses from excessive overreaching and inappropriate Federal regulation.

Unfortunately, this has been a consistent pattern of OSHA during the development of this regulation. There have been numerous stakeholder meetings and meetings with concerned businesses where OSHA received valuable guidance and suggestions that would have led to a better regulation. OSHA has not been willing to work with anyone from the employer community who would have to deal with this regulatory monstrosity. They have pursued their vision of this rule with a myopic tunnel vision that has shut out any and all recommendations that could make this regulation palatable and workable. The intransigence of OSHA in this rulemaking has been positively staggering. Unfortunately, this regulation threatens not only to stagger but to take the breath out of small businesses in the United States.

OSHA would have us believe that they must move forward because of the levels of musculoskeletal disorders occurring among employees. In fact, as employers have focused on MSDs, the numbers have been steadily declining, since 1994, by a total of 24 percent. These injuries now make up only 4 percent of all workplace injuries and illnesses. This progress has come about without an ergonomics regulation.

There is more that needs to be done, yes. We need to continue to work to find ways to reduce these painful and harmful injuries that cost time and pain to employees and deprive employers and small businesses of their ability to turn out product or a service and make a profit. Businesses are willing to consider what makes sense for their employees when there is a solution available.

I told you the story of one small business owner with whom I talked this week in Missouri. I have held conferences. At the National Women's Small Business Conference I held in Kansas City, they talked about problems facing women small business owners. They have problems with procurement. They have problems with access to capital. They are scared to death of what can happen to their businesses because they don't want to see their employees have MSDs or musculoskeletal disorders, injuries from repetitive motions.

They told me they are working on ways to minimize them and eliminate them, but this regulation gives them no help in moving forward in their efforts, which they intend to continue, which are voluntary, which are effective, unlike this rule. There is no help for them in this regulation, just a bull whip, if something goes wrong.

This regulation does not provide a solution or any guidance that would be helpful to employers. If OSHA were smart, they would take a look at what is happening and get out of the way, or offer constructive assistance, help figure out ways to prevent these injuries. OSHA is trying not to reinvent the wheel but telling the wheel which way to go without giving it any guidance.

OSHA will claim they have made changes in response to the concerns of the businesses. They will point to the grandfather clause they included. That is truly a laugh. The only problem is the grandfather clause is worthless.

Not a single company in the country which currently has an ergonomics program could qualify for it. OSHA's grandfather clause requires a company to put OSHA's program in place so they can be relieved of having to comply with the OSHA program. That sounds absurd. It doesn't make any sense, but that is what they require. They said: If you will put into place this OSHA program, whatever it is—and nobody knows what it is—then you will have complied with the grandfather clause. But to our knowledge—and OSHA hasn't told us of any—nobody has one in place that meets the impossible and unworkable and unknowable standards of this rule and regulation. Grandfather? That looks like some other kind of relative, not often seen at a family picnic when you apply it to this clause.

OSHA's pursuit of this regulation has been so single minded, they have cut corners with the rulemaking process. Under the proposed regulation, an employer's obligation to implement the full ergonomics program is triggered when an employee has an OSHA-recordable MSD injury. OSHA's definition of a recordable MSD injury is one where ''exposure to work caused, contributed to the MSD, or aggravated a pre-existing MSD.'' An employee could actually have an injury caused entirely by nonwork-related factors. This regulation would require the employer to implement a full-blown ergonomics program if the employee's job requires them to do something as simple as standing, which aggravates the injury.

I have had an ergonomic injury trying to pull up carpet tacks in a new house. I spent a weekend pulling up carpet tacks. I could not move my arm the next day. I went into work. I couldn't use the typewriter, even a pen, but I knew what caused that: pulling up the carpet tacks and ripping up the rug.

Under this rule, if I had gone in and told the employer, darn, I can't use the typewriter, I can't pick up a pencil today, I can't lift the law books, under this definition, that would have been a recordable MSD injury for my employer.

That would not have made him happy. What is even more remarkable about this regulation is that the language comes directly from OSHA's 1996 proposal to revise the recordkeeping standard which has not yet been finalized. OSHA is actually trying to finalize their proposed recordkeeping standard by inserting that language in the ergonomics proposal. That is an outrage and a clear violation of the principles of fairness and disclosure that underlie the rulemaking process that must be and should be subject to challenge under SBREFA and the appropriate procedures and actions.

The fact that OSHA has taken liberties with the rulemaking process is hardly new. Most of us remember in January when OSHA tried to impose on employers the obligation to check the homes of employees who telecommute for safety hazards. OSHA was attempting to do this through a letter of interpretation in response to a legitimate inquiry from an employer. The outcry over this move was so loud and so bipartisan that the Secretary of Labor herself had to withdraw that crazy idea the next day.

One of the reasons OSHA's attempts blew up in their face so badly was because of this ergonomics regulation. Employers immediately realized that if they were responsible for safety hazards in an employee's home, the ergonomics regulation would require them to intrude into their employees' private lives far too deeply. The regulation already expects employers to be responsible for injuries that are not caused by workplace exposures. If employers were to be responsible for safety issues at home, there would be no limit to what they would have to cover. Employers would never be able to control the exposure to ergonomic risk factors in the home, or distinguish which risks were part of work activities and which risks were part of everyday life like picking up their children.

This is the most expensive, complicated, expansive, burdensome, and destructive regulation that OSHA has ever proposed. That is no small title to achieve. When you are dealing with OSHA, that is a high stump to jump. But they have done it on this one. Indeed, it could be one of the most burdensome regulations ever proposed by the Federal Government. OSHA is pursuing this regulation with no concern for the impact it would have on employers, or the fact that employees will lose their jobs because of this regulation.

I call on my colleagues to pass the Enzi-Bond amendment to the Labor-HHS appropriations bill to stop OSHA from finalizing this horribly flawed regulation and force them to reconsider their approach and listen to the scientific evidence and to the people who are making their best efforts, successful in part already today, to reduce ergonomics injuries. To vote against this amendment is to say that an agency can promulgate a regulation without providing an adequate scientific foundation, and they can impose a crushing burden that would drive small businesses out of business and deprive employees of their jobs without considering the impact. That must not be the case.

I strongly urge and beseech my colleagues to support this amendment and put a stop to a terribly bad idea before OSHA takes the bull whip to small businesses throughout this country.

CLOTURE MOTION

Mr. REID. Mr. President, I send a motion to the desk.

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

Mr. REID. It is a cloture motion.

The PRESIDING OFFICER. The Chair will examine the motion.

The Senator has a right to send a cloture motion to the desk without having the floor.

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to commit H.R. 4577 to the Appropriations Committee with instructions to report back forthwith with the amendment No. 3598:

Jeff Bingaman, Richard Bryan, Daniel Akaka, Joe Biden, Richard Durbin, Bob Graham, Barbara Boxer, Byron Dorgan, Max Cleland, Thomas Daschle, Daniel Inouye, Harry Reid, Paul Wellstone, Joseph Lieberman, Charles Robb, John Rockefeller.

Mr. REID. I express my appreciation to the Senator.

The PRESIDING OFFICER. The Senator from Missouri still has the floor.

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

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I would like to share some thoughts on the OSHA regulations, these ergonomic regulations.

First, I want to say that it is a worthy goal to improve safety and health in the workplace, but we ought to look at it carefully and we ought to, as a representative body of the people, look at the democratic aspect of this process and be prepared to examine these regulations before we authorize them to go forward and make sure they meet a scientific standard, and in addition to the extraordinary costs we know they will cause, we need to know that they will actually improve safety and health in the workplace.

Last year, before OSHA published its proposed ergonomic rules, Senator BOND introduced a bill, which I supported, prohibiting OSHA from publishing its final ergonomics standard until the National Academy of Sciences completes a congressionally mandated peer-review of all the scientific literature concerning ergonomics.

Unfortunately, a minority number of Senators in this body were able to block its consideration. This year, I am pleased to join with Senator ENZI, who has tenaciously and effectively pointed out the problems with this rule and why it ought to be delayed.

I just believe that we have to remember that experts have characterized this legislation as ''the costliest government job mandate since the founding of the United States.'' That is a matter that should give us all pause.

I believe it is important to base whatever regulations we have on sound science, and I don't believe that OSHA has done so. This is an important issue. I am going to talk about three cases in recent years in which OSHA has been found not to have based its regulations

on sound science or justifiable procedures. I do that because a lot of people think, well, if OSHA says it, it must be good. Somehow they are blessed with ''all-knowing wisdom.'' But you have already heard from Senators who pointed out a number of things that OSHA has done that are certainly not justifiable. It is not what I say to you today, but what the courts have said about this that is important.

Certainly, it is important to provide a safe environment. Ergonomics, though, are based upon decisions and recommendations made by ergonomists and/or engineers, and not physicians, and their medical theories have proven to be controversial.

OSHA has attempted to apply ergonomics in three legal cases that they litigated to judgment. In each instance, OSHA suffered major losses. These cases demonstrate the vast uncertainty surrounding these regulations and the science OSHA claims supports their implementation. Even the ''experts'' on ergonomics at OSHA admit there is a great deal of uncertainty in these regulations.

OSHA has litigated these claims under the ''general duty'' clause of the Occupational Safety and Health Act of 1970. This clause provides a general obligation on every business in America, all employers, to protect workers from ''recognized hazards'' of ''death or serious physical harm'' and functions as a catchall under which OSHA frequently attempts to expand its regulatory power.

One important aspect in the cases I will discuss is that OSHA had the burden of identifying hazardous job conditions. In the cases I am talking about, OSHA had to prove these were hazardous job conditions, and they have to show how they would be corrected. In the rule we are debating, the burden will be put on the employers to make these decisions. We are going to find out that OSHA could not do it. Yet they are going to demand that every employer in America—many of them small businesses—are to meet these kinds of standards.

No. 1, in the 1995 case, Secretary of Labor v. Beverly Enterprises, OSHA sought to prevent nursing home employees from lifting up residents in order to care for them and move them about the room. OSHA would have preferred carting the elderly residents about with mechanical hoists.

In a 31-day trial before a Federal administrative law judge, OSHA presented four expert witnesses, each with a Ph.D. in this field. These were some of the leading ergonomics theorists in the Nation, some of which had done extensive research on the practice of lifting in nursing homes.

The federal administrative law judge concluded ''There is no reliable epidemiological evidence establishing lifting as a cause of low back pain. Science has not been successful in showing when and under what circumstances lifting presents a significant risk of harm, none of the experts could say with reasonable medical certainty that any injury claimed by Beverly employees was caused by their job tasks.''

With all of the resources of the federal government, including numerous experts, the Department of Labor and OSHA were not able to fulfill their obligation to ''define the hazard in such a way as to advise Beverly of its obligations and identify the conditions and practices over which Beverly may exercise control so as to reduce or eliminate the hazard.'' That is a direct quote from the judge. If a federal agency is unsuccessful, how are employers expected to meet this burden under the ergonomics rule.

The courts have also spoken in regards to the ''flawed'' science that is the basis for this proposed ergonomics rule. In the 1998 case Secretary of Labor v. Dayton Tire, OSHA launched an attack on 22 different manufacturing jobs in a single tire-manufacturing plant.

This is yet another case of the federal agency utilizing their large financial and personnel resources to prove their case. OSHA assigned three compliance personnel to a six-month inspection and investigation of the facility. At trial before the administrative law judge it called more than three dozen witnesses, including 31 employees, 4 doctors from the facility, 3 OSHA investigators, and 2 experts.

Thousands of man hours were spent in preparation for the trial, studying the jobs they claimed caused the injuries. The trial lasted 6 months, even though the company only called one witness.

The OSHA witnesses had extensive experience with ergonomics, with one having spent the last six years as an analyst for OSHA whose ''primary job'' was conducting ergonomic analysis.

OSHA's medical expert in the case was a university professor who was certified as an expert in ergonomics, who with the assistance of three other faculty members and six residents, had conducted extensive analysis of the medical records of the Dayton Tire employees who allegedly suffered from musculosketetal disorders. The Professor confessed during the trial that ''if he had been the treating physician, he would not have felt comfortable making a diagnosis of the conditions, nature and cause'' of those injuries.

This uncertainty is quite alarming coming from a man with expertise in the area. The fact that he conceded that his study did no more than ''present a red flag that something may be wrong'' at the plant concerned the judge.

The judge ruled and held that this method was ''not trustworthy'', ''scientifically valid'', or ''scientifically reliable'', stating that ''Conjectures that are probably wrong are of little use''.

Ultimately, the judge concluded that the expert's analysis ''failed to meet the minimal requirements for evidentiary reliability established in Daubert v. Merrel Dow Pharmaceuticals, Inc., the 1993 Supreme Court decision that requires judges to exclude ''expert'' testimony that uses scientifically invalid methodology or reasoning. This standard is generally referred to as the ''junk science'' standard.''

This testimony was rejected as not even valid testimony under the ''junk science'' doctrine. That is what OSHA was relying on in that case.

The fact that OSHA characterized the methods of their experts in the Dayton Tire as ''widely used and generally accepted'' among ergonomics experts, clearly shows that when scrutinized the science that is the basis of this ergonomics standard is fundamentally flawed.

In the 1997, Pepperidge Farm case, OSHA had its only opportunity to have an ergonomics case decided by the full Occupational Safety and Health Review Commission.

The risks that OSHA identified in the case were ''capping'' cookies—employees lifted the top of a sandwich cookie from one assembly line and placed it on top of the bottom of the cookie on another assembly line in a repetitious fashion.

