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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, ADM Barry C. Black, offered the following prayer:

Eternal Lord God, who rules the raging of the sea, great and marvelous are Your works; just and true are Your ways. Thank You for smiling upon America and for blessing this Nation with your generous providence. Forgive our tendency to forget Your goodness and our failure to express gratitude for Your gifts. Thank You for these Senators, who seek to produce fruits that will nourish this land. Give them a kindness that remembers those on life's margins and a courage that will narrow the gap between the creed and the deed. Remove the scales from our eyes, that we might discover celestial solutions to Earth's most difficult problems. Today, let our words, thoughts, and actions honor and glorify Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will be in a period of morning business until 11:30 a.m. Following morning business, the Senate will begin up to 15 minutes of debate on the nomination of David Campbell to be a U.S. District Judge for the District of Arizona. At 11:45, the Senate will vote on the Campbell nomination. Immediately following that vote, the Senate will proceed to a vote on the motion to invoke cloture on the nomination of Victor Wolski to be a judge of the U.S. Court of Federal Claims. Therefore, the first vote will occur at 11:45 and that vote will be the first of two back-to-back votes.

For the remainder of the day, the Senate will resume debate on the motion to proceed to S. 11, the Patients First Act. A cloture motion on the motion to proceed to the bill was filed yesterday and that cloture vote will occur on Wednesday.

I ask unanimous consent that following disposition of the Wolski nomination, the Senate resume consideration of the motion to proceed to S. 11.

Mr. REID. Mr. President, reserving the right to object, I ask the majority leader if there were not a vote on the motion to invoke cloture on Wolski, would the distinguished majority leader consider allowing several hours this afternoon to debate Wolski? If cloture is invoked, of course, we would have 30 hours. It would seem to me that for the people who have been seeking this vote, we could vitiate the cloture vote and the leader could give us, say, 3 or 4 hours to debate Wolski and then vote.

Mr. FRIST. Mr. President, I would certainly entertain that. I ask if I might have a discussion with Chairman HATCH, the chairman of the Judiciary Committee, before committing to that, and I will get back shortly with the assistant Democratic leader.

The PRESIDENT pro tempore. Is the unanimous consent request withdrawn?

Mr. FRIST. No, it is not.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. No.

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

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period of morning business until 11:30 a.m., with the time equally divided between the two leaders or their designees.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that the time during the quorum call be charged equally to both sides.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

PATIENTS FIRST ACT

Mr. DURBIN. Mr. President, I would like to speak in morning business on the issue that is pending before the Senate, which is the motion to proceed on S. 11. This is a bill relative to an important issue that really we have to grapple with in this country, and that

is the question of medical malpractice. It is an issue which has come at us in so many different ways. Unfortunately, the bill that is before us, S. 11, which we are now considering under a motion to proceed, looks at the issue of medical malpractice from only one narrow perspective, and from my point of view a very ineffective perspective.

What the bill before us would suggest is if you or a member of your family or one of your children is a victim of medical malpractice, there would be a strict limitation in this bill of how much you could recover in court for what is known as noneconomic losses, pain and suffering. That strict limitation would be $250,000.

To many people, $250,000 seems to be a very substantial sum of money, and it is until it is put in the perspective of the injuries we are discussing. Yesterday, in the course of the debate, I told the story of a 6-year-old boy in my home State of Illinois who went to a downstate clinic with a high fever. Unfortunately, he did not receive appropriate medical care and a jury decided he had been a victim of medical negligence. The doctors who had treated him did not perform the type of medical procedures necessary to monitor his serious condition. As a result of that, this poor little boy at the age of 6 became quadriplegic and uncommunicative. It is now 11 years later. He is 17 years old. He needs care around the clock. He cannot respond to stimulus that ordinary people do. He certainly cannot communicate. His situation for the past 11 years is, frankly, what he will face as long as he is alive.

That is a harrowing prospect for his family and it means they are going to have to dedicate the rest of their lives, as mother and father, to try to make his life on Earth as bearable as possible. So $250,000 in that context has to be taken from a different perspective. It goes beyond his medical bills, of which he will receive compensation, to the question of pain and suffering for him and certainly for his family.

If this young man, now at the age of 17, is going to live 20, 30, or 40 years, what is $250,000 worth? That $250,000 turns out to be a very small amount when we consider that the injuries he suffered and the problems he has endured are going to be there for a lifetime. So for us to say we will decide in the Senate in S. 11, the bill that is before us, that this little boy and his family will never receive more than $250,000 regardless of the circumstances facing him for the rest of his life, I think is totally unfair.

In fact, it is a dramatic departure from where we have been in the United States for so long. We have said, first, that this is an issue to be decided by each State. Each State should decide if there is going to be a limitation on how much money someone can receive if they are a victim of a certain injury or malpractice.

Secondly, we have said historically this is an issue not to be decided by 100 Senators, men and women sitting in Washington, but literally by 12 of this family's neighbors and friends who live in the community, who will try to reach a fair amount of compensation when in fact they find fault on the part of the doctor and the hospital. That is the jury system. It is a system we have believed in in America from the start of this Nation. It really is a system which parallels free elections in America where we say we entrust our Government to the people of this country.

In the courtroom, we entrust these decisions to the people of America, 12 of them chosen at random to come to a fair conclusion. Those who are pushing this bill today say we can no longer trust the jury system in America; we cannot trust 12 of this little boy's neighbors and friends and people in the community to come forward and reach a fair verdict.

I think that is a terrible condemnation of a system of justice which has really been the bedrock of American principles and American values.

It is curious to me that many of the same people who decide today that the jury system consists of people who cannot be trusted will readily trust the jury system when it comes to questions of criminal penalties, penalties as severe as the death penalty. If we trust a jury of 12 to decide the life or death of a criminal defendant, is it not also fair to say we would trust them to decide a fair amount of damages, a fair amount of compensation, for this child and his family?

Well, no. S. 11, offered on the Republican side of the aisle, says the opposite. It says, we will make the decision here. We are smarter. We know what is fair, and $250,000 is adequate compensation for this little boy who will face a lifetime now of care on a daily basis, minute by minute, whose mother has had to quit her job so she can stay home and tend to this 17-year-old boy who was a victim of medical malpractice.

Let me also add that equally unfair and unjust in S. 11 is the treatment of people who are senior citizens, who have been the victims of medical malpractice, because what this bill compensates are medical bills and lost wages, and limits any other recovery to $250,000. So if one happens to be a senior citizen who has no active income, perhaps a little retirement and the money they derive from their savings, and they are a victim of medical malpractice, they are limited to $250,000 compensation.

