The PRESIDING OFFICER. Five minutes fifty seconds.

Mr. HARKIN. I understand that the Senate will then resume consideration of the motion to proceed.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Mr. President, I am going to ask unanimous consent, since I had 15 minutes—I am going to ask unanimous consent that I be allowed to speak for 5 minutes as in morning business and then the Senate would then interrupt my presentation to return to the motion to proceed and that I be recognized to finish my statement then.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, might I ask—reserving the right to object, may I ask unanimous consent that the Senator from Iowa be given 15 minutes in morning business?

Mr. HARKIN. We will just go to the motion to proceed. That is fine.

The PRESIDING OFFICER. Is there objection to the original request?

Without objection, it is so ordered.

Mr. HARKIN. Which one?

The PRESIDING OFFICER. Your request that you be allowed 5 minutes now, then we go to the bill, and then you be recognized to speak for an additional 10 minutes.

Mr. HARKIN. I thank the Chair and I thank my colleague from North Dakota. We might as well go on with the motion to proceed. I can make my presentation then, too.

THE ECONOMY

Mr. HARKIN. Mr. President, there is no secret that there is a great frustration in the American workplace today. There is a great anxiety among American working families. You can sense it, you can feel it, you can hear it no matter where you go in America, whether it is in Iowa or Wyoming or New York or wherever it is. Something is happening out there. You get it all the time from people who have been working, maybe have lost their jobs, maybe they took another job, they are not making ends meet. They see the economy doing much better. They read this in the paper all the time—the economy is getting better, tax cuts are going into effect, foreign car sales, the big cars, the Mercedes and all those, are up. We see all the higher end items being purchased and sold.

For example, over the recent Christmas holidays, the Sharper Image, I believe, which sells high end electronics stuff, and Neiman Marcus had great sales. But Wal-Mart was down.

There is a great sense among American working people that something is not quite right with what is going on in this country. Maybe most Americans don't have degrees in economics; they haven't studied it, but they sense something is going wrong.

In his recent book, ''Wealth and Democracy,'' Kevin Phillips pointed out that there is a trend that different countries go through at various stages of their growth. One of those stages is where more and more of the output of a country accumulates to capital and less and less accumulates to labor, to the working people.

It is with great interest I note that, after I had read Kevin Phillips' book, yesterday in the New York Times an article by Bob Herbert brought it home. The title of the piece was ''We're More Productive. Who Gets the Money?'' As Mr. Herbert wrote yesterday in the New York Times:

> It's like running on a treadmill that keeps increasing its speed. You have to go faster and faster just to stay in place. Or, as a factory worker said many years ago, ''You can work 'til you drop dead, but you won't get ahead.''
>
> American workers have been remarkably productive in recent years, but they are getting fewer and fewer of the benefits of this increased productivity. While the economy, as measured by the gross domestic product, has been strong for some time now, ordinary workers have gotten little more than the back of the hand from employers who have pocketed an unprecedented share of the case from this burst of economic growth.
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> What is happening is nothing short of historic. The American workers' share of the increase in national income since November 2001, the end of the last recession, is the lowest on record. Employers took the money and ran. This is extraordinary, but very few people are talking about it, which tells you something about the hold that corporate interests have on the national conversation.
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> The situation is summed up in the long, unwieldy but very revealing title of a new study from the Center of Labor Market Studies at Northeastern University: ''The Unprecedented Rising Tide of Corporate Profits and the Simultaneous Ebbing of Labor Compensation—Gainers and Losers from the National Economic Recovery in 2002 and 2003.''

The PRESIDING OFFICER. The Senator's time has expired.

CONCLUSION OF MORNING BUSINESS

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

PREGNANCY AND TRAUMA CARE ACCESS PROTECTION ACT OF 2004—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the Senate will resume consideration of the motion to proceed to the consideration of S. 2207, which the clerk will report.

The legislative clerk read as follows:

> A bill (S. 2207) to improve women's access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such service.

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa is recognized for an additional 10 minutes.

Mr. HARKIN. Mr. President, parliamentary inquiry. I did not understand I was under a time limit. I had asked to continue to proceed after morning business on the motion to proceed, but I didn't recognize there was a time limit there. I did not ask consent for 10 minutes.

The PRESIDING OFFICER. The Senator has been granted 10 minutes to speak on any subject he wishes. But the total is 15 minutes under the request.

