initiative. We have to make the most efficient use of our existing highways. We provide new options for transportation planners to address safety and capacity concerns. The objective is to move more vehicles in a safer fashion over the same amount of highway that exists—not expand the highways, just move more vehicles along the existing highways in a safe fashion.

The environment received great attention in our legislation, and, I might say, so did ISTEA I in 1991. But we continued that. Indeed, we increased funding for the Congestion Mitigation and Air Quality Program. In other words, where congestion arises, we took efforts to mitigate those problems and the reflections that that congestion has upon our air quality.

We boosted funding for the Transportation Enhancements Program. We increased that by 38 percent over the prior legislation of 1991. So States can use these funds for what we call transportation enhancements, such as bicycle and pedestrian facilities and historic or environmental preservation projects.

We initiated a wetlands banking system to mitigate transportation's effect on wetlands. When we build new roads, all too often wetlands are affected. We want to promote wetlands restoration. We did that by making wetlands restoration a profitable private enterprise.

We reauthorized and amended the Aquatic Resources Trust Fund, which provides about $350 million annually to States throughout the Nation for sport fish restoration and boat safety programs.

So these are some of the things that we did. We had environmental streamlining. We held the line on administrative expenses. We added a design-build system for contracting. Current law doesn't allow the use of the so-called design-build concept in highway construction. The design-build concept combines the design and construction phases of a highway project, allowing projects to be built faster and at less cost to the taxpayer.

Mr. President, I will conclude by recognizing the tremendous efforts put forth in this legislation by the staffs and by the Department of Transportation. I want to thank Secretary Slater and Federal Highway Administrator Wykle for their time and effort on this bill and for making the full resources of the Department available to us. From the Department of Transportation, I thank specifically Jack Basso, Nadine Hamilton, Bud Wright and his staff, Tom Weeks, Bruce Swinford, Roger Mingo, Dedra Goodman, Frank Calhoun and his staff, Patricia Doersch, Bryan Grote, and David Seltzer. These individuals, particularly on the formula runs, were tremendously helpful.

I thank Secretary Slater for allowing Cheryle Tucker from the Federal Highway Administration to be detailed to our committee for 16 months to help us on this. I thank all the conferees from the Environment and Public Works Committee; all 18 were conferees. I think that was very helpful to me, and I believe it worked well. These members took hours from their busy schedules to listen to summaries of what was taking place and offered suggestions. I thank the chairman of the subcommittee, Senator WARNER, and the ranking member, Senator BAUCUS, for their efforts in getting this legislation up to the full committee.

Lastly, I would like to recognize the efforts of the Senate staff who worked so long and hard. Of course, I thank every single one of them. Particularly, I recognize the work of Jimmie Powell, who was just tireless, and a series of others who did such a good job. I am going to run over the names of some of those who worked on the reauthorization that I was particularly close with. Chris Hessler; Dan Corbett, of course, who was tireless and always present; Ann Loomis; Tom Sliter; Kathy Ruffalo, with Senator BAUCUS; Chris Russell; Gary Smith; Tracy Henke, with Senator BOND; Jason Rupp; Doug Benevento, with Senator ALLARD; Abigail Kinnison with the Environment and Public Works Committee; Al Dahlberg with the Environment and Public Works Committee; Linda Willard with the Environment and Public Works Committee; Ellen Stein with Senator WARNER; Chad Bradley with Senator INHOFE; Chris Jahn with Senator THOMAS; Gerry Gilligan with Senator SESSIONS; Rick Dearborn with Senator SESSIONS; Arnold Kupferman with Senator MOYNIHAN; Polly Trottenberg with Senator MOYNIHAN; Liz O'Donoghue with Senator LAUTENBERG; Kirsten Beronio with Senator LAUTENBERG; Drew Willison with Senator REID; Melissa White with Senator GRAHAM; Tim Hess with Senator GRAHAM; Joyce Rechtscheffen with Senator LIEBERMAN; Christopher Prins with Senator LIEBERMAN; Rob Alexander with Senator BOXER; Joshua Shenkmen with Senator WYDEN; Howard Menell with the Banking, Housing, and Urban Affairs; Peggy Kuhn with the Banking, Housing, and Urban Affairs; Joe Mondello with the Banking, Housing, and Urban Affairs; Loretta Garrison with the Banking, Housing, and Urban Affairs; Bill Hoagland with the Budget Committee; Brian Riley with the Budget Committee; Austin Smythe with the Budget Committee; Mitch Warren with the Budget Committee; Ann Begeman with the Commerce, Science and Transportation Committee; Charlotte Casey with the Commerce, Science and Transportation Committee; Clyde Hart with the Commerce, Science and Transportation Committee; Bob Greenawalt with Senator CHAFEE; Ashley Miller with Senator ROTH; Keith Hennessey with Senator LOTT; Carl Biersak with Senator LOTT; Janine Johnson with Senate Legislative Counsel; Peter Rogoff with Senator BYRD; Pam Sellers with Senator COATS; Steve McMilin with Senator GRAMM; and Dave Russell with Senator STEVENS.

