United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, TUESDAY, MAY 2, 1995 No. 71

Senate

(Legislative day of Monday, May 1, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The Chaplain will now deliver the morning prayer.

PRAYER

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

Let us pray:

Almighty God, Creator, Sustainer, and Lord of all, You who have brought light out of darkness and have created us to know You, we praise You for Your guidance. As we begin the work of this Senate today, we acknowledge again our total dependence on You. Revelation of Your truth comes in relationship with You; Your inspiration is given when we are illuminated with Your spirit. Therefore, we prepare for the decisive decisions of this day by opening our minds to the inflow of Your spirit. We confess that we need Your divine intelligence to invade our thinking brains and flood us with Your light in the dimness of our limited understanding.

Gracious Lord, You know what is ahead today for the women and men of this Senate. Crucial issues confront them. Votes will be cast and aspects of the future of our Nation will be shaped by what is decided. And so, we say with the Psalmist, ''Show me Your ways, O Lord; teach me Your paths. Lead me in Your truth and teach me, for You are the God of my salvation; on You I wait all the day.''—Psalm 25: 4–5. ''I delight to do Your will, O my God, and Your law is within my heart.''—Psalm 40:8.

We praise You Lord, that when this day comes to an end we will have the deep inner peace of knowing that You heard and answered this prayer for guidance. In the name of Him who is Truth. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. SANTORUM. Mr. President, this morning, the leader time has been reserved, and the Senate will immediately resume consideration of H.R. 956, the product liability bill.

Under the order, there will be 60 minutes of debate equally divided between the two managers, or their designees. At the conclusion of debate, at 11 o'clock, the Senate will begin a series of rollcall votes on, or in relation to, the pending second-degree amendments to the McConnell amendment.

The Senate will recess between the hours of 12:30 p.m. and 2:15 p.m. today for the weekly policy luncheons to meet.

Senators should be aware that further rollcall votes can be expected throughout today's session.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 956, the product liability bill, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Gorton amendment No. 596, in the nature of a substitute.

(2) McConnell amendment No. 603 (to amendment No. 596) to reform the health care liability system and improve health care quality through the establishment of quality assurance programs.

(3) Thomas amendment No. 604 (to amendment No. 603) to provide for the consideration of health care liability claims relating to certain obstetric services.

(4) Wellstone amendment No. 605 (to amendment No. 603) to revise provisions regarding reports on medical malpractice data and access to certain information.

(5) Snowe amendment No. 608 (to amendment No. 603) to limit the amount of punitive damages that may be awarded in a health care liability action.

(6) Kyl amendment No. 609 (to amendment No. 603) to provide for full compensation for noneconomic losses in civil actions.

(7) Kyl amendment No. 611 (to amendment No. 603) to place a limitation of $500,000 on noneconomic damages that are awarded to compensate a claimant for pain, suffering, emotional distress, and other related injuries.

(8) DeWine amendment No. 612 (to amendment No. 603) to clarify that the provisions of this title do not apply to action involving sexual abuse.

(9) Hatch amendment No. 613 (to amendment No. 603) to permit the Attorney General to award grants for establishing or maintaining alternative dispute resolution mechanisms.

(10) Simon/Wellstone amendment No. 614 (to amendment No. 603) to clarify the preemption of State laws.

(11) Kennedy amendment No. 607 (to amendment No. 603) in the nature of a substitute.

(12) Kennedy amendment No. 615 (to amendment No. 603) to clarify the preemption of State laws.

(13) DeWine (for Dodd) amendment No. 616 (to amendment No. 603) to provide for uniform standards for the awarding of punitive damages.

Mr. GORTON. Mr. President, we are now under a time agreement of 1 hour for the final debate on all of the second-degree amendments to the McConnell amendment on medical malpractice.

Seeing no Senator prepared to debate, I suggest the absence of a quorum and ask unanimous consent that it be charged equally against both sides.

The PRESIDING OFFICER (Mr. SANTORUM). Without objection, it is so ordered. The clerk will call the roll.

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

The legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. 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. ROCKEFELLER. I thank the Chair.

Mr. President, as a chief advocate and sponsor and manager of the product liability reform bill, which, as far as I know, is still being debated on the floor, I want to comment on the situation on the floor as I see it now.

From just about every corner of the Senate floor, an amendment of some kind dealing with malpractice—not product liability, but malpractice—has been offered. So much so, in fact, that we now have 12 amendments on malpractice in the pipeline. I am hoping that the Senate will not have to vote on 12 amendments, and I hope indeed some of them can be worked out, dropped, or whatever.

As I also said on Thursday when I last spoke, I share my colleagues' interest in malpractice reform. In fact, I daresay that I more than share my colleagues' interest on this subject. To me, it is part of the problem with our health care system. It is intimately related to cost and psychology and whether doctors' kids or anyone's children want to go into medicine or not. And malpractice reform is something I want very much to do. But I do not want to do it at the risk of killing product liability reform. It is as simple as that.

I think if we were to adopt malpractice reform in conflict, not only would it fail, but so would product liability. So in the interest of bringing malpractice reform into the discussion, everything would lose. We can win product liability on a clean bill, which Senator GORTON and I want. But we cannot win product liability if there are substantial or unsubstantial amendments attached to it, and malpractice reform is a very substantial amendment. We cannot win both.

As I said, I think at some point Senators have to choose: Do they want product liability reform? Do they want medical malpractice reform? Do they want nothing? Of course, there are many who want nothing.

I just do not see 12 amendments on medical malpractice to a product liability reform bill as the way to produce actual results, results which will be signed into law. It may make a lot of people feel good to offer their own iterations on medical malpractice to this bill. We have had some terrific speeches.

As somebody trying to enact something called a product liability bill for the last 9 years, it just does not make me feel very confident that this is the route to actually enacting either product liability reform or medical malpractice reform.

I repeat, I hope my colleagues understand this: If malpractice reform were to pass, and I do not think it will, if it were to pass and become part of the product liability bill, the product liability bill would lose. It is 100 percent guaranteed it would lose. So we would lose malpractice and we would lose product liability.

I do not understand that. I do not understand that. I think malpractice reform ought to be pursued just the way a bipartisan team of Senators have tried to enact this product liability reform bill. It ought to be done in the same manner—separately. That is, by getting a bill reported out of committee, onto the Senate Calendar, having the majority leader call it up, debating it on its own terms and with the time needed to work out any differences and issues that can be resolved here in the Senate.

Trying to enact malpractice reform by amending a product liability reform bill with enough issues of its own, for Heaven's sakes, just does not make sense to me. Maybe I will be proven wrong. I think the chances of that are almost zero percent. Maybe some kind of consensus will emerge around here on what form of malpractice reform should be attached to the product liability reform bill and we will suddenly have about 70 votes for a bill with both.

That was the original conversation, because of the surge of that nature in the House. People said malpractice will help products. That is what Jim Todd with the American Medical Association said to me and Dick Davidson of the American Hospital Association, and Tom Scully of the Federation of American Health Systems. They all said that to me; it will help.

All of the product liability alliance folks who surged in the House make the same assumption about the Senate. We are just very different. We are a very different body. It will not work here. This talk about getting 70 votes for a bill with both—I am highly skeptical.

As somebody who has worked very hard, as have Senator GORTON and many others here, on trying to enact product liability reform, I want to send a very clear signal to the Senators and to the citizens who also want to see a law enacted to achieve this result, this is no time for loading up this bill—neither now with these malpractice amendments nor after they have been disposed of. After they have been disposed of, there will be a chance for more amendments. Then there will also be not the time to load up the bill.

This is no time for amendment proliferation. This is no time to use this bill to make speeches on other issues to try to satisfy other interests, to try to feel good about writing amendments on other priorities, like malpractice reform.

