

nomination tomorrow morning. So we will certainly find a way in which to make that part of the schedule.

The clarification: As I understand it—and I ask for the majority leader's affirmation—Nos. 89, 129, and 130 are the nominations involving the Federal Claims Court. They are the other nominees whose names are still pending on the Executive Calendar. I ask the majority leader if that is, indeed, the case.

Mr. FRIST. Mr. President, that is the case, and the understanding as put forth in the unanimous consent request is that we proceed to them en bloc. They are the other three on the claims court.

Mr. DASCHLE. Mr. President, I have no objection.

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

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to speak for no more than 2 minutes on the nomination of David Campbell upon which we are about to vote.

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

Mr. KYL. Mr. President, I advise my colleagues that the person we are about to vote on is one of the smartest candidates for Federal district court that I have ever seen nominated by a President of either party. His name is David Campbell. He is nominated to be a U.S. District Judge for the District of Arizona.

He has a distinguished record in the State of Arizona, primarily with the Phoenix law firm of Osborn and Maledon. He was a graduate of the University of Utah Law School in 1979, where he was a note editor on the Law Review and was awarded the Order of Coif.

He clerked for both Judge Clifford Wallace for the U.S. Court of Appeals for the Ninth Circuit and for U.S. Supreme Court Justice William Rehnquist.

He has practiced primarily in the civil area but has a broad experience, including a lot of work with the Arizona State Bar Association's Committee on Rules of Professional Responsibility, and he has been cobar counsel in a majority bar disciplinary case.

In addition to his work in the law practice, he has taught as adjunct professor of law at the Arizona State University Law School and was a visiting professor at the J. Reuben Clark Law School at Brigham Young University where he was named Professor of the Year.

He has published articles and has had a distinguished career as a lawyer in the State of Arizona.

I think the Senate will be proud to have confirmed him to the Federal bench. He epitomizes what we are looking for in judicial temperament, intelligence and integrity, and I think the State of Arizona and the U.S. bench generally will be the better as a result of our confirmation of David Campbell.

I commend the President for his nomination of David Campbell.

I also express appreciation to David's wife Stacey and their five children for putting up with what will now be a career on the Federal bench for this very fine candidate, David Campbell.

I urge my colleagues to support the confirmation of his nomination to be a U.S. Federal judge.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of David G. Campbell to serve as a judge of the United States District Court for the District of Arizona.

David Campbell is an extremely well-qualified nominee with a significant amount of litigation experience, and he will make an excellent addition to the federal bench.

He received his undergraduate degree magna cum laude, as well as his law degree, from the University of Utah—which, in my view, is a reliable and persuasive indication of his excellent judgment.

Upon graduation from law school, Mr. Campbell clerked for Ninth Circuit Judge Clifford Wallace, and for then Associate Justice William Rehnquist on the United States Supreme Court.

He joined the Phoenix law firm of Meyer, Hendricks, Victor, Osborn & Maledon in 1982 and became a partner there in 1986. Since 1995, Mr. Campbell has been a partner at its successor firm, Osborn Maledon, where he practices in the area of general civil litigation. The American Bar Association bestowed on Mr. Campbell its highest rating of unambiguously well qualified in recognition of his outstanding legal skills and reputation.

In addition to his distinguished legal career, Mr. Campbell has been a great asset to his community and has donated many hours of pro bono service and volunteer time to help individuals and families in need in his community. His volunteer service has included building homes for the homeless in Mexico, providing Christmas supplies to crises nurseries, and providing back to school clothing for disadvantaged children. He was also named Professor of the Year in 1991 by the J. Reuben Clark Law School at Brigham Young University for his service as a visiting civil procedure professor.

I am confident that David Campbell will be a model jurist, and I urge my colleagues to join me in supporting his confirmation.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David G. Campbell, of Arizona, to be United States District Judge for the District of Arizona?

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

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Georgia (Mr. MILLER), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 263 Ex.]