They all were tremendous, and I feel bad if I left out the names of any of them. So it goes, Mr. President, without the help of these individuals, we plain could not have gotten this legislation accomplished. So I thank every one of them.

I thank the Chair.

Mr. President, I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ROBB. Mr. President, I would like to return to a discussion of the bill that is currently before the Senate. I voted against cloture today, and barring some major shift in the direction of this legislation, which now, regrettably, appears unlikely, I will have no choice but to vote against cloture again tomorrow.

Mr. President, I have a keen interest in the pending legislation. I have three children, all now grown. No member of my family smokes now, and I hope they never do. In the Senate, we represent millions of parents who have the same wish for their children. There are thousands of Virginians who belong to the American Heart Association, the Virginia Cancer Society, the American Lung Association, Virginians who have fought for years against the scourge of smoking-related disease.

There are also, however, thousands of honest, hard-working, God-fearing, law-abiding, taxpaying Virginians whose lives and livelihoods would be dramatically affected solely by the actions this Congress may take on the tobacco issue. For example, there are thousands of Virginians who work to manufacture tobacco-related products, and thousands more who work in associated industries, like the dock-workers at the Ports of Hampton Roads, foil manufacturers, and filter makers. And there are the thousands of Virginia families who work the soil and grow tobacco, who face not only the uncertainty other farmers face regarding the weather and other uncontrollable forces, but must contend with the added uncertainty of what Congress may do to affect their lives.

In short, to an extent not shared by many of my colleagues I represent virtually every interest affected by this legislation. While some would argue that because I'm from a tobacco state I must be biased on this issue. I believe that because I'm from a tobacco state, I'm in a unique position to be objective. I'm willing to listen with an open mind to public health advocates, who want to protect the Commonwealth's children, but I'm also willing to listen with an open mind to tobacco workers and tobacco growers whose very livelihood is under attack. Indeed, I've

worked closely with both the public health community and the tobacco grower communities—as well as the tobacco worker communities—whose concerns were not fully represented in the June 20 agreement.

I have believed from the outset that a resolution of the issues surrounding tobacco is in the best interests of all interested parties—children, the public health community, tobacco workers, plaintiffs, tobacco companies, tobacco farmers and their communities. I've said that from the very beginning and my position has not changed.

I still want very much to support comprehensive legislation that will address these concerns. Comprehensive legislation, however, must be reasonable. While by its very nature complicated legislation will not be perfect in any one individual's eyes, it must be fair and responsible. And indeed, it must meet its stated objectives. I have reluctantly come to the conclusion that as it now stands, this legislation has lost sight of its objective and will do more harm than good.

When we began this process of crafting legislative solutions to the problem of tobacco use among our children, we all understood it would not be easy. We knew that difficult and complicated issues needed to be addressed, and consensus would be hard to reach. But as I stand here today, I've become convinced that this effort has hopelessly faltered, tripped up by an unholy alliance of those who wanted to toughen the bill and those who wanted to kill it. We've lost our focus on our original goals. The lure of money to pay for both expensive tax cuts and federal programs, and the politics of punishment, have unfortunately proven irresistible.

We had, and regrettably for now we've lost, an historic opportunity to address underage tobacco use. While I did not agree with every element of the proposed resolution of tobacco issues that emerged with the original settlement agreement on June 20, 1997, I did see it as a chance to resolve many of the issues surrounding tobacco that have proven intractable in the past. The process of reaching the conclusion was not perfect, and there were parties who were not invited to participate, most notably in my view the tobacco growers and tobacco workers, to the extent their interests did not coincide with the companies'. But the framework for a resolution was there, representing compromise by the states, the tobacco companies, and the public health community.