I will come back later today and talk about a couple who were victimized frankly because a blood bank gave them blood that was tainted with the HIV virus, which resulted in this 70-year-old couple contracting that HIV infection, ultimately dying of AIDS. It was a sad situation and one that was graphic in terms of the malpractice involved. But because they were not wage earners, their compensation under this bill would be virtually nothing.

The medical care which they would receive, of course, would be compensated, but it would only be $250,000 for pain and suffering.

Let's go to the root cause of this debate. Why are we even talking about medical malpractice on the Senate floor? It is because we do have a serious national challenge. In many States, including my own, for many specialities of medical practice we have seen medical malpractice insurance premiums increasing at an alarming rate. When we have asked the General Accounting Office and private firms to analyze why this has happened, they have said there is a variety of reasons that have led up to it. Yes, in fact, there are more settlements in cases involving medical malpractice than there have been in the past, and in some marginal cases more verdicts. It is an indication of the fact there is more medical negligence being discovered, and even the Department of Health and Human Services gave us testimony a few weeks ago that we are facing medical negligence and medical errors across America, in their words, of epidemic proportion. So now we have this huge wave of exposure and liability coming at the medical profession, and naturally there are more lawsuits that are being filed to reflect this wave, this epidemic, of medical negligence.

What has happened on the insurance side to protect the doctors? Sadly, this has been, frankly, a casino mentality among many of the medical malpractice insurers. Back in the Clinton administration, when we had a strong, vibrant, growing economy, when the Dow Jones index was going up regularly and people saw their retirement incomes growing and their savings growing, many people were investing in the stock market and doing well and many insurance companies did as well, too.

In the case of medical malpractice insurers, they would collect the premiums from the doctors, invest them in the stock market or in bonds and do very well.

Now what has happened? In the last 2½ years under this administration, we have seen the economy in recession; we have lost jobs; we have lost businesses; we have seen people lose their life savings; they have made new decisions on whether they have to continue to work.

Business investment, as well, has not been as profitable. These insurance companies that thought they had a winning formula are starting to lose. The premiums collected from doctors, invested in bonds and the stock market, have not been as profitable. Because of this, many of these companies have gone out of business or raised their premiums because of anticipated exposure for medical errors. Those raised premiums have caused real hardship among doctors in America.

Senator DASCHLE came to the Senate floor yesterday—and I tried to make the point, also—to say we understand

this issue is serious. On the Democratic side of the aisle, we have offered to the Republican side of the aisle to come together on a bipartisan basis to deal with the malpractice insurance crisis and the malpractice crisis in America. But we cannot resolve this issue by introducing a bill, S. 11, that only goes after one discrete part of it—limiting the recovery of medical malpractice to victims.

This drastic response is not going to solve the underlying problem. We need to come together on a bipartisan basis as we did on terrorism insurance after September 11. We found a way to do it. But we can only do it if we engage the three elements that can lead to success. Those elements are: First, the medical profession itself. We have to bring together those doctors of good will across America who want to work with us to reduce medical errors, to bring more safety to the practice of medicine, to take away from the practice of medicine those doctors and practitioners who are largely responsible for medical malpractice. Fifty percent of the medical malpractice claims in America can be attributed to 5 percent of the doctors. We need to make certain the medical profession is more vigilant in taking these doctors out of the practice of medicine, are changing the way they practice medicine so fewer innocent victims emerge from this experience.

Second, we need to bring in the insurance industry. I know this is a sacred cow in the Senate, to talk about insurance companies and holding them accountable for the way they are treating doctors across America. But you cannot have an honest conversation about dealing with medical malpractice premiums without talking about the insurance industry. We could cap recoveries across America in every courtroom for every victim of medical malpractice with no guarantee that medical malpractice premiums are going to decrease for doctors across America.

Here is what I think we should do. First, we should eliminate the antitrust exemption for insurance companies across America. To think we allow these companies to collude, to come together and share pricing information to the detriment of their customers—in this case, their doctors—is indefensible. The McCarran-Ferguson Act should be repealed so the antitrust exemption is removed from the U.S. industry.

Second, we need to look at the whole question of reinsurance. Most of these malpractice insurance companies only protect doctors up to a certain amount—perhaps $1 million or $2 million—in terms of their exposure to liability. Then they sell off the additional exposure—$2 million to $10 million, $2 million to $20 million—and buy insurance to cover it. There are five major companies selling reinsurance in the medical malpractice area. Four are offshore and not regulated by any State or Federal regulation in the United States. We have no oversight of the way they are treating malpractice insurers in America. That is a guarantee that, no matter what we do in the Senate, there will still be ultimate vulnerability by the medical profession to unreasonable and excessive malpractice premiums.

The solution involves: Bringing together the medical profession to reduce medical errors, to reduce medical injuries; bringing the insurance industry in to make certain that we have some accountability and fairness in the premium charges; and, finally, bringing in those in the legal profession to make certain that any lawyer filing a frivolous malpractice lawsuit is going to be held accountable for the costs and attorney fees, initially, and ultimately, if he or she continues doing so, banned from filing future lawsuits; also making certain that punitive damages would be eliminated in virtually all medical malpractice cases. All of these factors will move us toward a solution to this problem.

This week, we are going to be visited by many doctors from across the United States. They will come and tell us of their legitimate concerns about malpractice premiums that are hurting their profession and limiting the availability of good medicine and good doctors across America. I do not quarrel with their premise that they have a problem that needs to be resolved, that we need to face squarely and honestly.

But this morning, at 11 o'clock, I will hold a press conference in which we will have five victims of medical malpractice. They will tell their heartbreaking stories, how they went to the doctor, they went to the hospital, and came home so injured and so changed that their lives were never the same. The $250,000 being offered by the sponsors of S. 11 is totally inadequate to the injuries they suffered. The limitation of $250,000 would make them wards of the state and dependent on government and charity for the rest of their life. That is what is being offered on the Republican side of the aisle.

The last point I make is this: When you read S. 11 closely, you will find it is not only about doctors and hospitals, it is also about protecting from liability HMO insurance companies and health care organizations, the makers of medical devices, and those pharmaceutical companies that are found to have been negligent in the sale of their products.