Mr. HARKIN. I think the record will show that I asked for consent to continue to speak in morning business, to yield the floor, to then return to the motion to proceed, and that I be recognized to continue to speak on the motion to proceed. That does not have a time limit.

The PRESIDING OFFICER. The Senator is recognized to speak on the motion to proceed or on whatever subject he wishes to speak for 10 minutes and thereafter on the bill.

Mr. HARKIN. I understand that. I thank the Chair.

Mr. GREGG. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. HARKIN. Sure.

Mr. GREGG. At the end of the Senator's 10 minutes, does the Senator come back and retain the floor?

The PRESIDING OFFICER. It was my understanding that the time under the request was that he was going to have a total of 15 minutes. Otherwise, there would have been an objection.

Mr. GREGG. Mr. President, I will be seeking the floor at the conclusion of the 10 minutes as the manager of the bill, for everybody's knowledge.

The PRESIDING OFFICER. Under the normal procedure, the manager of the bill may speak as soon as a bill is brought up, with the exception of the 10 minutes as a continuation of the total of 15 minutes.

The Senator from Iowa may proceed.

Mr. HARKIN. I do not mean to take more than 15 minutes. I might go into 18 or 20 minutes. I wasn't going to take a long time. I wanted to finish my statement without being constrained with the 15 minutes I had under morning business. That is why I went on the motion to proceed. I will speak on that for an additional few minutes. But I will take whatever time I can now. If I am cut off, I will be back.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, Mr. Herbert further said:

> Andrew Sum, the center's director and lead author of the study, said: ''This is the first time we've ever had a case where two years into a recovery, corporate profits got a larger share of the growth of national income than labor did. Normally labor gets about 65 percent and corporate profits about 15 to 18 percent. This time profits got 41 percent and labor [meaning all forms of employee compensation, including wages, benefits, salaries and the percentage of payroll taxes paid by employers] got 38 percent.''
>
> The study said: ''In no other recovery from a post-World War II recession did corporate profits ever account for as much as 20 percent of the growth in national income. And

at no time did corporate profits ever increase by a greater amount than labor compensation.''

In other words, an awful lot American workers have been had. Fleeced. Taken to the cleaners.

The recent productivity gains have been widely acknowledged. But workers are not being compensated for this. During the past two years, increases in wages and benefits have been very weak, or nonexistent. And despite the growth of jobs in March that had the Bush crowd dancing in the White House halls last Friday, there has been no net increase in formal payroll employment since the end of the recession. We have lost jobs. There are fewer payroll jobs now than there were when the recession ended in November 2001.

So if employers were not hiring workers, and if they were miserly when it came to increases in wages and benefits for existing employees, what happened to all the money from the strong economic growth?

The study is very clear on this point. The bulk of the gains did not go to workers, ''but instead were used to boost profits, lower prices, or increase C.E.O. compensation.''

This is a radical transformation of the way the bounty of this country has been distributed since World War II. Workers are being treated more and more like patrons in a rigged casino. They can't win.

Corporate profits go up. The stock market goes up. Executive compensation skyrockets. But workers, for the most part, remain on the treadmill.

The study found that the amount of income growth devoured by corporate profits in this recovery is ''historically unprecedented,'' as is the ''low share . . . accruing to the nation's workers in the form of labor compensation.''

I thought Mr. Herbert wound up his statement quite adequately when he said:

I have to laugh when I hear conservatives complaining about class warfare. They know this terrain better than anyone. They launched the war. They're waging it. And they're winning it.

One of the reasons they are winning it is because workers no longer have organized labor. Organized labor has been weakened to the point where workers are told: Take what you got or go get something else or we will take your job and we will take it to China or we will take your job and move it to India or South Africa or some other place. You have no recourse as a worker.

I have tried for years in this Senate and in this Congress to try to get a bill passed called the striker replacement bill which says if you are on strike you can't be replaced with a replacement worker. That one thing alone has broken the back of organized labor to the point where workers no longer have the power to withhold their labor, the only tool with which they have to bargain.

So here we have more and more of the earnings from increased productivity going to capital and less going to workers. What do we do about it? We say now we are going to take away your time-and-a-half overtime. That is the next assault on the time-and-a-half overtime. For our workers who are working more and more in this country and working longer hours than any other industrialized country, we are going to say to workers we will take away your right to overtime.