A carefully crafted, moderate compromise, however, is no match for a hot political issue. Between those who focused on punishing tobacco companies, and those who focused solely on opposing a tax increase, we have a political free-for-all. And these two factions, one of which believes it is protecting the children and the other which believes it is protecting the taxpayer, have united to create legislation in its current state that has become unworkable, irresponsible and unlikely to solve the problem it is designed to address.

This legislation should be about developing a plan to stop children from using tobacco products. And I do not doubt the commitment of those who have worked so hard on this bill to achieve a reduction in youth smoking. In my view, however, the amendments to the underlying bill that we have adopted recently do not get us closer to that goal. To the contrary, they make the essential compromise unreachable.

It is clear that the advertising and marketing rules the FDA put in their regulations represented the outer limits of what the government could do to restrict speech without the consent of those being restricted. To entice consent from the tobacco companies to modify their speech, the bill contained a cap on the amount of money a consenting company could be required to pay during any one year. That cap did not shield any company from paying any judgment rendered by a court; it merely regulated the time period over which such payments would be made.

During the amendment process, we've witnessed the emergence of an unlikely coalition of those who seek to punish the companies and those who seek to kill the bill who teamed up to strip that provision from the bill, virtually ensuring that no company will consent to greater restrictions, and preventing us from further limiting the advertising and marketing practices of the tobacco companies which many have come to the floor to denounce. However gratifying that vote may have been for some, I believe that amendment moved us away from our objective to combat teen tobacco use.

I believe the absence of liability protection does even further damage to the goal of the legislation. Without some limitation on liability, a ''Powerball'' plaintiff could hit a jackpot with a lone jury and walk away with the keys to the company. If that occurs, the company's funds will not be there to spend in the public interest as elected representatives see fit, but will be spent however the winning plaintiff sees fit. No funds for counter-advertising, no funds for smoking cessation programs, no money for cancer clinical trials and, yes, no money for farmers. This is a perverse result, which may satisfy a short-term craving for revenge but will leave the programs we want to support starved for funding over the long-term.

A better approach, in my view, would be to eliminate punitive damages for prior bad acts in exchange for a substantial up-front payment by the tobacco industry. This approach would have the benefit of allowing those ''punitive damages'' to go toward the public good, rather than to plaintiffs and their attorneys who ''hit the jackpot.''

Without liability protection, a single runaway jury could wipe out a major U.S. corporation, without any corresponding public benefit except the satisfaction of some from ''slaying the beast.'' But it would come at great social cost. It would destroy the jobs of those employed by those companies, and all of those in related jobs whose livelihoods depend on the company. And because there would still be a demand for cigarettes, other companies, both foreign and domestic, would simply step into the market and continue selling cigarettes, so there would be no guarantee of any perceptible public health benefit. I'm not convinced that this is the most rational course.

I'm also uncomfortable with the look-back provisions. The look-back provision sets up a performance standard, requiring certain goals of tobacco use reduction by minors. If those goals are not met, a strict liability scheme imposes penalties on those who manufacture tobacco products. While I certainly favor performance standards, I question their application when meeting the standard is not within the control of the entity charged with reaching it. Meeting the goals of the look-back provisions depend entirely on controlling the behavior of adolescents.

I'm not convinced that either the government or the tobacco companies really know how to control teen behavior, and while we should certainly try to develop methods of eliminating the use of tobacco products by adolescents, I don't believe we should assess damages against companies if those strategies don't work. The way the look-back provisions are currently structured, if the tobacco companies do everything this legislation requires them to do, and it doesn't work, they are still assessed damages, regardless of culpability. I believe this overestimates the power of the tobacco companies, because it requires companies to be responsible for the behavior of adolescents.

