

could be used for research purposes. A woman may not be approached for consent to donate the aborted tissue until after she has made the decision to have an abortion.

Safeguards established by the NIH have eliminated any potential incentives for abuse. No profit can be derived from providing the tissue for research. No family member or friend can benefit from a woman's abortion. A woman may not designate who will be the recipient of the tissue.

This issue has been reviewed and studied as to the effectiveness of the rules and regulations which have been established. It is effectively working and working well. This amendment would have an adverse impact in terms of the real potential for making significant progress in areas of research, and it would not be justified in terms of providing the kind of restrictions that are included in the Coats amendment. For that reason, I hope the Coats amendment will not be accepted.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### AMENDMENT NO. 1074, AS MODIFIED

Mr. WELLSTONE. Madam President, on the Wellstone-McCain/McCain-Wellstone amendment, I ask unanimous consent that Senator BOXER be added as a cosponsor.

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

Mr. WELLSTONE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Senator ROBB be listed as a cosponsor of the Wellstone-McCain / McCain-Wellstone amendment.

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

Mr. WELLSTONE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The question is on agreeing to amendment No. 1074, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI] is necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUE] is necessarily absent.

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 214 Leg.]

#### YEAS—95

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Allard	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murray
Boxer	Grassley	Nickles
Breaux	Gregg	Reed
Brownback	Hagel	Reid
Bryan	Harkin	Robb
Bumpers	Hatch	Roberts
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sarbanes
Cleland	Inhofe	Sessions
Coats	Johnson	Shelby
Cochran	Kempthorne	Smith (NH)
Collins	Kennedy	Smith (OR)
Conrad	Kerrey	Snowe
Coverdell	Kerry	Specter
Craig	Kohl	Stevens
D'Amato	Kyl	Thomas
Daschle	Landrieu	Thompson
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Durbin	Lott	Wyden
Faircloth		

#### NAYS—3

Ashcroft	Enzi	Jeffords
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#### NOT VOTING—2

Inouye	Murkowski
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The amendment (No. 1074), as modified, was agreed to.

Mr. WELLSTONE. I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, each year a small portion of the Medicare budget is devoted to HCFA's Office of Research and Demonstrations for Activities that help guide Medicare policymaking on coverage, financing and other operational issues. This year the Appropriations Committee has approved \$47 million for this purpose, an increase, of \$3 million over the last year.

The Appropriations Committee has urged the Secretary of Health and Human Services to use a portion of this research budget to conduct a 2-year demonstration project on coverage of medical nutrition therapy by registered dietitians under Medicare part B. I would like to take this opportunity to reiterate my support for this project and to urge the Secretary to move expeditiously to initiate this program.

Research has shown that medical nutrition therapy is an effective way to save health care dollars and improve patient outcomes. By reducing and shortening hospital admission, preventing and controlling medical com-

plications and limiting the need for physician follow-up visits, medical nutrition therapy can lower the cost of treating a variety of diseases. Of particular note are the savings that have been documented for patients with diabetes and cardiovascular disease, two ailments that account for a staggering 60 percent of all Medicare expenditures.

As we continue efforts to modernize and improve the Medicare Program, we should not overlook medical nutrition therapy as an important way to save program dollars and improve patient treatment options. A demonstration project in this area will help us understand how we can best integrate this important service into any future Medicare improvements.

#### AMENDMENT NO. 1057

Mr. MOYNIHAN. Mr. President, earlier today I voted to support Senator HARKIN's amendment to fund the Food and Drug Administration's "Youth Tobacco Initiative" regulations. When this amendment was first offered on July 23, 1997, I voted to table it. I was concerned at that time that the offset was a tax; taxes fall under the jurisdiction of the Ways and Means and Finance Committees. I am pleased that Senator HARKIN changed the offset so that I was able to vote for the amendment today. I am a strong supporter of the Food and Drug Administration's efforts to reduce the number of young people who begin smoking cigarettes each year. I believe that the money designated for that purpose today is crucial to the success of those efforts.

The PRESIDING OFFICER. Who seeks recognition?

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

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

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

#### FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent the Senate now turn to the consideration of S. 830, the FDA reform bill.

The PRESIDING OFFICER. Is there an objection?

Mr. DASCHLE. On behalf of Senator KENNEDY, I object.

The PRESIDING OFFICER. The objection is heard.

#### MOTION TO PROCEED

#### CLOTURE MOTION

Mr. LOTT. I move to proceed to S. 830, and I send a cloture motion to the desk.

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 105, S. 830, the FDA reform bill.

Trent Lott; Jim Jeffords; Pat Roberts; Kay Bailey Hutchison; Tim Hutchinson; Conrad Burns; Chuck Hagel; Jon Kyl; Rod Grams; Pete Domenici; Ted Stevens; Christopher Bond; Strom Thurmond; Judd Gregg; Don Nickles; and Paul Coverdell.

Mr. LOTT. I withdraw the motion to proceed.

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

Mr. LOTT. For the information of all Senators, I regret that the cloture motion is necessary at this time. I understand all of the interested parties were in agreement just prior to the recess. In fact, I stayed very close to the members of the committee that reported this legislation and to those who have continued to work to try to work out remaining disagreements, including Senator JEFFORDS, Senator MACK, Senator FRIST, others on this side of the aisle, as well as Senator DODD and Senator MIKULSKI.