YEAS—92

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|-----------|-------------|-------------|
| Akaka | DeWine | Lott |
| Alexander | Dodd | Lugar |
| Allard | Dole | McCain |
| Allen | Domenici | McConnell |
| Baucus | Dorgan | Mikulski |
| Bayh | Durbin | Murkowski |
| Bennett | Ensign | Murray |
| Bingaman | Enzi | Nelson (NE) |
| Bond | Feingold | Nickles |
| Boxer | Feinstein | Pryor |
| Breaux | Fitzgerald | Reed |
| Brownback | Frist | Reid |
| Bunning | Graham (SC) | Roberts |
| Burns | Grassley | Rockefeller |
| Byrd | Gregg | Santorum |
| Campbell | Hagel | Sarbanes |
| Cantwell | Harkin | Schumer |
| Carper | Hatch | Sessions |
| Chafee | Hollings | Shelby |
| Chambliss | Hutchison | Smith |
| Clinton | Inouye | Snowe |
| Cochran | Jeffords | Specter |
| Coleman | Johnson | Stabenow |
| Collins | Kennedy | Stevens |
| Conrad | Kohl | Sununu |
| Cornyn | Kyl | Talent |
| Corzine | Landrieu | Thomas |
| Craig | Lautenberg | Voinovich |
| Crapo | Leahy | Warner |
| Daschle | Levin | Wyden |
| Dayton | Lincoln | |

NOT VOTING—8

| | | |
|-------------|-----------|-------------|
| Biden | Inhofe | Miller |
| Edwards | Kerry | Nelson (FL) |
| Graham (FL) | Lieberman | |

The nomination was confirmed.

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The Senator from Wyoming is recognized.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate begin a period of morning business until 12:30 p.m.

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

PATIENTS FIRST ACT

Mr. ENZI. Mr. President, throughout the West, and all over the country,

more and more physicians are closing up shop and moving their practices out of State because they can no longer afford their medical liability insurance premiums in States that don't have some kind of a control over the amount that can be awarded.

Whenever I go home for a town meeting or when I visit with constituents, I hear story after story about people who are facing the loss of the sole option for health care in their towns because of the skyrocketing premiums their doctors must pay.

One constituent told me about her family physician in Newcastle, WY. She had to close her doors because the cost of insurance premiums made it impossible for her to provide obstetrical services to the pregnant women of the town. She said: Telling a pregnant woman I won't be there to deliver her baby was one of the hardest things I had to do as a family physician.

She then joined two other doctors in Newcastle to announce as of July 1 they would be unable to deliver babies because of a more than 50-percent increase in their liability insurance premiums. That means pregnant women in the Newcastle area will now drive 30 to 90 miles when it comes time to deliver their babies. This is a problem for the people of Newcastle, but it is one that also faces the people who live in a lot of towns throughout my State of Wyoming and many other States.

Take Jackson, WY, for instance. A surgeon there paid \$16,000 for liability insurance in his first year in practice. He is now facing an increase in his rates that will place his premium at \$164,000. That is a jump of \$148,000 in 1 year. Emergency room and trauma doctors are facing similar jumps in the cost of liability insurance. An emergency room doctor in Rawlins, WY, nearly closed his practice after his insurance company announced it would no longer provide coverage for emergency room services. Fortunately, his hospital was able to find him coverage at the last minute, but this is merely a temporary solution to a critical problem.

Recruiting physicians to practice in rural States such as Wyoming is a difficult job. The high cost of medical liability premiums is making it nearly impossible. These examples highlight the problem we are facing. This problem is not just about lawsuits and insurance rates, it is about people who cannot get the medical attention they need. It is about communities without doctors to serve them. It is about a health care system in crisis.

The cost of medical liability insurance and the role of medical litigation raise very complex issues, but the focus is not and should not be on doctors or trial lawyers or insurance companies fighting among themselves. Our focus should be on patients and on ensuring accessible and affordable health care for all Americans. In Wyoming, ensuring access to affordable health care is a persistent challenge. We probably

would have a shortage of health care providers even if our medical liability system worked perfectly, but the costs of medical litigation and of medical liability insurance are taking matters from bad to worse for the people of my State.

In fact, a study released yesterday by the Agency for Health Care Research and Quality found that States that limit pain and suffering awards in medical lawsuits have more physicians per capita than States such as Wyoming that have no such limits.

Here are some other examples of the impact this crisis is having on Wyomingites:

Two physicians who practice internal medicine in my hometown of Gillette have been notified that their medical liability insurance will be canceled as of July 31—not increased, canceled. If they are unable to find insurance coverage to replace their canceled policy in 2 weeks, they will be forced to close their practice in a town that is already experiencing a shortage of primary care doctors.

Another doctor in Casper, WY, was barely able to find insurance coverage for this year. The doctor delivers more than 350 babies each year. Nearly half of the mothers are covered by Medicaid. He also performs nearly one-half of the gynecological surgeries in the Casper area. The only insurance he was able to find cost him \$140,000 per year with an additional \$69,000 to purchase "tail" coverage in case he is sued for something that happened before his new insurance took effect.