To abate these conditions, OSHA ordered the company to increase its staff, slow assembly line speeds, increase rest periods, or simply automate the entire operation.

Automation means job loss. People complain that when we automate we are losing jobs. One reason that is happening is these kinds of regulations that drive up the costs; and to make it more economic for a company to avoid these kinds of lawsuits and Federal complaints, they could just go on and create some new form of a machine that could do the work without people.

While the commission did accept some of the major premises of ergonomics, such as repetitive workplace motions causing worker injuries—I am sure under the circumstances that can happen; I would not dispute that—the commission ruled that OSHA failed to show that its proposed ergonomics measures were appropriate means of reducing musculoskeletal disorders purportedly caused by the worksites.

The Commission found that some ergonomic measures had been implemented by the company and that the additional measures proposed by the agency's expert ergonomists were not shown to be feasible and effective.

The decision is particularly damaging because OSHA had enlisted enormous resources and leading experts to show what the company should have done to avoid worker injury. Yet OSHA and its experts could not prove in open court what works, again raising the question of how businesses can make such determinations when OSHA can't.

In these three cases OSHA deployed hundreds of experts and millions of dollars to target what they considered to be particularly hazardous worksites.

But because of the flawed science the agency could not determine what if anything was wrong, or how to correct it. And the courts rejected their view. This is why business is concerned.

Some think just because they have the name OSHA, that they do everything right. They have been knocked down time and again by the courts. Businesses do not understand and do not have confidence that the 300 pages of these proposed regulations are going to apply fairly, and they do not believe it is scientifically based. I can understand their concerns. Employers should not be held to a standard that has consistently alluded the agency that seeks to regulate them.

I believe we should pass Senator ENZI's amendment and delay the ergonomics standards until the uncertainties regarding the science and implementation of this can be further explored. I don't know the answer. OSHA has, through these three cases, established that they don't have the answers either. Why don't we allow the National Academy of Sciences' study to be completed? Why don't we get opinions of the physicians and medical experts who can understand these issues before we rush to force these regulations into play?

That is what we should do. That is why I believe the amendment by Senator ENZI is the proper amendment.

Let's get the scientific basis before we act.

I thank the President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senators on my side of the aisle who have spoken on the ergonomics amendment and the detrimental method by which OSHA is trying to force the standard through.

I ask unanimous consent Senator DOMENICI be added as a cosponsor.

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

Mr. ENZI. I thank Senator HUTCHINSON for his great delivery on the way the rulemaking process works and the way it has been forced in this instance. I thank Senator BOND not only for the speech he gave on the floor a while ago but for his continued interest and knowledge on the issue of ergonomics and his particular concern for the small businessman and how this rule and former ''rumored'' rules would affect them.

This is the furthest a standard has ever gotten on ergonomics. It has now been published. It is the first one to be published. Now people have an opportunity to see how harmful or damaging it can be.

I am the chairman of the subcommittee on workplace safety and training. I have worked a number of OSHA issues since I have been here. I have always tried to be reasonable on the issues on which I have worked. I appreciate comments from the other side of the aisle about the way I have worked with the other people.

I need to let everybody know what is happening. There are the votes to pass my amendment, so there is a filibuster to keep it from ever coming to a vote. There are people who would prefer not to vote on this measure at all. If they are listening to the debate, they should be interested in making sure that the rules get the full amount of time needed to decide properly whether that will provide the workplace safety about which we have been talking.

I offered an amendment, and there was a motion to commit. Some may not know what a motion to commit is, using another bill. It sends it back to committee to put in a completely different provision from ergonomics. There was an insistence it be read in full. It took only an hour and a half out of our day. That is Senate procedure.

Now we have an amendment on the bill again that brings us back to the ergonomics amendment. It is essential we get a vote on this ergonomics amendment. It is essential the Senators get an opportunity to say whether they think OSHA has been rushing a bad product. You will see a very conclusive vote on that when it comes to a vote.

This is a vote about how your Government, more specifically your bureaucracy, operates. This is not about safety necessarily, because if it was about safety, there are some other approaches OSHA would take. OSHA is not necessarily a safety organization. It is about fines, not necessarily prevention.

One of the things that has come up since I have been working on the OSHA issues is an explanation of how much injuries have increased since we passed the OSHA Act. I decided I would go back another 30 years before the OSHA Act and see what has been happening with injuries in this country. Do my colleagues know what I discovered? Injuries were decreasing at the same rate since 30 years before we thought of OSHA.

Do my colleagues know why that is? It is because businesses are concerned about their people. They are concerned about them. If they do not have a worker there, they are not getting the work done that they expect that person to do. Injuries cost money. Injuries are difficult to work with.

When we were doing the hearing on the work restriction protection—that is the part where workers comp will supersede State workers comp on the Federal level, which is poorly designed, very inadequate, and there is no money to do it—during that hearing, we received testimony from Under Secretary Jeffress. I was pleased to read his testimony. Witnesses get a short time before the committee to present testimony. During the course of that, I will read the rest of the testimony so I know what they intended to say if they could have said everything they wanted to say.

I ran into a paragraph about New Balance shoe manufacturing facilities. That caught my eye because for years my wife and I ran a shoe store in Gillette and in a couple of other places. New Balance was one of the shoes we sold. I was very pleased they make narrow shoes. It is a very good tennis manufacturing company.

In the statement, it said this New Balance shoe manufacturing company cut their workers compensation costs from $1.2 million to $89,000 a year and reduced their lost and restricted days from 11,000 to 549 during a 3-year period.

I asked Secretary Jeffress how much they had to fine this company to get them to do that fantastic work. They did not have to fine them. Of course not. Can you imagine the economics of reducing your cost from $1.2 million to $89,000 a year? That is good business. It also saves employees.

There are other examples of companies that have reduced their injuries dramatically. I said if OSHA was not there to fine them, how would that possibly have happened? Again, companies, for the most part, are extremely concerned about their employees. In fact, when the ranking member of our subcommittee spoke earlier, he mentioned that in his State of Minnesota, GM and 3M, and some other companies I did not get written down, are reducing their injuries dramatically. What I would like for him to do is to call those companies and see if they think this standard is essential to continue to do that.

The answer will be a resounding no, this will cost them a lot of money which will be diverted from the things they are already doing.

I wonder how many people know that ergonomic injuries, according to Department of Labor statistics, have gone down 24 percent since 1994. Imagine that. This rule was not in place. This rule is just proposed. Yet American business reduced ergonomic injuries 24 percent. There were no fines, no penalties, no standard, no rule, just concern for their employees. It is pretty amazing.

Can you imagine what those businesses would be able to do if OSHA saw as their mission preventing injuries—not fining, I did not say fining—preventing injuries and focused their efforts on helping businesses, particularly the small businesses for which Senator BOND expressed deep concern, the people who do not have all of the experts on board to make the best care possible? If the focus of OSHA helped those small businesses figure out what they could do differently, I bet we could get that decline rate up to about 50 percent, but it takes some experts helping out, not total concentration on a phony rulemaking procedure.

Oh, did I say ''phony''? I am sorry, but not very sorry because when I explain how this rulemaking procedure is working this year, everybody in this Chamber might agree that it is a phony process.

OSHA is paying witnesses to testify. They are not paying expenses, they are

paying them to testify. They are not just paying them to testify, they are even telling them other things they ought to say, ways they can beef up their testimony. If it is a $10,000 expert, don't you think he could write his own testimony? I do.

OK, a $10,000 expert, and then they have them come and do a mock hearing. An expert needs a mock hearing? I do not think the whole $10,000 goes to the testimony, because from some documents I have been able to look at, it appears to me $2,000 of that is really supposed to be to tear apart any testimony in opposition OSHA gets. They are paying people to tear other public testimony apart. Does that sound like something your Government ought to be doing? That is how badly OSHA wants this rule.

It was mentioned this morning that this is a proposed rule. Of course, it is a proposed rule. There is a process that it is supposed to go through, and it is not supposed to just take a year. That would be a record for OSHA even when they are doing much simpler rules. This is a very complicated one, a very expensive one, time consuming, and a damaging one. They are going to force it in a year. Every indication I find says they can do it unless we adopt this amendment. Is that why we are getting so much opposition through a filibuster to adopting this amendment?

Yes, this is about your Government, specifically your bureaucracy. This is about how your Government can control the business you work for without getting anything for the employee in return.

We heard some stories this morning about working people's lives, and we are concerned about those working people's lives. I was in small business, and when you work with people in small business, it is not a boss-employee relationship. If you cannot get along better than that, you probably will not have them as employees.

We had some examples of a few people, and there are many throughout the United States, who are being injured through repetitive motion. I am asking all of the businesses that deal with that to concentrate on eliminating the repetitive motion. I am asking OSHA to work with those businesses in finding ways to eliminate the repetitive motion.

Earlier we mentioned home office inspections, and everybody got up in an uproar saying that was already taken care of. Yes, this same department that we are talking about as proposing this rule—the same one—said that they had the right to go into homes and inspect. That raised a lot of interest, a lot of concern, and in about 48 hours—48 hours after we discovered it, not 48 hours after it was done—they discovered how terrible that was and they reversed it.

I really think if they think about the process that we are going through here, they would give some very serious consideration to reversing what is going on right now: Forcing a rule through, not giving any indication that any changes would be made, and part of that comes from this paying of witnesses.

Another issue we are dealing with around here is one about China, PNTR. I am getting a lot of letters on it. I am sure everybody here is. Half of those letters are talking about the way jobs are going to go overseas.

I am part of the NATO Parliament. I went to the last session of that. We talked about the way the Parliament changes. I was on the economic development committee for that. We talked about the ways that some of these other countries are having economic development. I saw some examples of how they were having economic development.

I saw a factory where people work for extremely long hours, every day, in complete body outfits, where only their eyes are visible. Their eyes are visible because they look into microscopes all day and weld on hard disc drives. It is an extremely tedious, repetitive motion. Those people get $350 a month. It should not happen.

But when we pass rules, by forcing rules through that greatly increases business costs, without protecting the worker at all, we are exporting jobs. The unions ought to be up in arms about this rule and what it will do in exporting American jobs. It concerns me. I hope it concerns everyone.

A lot of these things are interconnected. But the issue we are talking about here isn't as much what the rule is as it is the way it has been pursued.

I have asked questions to get information about how the process is working. I did not get the information. I found out the House had the information. I requested the ability to see it. I was told it could not be brought to my office. The House had fortunately made an arrangement by which I could look at it. But the arrangement did not say, ''in my office,'' so I had to go over there. But I was willing to do that. I was astounded at what I found when I got over there and figured out why it was they wanted me to go to every last bit of effort to look at it that I possibly could.

I have shared some of that with you. I would have liked to have shared it with you in more detail, but the agreement they had for me to even look at it said there was privilege in this that keeps a Senator, in an appropriations process, from being able to see the documents he needs to be able to see to know how the money is being spent so he can make decisions about how it will be spent in the future. I think that is unbelievable and it is just not right.

We have had some testimony in committee. We found out how OSHA gathers its testimony. We have found out how the whole process works. That is why I have asked everybody to vote against this.

QUORUM CALL

Mr. ENZI. Mr. President, I could go into more examples of what has been happening. I could counter some of the things that have been said, but at this point I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Smith of Oregon). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. ENZI. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 6]

Durbin	Harkin	Reid
Enzi	Kennedy	Smith (OR)
Feingold	Kerry	
Gorton	Lott	

The PRESIDING OFFICER. A quorum is not present.

Mr. LOTT. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Majority Leader.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.—

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—94

Abraham	Feinstein	McCain
Akaka	Fitzgerald	McConnell
Allard	Frist	Mikulski
Ashcroft	Gorton	Moynihan
Baucus	Graham	Murray
Bayh	Gramm	Nickles
Bennett	Grams	Reed
Biden	Grassley	Reid
Bingaman	Gregg	Robb
Bond	Hagel	Roberts
Brownback	Harkin	Rockefeller
Bryan	Hatch	Roth
Bunning	Helms	Santorum
Burns	Hollings	Sarbanes
Byrd	Hutchinson	Schumer
Campbell	Hutchison	Sessions
Chafee, L.	Inhofe	Shelby
Cleland	Jeffords	Smith (NH)
Cochran	Kennedy	Smith (OR)
Collins	Kerrey	Snowe
Coverdell	Kerry	Specter
Craig	Kohl	Stevens
Crapo	Kyl	Thomas
Daschle	Landrieu	Thompson
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Domenici	Levin	Voinovich
Dorgan	Lieberman	Warner
Durbin	Lincoln	Wellstone
Edwards	Lott	Wyden
Enzi	Lugar	
Feingold	Mack	

NAYS—3

Breaux	Conrad	Murkowski

NOT VOTING—3

Boxer Inouye Johnson

The motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

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

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, in a moment I will put in another quorum call. I thought we should go ahead and conclude that vote. We have come up with a procedure that I think is fair which will allow the Senate to go forward on the two issues that are now pending before the Senate. We are working on both sides of the aisle to make sure Senators are aware of what we are proposing. If we are able to get that agreement, there would be a couple of votes stacked in an hour or so. If we cannot get it agreed to, then there will be a vote here in the next 15 minutes.