Finally, with regard to the tax increase on tobacco products, I'm not unalterably opposed to raising the price. In fact, I voted against the amendment that would have eliminated any tax from this bill. I have in the past supported necessary tax increases when I believed them to be in the national interest, such as the 1993 deficit reduction package which has helped spur the economy. But I believe we should think long and hard before levying a tax that disproportionately taxes those at the bottom of the economic ladder. If we determine that raising the price by $1.10 per pack is the only way to tackle the problem of teen tobacco use, then I believe we have an obligation to assess it. But given the uncertainty as to what will actually stop teens from trying to act like adults by smoking, it seems to me we should try other approaches first. A massive, regressive tax ought not be the first resort, it should be the last resort.

In its 1996 regulations, for example, the Food and Drug Administration indicated that marketing and advertising restrictions, and tougher retail enforcement, could cut teen tobacco use

in half. While that estimate was likely overly optimistic, I think that we can expand upon the approach taken by the FDA to achieve the goal we all share. In the proposed rule, the FDA stated that ''the agency has examined many options for reducing tobacco use by children and adolescents, and believes an effective program must address the two following areas: (1) Restrictions on cigarette and smokeless tobacco sales that will make these products less accessible to young people; and (2) restrictions on labeling and advertising to help reduce the appeal of tobacco products to young people along with requirements for a manufacturer-funded national education campaign aimed at those under 18 years of age to help reduce the products' appeal to these young people.'' I would prefer enhancing these proposals, and determining whether they can solve the problem, before assessing a major tax on adults. Since only 2% of the cigarettes purchased are used by children, I would place emphasis on a far more precise tool than a tax on the other 98%, unless such a tax is the only weapon left in our arsenal.

For example, I would like to focus more on requiring those children who smoke to accept some short-term consequences of the decisions they make, such as taking away their car keys.

This is the type of approach that would be a more exact tool. But it is not to say that I could not have supported some look-back provision, or some tax increase, so long as they were contained in an otherwise balanced bill and the proceeds targetted toward supporting and enhancing the objective. In fact, I agreed to serve on the tobacco task force to try to help develop a balanced approach that would solve the problem. I knew going in that no proposal would be completely to my liking, and I was prepared to accept some less palatable provisions as part of a workable package I could have embraced.

For example, although I've always believed the look-back provisions were not sound public policy, despite the support they had from the companies, as part of a fair and reasonable resolution, I could have supported this approach. I was willing to accept a certain level of variance from my ideal in the interest of accomplishing the objective. This legislation, however, has reached the point where the burden is too heavy and the variance too great.

I cannot in good conscience support legislation which places too heavy a burden on people I represent without some guarantee that their legitimate concerns would be addressed and without some certainty that the objective of reducing youth tobacco use would be met. All along, I've wanted to achieve the dual goal of reducing teen tobacco use and looking out for the economic well-being of the hard-working people I'm here to serve.

This bill in its current form no longer has enough emphasis on these objectives, which is why I now am not supporting it. An unusual confluence of those who want to punish the companies and those who want to kill the bill have shaped legislation which many of us who wanted a responsible bill can no longer support. I had hoped to come to a different conclusion about this process. I still believe that a properly crafted global settlement is in the best interest of those concerned about tobacco. A resolution of the issues that have dogged the tobacco industry for decades, if done correctly, would be good for growers and their communities, children, tobacco workers, the tobacco industry, smokers, non-smokers, and the public health community. The uncertainty that now surrounds these issues is good for no one.

Discussed rationally, I believe we could develop a solution that would address these uncertainties. On the floor of the Senate during an election year, as we all know, rational discourse doesn't always carry the day.

Mr. President, let me conclude by saying that I began this process with an open mind and a sincere belief that comprehensive tobacco legislation that could be both reasonable and effective in reducing smoking among our youth was in the best interest of all parties involved. I would have supported that legislation. But in the last three weeks, in amendments aimed at punishing tobacco companies, we have weakened the ability of this legislation to do what we all say we want it to do: reduce teen smoking. Again, this has been done by an unfortunate alliance of those who want a bill that's too punitive and those who want simply to kill this bill. In the end, I cannot support legislation that brings great and unnecessary economic harm on working people, and does not effectively achieve the benefit of preventing young Virginians—and young Americans—from becoming young smokers.

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

Mr. KERRY. Will the Senator withhold?