This is the time to focus on the job at hand, and it is called product liability. We have a large, good group of Senators on both sides of the aisle who are prepared to vote for product liability reform, one of the most contentious issues that we face in any year in which we take this subject up, which is every other year. Up until this time we have lost every single year. We have lost nefariously, we have lost flat out, we have just sort of lost, but we have lost. It has always been close.

The majority of the Senate has always wanted product liability, but we have just fallen short, for one reason or another, of cloture. This year we can get it. This year we can do cloture and we can get a product liability bill which, in turn, will put the opposition in substantial disarray, and then we can move on to other aspects like malpractice reform, securities, that kind of thing, all of which I strongly favor, particularly malpractice.

So, again, this is the time to focus on the job at hand. I think that malpractice reform, in fact, is such a serious subject that it deserves far more attention than it has gotten. It deserves far more debate than it has gotten.

I am not convinced that there are 10 percent of the Senators who will vote on these amendments who understand what malpractice reform is all about. I do not mean that to insult any of my colleagues, but just as I think product liability reform is extremely complicated—particularly for nonlawyers such as myself—malpractice becomes more so because we are dealing with humans in a different way. It is a hard subject that deserves a very serious effort, but not on this bill.

Again, and in concluding, I am more than anxious to take up a bill on malpractice reform. I understand the urgency and the voices of the doctors and the health care institutions in my State of West Virginia and elsewhere. It is not right that it has to take so long to do something about problems with malpractice. It is the No. 1 subject on the minds of physicians, the No. 1 subject on the minds of hospitals. They desperately want it.

It also is not right to pretend that we can act on malpractice reform when trying to enact a serious piece of legislation on a different issue, which is called product liability.

My hope is that we simply will concentrate on product liability, that we will try to keep away amendments, that we will drive this thing through to a conclusion and get one excellent piece of work done.

I thank the Chair. I yield the floor. Mr. President, I suggest the absence of a quorum and ask the time be divided equally between the opponents and the proponents.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, I yield 6 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, we spent, now, 2 full days debating this underlying medical malpractice amendment and numerous second-degree amendments. I am privileged to be a cosponsor of the underlying first-degree amendment with the Senator from Kentucky, [Mr. MCCONNELL] and the Senator from Kansas [Mrs. KASSEBAUM]. I would like to take a few moments here to put this debate and the amendment in perspective.

Surprisingly, to my knowledge this is the first time the full Senate has engaged in a real debate on medical malpractice reform, even though this issue has been the subject of countless debates in State legislatures throughout America going back to the 1970's, when I was part of the State Legislature of Connecticut. I am pleased the issue and the problem has finally come to this point, and I want to express my admiration to my colleagues on both sides of this issue for the thoughtful remarks they have made over the last days.

We have heard a variety of views expressed, of course, but I am pleased to note there is broad agreement that our present system for compensating patients who have been injured by medical malpractice is ineffective, inefficient, and in many respects unfair. The system promotes the overuse of medical tests and procedures and simply diverts too much money away from victims. I know we have heard a lot of numbers in the past couple of days, but to me the most important one is this: Less than half of the money spent on medical malpractice in this country goes to the victims of malpractice. Less than 50 cents of every dollar that goes into the medical malpractice system in this country goes to those who are injured as a result of malpractice.

So the aim of the amendment is not to protect doctors who are guilty or health professionals who are guilty of negligence that injures patients. Quite the contrary, the aim of the amendment is to make sure that more, rather than less than half a dollar of every dollar that goes into this system, goes to the patients who are injured and not to those, including the attorneys, who are churning, moving the current system.

We can argue about the numbers, obviously, but I hope most of my colleagues will agree that the existing medical malpractice system does contribute to the high cost of health care. The cost of liability insurance has been estimated, the most recent number I could find, at $9 billion in 1992. That is not money that just comes out of the air or is printed by the Government; that is money that comes from everybody who is paying premiums for insurance for health care.

The respected health care consulting firm Lewin-VHI has estimated conservatively the cost of defensive medicine—this is beyond the $9 billion in premiums—but the cost of defensive medicine, which is to say medicine practiced by health professionals not for what they take to be the medical needs of their patients but defensively because they are worried about lawsuits, is $25 billion a year. Again, that is $25 billion coming out of the pockets of everybody who is paying health care costs.

That number may seem to some who look at the big picture of health care spending somehow small. If it does, they have perhaps lost touch with reality, because $25 billion is a lot of money. It is not small in any sense. We can and should do something to reduce that number.

Taxpayers and health care consumers bear the financial burden of those costs. I say taxpayers because we are paying for it in Medicare and Medicaid and every other Government-supported health care program. Tens of billions of dollars every year is not a trivial amount of money to taxpayers and consumers in this country.

The underlying amendment we will vote on today will begin to address the inefficiencies and perverse effect of our current malpractice system by directing a greater proportion of malpractice awards to victims, by discouraging frivolous lawsuits, and by enhancing programs that are aimed at improving the quality of medical practice, which is what this is all about.

The amendment will also improve consumer information, a key part of preventing malpractice, by establishing an advisory panel to improve quality assurance programs and consumer information. The panel will also look at ways to strengthen the national practitioner data bank. My colleague, Senator WELLSTONE, has offered an amendment that would open the data bank without this review. I respectfully suggest that this amendment goes too far too quickly, though I am sympathetic to the goal.

I believe the underlying amendment sponsored by Senators MCCONNELL, KASSEBAUM, and myself will lead us appropriately down the path but will do it with some also appropriate caution.

Mr. President, the underlying amendment is not new. It is not radical. It is a very moderate proposal which contains provisions from health care reform bills reported out of committees during the last Congress with the exception of the statute of limitations.

With the exception of the statute of limitations, the 2-year time limit does not include a statute of repose and a cap on punitive damages which is identical to the cap in the underlying product liability bill. Every provision in the pending first-degree amendment was contained either in President Clinton's health care reform proposal, the bill reported out of the Senate Labor Committee, or the bill reported out of the Senate Finance Committee last year.

I agree with my colleagues who have argued that medical liability reform is only a small part of health care reform. But it is a substantial and important beginning. As both Democrats and Republicans concluded last year, malpractice reform is an important part of health care reform. Today we have an opportunity to take a modest and reasonable proconsumer step forward on this problem.

I thank the Chair. I thank my colleagues, and I urge them to vote for the underlying amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I yield 5 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, the opponents of this medical malpractice amendment have wildly attacked it. But, this amendment is very reasonable and moderate reform. In fact, if you compare it to some of the proposals from last year's health care debate, you will see many familiar provisions.

For example, the original Clinton Health Security Act contained a cap on attorney contingent fees, collateral source reform, periodic payment of damages, and mandatory alternative dispute resolution. The medical malpractice provisions reported from the Finance Committee contained joint and several liability reform, a cap on noneconomic damages, and mandatory alternative dispute resolution with modified loser-pays for those who go onto court and do not improve upon the ADR decision. By omitting the cap on pain and suffering, this amendment does not go as far as the Finance Committee's proposals which were reported out of the committee, on a bipartisan basis.

During last year's health care debate, some argued for the Canadian single-payer system. Canada's single-payer system also includes some very strict rules on malpractice cases. While Canada's doctors do not pay malpractice insurance premiums, they pay a membership fee to the Canadian Medical Protective Association. In the United States, doctors and hospitals buy malpractice insurance, costing tens of thousands of dollars annually. And, according to the Medical Liability Monitor, more than half of all doctors have experienced 9- to 15-percent increases in their malpractice premiums in each of 1993 and 1994.

In Canada, noneconomic damages are capped at $240,000. The McConnell-Lieberman-Kassebaum amendment does not cap noneconomic damages, although Senator KYL has an amendment pending to add a cap of $500,000.

In Canada, contingency fees are illegal in some parts of the country and uncommon in the rest of the country.

Our amendment sets a limit on attorney contingent fees, to ensure that most of the award goes to the injured party.

In Canada, a plaintiff who loses, risks having to pay the defendant's legal fees. This amendment contains no loser-pays provision.