I am sorry I cannot give a more certain answer right now. We hope to have some agreement in the next few minutes. We will then put in that unanimous consent request and proceed to have some debate agreed to and the two votes, or go straight to the point of order on the pending motion.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BENNETT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I ask unanimous consent that the pending motion to commit be withdrawn and amendment No. 3594 be withdrawn and the Enzi amendment No. 3593 be laid aside. I further ask consent that the Robb amendment to the instructions be drafted and offered as a first-degree amendment to the bill.

I further ask consent that there be 1 hour for debate equally divided on both issues to run concurrently, and that at the conclusion of the time, the Senate proceed to vote on the Enzi amendment No. 3593, to be followed by a vote on the prescription drug amendment, without any intervening action or debate.

Mr. DASCHLE. Mr. President, reserving the right to object, I assume that the majority leader is referring here to an up-or-down vote in both cases.

Mr. LOTT. Absolutely. That was the understanding that was reached.

Mr. DASCHLE. Right.

Mr. LOTT. Some on both sides had reservations about that, but that was the only way we could bring it to a conclusion.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The motion to commit and the amendment (No. 3594) were withdrawn.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Mr. President, just so we can have an understanding of this, on our side the time with regard to the Enzi amendment on ergonomics would be controlled by the Senator from Wyoming, and the time on our side against the Robb amendment would be controlled by Senator Roth.

I presume Senator ROBB would have the time on your side, I say to Senator DASCHLE. Who do you wish to control the time on the other issue?

Mr. DASCHLE. Mr. President, I designate Senator ROBB as our manager on the Robb amendment and in control of the time. The manager in opposition to the Enzi amendment will be the senior Senator from Massachusetts, Mr. KENNEDY.

Mr. LOTT. I believe we are ready to proceed with the debate. I yield the floor.

MODIFICATION TO AMENDMENT NO. 3598

The PRESIDING OFFICER. The clerk will report the Robb amendment.

The legislative clerk read as follows:

Amendment No. 3598 previously proposed by the Senator from Virginia [Mr. ROBB], as modified.

Mr. REID. I ask unanimous consent that further reading of the amendment be dispensed with.

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

Pursuant to the previous order, the modification to the amendment is as follows:

At the end of the bill add the following:

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I yield myself 2 minutes of the 15 minutes that are allocated to the affirmative position on this amendment.

Mr. President, for the benefit of our colleagues, I would like to summarize this amendment as succinctly as I can. It is a bipartisan bill that would guarantee access to a comprehensive, meaningful prescription drug benefit for all Medicare beneficiaries. Unlike other drug proposals, our bill would guarantee total coverage for seniors, without any limits or gaps.

Let me say, however, to my colleagues on the other side of the aisle, that this benefit is not some ''big government'' solution to the Medicare prescription drug problem. In putting this proposal together, our bipartisan group opted to rely on private sector, market-based mechanisms to deliver medications to seniors. Competition and choice are at the very essence of our bill. For those who suggest that we need to take a centrist approach, I say that this bill is that logical bipartisan compromise. And we need to act on it now.

Mr. President, today is June 22. With the Senate deep into the appropriations process, we have very few legislative days left in this session. If we are going to get a prescription drug bill to the President's desk, we need to consider one now.

Mr. President, I've spoken previously today about the stories I heard in a series of health care fora held in my state over the past month. In one of them, I spoke to a physician who was prescribing the drug Tamoxofin for women who had been diagnosed with breast cancer and who were Medicare eligible. One woman was sharing her prescription with two other women who simply could not afford it—a travesty by any health care standards. I've heard many other stories of similar magnitude.

Prescription drugs are clearly a part of modern medicine today. They are a necessity, not a luxury. I ask that our colleagues respond affirmatively to this chance to provide modern medicine to those who are eligible for Medicare.

I reserve any time not used.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. I yield myself 3 minutes.

Mr. President, I rise in opposition to the so-called Robb amendment, not because I necessarily oppose its terms but because it affects, in an adverse manner, the possibility of getting legislation on prescription drugs enacted this year.

Prescription drugs is a matter before the Finance Committee. It is undoubtedly the most important domestic legislation that will be considered this year. Nothing will happen if we permit this legislation to become partisan. We do not need a Democratic bill. We do not need a Republican bill. We need legislation that represents a bipartisan consensus on both sides of the aisle.

We have worked very hard in the committee to develop the kind of information that is essential to design a bill that will meet the needs of the American people. We have spent something like 15 days on hearings, bringing before us experts as to what we should do to, frankly, modernize our Medicare legislation.

The last 2 weeks have been spent in meeting with Republicans and Democrats alike on the various proposals that have been made both by Republicans and Democrats in the House and the Senate.

We just completed that process this afternoon. I am very happy to say that I think the end results of these meetings give us a good chance to develop a bill that can be supported by both Republicans and Democrats.

I know there are people who want to make this a partisan issue. I know there are people who want to have a Republican issue on this matter, and the same is true on the Democratic side. But I say that this matter is too important—too important to our senior citizens—to try to rush it through in a political way rather than working together.

During our hearings, we had representatives of the AARP and other advocate groups. The one message they gave that came through loud and clear was: Do not rush something through.

Make sure that whatever you do will meet the needs of the American people. They urged, time and again, that it is essential that we act with care.

Let me point out, to those who want to have a vote all of a sudden on a piece of legislation that has not been studied, that in 1987, the Congress voted for—and it was signed into law—catastrophic legislation. That was passed in 1987. In 1988, it was revoked because the legislation did not do what the people thought it would do. We must not make that mistake again.

It is critically important that as we move ahead, we move ahead with care and understanding. Let me say, I understand full well the importance of this legislation and want to get it done. But it does not help the process or the development of a good piece of legislation if it is handled in a partisan way.

This bill was only introduced 2 days ago on June 20. The text of the bill has not even been printed in the CONGRESSIONAL RECORD. Are we going to act on that today without an understanding of what it includes and what it means?

It is estimated this legislation would cost, over 10 years, something like $200 to $300 billion.

The PRESIDING OFFICER (Mr. SESSIONS). The time of the Senator has expired.

Mr. ROTH. I yield myself 1 more minute.

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

Mr. ROTH. In 5 years, it is estimated it would cost something like $75 billion. Under the budget resolution, we are allowed to spend $20 billion in 5 years, if we have no reform. If we have reform, our program can consume up to $40 billion. This piece of legislation would cost something like $75 billion. The last thing we need to do is move ahead on legislation that would put our Medicare program at greater risk. Its solvency is already estimated to last only until 2025. In adopting what will be admittedly an expensive new program, we want to make sure that it is fiscally sound.

I urge and hope my friends on both sides of the aisle will reject this legislation and give the Finance Committee, which has jurisdiction, the opportunity to develop a bill that will serve the needs of our senior generation.

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

The Senator from Virginia.

Mr. ROBB. Mr. President, I yield 5 minutes to the Senator from Nevada, Mr. BRYAN.

Mr. BRYAN. I thank the Senator from Virginia.

Mr. President, I am pleased to join with my colleague from Virginia in offering a Medicare drug program.

For the 223,000 Nevadans who are Medicare recipients, no legislation we will debate in this Congress is more important for them. Two-thirds of them have either no prescription drug coverage at all or inadequate coverage—this at a time when prescription drug prices are increasing at a rate of nearly 20 percent a year.

I will talk about what this measure will do. First, it provides guaranteed and universal access to prescription drugs. Unlike some of the other proposals being debated, this benefit will actually be available because it is offered as an integral part of the Medicare program. Second—and this is important—the benefit is comprehensive and defined, simple. It is understandable. Beneficiaries understand what the coverage is, and it will not change from year to year or month to month. Moreover, this is the only proposal to offer complete coverage after the deductible. There are no gaps or limits. The bottom line: All seniors will be guaranteed access to affordable drugs and will have the peace of mind knowing that full coverage is provided for any and all expenses above $4,000. Any expenses for prescription medication above $4,000 are completely handled under this program. Third, this benefit is affordable for all beneficiaries. Those with the lowest incomes are provided the most assistance.

Finally, and critically, this proposal maximizes competition and provides choices. All of us who have been privileged to serve on the Finance Committee and to study this issue recognize the element of competition and choice as being an essential reform. This is not a one-size-fits-all program. Multiple private businesses are used to administer and deliver the benefit so there is competition at two levels: first, in terms of who are being chosen to provide the benefit and, second, those who are chosen compete and try to sign up beneficiaries for that program. So there is both competition and choice.

In sum, this amendment gives beneficiaries what they need most—long overdue coverage of prescription drugs—and it also injects competition into the program and provides choices for beneficiaries. It is the first proposal to offer universal, guaranteed, affordable, fully-defined comprehensive coverage, no limits, no gaps, no gimmicks. This proposal is for real. Beneficiaries will know what they are getting, and they will know without a doubt that the benefit will actually be provided.

I urge my colleagues to join me in supporting the proposal of the distinguished Senator from Virginia. The time to act is now.

I yield the remainder of my unused time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, does the Senator from Delaware or anyone opposing this particular bill wish to speak at this time?

Mr. ROTH. The Senator from Virginia may proceed.

Mr. ROBB. Mr. President, I yield 3 minutes to the Senator from Florida, Mr. GRAHAM.

Mr. GRAHAM. Mr. President, I commend our colleague, Senator ROBB, for the outstanding leadership he is providing on this critical issue. On Monday, Senator ROBB and I visited the Archbishop McCarthy Residences in Opa-Locka, FL. There I met an elderly lady who had this story to tell. She had purposefully joined an HMO in order to be able to get access to pharmaceutical coverage.

Two months ago, the HMO announced it was dropping all pharmaceutical coverage. This was the first month in which the impact of that was felt by this elderly American. What did it do to her? She has five medically necessary prescriptions. She had to decide to forgo three of those five because she could not afford them. The two she thought she could not omit cost her $168 a month out of her very limited income.

This is not a theoretical or conceptual issue. This is a real life-and-blood issue for millions of Americans.

It has become an issue, in part, because of our successes. When Social Security was established in the mid-1930s, the average American had a life expectancy after 65 of 7 years. Today, the average American has a life expectancy after 65 of 17 years. According to the Census Bureau, 100 years from today, the average American will have a life expectancy of 27 years after they reach 65.

Those numbers have fundamentally changed what constitutes effective, humane health care. It has meant that we need to be making an investment in prevention. If a person is only going to live a few years after retirement, one could argue, why spend the money on prevention. But if a person is going to live 17 or 27 years, that is a big share of their life.

In addition, because of that extended life, there is more emphasis on care for people who have chronic conditions that have to be managed for many years. Both of those, prevention and chronic care, necessitate access to prescription drugs. That is what this plan will do.

The year 2000, the beginning of the 21st century, will mark the year in which older Americans will no longer have to make the choice that the woman in Opa-Locka did, to drop three of her medically necessary prescriptions and then end up paying a very high part of her meager income to buy the two drugs she could not avoid.

I congratulate our colleague for bringing this amendment forth. I urge all of our colleagues to see this as a kind of opportunity and pass the Robb amendment.

Mr. MCCAIN. Mr. President, it is simply wrong that many of our nation's seniors who live on fixed incomes must choose between medicine and food. Our seniors should not be forced to drive over the border to Canada to purchase affordable prescription drugs.

As I have said many times over, we must work together to develop an initiative for helping America's seniors

obtain the prescription medication they so desperately need without forcing them to chose between groceries and vital medicines. Each of us must put aside partisan politics and work together to help our nation's seniors—many of whom are skipping or ignoring their medical needs because of the exorbitant prices they must pay for medication.

But I can not support the proposal before the Senate this evening. I can not support using parliamentary procedures and political posturing to force a vote on a proposal that has not been available for extensive review, analysis and input—particularly from our constituents and the very seniors we are trying to help. That is simply wrong.

Congress must take great pains to ensure that a Medicare prescription drug plan does not repeat the mistakes of Medicare Catastrophic legislation in the late 1980's. Medicare Catastrophic made broad, expensive reforms in the Medicare system which seniors saw as excessive, unnecessary and unviable. To truly help seniors obtain prescription drugs we need to take the time to engage in a thorough debate carefully scrutinizing and vetting the proposal. We must be conscious of what America's seniors want and need, and balance that with fiscal restraint and responsibility. We must find a method for helping our nation's seniors have access to prescription drugs that does not place an unfair and unexpected burden upon them or the taxpayers.

Mr. President, I respectfully request that my remarks be included in the RECORD with the debate regarding this amendment.

Mr. JEFFORDS. Mr. President, let me take just a brief moment to explain to my colleagues why they should join me in opposing the Robb amendment.

I am going to vote against this amendment because this amendment would stall a very important bill, the Labor, Health and Human Services Appropriations bill, and send it back to go through the process again. I have been meeting on a bipartisan basis in the Finance Committee, working in good faith, to come to an agreement to provide prescription drugs through Medicare. I am disappointed that my colleagues have decided to throw bipartisanship aside and offer this politically motivated amendment. The fact is, Mr. President, I got this amendment only a few minutes ago, and it has not even been printed in the CONGRESSIONAL RECORD.

I have always been very clear that I support a prescription drug benefit for Medicare beneficiaries, and I have several well drafted bills that would help seniors with their drug costs now. I have been working on a bipartisan basis to address the issue of coverage for seniors as well as the issue of the inequity of international pricing disparities for prescription drugs.

It is very difficult to understand this amendment because it is actually missing several pages, but from what I can tell, this bill has serious problems that need to be addressed. First, this amendment is drafted in such a way that would threaten the solvency of a Medicare program that is already in financial trouble. This proposal contains no reforms that would make the program more efficient, and in fact could cost as much as $300 billion over 10 years—far more than has been set aside in the Budget. The fact is, this amendment has not been considered by any Committee, and has only been considered for 30 minutes on this floor. In short, Mr. President, this is no way to pass landmark legislation that will affect all of our senior citizens.