I cannot understand how the medical profession can allow itself to be used by the sponsors of this bill so that those who are coming in to represent these special interest groups—the HMOs and managed care organizations, the pharmaceutical companies, and the medical device companies—get protection, using as their argument the sympathy that is being generated on behalf of doctors who are struggling with malpractice premiums. That is unfair to the doctors; it is unfair to the hospitals; it is unfair to the Senate, that we would include in S. 11 that type of limitation.

Finally, this bill, S. 11, allows for punitive damages in the most limited circumstances. It requires that there be a deliberate act on the part of a doctor for punitive damages to apply, as well as malicious intent being another option under punitive damages.

When I made an inquiry yesterday as to what it would mean if a doctor were intoxicated or an addict to drugs and, because of that intoxication or addiction, performed some medical procedure which harmed a person for life, I was told that punitive damage section would apply. I have to say quite honestly it does not because the language of the section is only about deliberate and intentional conduct, not about the kind of gross negligence involved in addiction and intoxication.

As we look at S. 11, we owe the medical profession as well as the people of America more than is being offered. To bring this bill on a take-it-or-leave-it basis, to say we will have no committee hearings, no amendment process in committee, no opportunity for an exchange of information, is not fair to the people of America. I hope we can do better—I think we can—that when the vote takes place tomorrow on the cloture motion, we will see a number of Senators are going to come forward and ask that we try to resolve this difference in a fair way, in a balanced way, rather than this unbalanced and unfair way being offered.

Mr. REID. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. REID. As I listen to the Senator today—and I am aware of what the Senator talked about yesterday—is the Senator saying he is not opposed to our doing something regarding medical malpractice?

Mr. DURBIN. That is exactly true. The Senator's home State, the State of Nevada, was a classic example of serious problems that were ultimately addressed last year by legislative action when the State of Nevada accepted its responsibility.

We need to deal with this through each State, and we need to find ways on the Federal level to try to make certain we do not have States in crisis, as mentioned yesterday, because of malpractice premiums.

Mr. REID. The Senator is absolutely right. In Nevada, the Governor, Republican Gov. Kenny Guinn, called a special session of the Nevada Legislature to address this problem which was created by one insurance company that decided to take a powder when the stock market fell, as the Senator aptly described.

The Senator, who previously served in the House of Representatives, also said during his statements in the Senate that if we are going to move important legislation such as this, there should be committee hearings discussing the legislation. It is true, is it not, that we have had no hearings on this legislation?

Mr. DURBIN. I would say to the Senator from Nevada, that is accurate. In fact, we had a limited hearing last February on the issue but not on this bill. Senator COLEMAN of Minnesota had a hearing in the Governmental Affairs Committee to talk about the general issue of medical malpractice, where the administration testified we are facing an epidemic of medical malpractice in America. But no one has sat down to measure whether this bill will actually reduce malpractice premiums. The only studies that have been done by the General Accounting Office, as well as by a group known as the Weiss Institute, have come to the conclusion that limiting the recovery of victims in medical malpractice lawsuits is no guarantee of malpractice premiums coming down. In fact, in many cases of States with caps on the recovery, limitations on recovery for malpractice victims, the malpractice premiums for doctors have gone up.

There is no linear connection or guarantee that limiting the recovery for victims is going to help the doctors, yet that is the only solution that is before us on the floor today.

Mr. REID. It is also true, is it not, I say to the Senator from Illinois, that the two studies of the Weiss and the General Accounting Office are not studies that have been paid for, were involved with or directed by attorneys? Is that a fair statement?

Mr. DURBIN. That is exactly right. I would say to the Senator from Nevada, it is true the medical profession feels very strongly on one side and the trial bar on the other. But what I have tried to do is gather information from those who have no axe to grind, people who are trying to analyze this problem honestly. The conclusions they have reached suggest to me this is a much more complex problem than what we see today.

Unfortunately, S. 11 I think is a political answer to a much more serious problem. If this is a question about whether the White House is going to take on the trial bar in some sort of confrontation for the next election, that is one thing. It is an interesting political battle. It is not going to solve the problem, not in my State or any other State. We have to deal with it honestly by saying the medical profession, the insurance industry, as well as the legal profession have to come to the table. We need to have not only committee hearings so we can see publicly what this issue is all about, but we need to have a good-faith effort. We can do it.

I think the Senator from Nevada recalls after 9/11 we had a problem with terrorism, of course, and the threat of terrorism. That had an impact on the construction industry and on investment. So people came to us and said: We can't get people to invest in building new buildings unless we do something about terrorism insurance.

We sat down on a bipartisan basis and worked it out. Senator DASCHLE came to the floor yesterday and said: Use the same model on malpractice. Bring us together, Republican and Democrat alike, and try to find common ground and a solution. If it is not through a committee process, let it be through an honest to goodness, good-faith negotiation, but we can achieve that goal.

Mr. REID. The Senator is aware, is he not, the reason terrorism insurance was held up for so long is that Republicans wanted absolute tort reform, everything involving medical malpractice, slips and falls, rear-end automobile accidents—everything. We said: Why don't we just deal with terrorism insurance? We finally prevailed, and we have done a good job. There is construction going on all over America today, and they are able to go forward because they can get terrorism insurance based upon the legislation we passed.

The Senator, as I understand it—I want to make sure I am correct in this—believes reform is needed?

Mr. DURBIN. Yes.

Mr. REID. No. 2, you believe we should do it through the ordinary process, have committee hearings.

Finally, you believe the insurance industry should be involved in this because the McCarran-Ferguson Act, named after Senator Pat McCarran of Nevada, was passed to give a few years of relief to the insurance industry so they could gather together during the Depression and not be involved with the Sherman Antitrust Act, and now, some 70 years later, they are the only business other than major league baseball that is not subject to the Sherman Antitrust Act. So the Senator believes they should be like other businesses in America, subject to the Antitrust Act.

If we did some reform here and we involved the committee structure and we involved the insurance industry, I think we could move the bill pretty quickly. Does the Senator agree?

Mr. DURBIN. I agree with the Senator.

One other thing that needs to be part of the record: Even if we enacted S. 11, which is the cap on recovery for medical malpractice victims—children, elderly people and families alike—there is no guarantee medical malpractice insurance premiums will come down. In Nevada, significant reform legislation was passed but, as I understand it, the premiums did not start coming down for some period of time, if at all.

Mr. REID. It is absolutely true. The fact is, if you look around the country, insurance rates have not gone down where these medical malpractice reforms have been initiated.