So, Mr. President, in comparing this amendment to last year's efforts on medical malpractice, as well as to Canada's law, we have very moderate reform proposed here.

And, those who support product liability reform should support medical malpractice reform. Enacting the underlying bill on its own will, in my judgment, make the legal system more complex. What will happen in a case where the injured party alleges malpractice over certain drug treatment? It product liability reform is enacted, the drug company will fall under the new law, but there will have to be a separate lawsuit regarding the conduct of the doctor or hospital. Such a result would be ridiculous.

The opponents assert that we are somehow trying to shield negligent doctors and hospitals. Nothing could be further from the truth. No one loses the right to sue under this amendment. An injured party will be fully compensated for his or her injuries. Negligent doctors and hospitals will be held accountable for the injuries they cause.

In addition, this amendment takes important steps in the direction of assuring quality care for all patients.

While protecting the rights of the injured to get compensation for their injuries, this amendment also gives the American people relief from the tort tax. We know the litigation tax adds thousands of dollars annually to the household budgets of all American families. It adds extra costs to the delivery of a baby, as well as to the cost of a heart pacemaker.

Relief from the tort tax and an end to the lawsuit gamble are the goals of our effort. We know that most of the money spent in the litigation system does not go to the injured victims; they get only 43 cents of every dollar spent in the liability system. The legal system is akin to the casinos of Las Vegas and Atlantic City. Sometimes you win big, but most times the house—that is the system, made up of lawyers and related court costs, is the biggest winner.

The only opponents we have in this legal reform fight are the trial lawyers. They have the biggest stake in maintaining the status quo. The injured people they represent will be treated better under this amendment. They will get more compensation for their injuries. So, if you are for the victims, you should vote for this amendment. I urge my colleagues to adopt the McConnell-Lieberman-Kassebaum amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROCKEFELLER. Mr. President, I yield 7 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 7 minutes.

Mrs. BOXER. Mr. President, I thank the Senator for yielding because I know he and I do not agree on this issue. So it must be in some ways a painful thing for him to yield to me. So I want to say to my friend, Senator ROCKEFELLER, I thank him very much for yielding me this time.

Mr. President, what are we doing here in the Senate today? We are voting, beginning to vote, to change a legal system that, while not perfect, is adjudged to be the best in the world. We are not tinkering around the edges. We are not dealing with frivolous lawsuits. We are in essence, if you follow the Contract With America, taking away the rights of average citizens to get justice in the courtroom. And what I find most remarkable about this in this Republican Congress is that this is the same Republican Congress that says let the States decide most matters, they are closer to the people. But in this case, the U.S. Senate and the House of Representatives, well, we are going to substitute our judgment for that of a local jury, a local judge, who knows the community, who is of, by, and from the community. I do not think we should be able to prejudge what a damage award should be, whether it is in a medical malpractice case or whether it is in a product liability case, the underlying bill.

Let me give you an example. Most Americans were stunned to hear that a physician in Florida in treating a gentleman actually cut off the wrong leg of that man. It meant that they had to then cut off the other leg and the man lost both legs.

In the debate on this subject of capping the damages and what people could receive in medical malpractice cases, a Republican Congressman—who happens to be a doctor—took to the floor of the House. He has served there for many years. And this Congressman was asked by another colleague, a Democratic colleague, ''What do you think about the fact that a physician cut off the wrong leg of a victim, and now this gentleman has no legs at all?'' He can never hope to have anything like a normal life. And this Republican doctor-Congressman said mistakes happen. These things happen. And then he was asked, what is it worth, the fact that a man has no legs and can never have the semblance of an ordinary life again? And he said, mistakes will happen.

Well, he does not know what it is worth.

These things happen.

The fact is we do not know, but a jury and a judge together will make that decision in accordance with State law. But, no, we are going to destroy all of this.

Now, the story which all America shared, unfortunately, is not that isolated. Although we know we have the best doctors in the world, the most healing doctors in the world, this is not isolated. It is a very small percent. Of all tort cases filed, only 7 percent are medical malpractice. But we are going to take the iron fist of the Senate and say we know best what a future victim should be awarded.

Now, let me tell you about a couple of cases. You also probably read about Betsy Lehman, who died after given a massive overdose of a strong chemotherapy drug. That story was publicized by the Boston Globe. Are we to tell the family of this young woman what the damages should be to that family? I think not.

How about Grand Rapids, MI? The wrong breast of a 69-year-old cancer patient was negligently cut off during a mastectomy. In Denver, CO, an anesthesiologist fell asleep during a routine operation on an 8-year-old boy. The child died, and we are going to tell the people in Colorado what that family should be awarded. I think there is something misguided going on here.

I have to believe there is some special interests that are involved here because the interests of the American people are not being served because we are all potential victims. We are all potential victims.

At the New England Medical Center, two skin cancer patients died when a highly toxic drug called Cisplatin was given to them at three times the recommended dosage. In California, my great State, Harry Jordan went into the hospital to have a diseased kidney removed. Instead, the surgeons removed his healthy kidney, and he remained on dialysis for the rest of his life. He died last month, and we are going to tell the jury and the judge what to do in this kind of case.

We could go on with examples. The fact is we have the safest products in the world, and we have the best physicians in the world. I have to believe that our system of justice, although not perfect, has played a role in this. And I say often to myself—and this has to do with the underlying bill on product safety—how many of us remember engines exploding in cars?

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mrs. BOXER. I ask for 1 more minute, if I might.

The PRESIDING OFFICER. The Senator from Washington controls the time.

Mr. GORTON. I will yield a minute to the Senator.

Mrs. BOXER. I thank the Senator so much. I say to my friends, I know these are arguments they do not enjoy hearing, and I therefore appreciate the generosity.

We all remember engines of cars exploding, company executives saying, ''Well, we figured we would have a few explosions. We write it off as a cost of

doing business.'' This Senate wants to limit the punitive damages to those future companies that would act in such a despicable fashion. Most of our companies are good and most of them care, but the bad apples should know they will be hit with punitive damages, not just a slap on the wrist. Should this Republican contract pass, the most change will occur in the boardroom—not in the courtroom, in the boardroom—as people are getting ready to put new products on the market saying, well, we do not have to worry; the Senate, the Republican contract saved us from being hit with a meaningful punitive damages suit.

So in closing, Mr. President, I wish to again thank my colleagues. I will be supporting some of these amendments that are coming before us because they will make the bill a little better. I will be opposing others. But nothing that we do here by way of amendment convinces me that we are on the right path.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington has 6 minutes remaining.

Mr. GORTON. Mr. President, among other things, the distinguished Senator from California spoke about special interests. I find that remarkable in light of an article which appeared a couple of weeks ago in the Wall Street Journal, and a followup report on campaign contributions to congressional candidates which shows that the largest single special interest involved in campaigns for Congress is the American Trial Lawyers Association and its members. In their contributions, they outdo the Fortune 500; they outdo organized labor; they outdo, multiplied by 4 or 5 times, oil and gas lobbyists' contributions. They are, by a significant margin, the No. 1 special interest from the point of view of contributions to political campaigns in the United States.

Now, Mr. President, I do not normally argue this point of view. I am inclined to think that most of these lobbying organizations support the people who are already on their sides. But to attack the legislation as being special interest legislation, when the opponents are supported by the largest of all of the special interests, seems to me somewhat paradoxical.

Mrs. BOXER. Will the Senator yield? Will the Senator yield to me on that point?

Mr. GORTON. This is particularly true——

Mrs. BOXER. Will the Senator yield to me on that point?

Mr. GORTON. No, not right now.

Mrs. BOXER. I will wait, thanks.

Mr. GORTON. This is particularly true, Mr. President, when we reflect on the fact that it is that special interest which is the greatest beneficiary of the present system as, of all of the money that goes into medical malpractice, only 40 percent gets to the victims and 60 percent goes to the transactions costs; that is to say, the attorneys, the expert witnesses, the insurance adjusters and the like who involve themselves in the question.