For these and other reasons that I do not have time to list, I will join a bipartisan group of Senators in voting against this ill-advised procedure and against a politically motivated amendment that will keep us from accomplishing a real, bipartisan prescription drug benefit that will help our seniors right now. It is my intent to vote on a real prescription drug benefit that will benefit all seniors, and to complete legislation this year that will address the inequity of international pricing disparities.

Mr. ROBB. Mr. President, how much time remains on the side of the proponents?

The PRESIDING OFFICER. The Senator from Virginia has 6 minutes. The Senator from Massachusetts has 15 minutes. The Senator from Delaware has 11 minutes.

Mr. ROTH. Mr. President, I yield 3 minutes to the Senator from Missouri.

Mr. ASHCROFT. Mr. President, I am concerned about the need for prescription drug assistance to needy seniors. I have traveled all across my State and, frankly, I think there are many seniors in need of some stop-loss protection. Those without coverage want to be able to buy drugs at discounted prices like those with coverage can because they are part of a group. This measure brought before us today literally takes longer to read than we have allowed for debate in the Senate on it. My staff hasn't been able to get a copy of it, which doesn't provide us with an intelligent and responsible way of making decisions here.

I think there are some good concepts here. I like the concept of stop-loss protection. In talking to people in my State, they want that. They want some sort of copay for people, but they want this to be available for people at all income levels. We spend a lot of time here in the Senate trying to make it possible for people to make good decisions by mandating that there be plain language, or that there be time for people to read things, or time for people to consider things in making contracts or otherwise entering into agreements. Yet we are being asked today, without any strong, valid, and reliable estimation as to cost, without an opportunity to actually see what is being proposed, to make a commitment, or instruct the Congress to commit to the expenditure of funds that might invade the Social Security surplus, which might well impair the capacity of this Government to meet its other obligations. It is not responsible. It is not the way we ought to do business.

So while I very much appreciate the effort, and I believe that we ought to find ways to help needy seniors to get access to prescription drugs, which can frequently keep them out of the hospital and help them remain independent and can save what would be hospital costs under Medicare, I think it is reasonable that we would have an opportunity to read the legislation, an opportunity to know something about an accurate estimate of its cost.

So I have to say that I don't think we should pass that which we haven't read, or that which is not available for our inspection. For that reason, regrettably, I announce that I will have to vote against this legislation. I think its intention is good, and I think many of its proposals appear to be in line with what the people would want and expect but without having an opportunity to read it and inspect it, to understand it and understand its cost, I think it is unwise for us to vote in its favor.

The PRESIDING OFFICER. Who yields time?

Mr. ROBB. Mr. President, I yield 2 minutes to the Senator from Arkansas, Mrs. LINCOLN.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I, too, commend my colleague from Virginia, Senator ROBB, for his wonderful leadership on this issue. My colleagues have already spoken eloquently about the need for prescription drug coverage among seniors and, certainly, the basic components of this amendment. I won't reiterate what they have said. We, as a body, must make this a priority, and we have not. I think this amendment is timely because the House is scheduled to act on it today. It is quickly becoming a crisis issue for many seniors in the country today, and that is why I am here as a supporter of a bipartisan plan in the Senate.

As a Senator who represents the State with the highest poverty rate among seniors, I am committed to seeing that the Senate act this year to implement a prescription drug plan. With all due respect to the chairman's comments in terms of timeliness and what must go through committee, the bottom line is that we are running out of time to do something on this issue.

This plan will provide immediate, affordable, and comprehensive drug coverage to seniors who often have to make the choice between buying food to eat or buying the prescription drugs they need. I want to emphasize the importance of the Medicare outpatient drug plan to rural seniors. In particular, this plan helps all seniors, particularly those who are low-income and living in rural areas. This is important because low-income and rural seniors

are less likely to have adequate prescription drug coverage. Nationally, rural seniors are 60 percent more likely not to be able to buy needed prescription drugs due to their high cost. A greater proportion of rural elderly spend a large percentage of their income on prescription drugs. Rural beneficiaries need adequate coverage because they are more likely to have poor health and lower income than seniors living in urban areas. In Arkansas, 60 percent of the State's seniors live in rural areas.

This is a good prescription drug proposal. It is a fiscally sound proposal that offers free coverage to our Nation's poorest seniors and reasonable benefits to those who can better afford to pay for some of their benefits. Our seniors deserve to enjoy healthier, longer lives without having to worry about affording the medicine they need. The Senate must act this year and this is an excellent time to do it.

I thank the Chair.

Mr. KENNEDY. Mr. President, I yield 4 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, in a short time, we are going to have two votes that will define the difference in values between the two political parties in this Chamber. For 2 or 3 years now, President Clinton has been calling for a prescription drug benefit under Medicare. During that period of time, the Republicans were in control of the House of Representatives and the Senate, and a bill never came to the floor to deal with this issue, which is paramount in the minds of families across America. On the Democratic side, we have asked, from day 1, for a chance to bring the President's proposal or our own proposal to the floor. The only way this vote came about this evening on a prescription drug benefit under Medicare is because we had to tie this Chamber into procedural knots to achieve this vote.

Well, I commend the Republicans who are supporting this bipartisan measure, and I hope many of them will cross the aisle and join us in a bipartisan show of support for a prescription drug benefit. For those who think they can vote against this prescription drug benefit and go home and explain that it was such a new idea and they didn't have a chance to read it, I can tell them the President has had a proposal here for years. This idea has been out here for years. You have been in control of the committees and in control of the Senate. We have waited for your prescription drug benefit, but there is nothing for us to consider from the Republican side. The vote that we will cast in a few minutes will give Republicans and Democrats alike a chance to go on the record for a good prescription drug benefit bill under Medicare.

The second vote we will cast also defines the values of the parties. To think that each year over 600,000 workers in America get up and go to work and do their very best in the workplace and get injured because of these so-called musculoskeletal disorders, and they don't have the kind of protection they deserve from their Government. This is a call to action in this Chamber—a call to action that was heard by Elizabeth Dole when she was Secretary of Labor. She said we needed a standard, a call to action, which has been heard over and over again from working families across America.

The Republican position is to turn a deaf ear to these workers, ignore the fact that they are facing debilitating injuries and disorders in the workplace, which haunt them for the rest of their natural lives. It is the position of the Republican Party to stop this effort to bring safety to the workplace. This is nothing new. There has not been a single time in America's history when we have come forward with protection for workers that business interests didn't stand up and try to block it. Whether we are talking about child labor laws, safety in the workplace, time and time again, they have said it is too much Government, too much meddling, it will cost too much.

Well, I think the value on human life and the value on safety in the workplace is not too high a price to pay. We have an opportunity today to pass a prescription drug benefit that will truly help the seniors and the disabled, an opportunity to stand up for millions of workers across America who expect us to be sensitive to their needs. In my experience in life, years ago, I had one of those assembly line jobs. I saw injuries in the workplace. I saw people taken out of the workplace, down to the doctors office, and off the job for weeks at a time for injuries.

Perhaps there are some in the Chamber who have never seen that. But it is a memory that will be with you for a lifetime. Those workers—men and women—and their families expect us to stand up for safety in the workplace. That is our obligation. The response from the Republican side is, let's postpone this at least another year, and in another year there will be another 600,000 injured American workers. That is unacceptable.

The vote we will cast on these two issues really defines the values of our parties.

Mr. ROTH. Mr. President, I yield 5 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BREAUX. Thank you, Mr. President. I thank the chairman of Finance Committee for yielding me time to make a couple of brief comments on the issue that is before the Senate.

Let me suggest, first of all, that the issue in the Congress is not whether or not this Congress should be for providing prescription drugs under the Medicare program to seniors. There is no difference in that. I don't know of any Member of Congress to whom I have talked—either in the House or in the Senate—who is opposed to saying to the Nation's 39 million Medicare beneficiaries that they should be covered for prescription drugs. That is a given. The question is not whether they should be covered; the question is, How are we going to do it?

I suggest that this is a baby who is not ready yet to be born. What do I mean by that? What I mean is that we are taking 30 minutes to debate an attempt to pass a prescription drug proposal on which a national Medicare bipartisan commission spent a year and a half working. We are, in 30 minutes, trying to pass a bill which has never come through the appropriate committee of jurisdiction—the Finance Committee.

We have had 14 days of bipartisan hearings on this issue. This afternoon, in a bipartisan fashion in the Senate Finance Committee meeting room, we sat and discussed this same issue—this identical issue—on how to construct a Medicare prescription drug plan that can work. We met additionally another time this week on the same subject.

It is not the proper process to yank that work product out of the responsible committee and say we are going to have 15 minutes on this side to debate a new entitlement program being added to a Medicare program which is in danger of default. It is in danger of going bankrupt. And yet we are going to add a new entitlement program with 15 minutes of debate on this side, and 15 minutes of debate on that side, and say we have done what is right and proper for the Medicare beneficiaries of this country? I suggest that is not the right way to do it.

I commend Senator CHUCK ROBB, who is a member of our Finance Committee, and Senator BOB GRAHAM, who has spent a great deal of time crafting this amendment. This may be the right way to go, but it is not yet ready to get there. We need more analysis. We need to consider if you can do it through an insurance program.

Finally, I think it is incredibly important that, whatever we do, we do not just add an entitlement program without doing some real basic reform to the Medicare program.

We have a Medicare+Choice Program under Medicare right now. Does anyone in this body think it is working correctly? It is being micromanaged by HCFA with 4,000 employees, and it is a disaster. We should not be looking backward and doing things the old way. We are moving into the 21st century. We should not be acting as if it is the 19th century. We should be crafting new ways of solving these problems, and not going back to policies that have failed.

Medicare was a wonderful program in 1965. But it is frozen in the 1990s. The challenge we have is not to debate a political issue, but to come together to find a way to solve the problem.

There are interesting ideas that are being discussed by the Senator from Florida, by the Senator from Virginia,

by myself, and others on the Democratic side, working with Members on the Republican side to come up with something that is creative. Are we not capable of thinking outside of the old style box of just adding another entitlement program to the Medicare program without reforming anything? I suggest we should not make that mistake.

If we want to put ourselves on the Record on prescription drugs, why not pass a Senate concurrent resolution that says, yes, we all think it is important that prescription drugs today are as important as a hospital bed was in the 1960s, and have a resolution that says that and says we are going to work in a bipartisan fashion to work out an agreement instead of debating an issue. I suggest that what we have is a very narrow opportunity to do that.

We are not going to be able to reform the whole program in the 30 days left in this session in a Presidential election year. That is not going to happen. But if we do prescription drugs, should we not do some reform attached to it? I think the suggestion and the answer is absolutely yes. Let the Finance Committee do our work, and bring something to the floor that is doable and passable. I suggest it is the right way to proceed.

The PRESIDING OFFICER. The Senator from Wyoming.

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

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I will be very brief. I just want to make a couple of points.

No. 1, prescription drugs, I believe—I say this not only as a Senator but also as a physician who has personally taken care of thousands and thousands of Medicare patients—that prescription drugs absolutely must be a part of our Medicare program and system if we are going to really provide health care security for our seniors.

The challenge we have is that, indeed, prescription drugs replace the surgeon's knife—which I have used my entire adult life—and replace the hospital bed, which are important dynamics of health care.

But the real challenge we have is including that new additional benefit—which, traditionally, over the last several years has been 17 to 18 percent a year—into a rigid, inflexible, outdated Medicare program that we have not been able to reform.

The challenge before this Congress is to very thoughtfully incorporate prescription drugs coupled with true Medicare reform, to bring it up to date, to modernize it in a way that we can truly guarantee health care security to our seniors.

This particular amendment has not gone through the committee process. I can tell you that I for one, having spent the last 7 hours working on health care in an adjacent room off this Chamber, have never seen this particular amendment nor had the opportunity to read this particular amendment. So I absolutely am going to oppose this particular amendment, which is brought to the floor outside of the committee process and outside of my having had the opportunity even to read the amendment.

I have been working on prescription drugs with my colleagues in a bipartisan fashion for the last 2 years. I was on the national bipartisan Medicare commission, where we talked about prescription drugs. There are other proposals being debated in the House.

We have not had the opportunity to see this particular amendment. It has not gone through committee. It should not be introduced tonight, I believe, and hopefully it will be defeated tonight.

Mr. ROBB. Mr. President, I yield myself 30 seconds, and then I will yield to the Senator from West Virginia.

I remind my good friends on the other side of the aisle that this bill was read in its entirety earlier today, and it has been available for several days. But it has been debated for a very long period of time, and the concept has been debated at length and discussed at length.

There was an attempt to put together a prescription drug bill in the House. The Health Insurance Association of America has stated many times that the particular proposal from the House simply will not work.

At this time, I yield 2 minutes to the distinguished Senator from West Virginia, Mr. ROCKEFELLER.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Presiding Officer and the Senator from Virginia.

This is really a moral issue, and the question is, Are we going to do it? We keep putting it off. We keep talking about it. We keep saying, let's have a commission, let's do a resolution, let's study it some more, let's make the process work perfectly.

I spent most of the afternoon in the Finance Committee trying to work out a resolution on this. Frankly, at the end, there was some hope. But there was also some discussion about what happens if we don't get to vote on prescription drugs. There was a discussion of that.

