

you are going to have access to that information, without securing the patient's approval in order to have access to that information, I think is just downright wrong.

I am heartened to know that the chairman of the Health, Education, Labor, and Pensions Committee is going to take steps, certainly through a hearing process, but, as well, to put the administration on notice that this rule change they are about to establish is not going to occur without significant opposition.

I tried to call Senator SHELBY in his office today. I cochaired the caucus, if you will, on privacy along with my colleague from Alabama, Senator SHELBY. I think he may have already gone back to his home State of Alabama. He may have left last evening. He was not here this morning. But I wanted to invite him to join me in this Chamber, as he has on so many other occasions when it comes to these privacy issues, to stand up to say that we are going to insist that people have the right to say no.

I cannot speak for him here, but I am confident that when the Senator from Alabama is heard on this issue, his voice and his words will not be significantly different than what I have said here already and that, in a bipartisan way, we will be standing up, very strongly, in seeing to it that this proposed rule change is not going to just fly through here without significant opposition.

#### THE FAMILY AND MEDICAL LEAVE ACT

Mr. DODD. Madam President, I rise to raise concern about a 5-to-4 decision that was reached earlier this week by the Supreme Court on the Family and Medical Leave Act, a bill that, along with many others in this body, I helped write back in the 1990s. It took a long time—about 7 years—from the time that bill was first introduced to the time it became law in February of 1993. But it was a singular achievement which improved tremendously the quality of life for millions of people who had worried about their dearly beloved ones—their children, their parents—so when their loved one was sick or they had a newborn or adopted a child, they could take some time off—12 weeks maximum in a year of unpaid leave—to be with their family during a time of crisis, or a “joyous crisis,” a birth, if you will—that is hardly a crisis but, nonetheless, an important period in people's lives, or a legitimate crisis—a child's illness or a parent they were caring for—to be with them without losing their job.

That is all it was: To help people, who often had been caught in the quandary of having to choose between the family they loved and the job they needed, when they needed to be with their families, yet there was the risk of losing their job if, in fact, they made the choice to be with their family.

I pointed out, on dozens and dozens of occasions, during the debate over 7

years in this Chamber, that I knew countless Members of this body who took time away from the Senate—missed dozens of votes, never went to committee hearings, did not see constituents—because a child, a spouse, or a parent needed our colleagues to be home with them. And none of their constituents ever held it against them, when they came up for reelection, because they missed a lot of votes because they were at a children's hospital taking care of a child or they were with their wife or husband when they were desperately ill and they needed to be with them. Certainly, we understood. In fact, had they been here voting and disregarding the needs of their families, they might have been in greater jeopardy politically for having made that choice.

But it seemed to me if Senators and Congressmen would make the choice to be with their families—and rightfully so—that we ought not ask average citizens to make any different choice. We wanted to provide the opportunity for them to do so without losing their job. That was the underlying thought process and the genesis of the bill.

One of the requirements in the bill was for a general notification to employees of what the bill provided for: the 12 weeks of unpaid leave. There were some regulations that were adopted along those lines as a result of the passage of the bill.

I think Sandra Day O'Connor got it right. The Court overruled the regulation because the regulation required specific notice to employees. It went beyond, if you will, you could argue, the general notification of the bill. But as Justice O'Connor pointed out, there was nothing in the bill that said you could not have additional requirements. You had a general notification, but there was nothing in the legislation, nor in the legislative history, that would have banned a regulation saying, you probably ought to give more specific notice to individuals rather than just tacking it up on a bulletin board someplace and saying: You have a right to 12 weeks of leave. We hope you get word of this.

Her point was it would be unrealistic to assume that individual employees would be aware of what the law provided to them with just a general notification. Her suggestion was that the regulation to require specific notification would not be going too far. What happened here was the regulation also said that if you do not do that, then you are required to provide an additional 12 weeks of leave.

The case, frankly, before the Court may not have been the best fact situation. In this particular case, the employer had been extremely generous to the employee, in my view. The employer had already provided about 30 weeks of leave for that particular employee. So it was one of those cases where it was not the best set of facts to make the point.

