

leader for his effort in getting us to this point.

Mr. LOTT. I thank Senator DASCHLE for his comments and his frankly suggesting we could do the two votes at 6 o'clock, as well as his cooperation.

I know a lot of Senators have a lot of other issues they are interested in. We are still working some other issues and some, I believe, for instance, the Emerson food donation bill, a food bank bill, which I think we can get that cleared. We will be talking about other issues, so I hope rather than ask about all these bills, maybe we can go ahead and get started on the debate. I see Senator NUNN, and I know he is very much interested in some nominations.

Mr. NUNN. If I could just take 2 seconds here, I am glad progress is being made.

I join the chairman of the committee, Senator THURMOND, in his plea that we pass the defense authorization bill. It will take a total of about 20 minutes, based on what I know now.

Even more urgently, I urge that we clear the nominations, the military nominations. We have posts all over the world that depend on these nominations. It is extremely important that we do the nominations this evening. Whatever else is still in dispute when we go home tonight, I hope the nominations on the military side are cleared.

I can assure my colleagues that if Senator THURMOND and I are given 20 minutes, equally divided—we will probably cut that down, if necessary—we can finish debate on the defense authorization bill and conference report, which passed the House last night, have the stacked votes at 6 o'clock, and have that vote right after that.

I hope we would be able to get agreement on both sides.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. LEVIN. Reserving the right to object, would the majority leader yield for a question?

Mr. LOTT. Mr. President, I thought all the unanimous-consents had been agreed to.

The PRESIDING OFFICER. The last consent was not agreed to. The Senator from Michigan has reserved the right to object.

Mr. LOTT. I am happy to yield.

Mr. LEVIN. Earlier in the week, the majority leader indicated there would be an effort made to offer up the nominations of the circuit judges as well as the district court judges. Is that effort going to continue?

Mr. LOTT. I will continue to work on those nominations. We have shown an abundance of good faith. We have confirmed 17 judges. We are not going to be able to get more of them cleared tonight, but we will continue to work on these as we go on into the fall.

Mr. LEVIN. As the majority leader knows, one of the judges I am familiar with, Eric Clay, has the support of both

the Republican and the Democratic Senators from Michigan, and he is from Michigan. Is there any possibility now that would be offered this evening?

Mr. LOTT. We will continue to work with the Senator on that. Senator ABRAHAM has talked to me about that. We will continue to work on that.

I yield the floor.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. WARNER. Mr. President, I join the distinguished chairman of the committee, Mr. THURMOND, and Mr. NUNN in their petition to the leadership of the Senate that we do address the authorization bill. I spoke earlier on that, and that particular military measure, coupled with the nominations pending before the Senate, are absolutely essential pieces that have to be passed before we depart.

I yield the floor.

Mr. THURMOND. Mr. President, I wish to thank the able Senator from Georgia, Senator NUNN, for his remarks on these defense matters, and also Senator WARNER of Virginia.

Defense, I say again, is nonpartisan; military matters and nominations are nonpartisan. Why there is an objection here to the taking up of nominations of the President of the United States for military nominations is beyond me. Why there is objection here to the taking up a defense bill agreed to on both sides, that we can finish in 20 minutes, an objection to taking it up is beyond me. After all, defense is for the whole country. These military nominations are for the whole country.

I hope that the leadership on the Democratic side that is objecting to taking up these matters would relent and let us go ahead and pass these matters. The House yesterday passed this defense conference report in 1 hour. I think we can pass it in 20 minutes.

Again, I ask the leadership on the Democratic side to reconsider this matter and take up these defense matters which are for the benefit of the whole country.

#### HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996—CONFERENCE REPORT

Mr. WELLSTONE. Mr. President, what is the regular order?

The PRESIDING OFFICER. The clerk will report the conference report. The bill clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3103) to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses

this report, signed by a majority of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 31, 1991.)

#### POINT OF ORDER

Mr. WELLSTONE. Mr. President, I raise a point of order against the conference report under rule XXVIII, paragraph 2, because provisions contained in section 281 of the report were inserted by the conferees, and such provisions constitute "matter not committed to them by either House."