But another thing it doesn't take into consideration is the tremendous harm done to people who have no ability to move forward when a doctor does something wrong to them.

I think the Senator indicated there are about 100,000 people killed because of medical malpractice in America every year. But that doesn't take into consideration the people who are paralyzed, people who are injured and damaged in many other ways. With this cap, these cases simply do not go forward.

So it is really not fair to analyze what goes on in those States because you don't take into consideration the damage, the harm, the pain and suffering of these people who have no way to recover their expenses as a result of a direct negligent act by a physician.

Mr. DURBIN. I agree. I say to the Senator from Nevada, I do not profess to be an expert, but I did, in my private practice as an attorney before I came to the Congress, have several malpractice cases. In some I defended doctors and in some I sued doctors for what I believed to be malpractice. Those are heartbreaking cases and should not be dismissed easily by the Members of the Senate until they sit down and talk to families.

I can recall a family who brought in an infant girl to my office. She had gone to the doctor for her ordinary baby shots, which I am sure the Senator from Nevada and my family have done; we have brought our children in for them without any real concern. This poor little girl, because she had a condition known as roseola, a form of measles that was undetected before the administration of the baby shot, ended up with a serious reaction to the pertussis vaccine for whooping cough and literally became a quadriplegic. This little girl was going to live the rest of her life in a virtual coma-like state and need constant care.

What we hear from the other side of the aisle is that that is not worth more than $250,000.

I would say, if I were the parent of that little girl, I would view this a lot differently. I would want to have a jury of my peers to decide what it is worth, what is the value.

But S. 11 takes away the authority of the jury to make that decision and decides we will make the decision here for every case in America—no matter how serious the injury to the infant or the person who is the victim of malpractice, no matter what the circumstances—to strictly limit it to a $250,000 recovery.

I think that is unfair. I think the Senator from Nevada has made the point.

The last point I will make on this issue is that I think we need to give the doctors immediate relief on malpractice premiums. I am going to introduce legislation with Senator GRAHAM of South Carolina that will provide an immediate tax credit, in addition to the deductibility, an immediate tax credit of up to 20 percent for relief to the specialties that are hardest hit by these increases in premiums for malpractice insurance—neurosurgery, OB/GYN, trauma surgeons. I really believe we need to do something quickly.

S. 11 does nothing but change a law which may or may not, in 3 or 4 years,

result in premiums going down. It is far better for us to do something on an immediate basis, an emergency basis. I hope the medical association and societies across America will take a hard look at this bill—it is being offered in good faith to deal with the immediate crisis—rather than penalize the victims of medical malpractice.

Mr. President, I yield the floor.

Mr. REID. Mr. President, if I could say one thing—I know the Democratic leader is in the Chamber—I have the highest respect and admiration for my colleague from the State of Nevada, Senator JOHN ENSIGN, who has introduced this legislation. He is passionately involved with doing something to solve this medical malpractice crisis. As I have indicated, I have supported his efforts to do something about it. He and I tend to disagree on how to do it. But I want the record to be spread with the fact that I have great respect and admiration for his moving forward on this problem.

I only wish there had been full committee hearings on his legislation. I think it would have improved it before it reached the floor. I think he has been shortchanged by not having his legislation brought before the appropriate committee, had hearings, and then brought here. I think with some changes in this legislation it is something we could all support.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I compliment again, as I did yesterday, the distinguished Senator from Illinois for his great work on this issue and for beginning this educational process that I think has to be a part of the debate at this time.

I also want to thank, as is always the case, the distinguished assistant Democratic leader for his involvement in these discussions as well.

I have concerns about where we are with regard to this issue on at least two counts.

First of all, the procedural count: I wish I had $1 for every occasion when Republicans would lament the fact that the committee process was bypassed. Yet here we are. There has been no hearing. There has been no markup. There has been no committee consideration at all of what is one of the most complex and extremely controversial issues to face the Senate and the country. To bypass the entire committee process and bring the bill straight to the floor does an injustice to the issue.

As Senator REID has noted, a bill of this magnitude deserves careful consideration, deserves the opportunity to be heard, and deserves the chance to have some debate in the committee among the experts who know this issue. I think it would be very helpful.

It is interesting that the president of the Tort Reform Association said don't count on insurance premiums going down if this legislation passes. I think Senators need to know that. If the president of the Tort Association of America says, look, don't expect any relief, what is it we are doing? This isn't from some trial. This is a person who advocates tort reform, but he is in the name of real honesty saying: Look, this is not the reason we are arguing for tort reform today. It is not going to bring down insurance premiums.

I think procedurally we have a real concern about the reason we are here today. I think that is something that ought to be considered very carefully. This is an important bill. It deserves the kind of careful, substantive attention that only committees can bring.

Second, of course, is the issue itself. As the distinguished Senator from Illinois has said so ably, we understand how important it is to address the seriousness of insurance premiums. We have two approaches before us: The one offered by the Senator from Illinois, and the one offered by the Senator from South Carolina which will give immediate relief. We are talking within the next couple of weeks, if this went to the President's desk, immediate relief for meaningful insurance cost reduction.

When I go home that is the issue about which doctors tell me they are concerned. They can't afford to pay the premiums. There is no better way to reduce the premiums than to give them the immediate relief offered in the Graham-Durbin bill. But I must say this is also a recognition of the concern.

There has to be a way to address the problems created when mistakes are made. Tommy Thompson himself—certainly no advocate of the status quo—has recognized that last year, the year before that, and the year before that 100,000 people died as a result of mistakes made in operating rooms, in clinics, and hospitals across the country. That is not my figure. That is not some special interest figure. That is the Secretary of Health and Human Services—100,000 people died.

I oftentimes find myself equating numbers with Vietnam and Vietnam-era veterans. We lost 58,000 people in Vietnam. We are losing almost twice that number every year due to mistakes made in operating rooms and in hospitals.

What I find perplexing—interesting—is that our Republican colleagues, who say the States know best how to govern, are saying: Well, in this case we don't think that is the case. In this case what we think is we know better. Washington is going to dictate to the States what the laws with regard to tort will be. Not only are we going to set the cap at $250,000, but we are actually, under the legislation before us today, going to preempt every single State law except the cap.

We are going to tell the States we know better and we are going to dictate to the States what it is they are going to have to abide by from here on out—total Federal preemption of State law. It is amazing that is coming from our Republican colleagues.