The greatest amount of money by far goes not to victims but to transaction costs.

In my view, that is the great scandal of the present system, whether we are dealing with medical malpractice or with product liability. The costs of the system outside of the compensation provided for any of the parties is so overwhelmingly on one side that I think it would be those who speak about victims and victims' rights who would be most in favor of a dramatic and drastic reform of the present system, most in favor of it, to create a system in which the transaction costs, the lawyer's fees were dramatically less, and a much greater percentage went to those who were victims.

I will be perfectly happy to yield to the Senator from California for a question.

Mrs. BOXER. I thank the Senator very much.

Is the Senator aware that well over 100 organizations, including some from his State, oppose this underlying bill very, very strongly? Because I think what the Senator is doing in his remarks is leading people to believe that there is one group that is opposed to it.

I read into the RECORD a number of groups the last time. Every single consumer organization you can name, both State based and nationally based: citizen action groups, public interest law people, Coalition of Silicon Survivors, and Colorado DES Action. The DES sons also oppose certain liability reforms.

What I wish to point out to my friend is I really respect his right to disagree——

Mr. GORTON. I understand the question now.

Mrs. BOXER. I ask unanimous consent to put this list of people who oppose this bill into the RECORD at this time, and I thank my friend for yielding.

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

STATE BASED ORGANIZATIONS OPPOSED TO ''LEGAL REFORM'' IN THE SENATE (S. 565)

Alabama Citizen Action.
Alaska PIRG.
Arizona Consumers Council.
Arizona Citizen Action.
Consumer Federation of California.
California Citizen Action.
Center for Public Interest Law at the University of San Diego.
California Motor Voters.
California Crime Victims Legal Clinic.
California Public Interest Research Group (CALPIRG).
Fair Housing Council of San Gabriel Valley.
Colorado Coalition for Accountability & Justice.
Colorado Steelworkers Union Local 2102.
Coalition of Silicon Survivors.
Colorado DES Action.
Denver UAW.
Colorado ACLU.
Denver Gray Panthers.
Colorado Public Interest Research Group (CoPIRG).
Colorado Clean Water Action.
Colorado Senior Lobby.
Connecticut Citizen Action Group.
ConnPIRG (Connecticut Public Interest Research Group).
Delaware Coalition for Accountability and Justice.
Delaware AARP.
Delaware Council of Senior Citizens.
Delaware AFL–CIO.
Delaware Federation of Women's Clubs.
Delaware Women and Wellness.
Delaware Breast Cancer Coalition.
Building Trades Council of Delaware.
UAW Local 1183—Delaware.
Delaware Sierra Club.
Delaware Audubon Society.
Save the Wetlands and Bays—Delaware.
Florida Consumer Action Network.
Florida PIRG.
Florida Consumer Fraud Watch.
Georgia Citizen Action.
Georgia Consumer Center.
Citizen Advocacy Center of Illinois.
Chicago & Central States ACTWU.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Public Action.
Illinois Council Against Handgun Violence.
Illinois PIRG.
Citizens Action Coalition of Indiana.
Iowa Citizen Action Network.
Iowa UAW.
Iowa State Council of Senior Citizens.
Kentucky Citizen Action.
Louisiana Citizen Action.
Maine People's Alliance.
Maryland Citizen Action.
Maryland State Teachers Association.
Maryland Coalition for Accountability & Justice.
Planned Parenthood of Maryland.
Law Foundation of Prince George's County.
Maryland PIRG.
Maryland Sierra Club.
Teamsters Joint Council No. 62.
UFCW Local 400.
White Lung Association & National Asbestos Victims.
Sexual Assault/Domestic Violence Center, Inc.
IBEW Local 24.
Maryland Clean Water Action.
Maryland Employment Lawyers Association.
Health Education Resource Organization (H.E.R.O.).
Environmental Action Foundation.
Massachusetts Jobs with Justice.
Massachusetts Consumer Association.
Massachusetts Citizen Action.
MassPIRG (Massachusetts Public Interest Research Group).
Michigan Consumer Federation.
Michigan Citizen Action.
Public Interest Research Group in Michigan (PIRGIM).
Minnesota COACT.
Minnesotans for Safe Foods.
Missouri Citizen Action.
Missouri PIRG.
Montana PIRG.
Nebraska Citizen Action.
Nebraska Coalition for Accountability & Justice.
Nebraska Farmers Union.
Nebraska Women's Political Network.
Nebraska National Organization for Women.
United Rubber Workers of America, Local 286.
Communications Workers of America, Local 7470.
Nebraska Head Injury Association.
Nebraska Center for Rural Affairs.

New Hampshire Citizen Action.
New Jersey Citizen Action.
White Lung Association of New Jersey.
New Jersey Tenants Organization.
Consumers League of New Jersey.
Cornucopia Network of New Jersey.
New Jersey DES Action.
NJPIRG (New Jersey Public Interest Research Group).
New Jersey Environmental Federation.
New Mexico Citizen Action.
Citizen Action of New York.
Essex West Hudson Labor Council.
Uniformed Firefighters Association of Greater New York.
Empire State Consumer Association.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Citizen Action.
North Carolina Consumers Council.
North Dakota Coalition for Accountability & Justice.
North Dakota Public Employees Association.
North Dakota DES Action.
North Dakota Clean Water Action.
Dakota Center for Independent Living.
North Dakota Breast Implant Coalition.
North Dakota Progressive Coalition.
Laborer's International Union, Local 580.
Boilermaker's Local 647.
Ironworkers Local 793.
United Transportation Union.
Sierra Club, Agassiz Basin Group.
Plumbers & Pipefitters Local 338.
United Church of Christ.
Teamsters Local 116.
Teamsters Local 123.
Plumbers & Pipefitters, Local 795.
Workers Against Inhumane Treatment.
Ohio Citizen Action.
Ohio Consumer League.
Ohio PIRG.
Oregon Fair Share.
Oregon Consumer League.
Oregon State Public Interest Research Group (OSPIRG).
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
Victims Against Lethal Valves (V.A.L.V.).
Citizen Action of Pennsylvania.
Pennsylvania DES Action.
Pennsylvania AFL–CIO.
SmokeFree Pennsylvania.
PennPIRG (Pennsylvania Public Interest Research Group).
South Dakota Coalition for Accountability & Justice.
South Dakota AFSCME.
East River Group Sierra Club.
Black Hills Group Sierra Club.
South Dakota State University.
IBEW, Local 426.
South Dakota DES Action.
South Dakota Peace & Justice Center.
Native American Women's Health & Education Center.
Native American Women's Reproductive Rights Coalition.
South Dakota AFL–CIO.
UFCW Local 304A.
Yankton Sioux Tribe.
South Dakota Coalition Against Domestic Violence.
South Dakota Advocacy Network.
South Dakota United Transportation Union.
South Dakota United Paperworkers International Union.
Tennessee Citizen Action.
Texas Citizen Action.
Texas Alliance for Human Needs.
Texas Public Citizen.
Defenders of the Rights of Texans.
Vermont PIRG.
Virginia National Organization for Women.
Virginia Citizen Action.
Virginia Citizens Consumer Council.
Washington Citizen Action.
WASHPIRG (Washington Public Interest Research Group).
West Virginia Citizen Action Group.
Wisconsin Consumers League.
Wisconsin PIRG.
Wisconsin Citizen Action.
Center for Public Representation, Inc.