That issue was brought up on the bill that was before us earlier. That was my amendment, to say these proposed rules by the Department of Labor that would deny up to 8 million Americans their right to time-and-a-half overtime could not go into effect. Now we find that not only is the administration trying to push through new rules to eliminate overtime pay; at the same time, many employers are illegally pushing the same thing. They are doctoring their employee time records in order to avoid paying overtime. This practice is shaving time. It is easy to do, it is hard to detect, and is done in a matter of a few keystrokes.

According to the New York Times article on Sunday by Steven Greenhouse:

Workers have sued Family Dollar and Pep Boys, the auto parts and repair chain, accusing managers of deleting hours. A jury found the Taco Bell managers in Oregon had routinely erased workers' time. More than a dozen former Wal-Mart employees said in interviews and depositions that managers had altered time records and shortchanged employees.

I ask unanimous consent a copy of the New York Times article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 4, 2004]

ALTERING OF WORKER TIME CARDS SPURS GROWING NUMBER OF SUITS

(By Steven Greenhouse)

As a former member of the Air Force military police, as a play-by-the-rules guy, Drew Pooters said he was stunned by what he found his manager doing in the Toys ''R'' Us store in Albuquerque.

Inside a cramped office, he said, his manager was sitting at a computer and altering workers' time records, secretly deleting hours to cut their paychecks and fatten his store's bottom line.

''I told him, 'That's not exactly legal,' '' said Mr. Pooters, who ran the store's electronics department. ''Then he out-and-out threatened me not to talk about what I saw.''

Mr. Pooters quit, landing a job in 2002 managing a Family Dollar store, one of 5,100 in that discount chain. Top managers there ordered him not to let employees' total hours exceed a certain amount each week, and one day, he said, his district manager told him to use a trick to cut payroll: delete some employee hours electronically.

''I told her, 'I'm not going to get involved in this,' '' Mr. Pooters recalled, saying that when he refused, the district manager erased the hours herself.

Experts on compensation say that the illegal doctoring of hourly employees' time records is far more prevalent than most Americans believe. The practice, commonly called shaving time, is easily done and hard to detect—a simple matter of computer keystrokes—and has spurred a growing number of lawsuits and settlements against a wide range of businesses.

Workers have sued Family Dollar and Pep Boys, the auto parts and repair chain, accusing managers of deleting hours. A jury found that Taco Bell managers in Oregon had routinely erased workers' time. More than a dozen former Wal-Mart employees said in interviews and depositions that managers had altered time records to shortchange employees. The Department of Labor recently reached two back-pay settlements with Kinko's photocopy centers, totaling $56,600, after finding that managers in Ithaca, NY, and Hyannis, MA, had erased time for 13 employees.

''There are a lot of incentives for store managers to cut costs in illegal ways,'' said David Lewin, a professor of management who teaches a course on compensation at the University of California, Los Angeles. ''You hope that would be contrary to company practices, but sometimes these practices become so ingrained that they become the dominant practice.''

Officials at Toys ''R'' Us, Family Dollar, Pep Boys, Wal-Mart and Taco Bell say they prohibit manipulation of time records, but many acknowledge that it sometimes happens.

''Our policy is to pay hourly associates for every minute they work,'' said Mona Williams, vice president for communications at Wal-Mart. ''With a company this large, there will inevitably be instances of managers doing the wrong thing. Our policy is if a manager deliberately deletes time, they're dismissed.''

Compensation experts say that many managers, whether at discount stores or fast-food restaurants, fear losing their jobs if they fail to keep costs down.

''A lot of this is that district managers might fire you as soon as look at you,'' said William Rutzick, a lawyer who reached a $1.5 million settlement with Taco Bell last year after a jury found the chain's managers guilty of erasing time and requiring off-the-clock work. ''The store managers have a toehold in the lower middle class. They're being paid $20,000, $30,000. They're in management. They get medical. They have no job security at all, and they want to keep their toehold in the lower middle class, and they'll often do whatever is necessary to do it.''

Another reason managers shave time, experts say, is that an increasing part of their compensation comes in bonuses based on minimizing costs or maximizing profits.

''The pressures are just unbelievable to control costs and improve productivity,'' said George Milkovich, a long time Cornell University professor of industrial relations and co-author of the leading textbook on compensation. ''All this manipulation of payroll may be the unintended consequence of increasing the emphasis on bonuses.''