I am in this Chamber to urge the agency, if you will, to take another

look at these regulations. And I strongly urge that they come back and re-issue the regulation, if you will, on the specific notification. I think that is the way to go. And then, in view of the Court's decision about any additional penalties, I would say, pare back on that some way. Again, leave it to legal scholars how to write this and how to fashion this.

But the point is, on such a close decision—5 to 4—I do not believe the Court was suggesting somehow we ought to eliminate the need for specific notification, even though the bill talked about general notification. That is the point I want to make.

This is a law that I am told has already provided benefits to more than 35 million people in this country in the last decade who have been able to take advantage of this.

A lot of people cannot take advantage of it. I know that because it is unpaid leave. A lot of people find themselves in economic circumstances where unpaid leave is something they just can't afford to do. Candidly, we would never have passed a bill that would have required paid leave. The opposition was overwhelming to that idea. We have since suggested some creative ways in which States may be able to provide for paid leave under limited circumstances, and we are considering that legislation.

Even with the unpaid provisions of this proposal, millions of people have been able to spend time with their families during very important periods in any family's life. As I said, in the situation of a newly arrived child, and I certainly know the joys of that, having had a daughter 6 months ago, knowing how important it is for my wife and myself to be able to spend time with Grace as she begins her new life. And certainly as a Member of the Senate, I can do that without any fear of losing my job because of it.

There were literally millions of people who could not take time to be with their newborn without that fear on the table. Obviously, adoption makes the case clearly how important it is for a newly adopted child to be able to be with her new parents or his new parents during that bonding period.

I don't think I have to make the case. If any of you have been to a children's hospital in a waiting room and seen the fear and anxiety in a mother's or father's face holding a child that is going into the hospital for some operation or into a pediatric intensive care unit, looking on the faces of parents with a newborn who is struggling to stay alive, wondering whether or not they should be there or on the job, as if somehow they could actually do a job while their child is sitting in an emergency room or an intensive care unit.

It seemed to us logical that we provide this opportunity for people not to be forced into that situation. I regret we couldn't do something about having paid leave for people. We are one of the few countries in the world that does

not do that. Almost every other industrialized, advanced nation in the world provides for paid leave under these circumstances. We don't do that. I regret that. But I don't have 51 votes for that in this Chamber. I had to do what I could do. So unpaid leave is the best I could do.

The fact that millions of people have been able to take advantage of that is something for which I am very proud. I hope we can come back to this issue of notice. This has been a positive benefit for a lot of people. But a lot of people are unaware that the law exists. Some general notice tacked up on a bulletin board someplace means that an awful lot of people probably wouldn't find out about it. Specific notice makes more sense to me.

My hope is the administration will promulgate a regulation that will call for specific notification and tailor it accordingly so it will not run afoul of the Supreme Court decision reached 5 to 4 a few days ago.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from North Dakota.

#### FAST TRACK AUTHORITY

Mr. DORGAN. Mr. President, yesterday the majority leader of the Senate described the conditions under which he intended to bring to the Senate legislation authorizing trade promotion authority. That is a euphemism for fast-track authority.

President Bush has requested of this Congress that we give him fast-track trade authority. Like Presidents before him, he has asked to be allowed to negotiate trade treaties and bring them to Congress for expedited consideration, without any amendments, under any circumstance, for any purpose.

I opposed fast-track authority for President Clinton, and I will oppose it for President Bush. I do not believe Congress should grant fast-track authority. I think it is undemocratic. I do not believe it is necessary for us to have fast-track authority in order to negotiate trade agreements. We negotiate the most sophisticated agreements without fast-track authority. Nuclear arms treaties are negotiated and brought to the Congress without fast-track authority. Only trade agreements, we are told, must have this handcuff put around Members of Congress, so they cannot offer any amendments.

The reason I care about this is I have watched trade agreement after trade agreement be negotiated, often trading away the interests of producers in the

United States, only to discover the problems that arise cannot be solved by these agreements.

To give an example, the White House negotiated a trade agreement with Canada, under fast-track trade authority. I was serving in the House at the time. I was a member of the House Ways and Means Committee. The trade agreement came back to the House, to the Ways and Means Committee, and the vote in committee for that trade agreement was 34 to 1. I cast the lone vote against the agreement.