ORGANIZATIONS OPPOSED TO ''LEGAL REFORM'' IN THE SENATE (S. 565)

(95 as of April 24, 1995)

Action on Smoking & Health.
AIDS Action Council.
Alliance Against Intoxicated Motorists.
Alliance for Justice.
American Association of Retired People (AARP).
American Bar Association.
American Coalition for Abuse Awareness.
American Council on Consumer Awareness.
American Fed. of Labor/Congress of Industrial Organizations (AFL–CIO).
American Public Health Association.
Americans for Democratic Action.
Americans for Non-Smokers' Rights.
Arab American Anti-Discrimination Committee.
Association of Trial Lawyers of America.
Center for Public Interest Research.
Business and Professional Women.
Center for Women's Policy Studies.
Children NOW.
Citizen Action.
Citizen Advocacy Center.
Citizens Clearinghouse for Hazardous Waste.
Clean Water Action.
Coalition for Consumer Rights.
Coalition of Labor Union Women.
Coalition to Stop Gun Violence.
Command Trust Network.
Committee for Children.
Conference of Chief Justices.
Consumer Action.
Consumer Federation of America.
Consumers for Civil Justice.
Consumer Protection Association.
Consumers Union.
Democratic Processes Center.
DES Action USA.
Families Advocating Injury Reduction (FAIR).
Federation of Organizations for Professional Women.
Fund for a Feminist Majority.
Gray Panthers.
Handgun Control Inc.
Help Us Regain the Children (HURT).
Hollywood Women's Political Committee.
Intl. Assn. of Machinists & Aerospace Workers (IAM).
Intl. Brotherhood of Teamsters.
Intl. Ladies Garment Workers Union.
Intl. Longshoremen's & Warehousemen Union.
Institute for Injury Reduction.
Lambda Legal Defense & Education Fund.
Latino Civil Rights Task Force.
Mothers Against Sexual Abuse.
Motor Voters.
NAACP (Natl. Assn. for the Advancement of Colored People).
Natl. Asbestos Victims Legal Action Organizing Committee.
Natl. Association of School Psychologists.
Natl. Breast Implant Coalition.
Natl. Conference of State Legislatures.
Natl. Consumers League.
Natl. Council of Jewish Women.
Natl. Council of Senior Citizens.
Natl. Fair Housing Coalition.
Natl. Family Farm Coalition.
Natl. Farmers Union.
Natl. Gay & Lesbian Task Force.
Natl. Head Injury Foundation.
Natl. Hispanic Council on Aging.
Natl. Minority AIDS Council.
Natl. Organization on Disability.
Natl. Rainbow Coalition.
Natl. Women's Health Network.
Natl. Women's Law Center.
Native American Rights Fund.
Network for Environmental & Economic Responsibility.
NOW Legal Defense & Education Fund.
Nuclear Information and Resource Service.
People's Medical Society.
Prevention First.
Public Citizen.
Public Voice for Food & Health Policy.
Purple Ribbon Project.
Safety Attorney Federation.
Southern Christian Leadership Conference.
STOP (Safe Tables Our Priority).
The Sierra Club.
Third Generation Network.
Trauma Foundation.
UAW (United Automobile, Aerospace & Agric. Imp. Workers of America).
U.S. Public Interest Research Group.
USWA (United Steelworkers of America).
Violence Policy Center.
Voices for Victims Inc.
Women Against Gun Violence.
Women's Institute for Freedom of the Press.
Women's Legal Defense Fund.
YWCA (Young Women's Christian Association).
Youth ALIVE.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Washington.

Mr. GORTON. Mr. President, yes, the Senator from Washington is quite aware of that list of organizations. Of course, there are all kinds of organizations that are on both sides of this case. The point made by the Senator from Washington was that overwhelmingly of these special interests, the largest single special interest in the United States, when one measures that influence by the amount of money put into the political system, is ATLA, the trial lawyers.

This is not surprising, given the fact that they are the principal beneficiaries to a considerably larger degree than the very victims whom they claim to be representing. That is the point from the perspective of organizations. The biggest special interest, the richest special interest, the special interest that gives the greatest amount of money leads the opposition to this view and contributes to many of the other organizations which are opposed to it.

But that does not, as this Senator said, necessarily mean that they are wrong or that the other side is right. When, however, we have a system which hurts innovation, destroys American competitiveness in some industries, and gives 60 percent of all the money in the system to those who game the system rather than victims, there is something wrong, and that something ought to be corrected.

PREEMPTION IN THE MCCONNELL-LIEBERMAN-KASSEBAUM AMENDMENT

Mrs. KASSEBAUM. Mr. President, last week I spoke in favor of the pending amendment on medical liability and addressed, very briefly, the issue of Federal preemption.

I want to take a few moments this morning to explain more fully my reasons for supporting a limited Federal preemption of State medical liability laws and to urge my colleagues to reject both the Simon and the Kennedy preemption amendments to the underlying McConnell-Kassebaum-Lieberman amendment.

Mr. President, the Federal Government has a significant stake in reforming the health care liability system both because of the effect of the system on interstate commerce and because of the enormous amount spent by the Federal Government on health care.

Last Thursday, I spoke of the need to achieve some degree of uniformity and certainty in the system. Without greater predictability, insurance rates will continue to reflect the potential for unlimited exposure to risk. And these higher insurance rates will continue to be passed along to the American consumer.

THE PRIVATE SECTOR DESERVES TO BENEFIT FROM THE SAME TYPE OF PROTECTIONS THAT THE FEDERAL GOVERNMENT HAS AFFORDED ITSELF

The Federal Government already has taken significant steps to limit its own exposure for costs associated with health care liability. For example, damages resulting from health claims disputes and redress in claims dispute cases are limited for Federal employees receiving health coverage under the Federal Employees Health Benefit Act [FEHBA], and for Medicare beneficiaries. There are no punitive or extra-contractual damages allowed under FEHBA or Medicare. *See Hayes* v. *Prudential Ins. Co.*, 819 F.2d 921 (9th Cir. 1987); *Homewood Professional Care Ctr., Ltd.* v. *Heckler*, 764 F.2d 1242 (7th Cir. 1985).

Moreover, responding to an outcry from Federal Community Health Centers about skyrocketing malpractice insurance premiums, Congress in 1992 limited the exposure of centers and their providers to malpractice claims by placing them under the Federal Tort Claims Act and taking steps that go well beyond the reforms in this legislation. In addition to having judgments paid from a Federal fund, that act: (1) allows liability to be determined by a judge rather than a jury (28 U.S.C. 2402); (2) contains a 2-year statute of limitations that is more restrictive than the one contained in this legislation (28 U.S.C. 2401); (3) prohibits the awarding of punitive damages (28 U.S.C. 2674); (4) places a cap on lawyers' contingency fees of 25 percent of a litigated claim and 20 percent of a settlement (28 U.S.C. 2678); disallows prejudgment interest (28 U.S.C. 2674), and requires claimants to exhaust administrative remedies before proceeding to court (28 U.S.C. 2675).

Mr. President, I believe that the private sector is entitled to the same type of protections that the Federal Government has extended to its own health providers.

AS THE LARGEST SINGLE PAYER OF HEALTH CARE SERVICES, THE FEDERAL GOVERNMENT HAS A COMPELLING INTEREST IN HEALTH CARE LIABILITY REFORM

While the Federal Government has limited its exposure to health care liability claims in certain instances, large gaps remain. In particular, liability for health care professionals and providers who treat Medicaid and Medicare patients remain subject to uneven and sometimes insufficient State medical liability reforms. One-third of total health care spending in this country is paid by the Federal Government. According to the Congressional Budget Office, Federal spending for Medicare will reach $177 billion in fiscal year 1995, while Medicaid grants to States will total $96 billion.

Therefore, I believe that there is a direct, compelling Federal interest in reforming the Nation's outmoded medical liability system.

FEDERAL LEGISLATION IS NECESSARY BECAUSE OF THE INCREASINGLY INTERSTATE CHARACTER OF HEALTH CARE DELIVERY

Moreover, some degree of uniformity is essential because health care markets are becoming increasingly regional, if not national. Telemedicine, by its very nature, is designed to overcome barriers to the delivery of medicine, including long distances, geographic limitations, and political borders. Some of the finest medical facilities in the United States—such as the Mayo Clinic in Minnesota, Stanford University in California, Barnes Hospital in Missouri, the Cleveland Clinic in Ohio, and the Dartmouth Medical Center in New Hampshire—treat patients from across the Nation, and around the world.