Beth Terrell, a Seattle lawyer who has sued Wal-Mart, accusing its managers of doctoring time records, said: ''Many of these employees are making $8 an hour. These employees can scarcely afford to have time deleted. They're barely paying their bills already.''

In the punch-card era, managers would have had to conspire with payroll clerks or accountants to manipulate records. But now it is far easier for individual managers to accomplish this secretly with computers, payroll experts say.

Mr. Pooters, a father of five who left the Air Force in 1997 for a career in retailing, talks with disgust about photocopied Toys ''R'' Us records that he said showed how his manager made it appear that he had clocked out much earlier than he had.

''Unless you keep track of your time and keep records of when you punch in and punch out, there's no way to stop this,'' he said.

After leaving Toys ''R'' Us and Family Dollar, Mr. Potters moved to Indiana and took a job as an account manager with Rentway, a chain that leases furniture and electronics. There, he and a co-worker, William Coombs, said, the workload was so intense that they typically missed four lunch breaks a week. Nonetheless, they said, their

manager inserted a half-hour for lunch into their time records every day, reducing their pay accordingly.

''They told us to sign the payroll printouts to confirm it was right,'' Mr. Pooters said, describing a confrontation last November. ''When we protested about what happened with our lunch hours, the manager said, 'If you don't sign, you're not going to get paid.' ''

Mr. Coombs said: ''They removed our lunch hours all the time. We were told if we didn't sign the payroll sheets, we'd be terminated.''

Larry Gorski, Rentway's vice president for human resources, said his company strictly prohibited erasing time. ''As soon as we hear this is going on, we jump all over it,'' he said.

Shannon Priller, who worked at a Family Dollar store in Rio Rancho, N.M., sheepishly acknowledged that she sometimes watched her district manager erase her hours. ''The manager and I would sit there and go over everybody's time cards,'' she said. ''We were told not to go over payroll, or we would lose our jobs. If we were over, my hours would get shaved.''

Some weeks, she said, she lost 10 or 15 hours, and her 6 a.m. clock-in time became 9 a.m. Patricia Bauer, a clerk at the store, said her paycheck was sometimes cut to under 30 hours on weeks when she worked 40.

Like Mr. Pooters, these women have joined a lawsuit that accuses Family Dollar of erasing time and requiring off-the-clock work. ''It needs to stop,'' said Ms. Priller, who now cleans houses.

Kim Danner said that when she ran a Family Dollar store with eight employees in Minneapolis, her district manager urged her to erase hours so that she never paid overtime or exceeded her allotted payroll. Federal law generally requires paying time-and-a-half to nonmanagerial employees who work more than 40 hours a week.

Ms. Danner said her employees could not do all the unloading, stocking, cashier work and pricing of merchandise in the hours allotted. ''The message from the district manager was, basically, 'I don't care how you do it, just get it done,' '' she said.

So she altered clock-out times and inserted half-hour lunch breaks even when employees had worked through them. ''I felt horrible that I was doing this,'' she said. ''I felt pressured, absolutely. If I refused, I would have been terminated easily.''

After five months, she quit.

Sandra Wilkenloh, Family Dollar's communications director, declined to respond to the lawsuit, but said, ''Family Dollar's policy is to fully comply with all wage and hour laws and to take appropriate disciplinary action in any case where we determine that such policy has been violated.''

She said Family Dollar maintained a hot line that employees could call anonymously to report wage violations.

Rosann Wilks, who was an assistant manager at a Pep Boys in Nashville, said she was fired in 2001 after refusing to delete time. She said her district manager told her, ''Under no circumstances at all is overtime allowed, and if so, then you need to shave time.''

At first, she bowed to orders and erased hours. Some employees began asking questions, she said, but they refused to confront management. ''They took it lying down,'' she said. ''They didn't want to lose their job. Jobs are hard to find.''

When she started feeling guilty and confronted her district manager, she said, ''It all came to a boil. He fired me.''

Bill Furtkevic, Pep Boys' spokesman, said his company did not tolerate deleting time. ''Pep Boys' policy dictates, and record demonstrates, that any store manager found to have shaved any amount of employee time be terminated,'' he said. He added that the company's investigation ''revealed no more than 21 instances over the past five years where time shaving'' had occurred.

More than a dozen former Wal-Mart employees said time records were altered in numerous ways. Some said that when they clocked more than 40 hours a week, managers transferred extra hours to the following week, to avoid paying overtime. Federal law bars moving hours from one week to another.