The chairman of the committee came to me and said: Congressman Dorgan, we must have a unanimous vote. It is very important. You are the only one who is holding out. It is really important you understand that Canada is our biggest trading partner, our neighbor to the north. The administration has negotiated this with great care. We really want to have a unanimous vote. Won't you join us?

I said: Absolutely not. It does not matter to me if I am the only vote. It does not matter to me at all.

The vote was 34 to 1, and they were sorely disappointed they could not get a unanimous vote out of the Ways and Means Committee. I was this troublemaker.

So the trade agreement went into effect, passed the House, passed the Senate. No one was able to offer an amendment. I could not offer an amendment. After the trade agreement was finished, we began to see an avalanche of Canadian grain being sent into our country. That Canadian grain came from the Canadian Wheat Board, which is a state trading enterprise. The Canadian Wheat Board has a monopoly on wheat, and is able to ship to this country deeply subsidized Canadian grain, undercutting our farmers, taking money right out of our farmers' pockets. Nothing could be done about it because I could not amend the trade agreement. Our hands were tied. That is what fast-track trade authority is all about.

Let me talk about trade for a few minutes and why I am going to oppose this fast-track resolution when it comes to the Senate. I and some others in the Senate—Senator BYRD has described his opposition—will be trying to slow down the fast track bill, and to ultimately defeat it.

Let me describe why. It is not because we are protectionists. It is not because we want to build a wall around our country. Those of us who oppose fast track believe in expanded trade. We believe trade is good for our country. We believe expanded trade and breaking down barriers in foreign markets makes sense for our country. We believe all of that. We also believe and insist and demand that trade be fair.

Let me point out what the Constitution says about trade. The U.S. Constitution, article I, section 8, says: The Congress shall have the power to regulate commerce with foreign nations and among the several States and with Indian tribes.

It could not be more clear. The Congress shall have the power to regulate commerce with foreign nations—not the President, not the executive branch, not the judicial branch, but the Congress and only the Congress.

With fast track, Congress relinquishes its responsibility. We will let someone else go negotiate a trade treaty, go into a room, shut the door, and in private, in secret, negotiate a trade treaty, and then bring it back to the Congress. Our hands will be tied behind our backs, as we will not be able to offer any amendments. That is what fast-track trade authority is all about.

I will use a chart to describe one piece of trade that I think demonstrates the bankruptcy of what has been going on in international trade. The example I have in mind involves trade with Korea in automobiles. Now, someone watching or listening on C-SPAN or someone in this Chamber might well drive a Korean car. If you do, good for you. You have every right to drive it. Korean cars are sold all over this country. You can go to a dealership, and buy a car from Korea, from Japan, from Europe. That is consumer choice. I would never be critical of that.

But the fact that there are lots of Korean cars coming to our country does not mean that there is free trade. You have to look at both sides of the equation. Last year the country of Korea sent to the United States 569,000 Korean automobiles. How many cars made in the United States are sold in Korea? Only 1,700. I repeat, we purchased in the United States 570,000 Korean cars and the Koreans purchased 1,700 from us.

Let me also describe how this happens. Korea does not want American cars in Korea. Under the World Trade Organization, tariff barriers to sending American cars to Korea have come down. Why would we not get more cars into Korea? In January, an English-language Korean newspaper published an article describing the trade barriers faced by imported cars in the Korean marketplace. It is based on a report put out by a Korean state-run think tank, the Korea Institute for International Economic Policy. The report cites a widespread climate of fear and intimidation associated with imported cars, including threats of physical harm. Now, this is a report by a Korean think tank, saying that Koreans face threats of physical harm, lengthy safety test procedures, and discrimination by the traffic police.

An especially flagrant example of unfair trade that caught my attention: Korean importers have been frustrated in their inability to showcase foreign cars at the Seoul Motor Show, the biggest car show in Korea. In May of 2000, the distributors put on their own import motor show. As the import show began to attract interest and some orders for foreign cars, the Korean Ministry of Finance announced the selling of any cars with engine displaced at