While I do not believe there is a need for absolute uniformity in all aspects of the health care system, I do believe that some minimum level of medical liability reforms are necessary to the continued development of a cost-effective private health care system. This is particularly true where, as under this legislation, insurers and other third party payers may be sued as defendants in health care liability actions.

As health care providers continue to consolidate and form integrated networks of care in response to market forces, economic pressure, and emerging treatment patterns, the number of individuals who receive health care services in one State while having them financed by entities in another will continue to increase.

While health care services generally are delivered locally, this does not necessarily mean that health care is delivered within State borders. To the contrary: more than 40 percent of Americans live in cities and counties that border on State lines; in 26 States, more than half of the population lives in cities and counties that border on State lines, and over 50 percent of the population in 26 States lives in border cities and counties. In these areas, it is even more likely that a patient will live or work in one State, receive health care services in another, and have his or her bills paid by a third-party payer in another State. A recent analysis of health services purchased across State borders found, for example: First, that Vermont and New Hampshire residents visit an out-of-State physician nearly one-quarter of the time; second, that Wyoming residents visit out-of-State doctors over one-third of the time, and third, that nearly 40 percent of the patients admitted to Delaware hospitals travel from out of the State.

FEDERAL LEGISLATION IS NECESSARY BECAUSE OF STATE CONSTITUTIONAL IMPEDIMENTS

Some have argued that this legislation is an unnecessary intrusion into an area of the law that traditionally has been the domain of the States. I would like to point out, however, that many of the opponents of Federal medical liability reform are, at the same time, aggressively challenging State tort reform efforts by arguing that the reforms are unconstitutional under State constitutions. As a result, many States have been frustrated in their efforts to pass meaningful tort reform. For example: First, statutes of limitations in health care liability actions have been held to violate State constitutions in Arizona; second, limits on punitive damage awards in health care liability actions have been held unconstitutional in Alabama, and third, periodic payment schedules for damage awards in health care liability actions have been held to violate State constitutions in Arizona, New Hampshire, and Ohio.

PREEMPTION PROVISIONS IN THE MCCONNELL-LIEBERMAN-KASSEBAUM AMENDMENT

Mr. President, the preemption provisions contained in the McConnell-Lieberman-Kassebaum amendment are designed to give both the States and the courts clear guidance as to the scope of the reforms contained in the legislation.

The amendment does not preempt State laws that: First, place greater restrictions on the amount of or standards for awarding noneconomic or punitive damages; second, place greater limitations on the awarding of attorneys fees for awards in excess of $150,000; third, permit a lower threshold for the periodic payment of future damages; fourth, establish a shorter period of time during which a health care liability action may be initiated or a more restrictive rule with respect to the time at which the period of limitations begins to run, or fifth, implement collateral source rule reform that either permits the introduction of evidence of collateral source benefits or provides for the mandatory offset of such benefits from damage awards.

The amendment also states specifically that it should not be construed to preempt any State law which: First, permits State officials to commence health care liability actions; second, permits provider-based dispute resolution; third, places a limit on total damages awarded in a health care liability

action; fourth, places a maximum limit on the time in which such an action may be initiated, or fifth, provides for defenses in addition to those contained in the act.

Last week and again yesterday, some of my colleagues argued that the so-called one-sided preemption provisions contained in the McConnell amendment were both novel and, somehow, unfair. I believe these arguments are without merit.

For the record, I would like to make clear that the characterization that all of the preemption provisions in the legislation are ''one-sided'' is simply incorrect. Two examples are instructive. First, the preemption provisions allow State collateral source reform measures to differ widely from the provisions contained in the legislation. States not only have the flexibility under the McConnell-Lieberman-Kassebaum amendment to adopt evidentiary collateral source rules and mandatory offset rules that permit introduction of collateral source benefits after trial, but may, in fact, adopt a whole range of collateral source rule reforms that are more favorable to claimants than those contained in the amendment. Second, the amendment makes clear that State laws limiting attorneys fees for awards of $150,000 or less may be both more restrictive than the 33⅓ percent set forth in the legislation and less restrictive.

In support of the preemption provisions contained in the McConnell-Lieberman-Kassebaum amendment, I would like to note further the long history of this Congress in setting minimum Federal standards and allowing the States significant flexibility beyond those standards. See, e.g., Clean Air Act Amendments of 1990, Pub. L. 101–549; Safe Drinking Water Act, Pub. L. 93–523; Civil Rights Act of 1964, Pub. L. 88–352; Americans With Disabilities Act, Pub. L. 101–336.

Moreover, nearly every health care reform bill introduced last Congress—including President Clinton's ''Health Security Act''—contained this type of Federal preemption for medical liability reforms. See, e.g., President Clinton's Health Security Act, H.R. 3600; Senator DOLE and Senator PACKWOOD's health care reform bill, S. 2374; Senator CHAFEE's Health Equity Access Reform Today Act, S. 1770; Representative Cooper's Managed Competition Act, H.R. 3222; the House Republican leadership plan, H.R. 3080; the bipartisan mainstream coalition health bill, and the House bipartisan health reform bill.

Another recent and relevant example of liability reform legislation containing the type of Federal preemption language included in the McConnell-Lieberman-Kassebaum amendment is S. 1458, the General Aviation Revitalization Act of 1994. That legislation provided in part that no civil action for damages arising out of an accident involving a general aviation aircraft could be brought against the manufacturer of the aircraft or the manufacturer of any component part of the aircraft, if the accident occurred more than 18 years after the date of the aircraft's delivery or the component part's installation. S. 1458, which passed the Senate on March 16, 1994 by a vote of 91 to 8, preempts State law only to the extent that such law permitted civil actions to be commenced after 18 years. See Public Law 103–298.

I believe that the underlying amendment is loyal to this tradition.

In conclusion, Mr. President, I would like to point out that many of those who oppose the preemption principles embodied in this legislation have repeatedly and enthusiastically embraced those principles in other legislative contexts.

For example, S. 7, the Family Health Insurance Protection Act, provides a clear example of one-sided preemption.

Section 1011 provides that State laws will not be preempted only if they: First, contain preexisting condition waiting periods that are ''less than those'' established in S 7; second, limit variations in premium rates ''beyond the variations permitted'' in S. 7, and third, expand the size of the small group market to include groups ''in excess of'' the size set forth in the legislation.ction 1012 of that legislation contains even more expansive one-sided preemption provisions. It states that: ''Nothing in this Act shall be construed as prohibiting States from enacting [any] health care reform measures that exceed the measures established under this Act, including reforms that expand access to health care services—for example, higher taxes—control health care costs, and so forth, institute tighter premium caps or cost controls, and enhance the quality of care.

Mr. President, as I said earlier, I do not believe there is a need for absolute uniformity in this area. But I do believe it is important to set some very clear minimum Federal standards that all States must meet.

The standards in the McConnell-Lieberman-Kassebaum amendment are only a floor. The amendment does not preempt States from going further with medical malpractice reforms they may decide are necessary. I think this is the best way to balance the need for some State flexibility with the need for greater certainty and predictability in the system.

MEDICAL MALPRACTICE REFORM

Mr. PELL. Mr. President, I wish to make a few observations regarding the effort sponsored by Senator MCCONNELL to add comprehensive medical malpractice reform to the product liability legislation currently pending before us.

I was much torn about the McConnell amendment because I support medical malpractice reform and believe the time has come to profoundly change the current system. Yet, in the end, I decided to vote against the McConnell amendment.

I did so because I was deeply concerned that adding this desirable but controversial reform effort to the pending legislation would gravely endanger the cause of product liability reform, a cause I have supported for many years. After many years of frustration I have real hope that we will achieve product liability reform in this Congress and I wanted to avoid any action which would endanger that hope. I would add that I was persuaded in this regard by the sponsor of the product liability reform effort, Senator ROCKEFELLER.