I don't want to see that happen. This will probably be our only vote on prescription drugs in this entire session. It is a bipartisan bill. I have made some compromises. Others have made compromises. It is a solid bill. It is probably the only vote we will have on it.

It is a moral issue, not a political issue, a moral issue that seniors don't have prescription drugs under Medicare. They ought to. JOHN BREAUX is right: Prescription drugs are like a bed in a hospital in 1965; now we are going to modernize it, it is available for all.

It is an amendment we should pass. It is a moral, not a political, issue. This will probably be the only vote on prescription drugs we will have in this session of the Senate.

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

Mr. HUTCHINSON. Mr. President, I rise to support the Enzi amendment and to oppose the ergonomics rule that has been proposed by the Department of Labor. This is the rule: hundreds of pages long.

Senator DURBIN said a few minutes ago this vote will be about values. I will accept that challenge. It is demagoguery to say because we oppose this rule we are not for safety in the workplace. I don't think anybody sincerely believes that on the other side. I am for a safe and healthy workplace. If we want to talk about values, I hope Members will read this and realize what we are imposing on the businesses on this country. There are going to be workers who lose their jobs because of this rule. There will be small businesses that are going to go bankrupt because of this rule, if it is not stopped.

My colleagues, I am opposed to the ergonomics rules for three reasons: It is based upon uncertain science, at best. This body funded almost a $1 million study by the National Academy of Sciences, which is not yet complete. Why do we fund a study by the NAS and then allow OSHA to move forward with the rule before we have the scientific basis for the rule? The Enzi amendment simply says let's hold off and wait until the science is in.

CRS says there is great uncertainty about what OSHA has proposed. Not only is there uncertain science, there is uncertain cost. While OSHA says it is a $4 billion cost, the Small Business Administration says the cost will be 15 times what OSHA says it will be. I am inclined to believe the estimates of the Small Business Administration. Private groups believe the cost will be many times beyond that. But we know that it will be very expensive. There is uncertain cost involved.

Third, I oppose this rule because of its uncertain impact. It is 600 pages with many unintended consequences. Many times we allow things to go on in these agencies in which there are unintended consequences, but we know that the OSH Act says that OSHA is not to impact workers compensation laws in the States. This will most assuredly do that.

As Senator ENZI has rightly pointed out, it is going to negatively impact Medicare, health care dependent upon capped Federal reimbursement. They will have to absorb the costs of the ergonomics with no way to recapture those costs.

We also know that OSHA has proudly said they have already used their general duty clause with over 500 citations on ergonomics. They are not helpless to protect workers in the workplace now. We should not allow them to move forward with an ill-advised rule.

The issue is not safety. The issue is not OSHA doing their job. The issue is

whether we will do our job and whether we will stop an agency that is unresponsive, arrogant, and out of control. I urge my colleagues to support the Enzi amendment.

I retain the remainder of the 5 minutes.

Mr. ROBB. Mr. President, I yield 1 minute to the distinguished Senator from Iowa, Mr. HARKIN.

Mr. HARKIN. Mr. President, in my State of Iowa, Sioux City, seniors regularly take bus trips to Mexico to get their drugs. Drugs that cost $68 in Sioux City are $7 in Mexico. Seniors in Waterloo, IA, are being bussed to Canada to buy their drugs. Seniors in Cedar Rapids, IA, are being forced to declare bankruptcy because they have run up their credit care debt so high just to pay for the drugs they need. Mr. President, $5,000 to $6,000 a year is being paid out of pocket by seniors who cannot afford it and are being forced into bankruptcy.

We are told this is not the time to do this, that we have to wait longer, that this baby is not ready to be born. The elderly have waited long enough, and they have been gouged deep enough, too deep, to pay for their prescription drugs. Now is the time to stand up for the seniors in our country and to vote aye on the Robb motion.

Mr. KENNEDY. I yield 4 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to have documents printed in the RECORD to respond to some of the accusations regarding the Labor Department.

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

OSHA'S USE OF CONTRACTORS DURING THE RULEMAKING PROCESS: EXPERT WITNESSES AND CONSULTANT SERVICES

OSHA's use of expert witnesses and consultants is authorized by Congress, approved by the Courts, affirmed by the General Accounting Office, and consistent with OSHA's past practice for over two decades, as well as that of other agencies.

1. OSHA's Use of Expert Witnesses and Consultants is Expressly Authorized by Congress.

In 1970, Congress passed, and President Nixon signed into law, the Occupational Safety and Health Act (''OSH Act'' or ''The Act'') which expressly authorized OSHA to hire experts and consultants and to compensate them for their service. *See* 29 U.S.C. sec. 651 *et seq*. Specifically, Section 7(c)(2) of the Act, 29 U.S.C. sec. 656(c)(2) states:

''In carrying out his responsibilities under this Act, the Secretary is authorized to—(2) employ experts and consultants or organizations thereof as authorized by Section 3109 of Title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS–18 under section 5332 of Title 5, United States Code including travel time . . .'' (emphasis added).

In addition to the Secretary's specific statutory authorization to hire experts for purposes of administering the OSH Act, Congress authorized the Department of Labor to employ consultants through procurement contracts in the Labor/HHS Appropriations bill (Pub. L. 102–394; 106 Stat. 1792, 1825).

2. OSHA's Use of Expert Witnesses and Consultants Has Been Affirmed by the Courts.

In 1980, the Lead industry made virtually the same challenge to OSHA's use of expert witnesses and consultants in a rulemaking that the opponents of the ergonomics rule are making now. See *United Steelworkers of America et al.* v. *Marshall,* 647 F.2d 1189 (D.C. Cir. 1980). In reviewing this challenge, the U.S. Circuit Court of Appeals for the District of Columbia recognized that OSHA is empowered to employ experts as part of the rulemaking process. The Court concluded that OSHA properly used its contracted experts and consultants for the following tasks: writing the preamble, on-the-record reports, testimony and posthearing reports. The Court stated that ''The OSHA Act empowers the agency to employ expert consultants . . . and OSHA might have possessed that power even without express statutory authority . . .'' *Id*. at 1217.

The Court found no problems with OSHA's contracting for the services of experts and consultants in the rulemaking process. *Id*. In fact, the Court stated that ''we generally see no reason to force agencies to hire enormous regular staffs versed in all conceivable technological issues, rather than use their appropriations to hire specific consultants for specific problems.'' *Id*.

In fact, the Court praised agencies' use of experts and consultants as proof that the agencies have taken their statutory missions seriously. *Id*.

3. OSHA's Use of Expert Witnesses and Consultants is Authorized by the Federal Acquisition Regulations.

The Federal Acquisition Regulation (''FAR''), Office of Management and Budget Circular No. A–76 and the Federal Activities Inventory Reform Act also authorize agencies to contract for certain functions, including:

''Services that involve or relate to analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy;

''Services which involve or relate to development of regulations; and

''Contractors providing legal advice and interpretation of regulations and statutes to federal officials.''

OFFP Policy Letter 92–1, Appendix B numbers 3, 4, and 18; *see* FAR sec. 7.503(d)(4).

4. Experts on OSHA's Rulemaking Processes Recognize OSHA's Use of Expert Witnesses and Consultants in Rulemakings.

It is traditional practice for OSHA to hire expert witnesses to testify at its rulemaking hearings. Both of the principal treatises on OSHA law, OSHA, History, Law and Policy, by Benjamin W. Mintz, and Occupational Safety and Health Law, edited by Stephen A. Bokat and Horace A. Thompson III for the American Bar Association, refer to this practice, which goes back at least to 1980, when OSHA arranged for 46 well-known experts to testify on behalf of OSHA's Carcinogens Policy.

ABA's ''Guide to Federal Agency Rulemaking'' addresses the use of expert witnesses in OSHA rulemakings, and describes the use of consultants as ''summarizing and evaluating data in the record, and helping draft portions of the final rule and its rationale.'' (Page 243)

5. The General Accounting Office Reviewed OSHA's Use of Expert Witnesses and Contractors in an Earlier Rulemaking.

In 1989, at the request of a House Subcommittee, GAO examined OSHA's use of contractors and expert witnesses and found that OSHA had used ''over 35 expert witnesses'' in the years 1986–1988, paying them generally ''$10,000 or less,'' and using them to testify during OSHA public hearings on proposed standards and rules. The report said OSHA used its contractors to assist in developing final rules and that they contributed to 36 different rules over three years.

6. OSHA has Historically Used Experts to Testify at Public Hearings About Parts of Proposed Rules Which Fall Within Their Areas of Expertise.

Among the other OSHA hearings at which experts have been used by are: Lead (1980); Hazard Communications (1983); Ethylene Oxide (1984); a revised asbestos standard (1986); Benzene (1987); and Methylene Chloride (1977).

The number of OSHA experts has varied from as few as one in the Excavation in Construction standard to 46 experts in the Carcinogens Policy hearing. Twenty-eight experts will have testified on OSHA's behalf at the conclusion of the ergonomics hearings.

7. Other Federal Agencies Use Expert Witnesses and Consultants in Ways Similar to OSHA.

EPA, FDA, and DOT make extensive use of consultants in their rulemaking activities, though they do not have hybrid hearings like OSHA's, in which OSHA permits the public to cross-examine their witnesses. EPA's use of consultants has been challenged and upheld by the courts, BASF Wyandotte v. Costle, 598 F2d 637 (1st Cir 1979); Weyerhauser v. Costle, 590 F3d 1011 (DC Cir 1978). In the BASF Wyndotte case, the Court found no fault in EPA's use of a private contractor which ''invested 16,500 man hours'' in a rule making process.

OSHA's rulemaking process is more open than other agencies because the public can cross examine OSHA's expert witnesses in public hearings. Most other agencies engage experts to submit written testimony on a rule, but these experts do not participate in public hearings and are not available for cross examination as OSHA's expert witnesses are.

8. OSHA's Use of Expert Witnesses and Consultants Was Disclosed to the Public and Was Clearly Known to Parties Who Cross-Examined OSHA's Experts at Public Hearings.

All of OSHA's expert witnesses appeared on a witness list provided by OSHA under the heading ''OSHA Witnesses.''

It is clear that the parties who cross-examined OSHA's experts in the ergonomics hearings were aware that OSHA's experts were paid consultants.

When Mr. Sparlin questioned OSHA expert Mr. Oxenburgh, he referenced the ''Expert Witness Contract for Dr. Maurice Oxenburgh.'' (pp. 2637–39).

When Ms. Holmes of Jones, Day, Reavis and Pogue made a statement regarding her ability to cross-examine OSHA's panel of experts, she referred to OSHA's ''obviously having commissioned written testimony from all these individuals.'' (p. 1440).

In questioning Dr. Beale, one of OSHA's attorneys, Ann Rosenthal, clarified for the public record that Dr. Beale was hired as an economist, not as an enforcement expert. (p. 2524). Dr. Beale's own written testimony stated that his ''clients in this regulatory work have included OSHA, MSHA, EPA, SBA, the FAA, the Department of Energy, and the IRS.'' (Ex. 37–22).

All of this material is part of the public docket and is available on OSHA's webpage.

9. OSHA's Expert Witnesses Have No Financial Conflict of Interest in the Outcome of the Ergonomics Rulemaking.

Conflict of interest laws and regulations apply only to employees of the federal government. In some instances, agencies hire

consultants as ''Special Government Employees'' who are subject to certain provisions of the conflict of interest laws. However, the consultants hired by OSHA for the ergonomics standard were contractors and did not have federal employee status while providing their services. As such, they do not come within the coverage of the conflict of interest laws or regulations.

ACCESS TO DOCUMENT

1. OSHA recognizes the importance of Members of Congress understanding the rulemaking process. That is why we work so hard to provide information to Members of Congress as expeditiously as possible. For example, in response to a request from the House Government Reform Committee dated May 10, 2000, OSHA promptly provided a list of contractors who worked on the current ergonomics rulemaking.

2. Once the House Committee expressed an interest in reviewing other documents, OSHA worked with the House to provide them with full and complete access to the documents on a timely basis. The House Committee agreed to treat these documents the same way OSHA does, and in a manner that protects the integrity of an ongoing rulemaking.

3. Senator Enzi made his first request for information only nine days ago (June 13, 2000). Immediaately following his request, OSHA Assistant Secretary Jeffress talked with Senator Enzi twice about his request for documents. Department of Labor staff and Senator Enzi's staff also talked to figure out how to most expeditiously respond to his request and at the same time protect the integrity of an open and ongoing rulemaking by treating the documents exactly the same way that the House had already agreed to treat them.

4. Senator Enzi claimed that OSHA failed to provide him with any information, but just three days after his original request, on June 16, 2000, OSHA responded to Senator Enzi's request and produced two boxes full of documents.

5. OSHA offered to meet with Senator Enzi and offered repeatedly to brief Senator Enzi about OSHA's use of expert witnesses in rulemakings.

6. On Tuesday, June 20, 2000, Senator Enzi's staff requested, for the first time, access to the materials provided to the House Committee. Under the terms of OSHA's agreement with the House Committee, Senator Enzi always had access to the documents he requested to see.

7. In order to accommodate the Senator's desire to review the documents in his office, OSHA offered to photocopy a complete set of the same documents provided to the House Committee immediately. Senator Enzi's staff refused this request because they were unwilling to agree to treat the materials they had requested in the exact same way that the House Committee had already agreed to treat the documents—in a way that protects an open, public rulemaking process as authorized by Congress.