Mr. ROBB. I withdraw my request.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Let me say to my friend from Virginia, I have great respect for his analysis and for the sober, introspective approach that he brought to this legislation. I must say I cannot disagree with him—that from, certainly, my perspective, there are one or two amendments that have been agreed to that may be a reflection of sort of a first-round fervor on the floor of the Senate. On the other hand, I am convinced that is going to change over the course of the legislative process. Some people have been trying to wish this bill dead for some period of time.

I think the Senator from Arizona and I would agree, this bill is not dead. This bill is going to continue to be fought out in the context of the Senate. I hope in the end the Senator from Virginia will find that, while he may not agree with what could still leave the Senate floor—and I believe the bill could still leave the Senate floor—if the Congress of the United States works its will in a complete way, it is possible that something could come back, ultimately, that the Senator may feel is better.

I also respect the Senator's particular needs with respect to Virginia. There are certain Senators here who obviously have a very particular problem they need to try to resolve in the context of this legislation. At the moment, there is not certainty as to that for the Senator. But I might say that might be also resolved as we go along here. So, I do respect his thinking on it. I appreciate his thoughtful approach.

Just so colleagues may have a sense of where we are and what we are doing, we do believe it may be possible within a short period of time that there would be a couple of votes. Our hope is to be able, though it is not yet guaranteed, to proceed forward with a couple of votes, conceivably one on the Coverdell amendment and then an alternative thereto, and then conceivably, first thing tomorrow, we may be able to deal with the issues of the Gramm amendment and a Democrat alternative to it.

So, even though things are not bubbling over with excitement on the floor itself, I think there is some quiet progress being made in some meetings behind the scenes. Hopefully, that will allow us to begin to break forward and set up something of a legislative agenda where we can begin to debate some additional amendments and, hopefully, proceed forward. That, obviously, will continue to depend on the goodwill of our colleagues and on the degree to which there is a good-faith effort to try to legislate rather than to procrastinate. Hopefully, within a short period of time we may be able to propound a request with respect to that.

I see the Senator from Wisconsin is on his feet and wishes to speak, so I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I come here today to discuss an amendment to the tobacco bill and to highlight how tobacco companies have used court secrecy orders to deceive and endanger the American public. While secrecy orders may be justified to protect personal information or trade secrets, they all too often have been abused—especially by tobacco companies—to undermine health and safety. We need to strike a better balance and make sure this tactic can't be used to cover up future bad conduct.

Typically, tobacco companies—like many other defendants—threaten that without ''secrecy,'' they will fight to conceal every document, and they will refuse to settle. They insist on making secrecy—or ''protective''—orders a precondition to turning over documents and to settlement. And overmatched

victims have no choice but to accept these demands, even though there is no legal reason why most of the documents should be kept under wraps.

While courts actually have the legal authority to deny requests for secrecy, often they do not—because both sides have agreed, and judges don't take the time to independently look into the matter themselves.

Over the years, we have raised this concern, citing several examples, including defective heart valves, exploding fuel tanks, and dangerous playground equipment. In case after case, people have been injured or killed by defective products that remained on the market while crucial information was sealed from the public light. This is not only wrong, it is also unacceptable.

There is no doubt that the most flagrant abuse of secrecy orders involves Big Tobacco. This tactic has served the industry in two disturbing ways. First, it dramatically drove up the cost of litigation by making every plaintiff ''reinvent the wheel.'' As one tobacco official boasted, rather crudely, ''the way we won these cases was not by spending all of [our] money, but by making that other S.O.B. spend all his.'' And secrecy orders helped them do it.

Second, secrecy kept crucial documents away from public view. The tobacco companies have used secrecy orders and attorney-client privilege to conceal all kinds of materials critical to public health and safety, including many relating to teen smoking and nicotine levels. Once these documents were released, public outrage compelled action. But if the public had this information earlier, we could have saved thousands of lives.

The underlying tobacco bill—which I strongly support—sets up a depository where tobacco companies are supposed to send current and future documents. But the tobacco companies have made clear that they will not cooperate. They'll just tie up this and other provisions in court, and the promise of a meaningful document library will literally be empty.

So the bill leaves a big, big loophole. In the future, tobacco companies could add new ingredients to cigarettes that pose health risks or make tobacco more addictive. And they will still be able to rely on secrecy orders to conceal these hazards from the public.