I would also say I am concerned because I can probably even consider looking at caps if there was any conclusive evidence that caps work. There is a very respected analytical group that made, with some fanfare, a decision a couple of years ago to examine this whole relationship between caps and premiums. They announced when they started the study that they did not know how it is was going to turn out. It could be pro-cap or it could be anti-cap. They didn't know. But they believed an objective review of the available information ought to be considered. They studied it. They looked at every single State. They released their findings about 3 weeks ago.

Do you know what they found? They found that there is no relationship. In fact, what they found is, in those States where there are caps, insurance premiums went up more than in those States that didn't have caps.

They are not arguing that caps had anything to do with it. But it is an interesting fact. Those States today with caps have actually seen higher insurance premiums than those without caps, according to this very respected independent study just released.

Both on the substantive as well as on the procedural issue, we have great concern with the fact that we are here today. We have a solution. I would argue to anyone on the other side who really wants to resolve this issue that we go back to what we did last year with terrorism insurance. That, too, was a tort reform question. Member after Member came to the floor and said unless we deal with tort reform we will never solve the terrorism insurance question. We sat together in a bipartisan fashion—Republicans and Democrats—worked out a reinsurance concept and passed it on the Senate floor, finally, after a great deal of tribulation and negotiation, with a large margin.

If you go to New York or to Chicago or to the hometown of the Senator from Illinois or a lot of other places, you will find that the terrorism insurance bill worked. I would argue it worked in part because procedurally we decided to come together and resolve it and solve it. I think it worked in partly because we addressed the issue with real solutions. We didn't get hung up on all of this tort reform because that wasn't the issue there either.

Today, we still celebrate a success story. We celebrate a success story here, too. We have a bipartisan Graham-Durbin bill. It might not be everything. Maybe we can figure out a way to make it an even better bill. I think we have to deal with reinsurance. I think we have to find a way to deal with reinsurance reform. We have to provide immediate relief and the tax credit relief proposed by the Senator from Illinois. We can do that. I think it is important that we do it. I think it is important that we recognize unless we do it that way we are not going to solve this issue.

Cloture will not be invoked tomorrow—not because we don't want to solve this problem but because we don't want to have a bill that is poorly conceived and will not solve the problem and which will be rammed down the throats of the country. We can find a better way to do this.

I would just implore my colleagues on the other side to work with us to make that happen.

Let me again thank the distinguished Senator from Illinois for his work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Democratic leader for his comments and for his leadership on this issue. I think he has shown a good-faith effort in the past to deal with issues and with the complexity of terrorism insurance. And that opportunity is still here today.

This week in Washington, many representatives of the medical profession will come to visit us and talk about the seriousness of this issue. They don't need to convince me; I am convinced.

The question is, How do we resolve it fairly and not just for doctors but for the victims of medical malpractice. We can do this. But I don't believe S. 11 is the way to approach it.

If we are going to allow this to disintegrate into a political face-off between the White House and the trial lawyers of America, perhaps when it is all over someone will have bragging rights for a 30-second ad. It will not help the doctor with whom I met who is serving Primbrook Township, south of the city of Chicago about an hour-and-a-half drive. You will find some of the poorest rural towns in America in Primbrook Township. This doctor is literally giving his life to the poor who need medical care. He said to me 2 weeks ago in Washington: Senator, I am here to receive this Jefferson Award, and I am proud of it, but I need help with malpractice insurance. I want to help him.

Limiting the recovery by malpractice victims may ultimately give someone some satisfaction that they have scored a political victory over the trial bar, or perhaps their limitation of victims' recovery will give them some satisfaction, but it is not going to help that doctor. It is not going to reduce his premiums. It is not going to give him an opportunity to continue his practice.

So I say to my friends in the medical profession—and this doctor is a good example—we honor and respect what you do. We need you. We need to work with you. Do not get so caught up in a political agenda involving the White House and the trial lawyers that you overlook the fact there are many people of good faith and good will who want to sit down and help.

We believe this can be done. It can be done in a way that is not going to deny the parents and the family of the small child, who, as I mentioned earlier, is going to live a lifetime of medical dependency because of medical malpractice. It is not going to be done in a way that is going to deny a woman who went in for simple cosmetic surgery and ended up with horrific burns on her face that required a dozen operations and years and years of suffering. That is not the way to resolve this.

Do this in a fair way for doctors; do it in a fair way for medical malpractice victims. Do not be afraid to call in the special interest group, the insurance companies, and tell them they have to be part of this conversation. We have the power in Congress to bring them in. We have the power to change the laws to make sure they treat doctors and hospitals fairly and to make certain the medical profession comes forward.

It is interesting to me that as I have discussed the issue of medical malpractice with doctors in my State and across the Nation, they have been of one mind and one voice and they have agreed: We need to do more to make certain we reduce the incidence of medical errors.

A doctor, who is a friend of mine, in Decatur, IL, also works on the board of a local hospital. He said he went to the hospital pharmacy where they literally write thousands of prescriptions each year for the patients who come through that hospital and they wanted to find out how many errors had been made in the prescriptions that had been written. They came up with a handful of examples. The doctor said to me: Senator, I know better, and you know better. We're not doing a good enough job here to make certain that mistakes are not made in the drugs that are prescribed and the prescriptions that are written.

We can do a better job—and we should—to have medical safety. Doctors want the best results. They do not want bad results. Certainly, the families and patients do not, either. We can work together to try to improve medical care in America in a professional way.

The bill I am going to introduce is going to allow for the transfer of information, data on medical safety, and the transfer of information without legal liability, so a doctor who would report an incident at a hospital that may lead to a change in a procedure or perhaps to a disciplining of a doctor is not going to be held legally responsible for having come forward with this information.

I think that is the only fair and honest way to deal with this issue. But if we are going to deal with it, let us look at each of those components: the medical profession, the insurance industry, as well as the legal profession.

What I do not want to see occur is what S. 11 really mandates; that is, instead of a jury of 12 in communities across America taking a look at each individual case to decide what a fair, reasonable verdict and outcome might be, we would have a jury of 100, 100 Senators, men and women elected here, who would sit in judgment of every single case in America involving medical malpractice.

We are not going to hear the story of the parents, who are going to come from that downstate community in Illinois, who took their little boy in with a high fever, who expected medical care—which each of us would expect as parents bringing in our baby with a fever to a clinic—and did not receive it because no temperature monitor was in place and, as a consequence, that little boy's high fever led to complications, quadriplegia, and the fact that he now has a lifetime of medical dependence on his parents. He will never enjoy the simple things in life which each of us takes for granted.