Mr. WELLSTONE. Mr. President, one problem with this debate is some of my colleagues come to the floor and make these points. Frankly, there does need to be a response.

My good friend from Arkansas says that what will happen with this OSHA rule, dealing with repetitive stress injury, is it will do severe damage to workers comp laws in our States.

There are some 12 attorneys general who have said in no way—including one who testified in our subcommittee—will that happen, including the attorney general from Arkansas who has said this will not impact workers compensation laws.

Then my colleagues say, this is a rush, they are rushing to promulgate a rule. It was Elizabeth Dole who, as Secretary of Labor, first pointed out that we needed to have an ergonomics rule because of the injuries taking place. My colleagues believe that this is a rush, though we have 600,000 workers every year who are severely injured.

I say to Senators, it is surprising to me when there is so much pain, when so many workers are injured, when they can no longer work, when they cannot sleep at night, when it has damaged families, when so many of the workers are women, that my colleagues don't want OSHA to do its job. The mission of OSHA is to protect workers. I am proud of the fact that OSHA is trying to promulgate this rule. I view this amendment as being nothing but blatant, political interference against this agency doing exactly the job it ought to do.

The same Senators who say OSHA is rushing after 10 years to promulgate a rule to protect workers, to have a safer workplace, they also believe we are rushing tonight to provide prescription drug benefits for senior citizens. Where have Senators been? On another planet? In Minnesota, 65 percent of senior citizens have no prescription drug coverage. It is an important issue to their lives, their children, and their grandchildren.

Do I need to come to the floor and tell Members about people who are paying 50 or 60 percent of their monthly budget because of prescription drug costs? And then Members come on the floor and say: It is not time; we are rushing; we better not support this legislation.

I don't know when Members think the time will come. I think the time has come. I think Democrats think the time has come. I agree with my colleague, Senator DURBIN, this is a values debate. This is about where we stand. As a Senator from Minnesota, I stand with working people. I stand for a safer workplace. And I certainly stand for trying to help senior citizens meet prescription drug costs so they are able to get the prescription drugs that are so essential for their health. I need not say anything else.

I yield the floor.

Mr. ENZI. Mr. President, I yield 1 minute to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire, Mr. SMITH.

Mr. SMITH of New Hampshire. I rise in support of the Enzi amendment.

Senator ENZI's amendment would delay the costliest mandate ever imposed on small businesses.

The Occupational Safety and Health Administration, OSHA, has published a rule that is the broadest and most expensive rule ever, let me say that again, ever proposed by OSHA. There needs to be more study of this rule before it is implemented.

Ergonomics is the science of fitting the job to the worker.

The OSHA proposed ergonomics rule would require employers to eliminate or materially reduce hazards in the workplace that lead to injuries such as carpal tunnel, tendinitis, and back injuries.

OSHA's cost estimate is $4.2 billion a year. Clinton administration's own Small Business Administration reports that the true cost would be $40–$60 billion a year—at least 10 times OSHA's estimate.

The Heritage Foundation estimates that the cost would be $5.7 billion to $10.8 billion per year without adding in the cost to state and local governments, and $6.6 billion to $12.5 billion per year if public-sector workers are included. Private industry estimates the bill's cost would be even higher.

OSHA expects that the proposed rule will significantly increase the number of requests for state compliance assistance and consultation services. That means this regulation will cost even more money.

The ergonomics rule probably would expand state workers' compensation systems, increasing claims and fraud.

This is yet again, an unfunded mandate on the states. Yet the OSHA has a limited public comment period that does not take into consideration the huge cost to business and the probable stress to the unprecedented economic growth that the U.S. is currently experiencing.

I urge your support for Senator ENZI's amendment, so that OSHA can reassess their proposed regulation that would burden the business community with a costly regulation.

On the prescription drug plan, I oppose the Robb plan. In my hand is a report, the actuarial report from Norman and Robinson, which says it will cost seniors $40 per month, up to almost $500 a year, and cost hundreds of billions of dollars to the taxpayers. That is the Robb plan.

Senator ALLARD and I have a plan and we want to try to get the attention of the Finance Committee. This plan has no premium increases on seniors. It saves seniors $550 a year. It is budget neutral. It covers 50 percent of the cost of drugs, up to $5,000.

Those are the two alternatives. This was done by King Associates. Guy King was a former actuary at HCFA.

I think the distinction is clear. How did we help seniors by raising premiums, when we don't have to raise premiums with this plan?

I hope my colleagues pay close attention to what Mr. King has said. This plan is sound.

I yield the floor.

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts has 7 minutes, the Senator from Delaware 3 minutes, and the Senator from Wyoming has 8 minutes.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will sum up where we are on these two extremely important issues, one involving safety in the workplace.

The whole issue of ergonomics addresses the most important worker safety issue in the workplace. Now we have an amendment of the Senator from Wyoming, my dear friend, who wants to undermine what has been a 10-year review and a study about how we can provide protection for workers in the workplace who are affected by ergonomics.

As has been pointed out, this whole issue was raised by Secretary Dole in the Bush administration who called ergonomic injuries one of the Nation's most debilitating across-the-board worker safety and health issues. Since that time, there have been over 2,000 studies on ergonomics carried out.

In 1997, NIOSH, the principal agency of Government that studies these issues, reviewed 600 of the most important of these studies. They made recommendations. In 1998, the National Academy of Sciences reviewed the studies again and again, and they came to the same conclusion. The fact is, the science is clear. The question is whether we will have the will and the determination to take steps to protect our workers. We know what needs to be done. The subject has been studied. Now we have the chance to take a step to protect American workers.

These are the facts: 35 percent of the most harmful injuries in the workplace are ergonomic injuries. That is what is happening today. More than 600,000 workers are affected. When you look at who are disproportionately harmed by ergonomic hazards, in lost time, 67 percent who lost working time from repetitive motion injuries were women, and those who lost work time for carpal tunnel injuries were women again, 77 percent. This is a woman's issue; this is a worker's issue.

The science is overwhelming. The fact is, historically we have been prepared to take actions to make the workplace safe. We had the great development of our mining systems, and we passed mine safety legislation. Now we need to pass legislation to protect American workers in this area.

It has been studied, restudied, and studied again. Once again, we are being asked to discard the various studies and reviews and put the profits of the private sector ahead of the interests of the workers. That is wrong. That is the issue: Are we going to stand for workers or are we going to stand for the profits of the industries in this country?

On the second issue, Medicare, I was there, like most of the Members of the Senate, when the President of the United States, in his State of the Union Address, asked the Congress of the United States to pass a prescription drug program based upon Medicare that would deal with the incredible hardship of so many of our seniors.

I was also here in 1964 and 1965 when the Senate eventually passed the Medicare program. This issue was discussed during that period of time: Were we going to pass a prescription drug program. The judgment at that time was: Let's pass in Medicare what they are doing in the private sector. A great majority of the private sector, over 90 percent, did not include a prescription drug program, so we did not pass one in the Medicare program. At that time, less than 3 percent of every dollar expended was used for prescription drugs.

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

Mr. KENNEDY. I yield myself 2 more minutes.

Now it is 20 to 30 percent, as the Senator from Florida has pointed out. We now know this is absolutely an essential need for our seniors. How much more does it have to be studied?

With all due respect to the Finance Committee, they had a whole set of hearings last year. We did not have any legislation reported out from the Finance Committee. We have not had any legislation reported in the final weeks of this Congress. We have no commitment that the chairman of the Finance Committee or the Finance Committee members will say: We will have a prescription drug bill on the floor of the Senate for you in July—absolutely not.

We have a well-thought-out program that can make the difference for our senior citizens. When Medicare was passed, it was a fundamental commitment by the Federal Government to senior citizens: Work hard, play by the rules, and your health care needs will be attended to. That was the commitment in 1964 and 1965.

Every day we fail to pass a prescription drug benefit, we are violating that commitment. Every single day, we find our seniors are in pain and agony and suffering irreparable damage, in many cases because they cannot afford a prescription drug program. That is a fact. That promise is being broken every day because Medicare does not cover prescription drugs. This is wrong. This is fundamentally wrong. Every Member of the Senate knows it in their hearts. Every family in America knows it is wrong. Certainly, every senior citizen knows it is wrong.

We have a chance to do something right. We have a chance to put the health care of our senior citizens ahead of the profits of the private special interests.

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

Mr. KENNEDY. I yield myself 1 more minute.

That is what this vote is all about. For whom are we going to stand? This is the vote on prescription drugs. This is a program that is tied to the Medicare system. Our elderly people understand Medicare. They believe in Medicare. They know the need for prescription drugs. It is as simple and fundamental as that. It is comprehensive, it is all inclusive, it is affordable, and it will meet the needs of our senior citizens.

That is the vote we are going to have in the Senate, and we should meet our commitments to our senior citizens. We know what their needs are. We should meet them. We have that opportunity tonight. Let us not fail them.

I withhold the remainder of my time.

Mr. ENZI. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I congratulate and compliment my friend and colleague from Wyoming, as well as the Senator from Arkansas, Mr. HUTCHINSON, because they have offered an amendment that is one of the most important amendments we are going to vote on this year. The Clinton administration is trying to push forward an ergonomics rule that will have a draconian, negative impact on every single business in America.

I want all my colleagues to know if this amendment is not adopted, if this ergonomics rule goes forward, there will be significant costs. Employers will be coming up to you asking: Why did you do this to me? I have some bureaucrat coming in and telling me how to run my business.

I have a quote given by the individual who wrote these regs. She said:

> I love it; I absolutely love it. I was born to regulate. I don't know why, but that's very true. So as long as I am regulating, I'm happy.

And she came up with the largest regulation in OSHA's history on business. The Small Business Administration estimated it will cost $60 billion a year, 15 times the cost that OSHA said. People in the private sector said it will cost over $100 billion a year. And the administration wants this to go forward right after the election, right before we have a change of administration.

Senator KENNEDY said this has been studied. Congress passed, in 1998, $890,000 for a study by the National Academy of Sciences. They are going to complete that study in January. We should let them do it. We should base this regulation on science, real science, not on a political agenda. They want to cram through an extensive regulation where bureaucrats are telling employees how to run their business, and to do that right before the election, before the next administration, will be a serious mistake.

We need to stop it, and the way to stop it is to adopt the Enzi amendment. I say to my colleagues, this is probably the most important free-enterprise, private-sector initiative you'll vote on this year: If this year you believe business should be making decisions, support the amendment.

I urge my colleagues to vote in favor of the Enzi amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I yield myself 3 minutes.

The other side today has spent most of the day avoiding the ergonomics debate. Part of the debate was on the floods in North Dakota. That is because they do not have an answer to what we have been saying all day. We, too, are concerned about worker safety. We have been doing things for worker safety. Companies in this country have been doing things for worker safety. In fact, I appreciate the ranking member of my subcommittee mentioning today a couple of companies in his State that have made tremendous strides in worker safety, including ergonomics.

I am so pleased to report that according to the Bureau of Labor Statistics, last year there was a 24-percent decrease in ergonomics accidents. Companies are doing something. They are doing what they can think of.

If the same $1.8 million that has been spent on getting testimony for this rule had been used and focused particularly on small business to make sure they had the information to make the ergonomics changes in their work site, we would have even more workplace safety.

But, no, we have been paying contractors to testify. Has the Department disclosed that? No. They think these people have been volunteering their time, just like everybody else. Not only that, they edited their text for them. They had mock sessions so these experts could do it correctly. Then they paid them to rip the opposition. That is not testimony. That is the expertise that we ought to have in the workers comp department.

This will have a drastic effect on Medicare and Medicaid. We place limits on what we pay on Medicare. We are not raising those caps through the rule. So we will force people to violate some of the Medicare and some of the nursing statutes that we already have.

Then the work restriction protection—my goodness, we want the United States to get into a workers comp program? Ask your States how much of a problem they are having administering workers comp, and see if you think that OSHA can do the job. See if you think they can.

Incidentally, it was mentioned that there was testimony in our committee in that there was no opposition from the States. I presented a letter. I ask unanimous consent the letter be printed in the RECORD. It is from the State of New York Department of Labor, saying they were opposed to it.

I also ask permission that a similar letter from the State of Pennsylvania, be placed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF NEW YORK,
DEPARTMENT OF LABOR,
Albany, NY, March 1, 2000.

OSHA Docket Office,

Docket No. S–777, Department of Labor, Washington, DC.

To whom it may concern:

Enclosed please find comments from the New York State Department of Labor concerning the proposed Ergonomics Standard, 29 CFR Part 1910, published Tuesday, November 23, 1999, in Federal Register, Volume 64, Number 225, at page 65768.

Sincerely,

CONNIE J. VARCASIA.

Enclosure.

This constitutes comments by the New York State Department of Labor (NYSDOL) regarding the proposed Ergonomics Standard 29 CFR Part 1910.

1. We note for the record that OSHA, in the Federal Register notice dated November 23, 1999, (hereinafter referred to as notice), at page 66,054, IX, states, ''In addition, the agency has preliminarily concluded, based on a review of the rulemaking record to date, that few, if any, of the affected employers are state, local and tribal governments.'' Aside from the issue of how OSHA arrived at this conclusion, we agree with the statement. Therefore, we do not expect that the public sector programs of State Plan states' will be required to adopt the proposed standard.

2. If, however, OSHA intends to require adoption of this standard by State Plan public sector programs, we object. We object to the standard because OSHA excluded small public sector jurisdictions (small entities under the Small Business Regulatory Enforcement Fairness Act, hereinafter ''SBREFA'') from the SBREFA process and panel during the course of preparing this rulemaking.