Our proposal will close this loophole. It is simple, effective and limited in scope. It only applies to a small category of cases, like tobacco, which involve public health or safety. Before approving secrecy orders, courts would apply a balancing test—they could permit secrecy solely if the need for privacy outweighs the public's right to know. In addition, the amendment bars any agreement that would prevent disclosure to the federal and state agencies charged with protecting public safety.

Mr. President, our proposal does apply to more than just tobacco cases, of course, and it should. We need to prevent others from copying the tobacco industry's tactics.

Bipartisan support for this proposal has grown over the years. Last Congress, it passed the Judiciary Committee 11 to 7. So if the tobacco bill moves forward, this proposal should be included.

But even if the tobacco bill goes down, we still need to address this problem. Because who knows what other hazards are hidden behind courthouse doors? So if necessary I will offer this amendment to another measure.

Today, a debate is raging about whether the President is hiding behind court orders and legal privileges. But when health and safety are at issue, there shouldn't be any debate at all. This is far too important. We need to learn our lessons from tobacco and take action to stop the next threat.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

PATIENTS' BILL OF RIGHTS

Mr. DORGAN. Mr. President, I want to speak just for a moment about the Patients' Bill of Rights that we have introduced in the Senate and that many of us in the Senate hope can be considered on an expeditious basis by the U.S. Senate.

The Patients' Bill of Rights is a piece of legislation designed to address some of the concerns we have about managed care. In many instances, health plans are denying patients the right to know all of the treatment options available for their not just the cheapest treatments available. The Patients' Bill of Rights would guarantee that right, along with the opportunity to understand your rights with respect to emergency care and a range of other rights that we believe should be inherent.

I want to tell the Senate another story, as we have done almost every day the Senate has been in session, that describes, again, the urgent need for passage of the Patients' Bill of Rights.

This is about a young woman named Paige Lancaster from Stafford, VA. In 1991, when Paige Lancaster was 11 years old, her mother took her to see her HMO pediatrician because she had complained of nausea and severe daily headaches for some long while.

For the next 4 years, Paige repeatedly sought medical treatment for headaches from two other HMO pediatricians available. They prescribed adult-strength narcotics but never once consulted with a neurologist nor did they recommend during all this time an MRI, CAT scan, EEG, or any other diagnostic test, for that matter, to diagnose Paige's condition.

Then in 1996, Paige's school counselor worried about this young girl's deteriorating high school performance. She recommended to the doctors that they perform some diagnostic tests to determine the cause of this young lady's debilitating symptoms.

Mr. President, 4½ years after the first visit by this child complaining of severe headaches, the doctors finally ordered an EEG and an MRI. The MRI revealed a massive right frontal tumor and cystic mass that had infiltrated over 40 percent of her brain. One week later, Paige underwent surgery to remove the tumor. However, the surgery was unsuccessful because of the tumor's size and maturity. Paige then underwent a second and third surgery and radiation therapy, and she is, we are told, likely to require additional surgery and ongoing intensive care.

What is so outrageous about this case is that the HMO covering Paige had in place a financial incentive program under which her physicians would receive bonuses for avoiding excessive treatments and tests.

This is not something new. We know of managed care organizations in which the contracts with the physicians require that, if a patient of the physician shows up in an emergency room, the cost of that emergency treatment comes out of the payment to the physician—an unholy circumstance, in my judgment, because it creates exactly the wrong kind of incentive for physicians.

In this case there is the same kind of incentive in reverse. The HMO had in place a financial incentive under which physicians would receive bonuses for avoiding excessive treatments and tests. Clearly, physicians should not prescribe excessive treatments and tests, but, just as clearly, physicians should not have to consider their own financial circumstances when determining whether they should prescribe a test.

The Lancasters, Paige's parents, challenged the HMO's handling of Paige's case, but, unfortunately for them, the insurance for their children was provided by Mr. Lancaster's employer and was subject to something called ERISA, the Employee Retirement Income Security Act. Under ERISA, the only available remedy to the patient is the cost of the benefit denied, in this case the $800 cost of the MRI. In other words, under ERISA, the HMO cannot be sued. The piece of legislation that we have proposed in the U.S. Senate, the Patients' Bill of Rights, would hold HMOs accountable by allowing patients to sue when their HMO's coverage, or lack of it, has caused them harm. The bill will also require HMOs to disclose any financial