Wal-Mart executives acknowledged that one common practice, the ''one-minute clock-out,'' had cheated employees for years. It involved workers who clocked our for lunch and forgot to clock back in before finishing the day. In such situations, many managers altered records to show such workers clocking out for the day one minute after their lunch breaks began—at 12:01 p.m., for example. That way a worker's day was often three hours and one minute, instead of seven hours.

Ms. Williams, the Wal-Mart spokeswoman, said Wal-Mart had broadcast a video to store managers last April telling them to halt all one-minute clock-outs. Under the new policy, when workers fail to clock in after lunch, managers must do their best to determine what their true workday was.

In interviews, five former Wal-Mart managers acknowledged erasing time to cut costs. Victor Mitchell said that as an assistant manager in Hazlehurst, Miss., in 1997, he frequently shaved time.

''We were told we can't have any overtime,'' he said. ''It's what the other assistant managers were doing, and I went along with it.''

Mr. Mitchell said the store's manager ordered them to stop. But he said that in 2002, after becoming manager of a Wal-Mart in Bogalusa, La., a new district ordered him to erase overtime. He said he refused.

Ms. Williams said Wal-Mart had increased efforts to stop managers from shaving time or allowing off-the-clock work.

Wal-Mart has circulated a ''payroll integrity'' memo, saying that any worker, ''hourly or salaried, who knowingly falsifies payroll records is subject to disciplinary action up to an including termination.''

Employees at Wal-Mart and other companies complain that they receive no paper time records, making it hard to challenge management when their paychecks are inexplicably low.

Ms. Danner, the former Family Dollar manager, praised the system at the McDonald's restaurant she managed for seven years. At day's end, she said, employees received a printout detailing total hours worked and when they clocked in and out.

''We never had any problems like this at McDonald's,'' she said.

Mr. HARKIN. I also ask unanimous consent that yesterday's article by Bob Herbert be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 5, 2004]

WE'RE MORE PRODUCTIVE. WHO GETS THE MONEY?

(By Bob Herbert)

It's like running on a treadmill that keeps increasing its speed. You have to go faster and faster just to stay in place. Or, as a factory worker said many years ago, ''You can work 'til you drop dead, but you won't get ahead.''

American workers have been remarkably productive in recent years, but they are getting fewer and fewer of the benefits of this increased productivity. While the economy, as measured by the gross domestic product, has been strong for some time now, ordinary workers have gotten little more than the back of the hand from employers who have pocketed an unprecedented share of the cash from this burst of economic growth.

What is happening is nothing short of historic. The American workers' share of the increase in national income since November 2001, the end of the last recession, is the lowest on record. Employers took the money and ran. This is extraordinary, but very few people are talking about it, which tells you something about the hold that corporate interests have on the national conversation.

The situation is summed up in the long, unwieldy but very revealing title of a new study from the Center for Labor Market Studies at Northeastern University: ''The Unprecedented Rising Tide of Corporate Profits and the Simultaneous Ebbing of Labor Compensation—Gainers and Losers from the National Economic Recovery in 2002 and 2003.''

Andrew Sum, the center's director and lead author of the study said: ''This is the first time we've ever had a case where two years into a recovery, corporate profits got a larger share of the growth of national income than labor did. Normally labor gets about 65 percent and corporate profits about 15 to 18 percent. This time profits got 41 percent and labor [meaning all forms of employee compensation, including wages, benefits, salaries and the percentage of payroll taxes paid by employers] got 38 percent.''

The study said: ''In no other recovery from a post-World War II recession did corporate profits ever account for as much as 20 percent of the growth in national income. And at no time did corporate profits ever increase by a greater amount than labor compensation.''

In other words, an awful lot of American workers have been had. Fleeced. Taken to the cleaners.

The recent productivity gains have been widely acknowledged. But workers are not being compensated for this. During the past two years, increases in wages and benefits have been very weak, or nonexistent. And despite the growth of jobs in March that had the Bush crowd dancing in the White House halls last Friday, there has been no net increase in formal payroll employment since the end of the recession. We have lost jobs. There are fewer payroll jobs now than there were when the recession ended in November 2001.

So if employers were not hiring workers, and if they were miserly when it came to increases in wages and benefits for existing employees, what happened to all the money from the strong economic growth?