However, I look forward to the opportunity to fully address medical malpractice reform later in this Congress when the issues can be aired fully and not be encumbered by the desire to achieve progress in other areas of legal system reform. While I do not support all the provisions of the McConnell amendment, I do support its thrust and would welcome the opportunity to debate the issue strictly on its own merits.

MEDICAL MALPRACTICE REFORM

Mr. ROTH. Mr. President, I have always been a staunch supporter of our Federal system of government, which has as its most fundamental principle the idea that matters of governance ought to be left as much as possible to the States. Traditionally, one such matter left to the States has been the administration of medical malpractice law.

By virtue of its overwhelming financial stake in the Nation's health care, however, the Federal Government has a unique and compelling interest in the delivery of care, and this interest leads me to support the McConnell amendment on medical malpractice reform. The McConnell amendment reforms medical malpractice law by creating certain minimum standards, such as a cap on punitive damages, that will apply nationwide. It permits States, however, to pass more thorough-going reforms if they wish to do so.

The Federal Government is the largest purchaser of health care, and it finances 32 percent of the Nation's health care spending through the Medicare and Medicaid programs, federally qualified community health centers, the veterans health care, military health care, Indian health care, and many other programs. In fact, the Federal Government spent $280.6 billion in 1993 purchasing health care services—more than for any other service.

Projections of the growth of health care expenditures continue to escalate, and the Federal Government's role in paying for these services will also continue to grow—unless we begin to take steps to control the rate of growth. In the meantime, we should be working on increasing access to health care coverage. Savings achieved through medical malpractice reform will not only save the taxpayers of America significant amounts, it will help expand access to care.

Based on the experience with federally qualified community health centers, the evidence is good that the McConnell amendment will lead to cost savings and expanded access to care. Currently, more than 500 of these community and migrant health centers receive Federal funding. These centers provide essential primary care for about 6 million people living in areas where there are few physicians or other health care providers. In fact, we have three such important centers in Delaware—the Henrietta Johnson Community Health Center in Southbridge, the West Side Community Health Center in Wilmington, and the DelMarVa Rural Ministries in Kent County. In October 1992, Congress enacted a type of medical malpractice reform for federally supported community health centers by extending the Federal Tort Claims Act [FTCA] to cover these centers. A Government Accounting Office report estimates that for calendar years 1993 through 1995, a total of $54.8 million was saved by bringing the community health centers within the reach of the FTCA.

It is clear to me that medical malpractice reform is needed in order to control the Federal Government's enormous share of our national health care costs and, thus, to ensure broad access to quality care. The Physician Payment Review Commission, which is charged with advising Congress regarding Medicare policy, has advised in its latest report that Federal medical malpractice reform should be enacted. The report states that ''the medical liability system does not adequately prevent medical injuries or compensate injured patients. There is concern that the current functioning of this system promotes the practice of defensive medicine and may impede efforts to improve the cost effectiveness of care.'' Last year, these problems led me to vote in favor of medical malpractice reform when the Senate Finance Committee considered it during its deliberations on health care reform. Because the problems are with us still, this year I support the McConnell amendment.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GORTON. 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. GORTON. Mr. President, I ask unanimous consent that, following the conclusion of the first rollcall vote, all remaining consecutive rollcall votes be limited to 10 minutes.

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

Mr. GORTON. I now ask for regular order.

AMENDMENT NO. 604

The PRESIDING OFFICER. Regular order provides for the Thomas amendment to recur as the pending amendment.

Mr. ROCKEFELLER. Mr. President, I move to table the Thomas amendment and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. GORTON. Mr. President, for the information of all Senators, there is a potential for as many as 12 back-to-back votes, beginning now. All Senators are urged to remain on the floor during this voting sequence.

I ask unanimous consent that, notwithstanding the consent for the recess at 12:30, the Senate stand in recess immediately following the disposition of the McConnell amendment.

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 604

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia [Mr. ROCKEFELLER] to table the amendment of the Senator from Wyoming [Mr. THOMAS].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 39, nays 61, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—39

Akaka	Glenn	Levin
Biden	Gorton	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Hatfield	Murray
Bradley	Heflin	Pell
Breaux	Hollings	Robb
Bumpers	Inouye	Rockefeller
Cohen	Jeffords	Sarbanes
D'Amato	Kassebaum	Simon
Daschle	Kennedy	Snowe
DeWine	Kerry	Specter
Dodd	Kohl	Thompson
Feingold	Lautenberg	Wellstone

NAYS—61

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Graham	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Nunn
Bryan	Grassley	Packwood
Burns	Gregg	Pressler
Byrd	Hatch	Pryor
Campbell	Helms	Reid
Chafee	Hutchison	Roth
Coats	Inhofe	Santorum
Cochran	Johnston	Shelby
Conrad	Kempthorne	Simpson
Coverdell	Kerrey	Smith
Craig	Kyl	Stevens
Dole	Leahy	Thomas
Domenici	Lieberman	Thurmond
Dorgan	Lott	Warner
Exon	Lugar	
Faircloth	Mack	

So the motion to lay on the table the amendment (No. 604) was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 604) was agreed to.

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

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 605

The PRESIDING OFFICER. The question occurs on amendment numbered 605.

Mr. GORTON. Mr. President, I move to table the Wellstone amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—69

Abraham	Ford	Lott
Ashcroft	Frist	Lugar
Baucus	Glenn	McCain
Bennett	Gorton	McConnell
Biden	Graham	Moynihan
Breaux	Gramm	Murkowski
Brown	Grams	Nickles
Bumpers	Grassley	Nunn
Burns	Gregg	Packwood
Campbell	Hatch	Pressler
Chafee	Hatfield	Pryor
Coats	Heflin	Rockefeller
Cochran	Helms	Roth
Cohen	Hutchison	Santorum
Coverdell	Inhofe	Shelby
Craig	Jeffords	Simpson
D'Amato	Johnston	Smith
DeWine	Kassebaum	Specter
Dodd	Kempthorne	Stevens
Dole	Kohl	Thomas
Domenici	Kyl	Thompson
Faircloth	Leahy	Thurmond
Feinstein	Lieberman	Warner

NAYS—31

Akaka	Feingold	Moseley-Braun
Bingaman	Harkin	Murray
Bond	Hollings	Pell
Boxer	Inouye	Reid
Bradley	Kennedy	Robb
Bryan	Kerrey	Sarbanes
Byrd	Kerry	Simon
Conrad	Lautenberg	Snowe
Daschle	Levin	Wellstone
Dorgan	Mack	
Exon	Mikulski	

So the motion to lay on the table the amendment (No. 605) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 608

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maine.

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 yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maine. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—61

Abraham	Gorton	Mikulski
Bennett	Grams	Moseley-Braun
Bond	Grassley	Murkowski
Brown	Gregg	Nickles
Burns	Hatch	Nunn
Campbell	Helms	Packwood
Chafee	Hutchison	Pressler
Coats	Inhofe	Robb
Cochran	Jeffords	Roth
Cohen	Kassebaum	Santorum
Conrad	Kempthorne	Shelby
Coverdell	Kerrey	Simpson
Craig	Kohl	Snowe
D'Amato	Kyl	Specter
Daschle	Lautenberg	Stevens
DeWine	Levin	Thomas
Dole	Lieberman	Thompson
Domenici	Lott	Thurmond
Faircloth	Mack	Warner
Feinstein	McCain	
Frist	McConnell	

NAYS—39

Akaka	Exon	Kerry
Ashcroft	Feingold	Leahy
Baucus	Ford	Lugar
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Gramm	Pell
Bradley	Harkin	Pryor
Breaux	Hatfield	Reid
Bryan	Heflin	Rockefeller
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Simon
Dodd	Johnston	Smith
Dorgan	Kennedy	Wellstone

So the amendment (No. 608) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 609

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 609 by the Senator from Arizona [Mr. KYL].