In Wyoming, a physician who delivers a baby can be sued any time until the child's eighth birthday. So this "tail" is quite long, which means the premium could be quite high. In addition, this coverage is a short-term policy only good for 1 year, and he expects his cost of insurance will increase substantially again next year. Without his service, many pregnant mothers will find it difficult to obtain important prenatal care, especially expectant mothers in low-income families.

Earlier this year, a doctor in Wheatland, WY, went to a high school basketball game between the Wheatland Bulldogs and the nearby Douglas Bearcats. At the game, he announced he would not be delivering any more babies in Wheatland or Douglas and may be leaving the State because of the cost of liability insurance. The irony is that he had delivered just about every player on both teams. This was not somebody new in practice.

We also have doctors who are being forced to leave Wyoming to find relief from the financial burden of liability insurance. One doctor from Riverton, WY, grew up there, married a native of Wyoming, and returned to Riverton to raise his family and practice medicine in the State he loves. But between paying off student loans from medical school and paying expensive premiums on liability insurance, he is being forced to move to a State that has lim-

its on pain and suffering awards. By moving, he will reduce his premiums by \$43,000 a year.

The threat of lawsuits is enough by itself to raise insurance premiums in a State such as Wyoming. Plus, with so few doctors purchasing insurance in the pool, one major payout, whether the doctor was at fault or not, can really send premiums for every doctor right through the roof. As a result, many doctors in Wyoming are moving to States with larger risk pools and fairer liability laws, just as their colleague from Riverton is doing.

People who are truly injured by errors made by health care providers ought to be compensated fairly for their losses. However, the medical justice system today does not achieve this objective. If fair compensation is the standard, our medical justice system falls woefully short of the mark. Most people who are injured as a result of health care errors do not receive any compensation. However, some who are injured receive multimillion-dollar judgments as compensation for a bad outcome often without regard for whether the physician or hospital was even negligent.

The unpredictability of our medical justice system really does not serve patients or providers well. The only people who come out ahead are the personal injury lawyers who happen to find the right case. When it becomes impossible for insurance companies to predict their losses with any certainty, premiums go up. It is a fact of the business, and it is no different for property insurers or life insurers than it is for medical liability insurers.

Yes, people are hurt by health care errors, but skyrocketing medical liability premiums are hurting people, too. They are hurting physicians and hospitals in my home State by forcing them to curtail services or, in the case of doctors, to leave their practices entirely. Those doctors who continue to practice now look at each patient as a potential lawsuit. So they order more tests, whether or not the patient needs the tests. They spend less time discussing a course of treatment with the patient so they can spend more time writing a report after the appointment to justify the treatment decision in case they get sued.

Ordering more tests and writing more reports costs an already overworked doctor time with his or her family and time to catch up on his or her sleep. Doctors should not have to make choices between what is right for their patients and what is right for themselves, but our medical litigation system does not offer them a real alternative.

Most importantly, the medical liability crisis in my State is hurting innocent citizens who are losing their trusted hometown doctors to other States that have reformed their medical justice systems.

What do we know about our overall system of medical justice in America

today? We know compensation to patients injured by medical errors is neither prompt nor fair. We also know verdicts with huge awards that do not match the severity of injuries or the conduct of the defendants destabilize the insurance markets. This sends premiums skyrocketing, which forces many physicians to curtail, move, or drop their practices. This leaves patients without access to necessary medical care.

Finally, we know litigation does nothing to improve quality or safety. In fact, the constant threat of litigation drives the inefficient and costly practice of defensive medicine and also discourages the exchange of information about preventable health care errors that we could use to improve the quality and safety of patient care.

The current medical liability crisis and the shortcomings of our medical litigation system make it clear that this is the time for a major change. We need a medical justice system that promotes accountability and fairness instead of discouraging them.

Regardless of how we vote on this legislation before us, we all ought to start working toward replacing the current medical tort liability scheme with a more reliable and predictable system of medical justice. We need a system that restores rationality to the way in which we compensate the injured and learn from mistakes. We need a system that restores the trust that patients and providers used to have in each other. It is incumbent upon all of us to strive for such a system so that we may raise the overall standard of health care in this country.

The legislation we are considering today is an important step in the short term toward making the medical justice system work better for everyone, not just a fortunate handful of personal injury lawyers. I urge my colleagues to join me and vote for this bill.

I ask unanimous consent that at 2:15, Senator KYL be recognized to speak for up to 15 minutes to be followed by Senator FEINSTEIN for up to 25 minutes.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH.)