3. OSHA's proposal may not be a ''standard'' as defined by the statute. It does not describe means, methods or practices reasonably necessary or appropriate to control occupational safety and health hazards. It is not a ''standard'' about workplace hazards; rather, it proposes to impose a particular management approach on employers.

4. OSHA has estimated the cost of initial compliance with this standard at $4.2 billion (OSHA's original estimate was $3.5 billion). Private sector businesses and trade associations have estimated this cost as high as $26 billion and the United States Small Business Administration (SBA) has estimated the same cost at more than $18 billion. A copy of the SBA report is annexed hereto and made a part hereof.

Given these disparity of costs, there is not consensus as to the costs of compliance with this proposed standard. It appears that a proper and accurate cost-benefit analysis has not been done, and that OSHA should, at a minimum, address the conclusion of the SBA regarding the cost of this proposal.

5. This rulemaking is completely devoid of any mention of the amount of funding that could be appropriated to State Plans for its enforcement. OSHA has not discussed the issue of funding this standard with State Plans in any other forum. Of particular concern are the following:

(a) Depending on which ergonomist one believes, ergonomics affects 30%, 40% or 50% of the jobs in America. As a regulatory agency, the NYSDOL can expect at least a 30% increase in the number of legitimate complaints (as well as countless unsubstantiated complaints) because of the new standard. Based on sheer numbers, caseload and volume, our public sector State Plan will require an increase in the amount of funding to respond to complaints.

(b) Ergonomics is a precise science where incorrect advice can do more damage than no advice at all. New York State does not currently have staff with ergonomics expertise, and we have serious concerns with its lack of availability. No mention is made in this rulemaking of how much money OSHA will provide for staff training in this field. Note that a two-week training session on ergonomics is not sufficient to provide the professional level of service which the regulated community will demand. The number of professionally accredited ergonomists in the United States is wholly inadequate to meet the demand that will be engendered by adoption of this standard throughout the United States (see attached article).

(c) The proposed standard is unfair to public sector employers because some of the more frequently utilized abatement measures are not available to them. The public sector workplace is nearly 100% unionized in New York State. It is governed by civil service rules and collective bargaining agreements that describe in detail job tasks to be performed. Accordingly, redesigning a job for one person to include varied tasks not contained within the general job description for that position is not permitted. A public employer cannot change a job unilaterally; it must return to the collective bargaining table for job redesign. Many states have statutes such as our own Taylor Law, which expose an employer to improper practice (unfair labor practice) liability if it were to obey an order based upon the OSHA proposed standard. The employer would also be subject to grievance proceedings under the collective bargaining agreement with the union involved, as changing individual job requirements would constitute a breach of the contract.

(d) Another often recommended abatement measure is more frequent rest breaks. Rest breaks, and the timing and duration thereof, are also provided for in collective bargaining agreements and civil service rules. Any public employer altering such breaks unilaterally, without a return to the bargaining table, would again be subject to the sanctions of improper practice charges under the Taylor Law and union grievance for breach of the collective bargaining agreement. As such, these abatement measures are unavailable to public sector employers. The proposed OSHA standard is an infringement of rights granted under collective bargaining agreements and laws to public sector employers and employees.

(e) Should a public sector employer attempt to implement altered rest breaks or altered job tasks unilaterally in order to comply a violation of the OSHA standard, the state regulatory agency would be in the position of aiding and abetting the infringement of workers' rights guaranteed under the collective bargaining agreement and state statutes.

(f) Regarding the costs of implementing the standard for small public sector entities, the proposed standard would place a tremendous burden on the public sector employer. If one assumes that this will increase costs to public employers, the only way to pay for this will be to increase the taxes of the citizens in its jurisdiction. Public sector small entities include town, village and small city governments, as well as fire districts, volunteer fire departments, school districts, water districts, and many others that would not be able to sustain the cost of this proposed standard without increased taxation.

6. The proposed standard does not provide adequate notice to the affected employers or employees. A by-product of this uncertainty is likely to be increased litigation. Many terms are undefined or vague: ''management leadership,'' ''employee participation,'' ''relevant,'' ''become involved,'' ''effective means,'' ''reasonably likely,'' ''promptly,'' ''likely to cause,'' ''likely to contribute,'' ''similar jobs,'' ''minimize,'' ''try,'' ''feasible,'' ''medical management,'' ''periodically as needed,'' ''recovery period,'' ''closely associated,'' ''adequate,'' ''excessive vibration,'' ''recently,'' and ''prolonged'' are either poorly defined or not defined at all. While OSHA offers definitions of some of

these terms, many are vague and will need to be defined—a task most likely to be accomplished by courts of competent jurisdiction over the next quarter century.

7. We agree with former Acting Assistant Secretary and OSHA Head, Greg Watchman, who said on November 30, 1999, that the proposed ergonomic standard is too broad, triggered too easily, and includes comprehensive requirements that may not be necessary to address one or two signs or symptoms of musculoskeletal disorders. We also agree with his statement that thousands or perhaps millions of employers would be required to implement programs regardless of whether workers are at risk.

8. We agree with the Small Business Administration that OSHA failed to fully examine other regulatory approaches, such as using the On Site Consultation Program to educate employers and the public as to precisely what ergonomics is and how studying ergonomics can help individual employers and their workforces.

9. We agree with the Women Constructors Forum's statement, ''Women-owned companies are the fastest growing sector of our economy. What we need is information, not regulation. . . . The nature of this standard could force businesses to completely overhaul their safety and health practices and devote more resources to paperwork and compliance.''

10. Attached and made a part of these comments are a number of articles and studies marked exhibits 1 through 7. The New York State Department of Labor requests that these be made a part of our comments and asks that OSHA respond to the concerns and questions addressed in them.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
Harrisburg, PA, February 29, 2000.

Re Comments to the Proposed Ergonomic Standard.

OSHA Docket Office,
Docket No. S–777, Department of Labor, Washington, DC.

DEAR SIR/MADAM: Pursuant to the proposed rulemaking published in the Federal Register on November 23, 1999, Vol. 64, No. 225, the Commonwealth of Pennsylvania submits the attached comments in response to OSHA's ''Proposed Ergonomics Standard.''

The proposed standard conflicts with section 4(b)(4) of the OSHA Act, 29 U.S.C. §653(b)(4), in that it attempts to supersede and preempt state workers' compensation laws where the OSHA Act specifically prohibits such preemption. Specifically, the proposed standard intrudes upon the states' abilities to respond appropriately to issues of work-related illness and injury, including those relating to musculoskeletal disorders, heretofore addressed by each state's workers' compensation laws. OSHA proposes to replace these systems, which were custom tailored to the needs of the individual states, with a broad, uniform system which at best confuses and at worst conflicts with the various states' workers' compensation programs. Despite OSHA's recognition of its inability to regulate in areas of state workers' compensation law, it has, in the proposed rulemaking, failed to recognize that many issues addressed therein are, in fact, within the province of the states' workers' compensation systems, and are beyond the scope of OSHA's regulatory authority.

We believe that Pennsylvania, as well as the other states, will be negatively impacted by the standard which OSHA has proposed. The attached comments articulate in further detail the manner by which the proposed standard confuses issues regarding the provision of health care to injured workers, employers' abilities to adequately respond to workers' compensation claims, the provision of workers' compensation wage loss-benefits, the time for filing of workers' compensation claims, and issues of causation and preexisting conditions.

In light of the foregoing, we ask that you reconsider the proposed rulemaking, as it poses substantial difficulties for the citizens of the Commonwealth of Pennsylvania. Thank you for your consideration of this matter.

Sincerely,

JOHNNY J. BUTLER.

Mr. ENZI. I have lots of letters from different groups that have said: Don't do work restriction protection. That's workers comp, and you're violating our right to do that.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. ENZI. I yield myself 1 additional minute.

Work restriction protection is prohibited by the OSHA Act. Very clear wording in the OSHA Act says you cannot get into workers comp, but they are going to with this rule they are trying to push through by December. I do not know why December is so critical to them. Maybe I do. They are trying to get this thing pushed through at all costs, and without paying attention to what people are saying to them about things that are wrong about the rule that they are doing.

We need a little time to take a look at the rule, particularly in light of how well businesses are doing at fixing ergonomics.

Again, I encourage the Department to help people figure out ways they can improve the safety. All we would be doing if we passed this rule is we would be giving OSHA a bigger club to beat people up with, not an answer to the ergonomics problem.

I reserve the remainder of my time.

The PRESIDING OFFICER. Under the previous agreement, the only time left is controlled by the Senator from Delaware, who has 3 minutes, and the Senator from Wyoming, who has 1 minute.

Mr. ROTH. I yield 3 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I say to Senator BREAUX, while I was not physically present on the floor when you made your speech, I was listening. I am very privileged and pleased to join you tonight in suggesting that this is not a real vote on Medicare.

Most of the time—in the past—Senator ROBB is a very realistic and forthright Senator. But somehow or other we are getting close to an election, and somebody has suggested to him that this is a way to get a real Medicare vote. The truth of the matter is, everybody listening should know this is not a real Medicare vote.

If anything, if we adopt this on an appropriations bill—that funds all of the priorities of the other side of the aisle—if they want to fund education, it is funded in this bill. If they want to fund community centers to treat the people that are poor, they are funded in this bill more than last year. But now they come along and ask us to attach an amendment, a huge bill that we have never had a hearing on, and we call it prescription drugs for America. We put it on with education, community centers, all the health programs for our seniors, and we say, just put it on there and tell the committee, that knows nothing about Medicare because they are not expected to, to bring back a comprehensive Medicare program on an appropriations bill. Then the suggestion to the American senior citizens is, we are doing something for you.

What we are doing is trying to force a vote before we have a bill. This is not a bill that has been considered. It is not going to be voted out by our bipartisan effort. A great bipartisan effort is taking place.

If I were a member of the Finance Committee—be it Dr. BILL FRIST or the Senator from Texas or the distinguished Senators on that side working on it—I would be ashamed today to say: I am going to vote to usurp and take away all your power and vote in a so-called prescription drug bill that a few of us have written up. And we are going to pass it on an appropriations bill where that committee does not know anything about prescription drugs.

They are sort of expected to robot out of here and robot back in with a great prescription drug bill.

I submit that we should not vote for it. We should not use our procedures and our processes in this perverted way.

I am going to ask five or six questions. They are not answered by this legislation, and they are not answered here.

Let me first ask: How does this amendment affect the solvency of Medicare? Nobody knows. What are the premiums for drug coverage? Nobody knows. I don't know that anybody knows the official cost estimate of this bill. But I know it is expensive. Don't you think we ought to know those answers before we try to convince Americans that we are passing a prescription drug bill which could not become law?

There are two more questions: Are there taxes in this proposal? If there are, the bill goes nowhere.

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

Mr. DOMENICI. I think we are going to do the right thing and deny this effort to make an issue out of something that is not ready to have an issue.

The PRESIDING OFFICER. The Senator from Wyoming has 1 minute.

Mr. ENZI. I yield the final minute to the Senator from Texas.

Mr. REID. How much time do you yield?

Mr. ENZI. One minute.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mr. GRAHAM. Point of personal privilege.

Mr. GRAMM. I do not want my 1 minute to start until I start talking. If the Senator wants to talk, let him do it.

Mr. GRAHAM. I do not want to talk; I want to answer.

The Senator asked a series of questions, and I am prepared to answer them.

The PRESIDING OFFICER. The Senator from Texas has the floor. The Senator from Florida is not in order. The Senator from Texas has the floor.

Mr. GRAMM. Mr. President, we have been meeting on a bipartisan basis to try to put together a bill in the waning hours of this Congress that will provide for prescription drug insurance for senior Americans. We have been working in good faith.

This is a bad faith amendment. This is a politics-first amendment. Nobody knows what it costs. Nobody knows how it will work. Nobody knows what it does to the solvency of Medicare. This is politics at its worst.

I think this body ought to be offended by it. I am offended by it. I do not believe that voters are going to be impressed by circumventing the process. This does not speed it up. This makes it harder for people such as Senator ROTH and Senator BREAUX to bring us together to pass a bill. This needs to be rejected by an overwhelming vote.

I urge those who really want a prescription drug benefit—label this for what it is by voting no, and let's get on with trying to do this on a bipartisan basis.

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

Mr. ENZI. Mr. President, I ask unanimous consent to add Senators THURMOND and HELMS as cosponsors of my amendment.

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

VOTE ON AMENDMENT NO. 3593

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to amendment No. 3593. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The PRESIDING OFFICER (Mr. ASHCROFT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—57

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

NAYS—41

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

NOT VOTING—2

Boxer	Inouye

The amendment (No. 3593) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD answers to the questions that were asked during the debate by the Senator from New Mexico.

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

SENATOR BOB GRAHAM'S ANSWERS TO SENATOR DOMENICI'S QUESTIONS CONCERNING THE ROBB AMENDMENT, JUNE 22, 2000

1. What is the score of this proposal?

Over 10 years the cost of this comprehensive package is approximately $242 billion.

2. What impact will this benefit have on the solvency of the Medicare program?

This program will not have a direct impact on the solvency of the Medicare program. In fact, the inclusion of a prescription drug benefit may lead to a decrease in hospital stays and other costly outpatient care, which may result in savings to the trust fund.