We are not going to hear that story in the Senate as a jury would hear in a courtroom. We will not hear the details of his life and what it means now: the pain and suffering he goes through every single day. No, we will not hear those facts. We will not make a decision based on the reality of the malpractice that this family and boy endured.

Instead, we will make a decision, under S. 11, that says $250,000 is the maximum amount that boy and his family will ever receive for the injuries which they have suffered when it comes to pain and suffering. That isn't fair. We should not stand as a jury and make that decision. We ought to trust a jury system that has been part of American justice for a long time, a system that we rely on every single day in thousands of courtrooms across America.

I think a sensible approach is to say that we do have a problem; we will work with the doctors; we will work with the insurance companies; and we will work with the legal profession to find a reasonable alternative to it. S. 11 is not that alternative.

If, in fact, the cloture motion is defeated tomorrow, which means we do not proceed to the bill, I make this offer, not only to the sponsors of that bill but to all who are interested in this issue, that I will personally engage myself in trying to find a reasonable, good-faith alternative that reduces malpractice rates, premium rates, particularly for those doctors who have no experience of wrongdoing—now, there are some doctors paying high rates who, frankly, have to pay them because they have been found guilty of malpractice—but for the innocent doctors, who have given their lives to medicine and who come forward every single day in a valiant effort to save and improve lives, I will stand on their side to make certain that they are treated reasonably and fairly.

Please do not turn to S. 11 as your only recourse because S. 11, being offered on the floor today, is one bill which is as unfair to malpractice victims as the insurance premiums are unfair to doctors in many places in America today. Let us work together—

as we can; as we did under the terrorism insurance legislation—to find a reasonable alternative.

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

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SCHUMER. Mr. President, I ask unanimous consent to address the Senate for about 15 minutes on an upcoming judicial nomination.

The PRESIDING OFFICER. All remaining time is on the majority side. Is there objection?

Mr. ENSIGN. Mr. President, I was scheduled to make a statement on the medical liability bill, and I am prepared to do that at this time.

Mr. SCHUMER. Mr. President, I ask the Senator how long he intends to speak.

Mr. ENSIGN. Probably 10, 20 minutes.

Mr. SCHUMER. I ask unanimous consent that after the Senator from Nevada finishes his remarks, I be recognized for 15 minutes on the nomination of Mr. Wolski on which we will vote at 11:45 a.m.

The PRESIDING OFFICER. It was the Chair's understanding there would be a substitute in the chair so he could make a statement on the Republican time following Senator ENSIGN's speech and that the debate would begin at 11:30 a.m. on the judges.

Mr. SCHUMER. Mr. President, are you saying there is no time between now and 11:30 a.m.?

The PRESIDING OFFICER. All the time has been reserved on the Republican side.

Mr. SCHUMER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I have come to the Chamber to talk about the legislation we are going to be discussing for the next couple of days. It is very important legislation that affects people in virtually every State in the country.

We have patients today being denied access to medical care in many States across the country, and we are going to explore why that is happening and what I believe the solution should be. Several States are losing medical professionals at an alarming rate, leaving thousands of patients without a health care provider to serve their needs.

In Bisbee, AZ, the town's only maternity ward closed. Today expectant mothers must drive more than half an hour to have their babies delivered. In Mississippi, 11 out of 21 obstetricians terminated service in four rural counties. In my home State of Nevada, our only level 1 trauma center closed for 10 days, leaving every patient within 10,000 square miles unserved by a trauma unit.

The bottom line is patients cannot get care when they need it most. By definition, this is a crisis. This crisis boils down to two factors: affordability and availability of medical liability insurance for providers.

The States in red are currently in crisis. A number are new States in crisis. We can see they have been added, including the Chair's State of Wyoming. My State has been in crisis for quite some time now, and it has led to a lot of the national press, but it is certainly not alone. The States indicated in yellow are the States that have problem signs. The States that currently seem to be OK are indicated in white, and we can see that very few States are in pretty good shape. Most of those States have enacted medical liability reform that has been in place long enough to stabilize the rates on medical liability insurance.

On affordability, the American Medical Association found that in the year 2000, medical liability insurance rates increased at least 30 percent in 8 States and by at least 25 percent in more than 12 other States. In this past year, the physicians in my State would be pleased if the rates had only gone up that much. These rates are forcing more physicians, hospitals, and other health care providers to limit their practices or to leave the profession altogether.

Anecdotally—and obviously this hospital would not want this word to get out—at this time of the year when they get applications for new residents, they normally get about 18 to 20 residents applying for slots at that hospital. That is an average of 18 to 20 each year. This year they have received zero applications, and that is because of the medical liability crisis that is occurring in my State.

Rates are forcing so many physicians and hospitals into a situation they did not want to be in. They went into these practices because of the compassion they felt for patients, and they are not being able to deliver the services because of the out-of-control costs of medical liability insurance.

On the issue of availability, thousands of doctors nationwide have been left with no liability insurance as major insurers are either leaving the market or raising the rates to astronomical levels.

Why are insurers raising rates or leaving the market? Because there is no stability in the marketplace for providing medical liability insurance. Why is that the case? Because our health care system is being overrun by frivolous lawsuits and outrageous jury awards. This excessive litigation is leading to higher health care costs to every American and an unstable peace of mind for our health care providers.

This chart shows the average payment in red from the year 1989 to the year 2001 and the median payment. We can see the dramatic increase, especially in the last few years, and if this chart continued out, it is continuing that trend up to the point where the average being paid in jury awards is continuing to skyrocket, and it is doing that because of the number of over $1 million awards being made by juries.

This is a chart reflecting the median jury award. We can see this is the $1 million line, and we can see what has happened. It has gone up. This, unfortunately, has created a situation where doctors, hospitals, and health care providers cannot afford to buy the insurance they need to continue practicing.

This excessive litigation is leading to higher health care costs for every American and an unstable peace of mind for our health care providers. Health care professionals are forced to practice defensive medicine by ordering unnecessary tests just to avoid being sued for ''underdiagnosing'' their patients. A study by the Department of Health and Human Services found defensive medicine is costing the Federal Government an estimated $28 billion to $47 billion in unnecessary health care costs.