They have, therefore, exceeded their authority, in violation of rule XXVIII, paragraph 2.

The PRESIDING OFFICER. The Chair will examine the language of the conference report and needs to do that before it can issue a ruling. The Chair will withhold so that examination can be made.

The Chair announces that the point of order is not sustained.

Mr. WELLSTONE. Mr. President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. Under the previous order, 10 minutes are to be equally divided.

The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, let me explain my challenge. I have to thank Senator PRYOR from Arkansas, who has been so diligent on these issues, and also Senator KENNEDY from Massachusetts.

Mr. President, in the dark of night, in this conference committee for this bill, the insurance reform bill, there was a provision that was put in, which was a 2-year patent extension for a prescription drug called Lodine. I think the effect of this would be that for 5 years it would be impossible for consumers to purchase a generic drug. My understanding is that the manufacturer is paying the Federal Government \$10 million each year, or \$20 million, because this would be additional costs, since the Medicaid assistance would go up more than it would if in fact consumers had access to the generic drug. In addition, the company will be providing reimbursements to some of the States because of the additional Medicaid costs.

The problem, Mr. President, is that this is a gigantic ripoff for the rest of the consumers because the generic drug would give consumers access to affordable treatment, those who are suffering from arthritis. So that, I think, is egregious. Clearly, I think it is the wrong thing for us to do.

The point of this challenge, however, has to do with the process. There was an attempt to stick this provision into the Senate Appropriations Subcommittee, and there was a very strong letter from Senator PRYOR and Senator CHAFEE saying, don't do that. But this was stuck into the committee late at night, not known to very many Members. It had never really passed out of

any committee. It hadn't passed out of any committee in either House, certainly not the two committees with jurisdiction over this legislation. Therefore, it was not within the scope of this conference committee to stick this provision in.

So, Mr. President, my point and the reason that I raise this point of order is that I think what was done really was a violation of the way the process is supposed to operate. On a very legal, technical point, it was a violation. This had not been dealt with by committee in either House.

Mr. President, I have to say, I was a college professor and used to teach political science courses, and I knew conference committees were called the third House of the Congress, but I had no idea that this kind of action could be taken, really, in the dark of night, not an open process, not accountable to the citizens of the country. It was the wrong thing to do, and it is for this reason that I raise this point of order and that I appeal the ruling of the Chair.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. WELLSTONE. I reserve the remainder of my time, and I will yield on your time.

Mr. SANTORUM. In that case, I will yield to the senior Senator from Pennsylvania.

Mr. SPECTER. Mr. President, contrary to the statement by the Senator from Minnesota, this matter has been considered in the Judiciary Committee as part of the markup on the drug patent bill. It was on the floor as a part of the Hatch amendment, which was a part of the defense authorization bill.

This measure was also considered by the House, which passed a 2-year patent extension for this drug on separate occasions; in 1992 and again in 1996. It has been so considered as a matter of basic fairness. The FDA delayed action on this matter for some 97 months, contrasted with 27 months on the average.

This matter has been considered extensively. I raised it in open session in the Agriculture Subcommittee of the Appropriations Committee earlier this week. It had been in the House Agriculture appropriations bill and was dropped in conference. I do not vouch for the provision where it was added to the health care bill after conference. I do not know about that and was not a party to that.

But we have a very basic problem in America about research expenditures for drugs that benefit sick people. These drugs benefit everybody including the elderly, the young, and those not in either category. If we are going to expend a very substantial sum of money on research, there is going to have to be a reasonable return. We have a patent period, and the patent period was not honored in this case. The manufacturer here, Wyeth-Ayerst, is a major Pennsylvania constituent of Senator SANTORUM's and mine, employ-

ing thousands of people in the Philadelphia suburbs. If they are to be able to continue, they are going to have to have a reasonable return.