The study is very clear on this point. The bulk of the gains did not go to workers, ''but instead were used to boost profits, lower prices, or increase C.E.O. compensation.''

This is a radical transformation of the way the bounty of this country has been distributed since World War II. Workers are being treated more and more like patrons in a rigged casino. They can't win.

Corporate profits go up. The stock market goes up. Executive compensation skyrockets. But workers, for the most part, remain on the treadmill.

When you look at corporate profits versus employee compensation in this recovery, and then compare that, as Mr. Sum and his colleagues did, with the eight previous recoveries since World War II, it's like turning a chart upside down.

The study found that the amount of income growth devoured by corporate profits in this recovery is ''historically unprecedented,'' as is the ''low share . . . accruing to

the nation's workers in the form of labor compensation.''

I have to laugh when I hear conservatives complaining about class warfare. They know this terrain better than anyone. They launched the war. They're waging it. And they're winning it.

Mr. HARKIN. Mr. President, the article went on to point out that Kim Danner used to manage a Family Dollar store with eight employees in Minneapolis. She says:

. . . her district manager urged her to erase hours so she never paid overtime or exceeded her allotted payroll.

She said her employees could not do all of the unloading, stocking, cashier work, and pricing in the hours allotted, so she altered clock-out times and inserted half-hour lunch breaks, even when employees worked through lunch. She says:

I felt horrible that I was doing this. I felt pressured, absolutely. If I refused, I would have been terminated easily.

Instead of issuing new rules to officially eliminate overtime for millions of Americans, the Department of Labor ought to be cracking down on these unscrupulous companies. The Department of Labor ought to be enforcing the overtime laws so American workers are not gouged and cheated out of their hard-earned pay.

Now we see clearly where the increased productivity is coming from. American workers are working longer hours, they are working through their lunchtimes, but their hours are being shaved. Their time is taken away from them. Sometimes they clock out and they are made to come back to work. Rather than making an example of these companies and going after them, the Department of Labor is coming around the other side and saying, well, that may be illegal, but what we are going to do is make it legal to take away the overtime rights of up to 8 million workers. In fact, even in the proposed rules, the Department offered employers helpful tips on how to avoid paying overtime to the lowest paid workers, the very workers, of course, supposedly helped by the new rules.

For example, the Department of Labor, in their own writing, suggests cutting a worker's hourly wage so any new overtime payments will not result in a net gain to the employee. The Department of Labor also recommends raising a worker's salary slightly to meet the threshold at which eligibility for time-and-a-half pay ends.

Again, American workers face a double-barreled threat to their overtime rights. They face a threat from unscrupulous employers who deny overtime illegally and now they face a threat from the Department of Labor which wants to deny overtime legally. But the result is the same: an assault on the American worker's right to time-and-a-half pay for hours worked in excess of 40 hours a week.

We are going to continue to try to offer this amendment and to try to get a vote on it. In Rollcall today there is an article saying ''Will 'Obstructionist' Label Stick?'' Evidently, our majority leader last week said: Obstruction, obstruction, obstruction—every bill. That is according to Majority Leader FRIST, at least according to the article in Rollcall.

I have the greatest respect for Senator FRIST. He knows that. I like him as a friend. But quite frankly, that will not wash. The first ruling on FSC was in 2002.

Mr. President, I will continue my remarks later today.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I understand the motion to proceed has been reported.

The PRESIDING OFFICER. Yes.

Mr. GREGG. We are now moving on to the issue of how we give the American people better access to doctors, especially women who are having children, people who have experienced a traumatic event and have gone to the emergency room.

Regrettably, in our society today we are seeing a lot of highly qualified people in the medical professions—not only doctors, but nurse midwives and ambulance professionals, EMT professionals—giving up the practice which they love; in the case of an OB doctor, delivering a baby, and in the case of emergency room personnel, especially the doctor, trying to save lives—having given up those professions or significantly curtailed the extent to which they practice their profession because the cost of their liability insurance due to lawsuits has gotten so high there is no way they can earn enough money to cover the premiums they have to pay to purchase the liability coverage. Of course, there is no hospital in America today which allows a doctor to practice unless that doctor has adequate liability coverage.