Who else pays for these unnecessary costs? Every American with health insurance in the form of higher premiums and, obviously, the American taxpayer. Too often costs are so great that employers have to stop offering coverage altogether, thereby increasing the number of uninsured Americans. A lot of those uninsured Americans are younger, healthier people. So the people who are left in the health care field are a higher risk pool, which drives up the cost even more, which causes more and more people to not be able to afford health care insurance; therefore, more uninsured. It is a vicious cycle that goes on and on. This cycle has to be stopped. We can do that by passing national medical liability reform right now.

Comprehensive reform is critical on a national level because every American patient should have access to affordable and high quality health care. Likewise, every responsible, meritorious member of the health care community should not be afraid to provide such care because of the fear of litigation.

To achieve these reforms, I have introduced the legislation that is before us today, known as the HEALTH Act. It has several key reforms. It includes a $250,000 cap on noneconomic damages, joint liability, and collateral source improvements, and limits on attorney's fees according to a sliding scale award.

In addition, my legislation includes an expert witness provision to ensure that relevant medical experts serve as trial witnesses instead of the so-called professional witnesses who are used to further abuse the system today. If one talks to physicians, there is literally a whole industry that has been created of these ''professional witnesses.'' It would make sense that if somebody

was testifying in a case involving neurology, that the person should have expertise in the field of neurology. I think that makes incredible common sense, but that is not the way it works today. As long as somebody is a physician, they are able to testify and be called an ''expert.''

Our legislation today says that if they are to be called an expert, they must have expertise in the field in which they are testifying. Over 50 organizations are in support of my bill, including business groups, medical associates, device manufacturers, and the list goes on. I have heard from people all over my State, and not just physicians. This is not a doctors versus lawyers issue. This is about patient access to medical care. That is why we have heard from nurses, physical therapists, and people who work in doctors' offices and understand the problem that is going on. We have heard, of course, from physicians, but we have also heard mostly from the patients who understand; we have gotten so many calls from women whose physicians used to deliver babies. The women are now pregnant and their obstetricians no longer can deliver babies because they may be a high risk delivery and they can no longer afford to provide that type of a service.

The broad coalition that has come forward to urge meaningful reform highlights that this problem affects a number of industries, not only our health care system. Starting the Senate debate with our strongest proposal is critical because we must not approve a weak bill that the President will not be able to sign into law. Doing something weak as a Band-Aid would actually make things worse, and that is why we need very strong legislation.

Opponents of this legislation ask how I know this approach works. It works because this legislation is modeled after the highly successful legislation that passed and has been in place for over 20 years in California. It is known as MICRA. MICRA has brought about real reform to California's liability system. The number of frivolous lawsuits going to trial has declined dramatically. Injured patients receive a larger share of their rewards because of the limits on the fees that go to the trial attorneys. Disciplinary actions against incompetent health care providers have increased.

The bottom line is that California's medical liability system works. This is a quote by one of our colleagues from the other side of the aisle, Senator DIANNE FEINSTEIN, January 14, 2003:

> With the California law, we have a time-tested solution. California passed MICRA in 1975, so we have our 27 years of successful experience with the law.

One important point, neither MICRA nor my legislation limits the amount of economic damages that an injured patient can recover. As in every other profession, mistakes are made by health care providers. I practiced veterinary medicine after graduating from Colorado State University. I saw firsthand that mistakes are made.

Medicine is an art and a science, and there is a human being practicing that very inexact science. Every day somewhere mistakes are made. They are unfortunate. We should do everything we can to limit those mistakes, but we know mistakes will be made.

Sometimes they are mistakes in judgment. When one looks back in hindsight, they can see how they could have made that decision differently. But when they are faced with it at the time, because the human body does not read the textbook—this is how the disease is supposed to progress, this is how the injury is supposed to progress—the human body does not read that. So sometimes it reacts differently to the way the physician was trained, and so what looks like a mistake in a court of law could have actually been a very difficult judgment call. Yet a lot of these are frivolous lawsuits that are going to trial.

In our legislation, we are trying to bring some balance back to the system. We do limit the amount of noneconomic damages, pain and suffering as it is most often referred. People say, how can that be limited? How can losing a leg be limited or how can a dollar figure be put on that?

Well, a dollar figure can never be put on it. No amount could ever be justified to somebody for some of the things that happen to them, but we have to look at the overall good of our system.

With the system we have now, we are losing doctors, and we are losing the kind of patient care we need. How does one put a dollar figure on the doctor not being there, on the health care provider not being there, on the hospital closing, on the trauma center closing?

We had a press conference several months ago in Washington with a woman whose father was in Las Vegas visiting, and it happened to be the week that our trauma center closed. During that week, unfortunately, he needed our trauma center. I cannot tell my colleagues that he would have lived if it was open, but the reason trauma centers exist is because they provide intense expertise in the area of trauma. They have great results, much better than normal emergency rooms. Unfortunately for this family, that trauma center was closed.

By the way, the only way we were able to reopen the trauma center in Las Vegas was because the State stepped in and said that we are going to limit not to $250,000, but we are going to limit to $50,000 any injuries and malpractice that occurs. That is not just noneconomic, that is even economic damages. That is the only way that the trauma center in Las Vegas was able to open. We are losing all kinds of experts in emergency rooms in other areas in Las Vegas as well.

People talk about decreasing the amount of mistakes by physicians, and we need to do that. It is very difficult and very complex to do. One of the ways we can do that is to enact legislation to encourage voluntary reporting. The current system actually is a protectionist-type system that if somebody voluntarily reports mistakes, they set themselves up for lawsuits. So we have no way to follow where the mistakes are being made and to point out trends so we can correct those mistakes.

The House has passed patient safety legislation. We are going to be working on that in the HELP Committee, of which I am a member. I hope, in a bipartisan fashion, we can craft patient safety legislation that will make the outcomes more of what we all want to see. That means fewer mistakes. But understand that there is no way to have a mistake-free environment in such an area where the science is so inexact. We have an opportunity here.

We have an opportunity with so many States now in crisis. The States in red on the chart are in crisis; the States in yellow show serious problem signs. We have a chance in the Senate—the House of Representatives has already enacted this legislation—to make a real difference in patients' lives. We can make sure trauma centers do not close. We can make sure when a woman needs access to an obstetrician she can have that access.

A friend of mine has Parkinson's disease, lives in Las Vegas, and has to go to Loma Linda where his specialist treats him. We do not have that particular field of subspecialty in southern Nevada. He talked his physician into coming to Las Vegas before the crisis hit Nevada. When the crisis hit and we lost our major carrier of medical liability insurance, the rates literally doubled and tripled overnight, and that physician decided to stay in California. Why? Because they have enacted a law that has kept rates reasonably low.