Those who added it to this bill did so because this is a health bill. One way or another, these sorts of matters must be considered. I am very sympathetic to generic manufacturers, and I have a very strong voting record for senior citizens on issues like this. But if we are to have the kind of research, productivity and the great miraculous advances, we are simply going to have to have a reasonable rate of return on the patent period that is realistic. That is why on the merits and as a matter of fairness, I have advocated this position publicly and do so today, because I think it is an appropriate and sound position.

I yield to my colleague from Pennsylvania.

Mr. SANTORUM. I think the Senator has articulated the arguments on the merits very well. This is an appropriate remedy. I just ask the Senator from Minnesota if he has ever heard of the drug Daypro. It is a competing drug that had the same problems going through the FDA as Lodine, the same problems, the same delay. But in the 1996 omnibus appropriations bill, Daypro got an extension. I don't recall the Senator from Minnesota objecting to that extension, asking for that to be removed. But they got one, too.

So what we have now is a competitive disadvantage. We have one company with a similar drug, a similar prescription, getting an extension and another drug with the same FDA problem not getting an extension. This is a health care bill. The Chair has ruled that it is within the scope of this bill. So I think what is going on here is, frankly, not a special interest, but simply a matter of fairness that we are trying to address. I think what has gone on here is really a lot of actions that—as the Senator said, this bill passed here in the Senate, passed in the House. It is not a new provision. It has had committee discussion. This thing is not anything new to any Member of this floor. We should have left it alone and created the fairness that this Senate acted on and the House acted on in the past.

Again, I agree with the Senator from Minnesota, and I don't agree with sticking things in conference that weren't originally there. I understand that objection. But this is not a red herring proposal. This is a sound proposal. This is a fair approach, and I think we are going to see either this or, frankly, the repeal of the Daypro. One or the other is going to happen again sometime in the next couple of months.

Mr. WELLSTONE. Mr. President, I appreciate working with both of my colleagues. For all I know that other provision was stuck in conference committee in the dark of night. I did not catch it. I really appreciate what you have said. I think we would probably

disagree maybe on the substance because I think by postponing the time that this can be generic. We really provide more cost to the consumers. But it seems like what you have said—and hopefully we can all agree on this—this should not have been stuck in the conference committee the way it was. It was not appropriate, and that is why I challenged the ruling of the Chair.

I think from the point of view of the way our process operates it is a huge mistake to legislate this way. That is why I hope that I will receive strong support on this challenge. And my understanding is that, if we prevail on the voice vote, this will become a successful concurrent resolution which will be a technical correction resolution that I introduced on behalf of myself, and also Senator KENNEDY from Massachusetts.

Again, I thank especially Senator DAVID PRYOR for really bringing this to my attention.

Mr. SPECTER. Mr. President, I would take strong exception to any language if it refers to anything which my distinguished colleague, I, or others in the advocacy of this position have done. We have spoken of it directly. I did so earlier this week in the conference, and we do so on the floor today.

We need medical research. We need these wonder drugs to be produced. It is a matter of fairness as to how we are going to compensate those who produce them. If we are to have them for the consumers, we will have to be able to pay for them. And I think ultimately we will have to take this matter up on the merits, and I think at that time we will see that it is an appropriate position which Senator SANTORUM, I, and others have advocated.

Mr. WELLSTONE. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 36 seconds.

Mr. WELLSTONE. I say to my both my colleagues from Pennsylvania that they clearly are two Senators who are always more than willing to be strong and determined and honest in their positions in public.

This amendment is not at all aimed at the Senator from Pennsylvania. It is aimed at something that I think is wrong with this process.

I yield the floor.

The PRESIDING OFFICER. The question is, Should the decision of the Chair stand as the judgment of the Senate?

The ruling of the Chair was not sustained.

#### CORRECTING THE ENROLLMENT OF H.R. 3103

The PRESIDING OFFICER. The clerk will now report the concurrent resolution.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 68) to correct the enrollment of H.R. 3103.

The PRESIDING OFFICER. Under the previous order, the concurrent resolution is agreed to.