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 609

The PRESIDING OFFICER (Mr. KEMPTHORNE). The question is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 65, nays 35, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—65

Abraham	Feinstein	Mikulski
Akaka	Ford	Moynihan
Ashcroft	Frist	Murkowski
Biden	Glenn	Murray
Bingaman	Gorton	Nunn
Boxer	Graham	Packwood
Bradley	Harkin	Pell
Breaux	Hatch	Pressler
Bryan	Heflin	Pryor
Bumpers	Hollings	Reid
Burns	Jeffords	Robb
Campbell	Johnston	Rockefeller
Cochran	Kassebaum	Roth
Cohen	Kennedy	Sarbanes
Conrad	Kerrey	Shelby
D'Amato	Kerry	Snowe
Daschle	Kohl	Specter
DeWine	Lautenberg	Stevens
Dodd	Leahy	Thompson
Dorgan	Levin	Warner
Exon	Lieberman	Wellstone
Feingold	Mack	

NAYS—35

Baucus	Gramm	Lugar
Bennett	Grams	McCain
Bond	Grassley	McConnell
Brown	Gregg	Moseley-Braun
Byrd	Hatfield	Nickles
Chafee	Helms	Santorum
Coats	Hutchison	Simon
Coverdell	Inhofe	Simpson
Craig	Inouye	Smith
Dole	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lott	

So the motion to table the amendment (No. 609) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 611

The PRESIDING OFFICER. The question now is on the Kyl amendment No. 611.

Mr. ROCKEFELLER. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 56, nays 44, as follows:

[Rollcall Vote No. 141 Leg.]

YEAS—56

Akaka	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murray
Boxer	Harkin	Nunn
Bradley	Heflin	Packwood
Breaux	Hollings	Pressler
Bryan	Inouye	Pryor
Bumpers	Jeffords	Reid
Byrd	Johnston	Robb
Cohen	Kennedy	Rockefeller
Conrad	Kerrey	Sarbanes
D'Amato	Kerry	Shelby
Daschle	Kohl	Simon
DeWine	Lautenberg	Simpson
Dodd	Leahy	Specter
Dorgan	Levin	Thompson
Feingold	Lieberman	Wellstone
Feinstein	McConnell	

NAYS—44

Abraham	Bennett	Campbell
Ashcroft	Brown	Chafee
Baucus	Burns	Coats
Cochran	Hatch	Murkowski
Coverdell	Hatfield	Nickles
Craig	Helms	Pell
Dole	Hutchison	Roth
Domenici	Inhofe	Santorum
Exon	Kassebaum	Smith
Faircloth	Kempthorne	Snowe
Frist	Kyl	Stevens
Gramm	Lott	Thomas
Grams	Lugar	Thurmond
Grassley	Mack	Warner
Gregg	McCain	

So the motion to lay on the table the amendment (No. 611) was agreed to.

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

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 612

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 612, offered by the Senator from Ohio.

Mr. GORTON. Mr. President, this is a noncontroversial amendment.

So the amendment (No. 612) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 613

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 613, offered by the Senator from Utah.

Mr. GORTON. Mr. President, this is also a noncontroversial amendment.

So the amendment (No. 613) was agreed to.

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

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

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I ask unanimous consent we have the next vote and then we recess for the policy luncheons until 2:15, and then come back and complete the additional rollcall votes.

There will be one additional rollcall vote. The remainder of the votes will follow at 2:15.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, I am going to withdraw my amendment at this point. I do not know if that affects the majority leader's schedule, but I ask unanimous consent to withdraw my amendment.

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

The amendment (No. 616) was withdrawn.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, after consultation with the Democratic leader and a number of people who are conducting hearings, I withdraw the request. We will just go ahead and complete the votes now.

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

AMENDMENT NO. 614

The PRESIDING OFFICER. The question, then, is on agreeing to the Simon amendment (No. 614).

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I move to table the Simon amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 614

The PRESIDING OFFICER. The question occurs on the motion to lay on the table the amendment, No. 614.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced, yeas 51, nays 49, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—51

Ashcroft	Gorton	Lugar
Bennett	Gramm	Mack
Bond	Grams	McCain
Brown	Grassley	McConnell
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Pressler
Coats	Helms	Robb
Cochran	Hutchison	Rockefeller
Coverdell	Inhofe	Roth
Craig	Jeffords	Santorum
Dodd	Kassebaum	Smith
Dole	Kempthorne	Snowe
Domenici	Kyl	Stevens
Exon	Lautenberg	Thomas
Faircloth	Lieberman	Thurmond
Frist	Lott	Warner

NAYS—49

Abraham	Feingold	Moseley-Braun
Akaka	Feinstein	Moynihan
Baucus	Ford	Murray
Biden	Glenn	Nunn
Bingaman	Graham	Packwood
Boxer	Harkin	Pell
Bradley	Heflin	Pryor
Breaux	Hollings	Reid
Bryan	Inouye	Sarbanes
Bumpers	Johnston	Shelby
Byrd	Kennedy	Simon
Cohen	Kerrey	Simpson
Conrad	Kerry	Specter
D'Amato	Kohl	Thompson
Daschle	Leahy	Wellstone
DeWine	Levin	
Dorgan	Mikulski	

So the motion to lay on the table the amendment (No. 614) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 607

The PRESIDING OFFICER. The question now occurs on amendment No. 607 offered by the Senator from Massachusetts [Mr. KENNEDY].

Mr. GORTON. Mr. President, I move to table the Kennedy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 607. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—55

Abraham	Graham	McCain
Ashcroft	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Hatfield	Robb
Chafee	Heflin	Rockefeller
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
DeWine	Kassebaum	Stevens
Dole	Kempthorne	Thomas
Domenici	Kyl	Thompson
Exon	Lieberman	Thurmond
Faircloth	Lott	Warner
Frist	Lugar	
Gorton	Mack	

NAYS—45

Akaka	Dorgan	Levin
Baucus	Feingold	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Ford	Moynihan
Boxer	Glenn	Murray
Bradley	Harkin	Nunn
Breaux	Hollings	Pell
Bryan	Inouye	Pryor
Bumpers	Johnston	Reid
Byrd	Kennedy	Sarbanes
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
D'Amato	Kohl	Simpson
Daschle	Lautenberg	Specter
Dodd	Leahy	Wellstone

So the motion to table the amendment (No. 607) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 615

The PRESIDING OFFICER. The question is on agreeing to amendment No. 615 offered by the Senator from Massachusetts [Mr. KENNEDY].

The amendment (No. 615) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 603, AS AMENDED

The PRESIDING OFFICER. The pending measure is amendment No. 603, as amended, offered by the Senator from Kentucky [Mr. MCCONNELL].

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

VOTE ON AMENDMENT NO. 603, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to amendment No. 603, as amended.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 144 Leg.]

YEAS—53

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Bennett	Gramm	McConnell
Bond	Grams	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Nunn
Campbell	Hatch	Pressler
Chafee	Hatfield	Robb
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Simpson
Craig	Jeffords	Smith
DeWine	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kyl	Thomas
Exon	Lieberman	Thurmond
Faircloth	Lott	Warner
Feinstein	Lugar	

NAYS—47

Akaka	Feingold	Mikulski
Baucus	Ford	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Packwood
Bradley	Heflin	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Johnston	Rockefeller
Byrd	Kennedy	Sarbanes
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
D'Amato	Kohl	Specter
Daschle	Lautenberg	Thompson
Dodd	Leahy	Wellstone
Dorgan	Levin	

So the amendment (No. 603), as amended, was agreed to.

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote No. 139 I voted ''yea.'' It was my intention to vote ''no.'' Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

CHANGE OF VOTE

Mr. HATFIELD. Mr. President, on rollcall vote No. 137 I voted ''yea.'' It was my intention to vote ''no.'' Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. HELMS. Mr. President, I ask unanimous consent that I be permitted to proceed very briefly as in the morning business.