This is truly a bipartisan issue and one we certainly should take up and finish before we go out at the end of this year.

When you talk about quality of life for Americans, certainly having a reformed Food and Drug Administration would be in their interest. Too many procedures, pharmaceuticals, and medical devices are delayed, hung up by bureaucracy. What we need is an expedited process, the reforms that are necessary to make that happen, and safe procedures for the American people.

I hope we can get this done. The only objection I know of was one that has been lodged by Senator KENNEDY. We thought we had the agreement all worked out the last week we were in session. At the last minute, there seemed to be some further objection. As a matter of fact, I had hoped over the last 2 weeks before we went out the 1st of August for our State work period that we could get this agreed to. Now there is apparently some disagreement with regard to cosmetics. I would think this legislation is much more important than some remaining small disagreement in this area.

So as a result of filing this cloture motion, a cloture vote will occur on Friday, September 5 in the morning unless something is worked out in the meantime. I will consult with the Democratic leader and all the Senators involved on both sides of the aisle as to how we can proceed. We need to get this done.

By the way, this is on the motion to proceed. It looks like we will have a fil-

ibuster even on the motion to proceed. I am committed to this. If we have to have a cloture on the motion to proceed, if we have to have more than one, if we have to have cloture on the bill itself, whatever is necessary, I feel that we should force this to an action.

However, I do ask unanimous consent the mandatory quorum under rule XXII be waived at this time.

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

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each, with the exception of Senators HUTCHISON of Texas and ROBERTS.

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

TRIBAL SOVEREIGN IMMUNITY

Mr. GORTON. Mr. President, on October 25, 1994, Jered Gamache lost his life, and his brother, Andy, was seriously injured on their way home from school when a Yakama tribal police officer, driving at 68 miles per hour, ran through a red light and crashed into their truck. Jered was 18 and Andy was 16. Despite the loss of Jered's life and the injuries to Andrew, the Gamache family has been totally unable to seek damages against the Yakama tribal government for the actions of its police officer.

Now, let us compare this situation, Mr. President, to the case of Abner Louima, the Haitian immigrant who was brutalized a few weeks ago by New York City police officers. According to the New York Times, in addition to the ongoing criminal investigation, Mr. Louima's attorneys are planning to file a \$465 million civil damage suit against New York City.

Now, Mr. President, what makes the case of Jered and Andy Gamache different from the case of Abner Louima? The answer is simple: Tribal sovereign immunity. Unlike New York City, the Yakama tribal government can claim immunity from any civil lawsuit, including suits involving public safety and bodily harm, in both State and Federal courts. As a consequence, the lawyers retained by the Gamache family have told them it is pointless to bring any kind of lawsuit. They have no recourse.

New York City does not have sovereign immunity, and thus, of course, is subject to a lawsuit in any amount of money on the part of victims of malfeasance, on the part of members of its police department.

A few weeks ago, up until the present time, the New York Times has run articles and editorials showcasing the Louima case as an example of police brutality and the need for permanent reform. While that case has sparked outrage from editorialists in New York

and elsewhere, last Sunday the New York Times vilified my efforts to provide exactly the same avenue for relief to the Gamache family as the New York Times eloquently advocates for Mr. Louima. The New York Times has decided that while it is unacceptable for New York City to brutalize a person, it rejects non-Indians' right to bring similar claims against tribal police agencies in the U.S. courts. So we have 18- and 16-year-old victims who have no recourse.

Enormous injustices can be done whenever a technical claim can prevent the adjudication of a just claim on the part of an individual against a government. It is for exactly that reason that the doctrine of sovereign immunity was long ago dropped by the Federal Government and the State government in cases of this nature.

Let us consider another case, Mr. President, the case of Sally Matsch. When she was fired from an American Indian casino in Minnesota she felt that she was a victim of age discrimination, so she sued the Prairie Island Indian Tribe. The tribe, however, invoked its sovereign immunity against lawsuits in State or Federal courts, and her case was heard by an Indian court on the second floor of the casino and was dismissed amid the sounds of slot machines by a judge who served at the pleasure of the tribal council that ran the casino.

Seventeen years ago I was attorney general of the State of Washington. I brought a lawsuit that asserted the right of the State of Washington to tax the sale of cigarettes in Indian smoke shops to non-Indians. The Supreme Court of the United States upheld our position that those sales were taxable. For all practical purposes, however, in the 17 years since that time, States have been unable to enforce a right that the Supreme Court of the United States said they had because they cannot sue the tribe or the tribal business entities in order to collect those taxes or to enforce their collection. Why? Tribal sovereign immunity.

Barbara Lindsey, Mr. President, is president of an organization of Puget Sound beach property owners in Washington State. In 1989, 16 Indian tribes sued those property owners in the State of Washington claiming that "treaty rights" gave them the right to enter private property to remove clams and oysters. A Federal district court in large measure has accepted that claim, but Barbara Lindsey and the thousands of property owners she represents, Mr. President, cannot sue the Indian tribes for violations of their property rights, even in cases when those violations are obvious and open. The problem? Tribal sovereign immunity.

So, Mr. President, this body will debate next week when it debates the Interior appropriations bill a provision that for a period of 1 year, as a rider on the appropriations bill, requires the waiver of tribal sovereign immunity on the part of those tribes—and I believe