3. What will beneficiary premiums be?

In 2003, when the benefit begins, the beneficiary premiums will be approximately $38.50 per month.

4. How will this program impact the taxpayer?

This program will have no direct implications on the American taxpayer.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to file for the RECORD CBO estimates as promptly as I can get them.

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

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, in a moment I believe we will be prepared to begin the vote on the second amendment in this series. I have discussed the schedule with Senator DASCHLE and the manager of the legislation. This will be the last vote of the night. We will be in session tomorrow.

We urge Senators who have amendments to offer them tonight—I understand one is already prepared for tonight—and to be prepared to be here and have amendments in the morning so that we can make progress. We will plan on stacking those votes next week at a time to be determined, and we will let the Members know sometime tomorrow when that will be. But this will be the last vote for tonight and for the week.

I yield the floor.

AMENDMENT NO. 3598, AS MODIFIED

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to amendment No. 3598, as modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from California (Mrs. BOXER) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The result was announced—yeas 44, nays 53, as follows:

[Rollcall Vote No. 144 Leg.]

YEAS—44

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

NAYS—53

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

NOT VOTING—3

Boxer	Campbell	Inouye

The amendment (No. 3598), as modified, was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Arizona.

AMENDMENT NO. 3610

(Purpose: To enhance the protection of children using the Internet)

Mr. MCCAIN. Mr. President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 3610.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

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

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, the purpose of this amendment is to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing Internet from a school or library receiving Federal universal service assistance by requiring such schools and libraries to deploy blocking or filtering technology on computers used by minors and to block general access to obscene material and child pornography on all computers. The amendment further requires that schools and libraries block child pornography on all computers.

The last few years have seen a dramatic expansion in Internet connection. The Internet connects more than 29 million host computers in more than 250 countries. Currently, the Internet is growing at a rate of approximately 40 percent to 50 percent annually. Some estimates have the number of U.S. Internet users as high as 62 million.

There are approximately 86,000 public schools in the United States. The first program year of the e-rate, 68,220 public schools participated in the program. That is approximately 68 percent of all public schools. Participation increased by 15 percent in the second year, from July 1, 1999, to June 30, 2000, with 78,722 public schools listed on funded applications. Statistics on libraries participating in the program mirror these dramatic numbers.

I lay out these statistics because they represent both the tremendous promise and the exponential danger that wiring America's children to the Internet poses. Certainly the Internet represents previously unimaginable education and information opportunities for our Nation's schoolchildren. However, there are also some very real risks. Pornography, including obscene material, child pornography, and indecent material is widely available on the Internet. This material may be accessed directly or may turn up as the product of a general Internet search.

Seemingly innocuous key word searches such as Barbie doll, playground, boy, and girl can turn up some of the most offensive and shocking pornography imaginable.

According to the National Journal, there are at least 30,000 pornographic web sites. This number does not include Usenet news groups and pornographic spam.

As we have seen through an increasing flurry of shocking media reports, the Internet has become the tool of choice for pedophiles who utilize the Internet to lure and seduce children into illegal and abusive sexual activity. Pedophiles are using this technology to trade in child pornography and to lure and seduce our children. In many cases, such activity is the product of individuals taking advantage of the anonymity provided by the Internet to stalk children through chatrooms and by e-mail. However, an increasingly disturbing trend is that of highly organized and technologically sophisticated groups of pedophiles who utilize advanced technology to trade in child pornography and to sexually exploit and abuse children.

As we wire America's children to the Internet, we are inviting these lowlifes to prey upon our children in every classroom and library in America. If this isn't enough, the Internet has now become a tool of choice for disseminating information and propaganda promoting racism, anti-Semitism, extremism, and how-to manuals on everything from drugs to bombs.

Rapid Internet growth has provided an opportunity for those promoting hate to reach a much wider and broader audience. Children are uniquely susceptible to these messages of hate, and make no mistake about it, they are the targets of these messages. According to the New York Times: ''They, hate groups, peddle hatred to children, with brightly colored Web pages featuring a coloring book of white supremacist symbols and a crossword puzzle full of racist clues.''

Media propaganda has always been used as a means for spreading the toxic message of hate. Magazines, pamphlets, movies, music and other media have been their traditional tools for those seeking to feed the darker side of our human nature. The Seattle Post-Intelligencer reported in an article entitled ''Nazism on the Internet'': ''Many sites operated by neo-nazis, skinheads, Ku Klux Klan members and followers of radical religious sects are growing more sophisticated, offering inviting Web environments that are designed to be attractive to children and young adults.''

The software filtering industry estimates that about 180 new hate or discrimination pages, 2,500 to 7,500 adult sites, 400 sites dedicated to violence, 1,250 dedicated to weapons, and 50 are murder-suicide sites are added to the Web every week.

Manuals on bomb-making, weapons purchases, drug making and purchasing, are widespread on the Internet. Simple word searches using ''marijuana,'' enables kids to access Web sites instructing them on how to cultivate, buy, and consume drugs. Literature such as the ''Terrorist's Handbook'' is easily available on-line, and provides readers with instruction on everything from how to build guns and bombs, to lists of suppliers for the chemicals, and other ingredients necessary to construct such devices.

When a school or library accepts Federal dollars through the Universal Service fund, they become a partner with the federal government in pursuing the compelling interest of protecting children.

Mr. President, Dr. Carl Jung, in 1913, spoke of the importance of childhood in shaping values, and the implications for future generations. Jung said: ''The little world of childhood with its familiar surroundings is a model of the greater world. The more intensively the family has stamped its character upon the child, the more it will tend to feel and see its earlier miniature world again in the bigger world of adulthood.''

As I look upon the landscape of America today, of our children, growing up in a culture of violence, of a mass media that floods their innocent minds with images of gratuitous sex and senseless violence, as I contemplate the likes of predators who stalk our children through this new technology, of pornographers and hate mongers who seek to invade the sanctity of the innocence of childhood to stamp their dark values on our children, I wonder what the future world of adulthood will look like if we do not act swiftly and decisively to build an inviolable wall around our precious children.

Mr. President, I ask unanimous consent to print in the RECORD a letter from a group of people, including the American Family Association, Family Research Council, Republican Jewish Coalition, Traditional Values Coalition, many others in support of this legislation.

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

WASHINGTON, DC, *June 22, 2000*.

Hon. JOHN MCCAIN,

Russell Senate Office Bldg., Washington, DC.

DEAR SEN. MCCAIN: We are writing to indicate our very strong support for the Children's Internet Protection Act, S. 97, which we believe offers a very effective solution to the growing problem of pornography accessible on the Internet by computers in schools and public libraries. Caring parents who wish to shield their children from sexually exploitive material should be able to trust that schools and public libraries are on their side in this battle. Yet, because of the influence of the American Library Association and their allies, which oppose filtering of any material, even illegal pornography, to children, such parents find they are fighting a losing battle. The Children's Internet Protection Act will go a long way in that battle by requiring that obscenity (hard-core pornography), child pornography, and other material inappropriate for minors be blocked when children access the Internet on school and library computers.

The Children's Internet Protection Act would help solve an additional problem occurring primarily in public libraries, the use

of computers by pedophiles who access child pornography, and then seek to molest children. We are pleased that your bill, unlike some other Internet filtering bills introduced in Congress, requires that child pornography be blocked for all users, adults and children.

American needs the Children's Internet Protection Act. Thank you for your leadership on this important matter.

American Family Association, Family Research Council, Republican Jewish Coalition, Traditional Values Coalition, Morality in Media, National Law Cntr. for Children & Families, Family Friendly Libraries, Family Association of Minnesota, Family Policy Network, VA, Christian Action League, NC, Citizens for Community Values, OH, American Family Assoc., IN, American Family Assoc., MS, American Family Assoc., NY, American Family Assoc., PA, American Family Assoc., TX, American Family Assoc., AR, American Family Assoc., AL, American Family Assoc., KY, American Family Assoc., GA, American Family Assoc., MO, American Family Assoc., CO, American Family Assoc., OR, American Family Assoc., IA, American Family Assoc., MI, American Family Assoc., OH, American Family Assoc., NJ.

Mr. MCCAIN. Mr. President, this is from Houston Reuters, Thursday, June 15:

A Georgia man has been arrested in Texas and charged with trying to buy two elementary school boys for sex after FBI agents monitoring the Internet identified him as a pedophile, the agency said on Thursday.

Jonathan Christopher Wood was arrested on June 3 after traveling to Houston from Perry, Georgia, with the intention of buying the boys and taking them back to Georgia for illegal sex, the FBI said in a statement.

Wood, 53, was arrested after arriving in an agreed-upon meeting place with $12,000 in cash for the purchase, the FBI said.

Brian Loader, assistant special agent in charge of the FBI's Houston field office, told Reuters the arrest came as a result of FBI monitoring of Internet chatrooms.

''He was identified by our Crimes against Children task force as a person who was actively seeking to purchase children for sexual exploitation. He was using the Internet,'' Loader said.

Loader declined to say whether an FBI agent had posed as a seller but he said that no other arrests had been made.

A Federal criminal complaint filed against Wood alleges that he traveled across States lines with intent to engage in prohibited sexual relations with a minor. Woods had recently moved to Georgia from Alabama, where he had owned a company that provided Internet access.

Also on Thursday, Texas Attorney General John Cornyn announced the arrest of five men charged with aggravated sexual assault for allegedly having sex with a 12-year-old girl they contacted through an Internet chatroom.

Mr. President, I will have a longer statement when we pursue this amendment later on. I hope we can have an up-or-down vote. Anyone who uses the Internet knows of this problem.

I am not advocating censorship. The fact is that when Federal dollars are used to wire schools and libraries in America, then it seems to me the schools and libraries have an obligation to provide Internet filters and use them according to community standards—only according to community standards, in the same fashion that a school or library filters printed material that comes into a school or library. Occasionally, a wrong book may be taken off the shelf in a library. But I know of no school board or library board that does not filter printed material.

How in the world can we sit still and have all of this stuff coming into our schools and libraries without the kind of filtering that is done with printed materials? A few years ago, a 13-year-old boy in the Phoenix library was viewing pornography on the Internet, and he walked out and sexually molested another young boy. This is rampant throughout this country.

Some argue that I can't stop everything over the Internet, nor do I wish to try that or to enter anybody's home; that is their private business. But schools and libraries in this country should exercise their responsibilities to screen this kind of material according to community standards.

Why in the world the American Library Association opposes this legislation is one of the great curiosities of my political career. I hope we can overcome that opposition. The overwhelming number of parents in America want their children protected in schools and libraries as they view the Internet.

Mr. President, I look forward to an overwhelming vote in favor of this amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 15 minutes each.

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

PROTECTING CHILDREN ON THE INTERNET

Mr. SESSIONS. Mr. President, I appreciate Senator MCCAIN for raising this important issue. I agree with him that is difficult to conceive that anyone would think that material that comes through the Internet which would not be allowed in the library in a book should be allowed to be in there electronically. It is frustrating to see the National Library Association, who I have observed over the years have a very radical view of absolutely no one telling a librarian what can be brought into a library. I don't think that is legitimate. Their salaries are paid by the taxpayers, and they receive money from the Federal Government. They don't have an absolute, unprotected right to select whatever they want in the library. It is not a healthy matter.

ELLSWORTH WOULD BE THE BEST HOME FOR THE NEW GLOBAL HAWK AIRCRAFT

Mr. DASCHLE. Mr. President, the Air Force is currently evaluating five military bases to see which would be the best home for its new unmanned surveillance craft, known as Global Hawk. Accordingly, the Air Force is using the final 2 weeks of June to send a team out to each of the five candidates to solicit public opinion on potential environmental impacts. The next such meeting occurs Friday in Rapid City, SD and focuses on Ellsworth Air Force Base.

For the past year or so, I have been making the case for Ellsworth to senior officials in the Department of Defense and the Air Force. Perhaps not surprisingly, I firmly believe Ellsworth represents the best choice for the Air Force to host this important new mission. As we approach the date of the Air Force's meeting in South Dakota, I thought I would say a few words here in the Senate about why I feel as strongly as I do. Although I am confident none of my colleagues will be surprised by this position, they may find some of what I have to say about Ellsworth surprising.

Friday's meeting moves the Air Force one step closer to a deployment decision on the Global Hawk system. I and the scores of other supporters of Ellsworth welcome a careful, objective review. We are confident that at the end of such a process the Air Force will conclude that Ellsworth is the most appropriate home for the Air Force's next generation of surveillance aircraft.

We hold this view for three very important reasons. First, geography. Ellsworth offers uncrowded airspace and largely open spaces. Such a setting is ideal for conducting the kinds of training missions necessary to ensure the Air Force maximizes the technological possibilities offered by Global Hawk.

The second reason Ellsworth has an edge over its competitors is base infrastructure. Many people who have never visited Ellsworth or who have not visited recently will be surprised to see the modern facilities at this base. Many people perceive Ellsworth as a sleepy, rundown former Strategic Air Command Base. Nothing could be further from the truth. As a result of years of effort, it now has the facilities to match the fine personnel it has always had.

The final advantage Ellsworth enjoys is community support that is as deep as it is widespread. From elected officials, to business owners, to hard-working South Dakotan families living in the surrounding area, all stand completely behind what Ellsworth does for South Dakota and our national security. The Air Force will be hard pressed to find a community more supportive of its mission.

For all of these reasons, I stand behind Ellsworth and welcome the Air Force to my state so they can see first hand what I have been talking about in meetings with defense officials and here today on the Senate floor.