PATIENTS FIRST ACT OF 2003— Motion to Proceed—Resumed

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. REID. Mr. President, if the Senator will yield just for a brief second, it is my understanding the Senator from Arizona has authority to speak up to 15 minutes, followed by a 25-minute

speech by the Senator from California. Is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that following the statement of the Senator from California, Senator CORNYN be recognized for 30 minutes, followed by Senator HOLLINGS for 30 minutes, and following Senator HOLLINGS, I ask that Senator VOINOVICH be recognized for up to 30 minutes, and then he would be followed by a Democrat.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Arizona.

Mr. KYL. Mr. President, I am pleased to address one of the most important issues I think we are going to be talking about all year. I hope our colleagues will permit us to conclude our debate with a vote so we can actually adopt some legislation to deal with this crisis of lawsuit abuse in the United States. Some call it medical malpractice reform. Whatever you call it, we have to deal with it.

Unfortunately, what we have heard is that some of our colleagues are going to prevent us from having a vote on the bill that is before us, S. 11. It is a bill that addresses one of the most fundamental problems we have, and that is access to available quality medical care by a lot of people in our society today. We need to reform this flawed medical malpractice system which is prohibiting people from getting the quality medical care they need and deserve.

We debated just before the Fourth of July recess Medicare reform to provide prescription drug benefits to all of our senior citizens. We took a lot of time talking about why our senior citizens needed access to care and how we were going to improve that access. But all of that will go for naught, it will do no good, if there are no hospitals and there are no pharmacists, if there are no physicians and other health care providers—or an insufficient number of those providers—to help those people in need, whether they be senior citizens or others, because of the high cost of malpractice premiums and therefore the inability of these providers to continue to serve the people in their communities.

Last year, the American Medical Association released a study on this lawsuit abuse problem. It concluded that 12 States were having a full-blown crisis and that 30 States were seeing serious problems in terms of the ability of physicians and hospitals to stay in practice to take care of their patients.

Today, just a year later, that study has been updated and the AMA has now concluded that 19 States are having a full-blown crisis in dealing with the medical malpractice insurance rates just for physicians. Let me give some examples of how this is affecting different communities around the country so you can see it is truly a nationwide problem.

In my State of Arizona, health care providers have experienced dramatic increases in their insurance rates. Between 2001 and 2002, two hospitals in Phoenix saw a threefold increase in their malpractice premiums, paying more than \$1.7 million. Meanwhile, in Winslow, AZ, the hospital premiums have more than doubled, to \$1.8 million.

Some of you know the town of Winslow, AR, from a famous song by the Eagles. It is a town with great history and rich in tradition in Arizona but it is not very big. It doesn't have the patient base to support a hospital that has to pay almost \$2 million a year in medical malpractice premiums. It is not just in my State of Arizona. Methodist Hospital in south Philadelphia recently closed its maternity ward and prenatal program because of its medical liability insurance rates. Greenwood Hospital in Mississippi was unable to keep its level II trauma center rating because the neurosurgeons in the area had left citing the high cost of liability insurance.

I spoke with a woman whose husband had been very seriously injured in an automobile accident in Mississippi. She told the story of how—because of the lack of physicians and because of the high cost of premiums—her husband has suffered so terribly as a result of that accident and the inability to get quick medical attention.

Back to my home State of Arizona, the Copper Queen Community Hospital in Bisbee, AZ, was recently forced to close its maternity ward because the family practitioners in that community were looking at a 500-percent premium increase. Expectant mothers now must travel more than 60 miles to the closest hospital, which is either in Sierra Vista or in Tucson. According to the recent news accounts, four women have since had to deliver babies en route.

To cite the news accounts, Time magazine has a June 9 cover story about the doctor being out and why so many patients are losing doctors to the rising cost of malpractice.

This is now truly a national event.

In the Time magazine piece dealing with this question of physicians having to leave the practice, there is a particularly interesting story about a woman in Arizona whose name is Vanessa Valdez. The title of the story is "Taking the Highway to Have a Baby." The story points out that Vanessa has to drive about 50 miles to see her OB/GYN and to have a baby. She lives in the town of Douglas, which is on the Arizona-Mexico border. But there is no obstetrician within an hour's drive to deliver her child. There were six family practitioners in that community but they couldn't afford the soaring malpractice premiums. As a result, the hospital was forced to close its delivery room, and suddenly rural Cochise County has but one delivery room for the 118,000 residents. That is in Sierra Vista, 50 miles from Valdez's home of Douglas.