My next chart shows differences in larger cities around the country. First, OB/GYN in Los Angeles, a well-to-do area that has enacted medical liability reform, $54,000 on average for an OB/GYN; in Denver, also where they have had enacted legislation, $30,000. Then we have New York, Las Vegas, Chicago, with Miami the worst. These are places that do not have medical liability reform. In Miami, rates are over $200,000 on average for an OB/GYN.

People say doctors make plenty of money. Have you talked to an OB/GYN lately about their average income? In Las Vegas, the average income is around $200,000 for an OB/GYN who goes through 8 years of undergraduate and medical school and then a 5-year residency. They come out $250,000 to $300,000 in debt minimum and they work about 100 to 110 hours a week to make $200,000. And their rates now in Las Vegas are around $130,000 to $140,000, up from a couple of years ago around $40,000 or $50,000 a year.

Because of managed care they are not able to increase their rates, so it comes out of their pockets. That is why a lot of them are leaving our

State. That is why a lot of new people are not going into the practice of obstetrics and gynecology. Especially for delivery of high-risk patients, rates have skyrocketed. Many physicians simply will not treat high-risk patients.

What are the women to do with a high-risk pregnancy? More and more women today are choosing to have babies later and later in life, and more and more of them have high-risk pregnancies as a result. With fewer and fewer doctors able to deliver high-risk pregnancies, this does not add up. That is why it is so critical to enact this legislation before the Senate today.

I know where the politics lie. We will probably not be able to pass this legislation at this point. However, I want people to take a hard look, talk to the patients in your States, find out what is really happening at the grassroots level. This is not a question of how much money a physician makes. This is not a question of whether hospitals or insurance companies are going to be profitable. This is a question of whether when somebody needs the health care services to save lives or deliver babies, that health care will be there because the provider is there.

I am passionate about this issue because people are in jeopardy of not getting the kinds of lifesaving services they need, the types of services that improve the quality of life for so many Americans. That is why this legislation is so critical today.

As we go forward over the next 24 hours debating this bill, I encourage Members to have a healthy debate with an up-or-down vote and start hearing from the American people on this issue. If Senators listen to their constituents, they will hear loudly and clearly we need to reform our medical liability system so we can afford to have health care that is so desperately needed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Are we in morning business?

The PRESIDING OFFICER. We are in morning business with remaining time on our side of 4 minutes 21 seconds.

Mr. REID. Mr. President, I ask that the Senator from Idaho be given whatever time he needs. He is talking about a very important subject.

The PRESIDING OFFICER. There is a unanimous consent to begin debate on judges at 11:30.

Mr. REID. I ask unanimous consent the Senator have whatever time he needs up to 25 minutes to the hour for this very important statement.

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

BIRTH ANNOUNCEMENTS

Mr. CRAIG. Mr. President, the Democrat leader and I were visiting a few moments ago about our Fourth of July break and what we were doing. That is one of the reasons I am speaking this morning. I thank the Senator from Nevada for that courtesy.

We all went home during the Fourth of July break to celebrate a birthday, the birthday of our great Nation. We gathered with family and friends. We set off fireworks. Some Members were in parades. It was all about a birthday, the birthday of this great Nation.

My wife Suzanne and I were also home in Idaho because of other birthdays. On May 31 of this year, our daughter Shae and her husband David had twins. Two new grandchildren entered both Suzanne's and my life, a boy and a girl, born on May 31. The little boy's name is Drew Calvin Howell and he weighed 5 pounds and 3 ounces. His sister, I am sure always to be called the little sister, is Peyton Shae Howell, and she was born at 11:54. Drew was born at 11:32. She weighed 4 pounds and 1 ounce. They are twins and were premature so they stayed the first 3 weeks of their lives in intensive care in a Boise hospital before they were allowed to come home.

Here we are, Fourth of July, and they are really home for the first time. It is the first time grandpa had a chance to hold them and love them and see them and be around them. It was a treat for our family but especially for Suzanne and myself to be with our grandchildren.

This Fourth of July in Idaho with our family took on special meaning as we celebrated the birthday of these grandchildren, these twins, with our daughter Shae and her husband David. It is always an important time in families when grandchildren enter them. Drew and Peyton are the sixth and seventh grandchildren, so we feel very privileged by that.

Often we come to the floor to talk about momentous and meaningful events. The Republican Senator from Nevada just spoke about a critical issue of reforming health care in our country, and malpractice. But probably there is no more important event than when grandchildren enter our lives.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DAVID G. CAMPBELL, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

The PRESIDING OFFICER. The hour of 11:30 having arrived, the Senate will proceed to executive session for the consideration of Executive Calendar No. 227 until the hour of 11:45, with the time equally divided between the chairman and the ranking member of the Judiciary Committee or their designees.

The clerk will report.

The legislative clerk read the nomination of David G. Campbell, of Arizona, to be United States District Judge for the District of Arizona.

The PRESIDING OFFICER. The Senator from Idaho.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT

Mr. FRIST. Mr. President, I ask unanimous consent that the cloture vote with respect to the Wolski nomination be vitiated; provided further that at 2:15 today the Senate resume the motion to proceed to S. 11; further, I ask unanimous consent that on Wednesday the time between 9:30 a.m. and 11 a.m. be equally divided between the two leaders or their designees; that at 11:30 the Senate proceed to the vote on invoking cloture on the motion to proceed to S. 11; and, regardless of the outcome of that vote the Senate then proceed to an immediate vote on the confirmation of Victor Wolski to be a judge of the U.S. Court of Federal Claims.

I further ask unanimous consent that immediately after the confirmation of the Wolski nomination the Senate proceed en bloc to Executive Calendar Nos. 89, 129, and 130; and, further, that the nominations be confirmed and the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Finally, I ask unanimous consent that following that action the Senate then proceed to the consideration of Calendar No. 77, S. 925, the State Department authorization bill.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, reserving the right to object—I will not object—I will make a comment and then pose a clarification.

I talked to the majority leader earlier today about the concerns that we have regarding Mr. Wolski. Although it was not our intent to extend the debate indefinitely, it was our view that, given the nature of his nomination, it deserved a little additional attention and some specific time for debate beyond that which we were provided this morning.

I wish to express my appreciation to the majority leader for giving us that opportunity. I hope, if there are breaks in the debate either today or tonight, that Senators who have an interest in this particular nomination use that time in addition to the amount of time that is earmarked for the debate on the