This is a crisis. It is a crisis in a lot of States in this country. It is soon to be a crisis in even more States. There are 19 States which the American Medical Association has identified as in crisis. There is another group, I think 23, the American Medical Association has said moving toward crisis. The red States on the chart are in crisis and the yellow States are the States moving toward crisis. There are 11 States which are doing pretty good, which have their medical liability issues under control.

This bill attempts to create a national response to this problem so women who are having children or want to have children can see a doctor. If you are in a car accident and you have a serious injury, or you are walking down the road and you slip and fall and have a serious injury, or you have any other type of physical injury and you go to your emergency room, you will see a doctor who is capable of taking care of you. That is what this bill tries to address.

The issue, of course, is these doctors want to deliver these services. It is not as if they want to get out of the business or out of the activity for which they have trained all their lives, such as delivering a baby. I have had meetings with doctors in my home State. I remember distinctly a doctor from Dover, a woman who loves to deliver babies. This is what really excites her about being a doctor. It is why she went to medical school. It is why she went to graduate school afterwards. But she has actually had to stop delivering babies. The only babies she now delivers are members of her own family. She has to get special dispensation from the hospital to do that because as an OB/GYN she cannot afford the insurance necessary to cover her costs of delivering those children.

We have regions in our State, and it is true in every State that has any sort of rural atmosphere, where we literally do not have any coverage at all, where a woman in northern New Hampshire who has decided to have a child has to drive 10 miles—10 would be conservative—20, 30, 40 miles or more in order to see an obstetric doctor, in order to get care during her pregnancy.

It is darn dangerous in New Hampshire in the middle of the winter to drive those miles, especially if you are pregnant or, Lord forbid, you happen to actually be in labor. The local hospitals do not have doctors on call, do not have doctors, period, who are willing to practice delivering babies. So these women find themselves placed on the road in order to see a doctor.

This is true across the country in our urban areas. A lot of hospitals are finding it very hard to get coverage in their emergency rooms—emergency room closed. In Phoenix Memorial Hospital—emergency room closed.

Why was it closed? It was closed because the doctors who covered the emergency room could not afford the cost of the insurance they had to pay to meet the demands of the trial bar which has been suing the doctors. They had to back out of the business or out of the activity of covering the emergency room, so the emergency room got closed.

You talk to hospitals across this country, and they are finding it very difficult to get doctors to do the call, to do their period where they have to come in and do their coverage responsibilities because of the fact the local doctors do not want to put at risk their insurance premiums as a result of going into the emergency room and practicing 1 day a week or 2 days a week, as has been the tradition.

I know in the town I grew up in, Nashua, NH, the medical community, the physicians, would take turns. They would come on rotation into the emergency room and cover the emergency room. They were not all trauma specialists, but that was sort of their responsibility as being part of the medical community in the city of Nashua, and they were proud of it.

Today it is very hard to get doctors who are not trauma specialists into the emergency room because of the fact

these insurance premiums have gotten so out of control, and the trauma specialists themselves cannot afford the premiums because it is a low-paying area of the medical profession. As a result, they cannot work long enough hours; and they work outrageous hours already. There are not enough hours in the day for them to work in order to cover the cost of their insurance. This is a crisis.

The same is true of baby doctors. I had a doctor in Laconia tell us—Laconia, NH; a great town on Lake Winnipesaukee. I hope everybody will go up and visit this summer. It is a beautiful place to take your summer vacation. He told us he has to work 5½ months of the year to pay the premiums on his insurance because he delivers babies, and they are down to two doctors who do this in his area. That makes it economically unviable for him to practice obstetrics. When it takes 5½ months to pay your premiums and 6 months to pay your taxes, you only have 2 weeks of the year you earn for yourself, and you still have to send your kids to college and maybe even buy your wife something for Christmas—you cannot do it—or your husband. A lot of the OB doctors are, obviously, women. So it is serious.

Yet we have in this institution tried time and again to raise the issue, and what has happened? We have been stonewalled by the other side. Why would the other side not even be willing to allow us to proceed to these bills? This is the third time we have tried this, to get to these bills to discuss how we are going to relieve the pressure on doctors who deliver babies and doctors who take care of emergency rooms. We are not even expecting it necessarily to pass. We would like it to pass, but we at least want to be able to debate it. Yet time and again the Democratic leadership of this institution has said: No, you are not even going to be allowed to proceed to the bill. That is what we are trying to get to today with the motion to proceed. It is a technical motion, meaning it is a way to try to get the bill to the floor so it is up for action.

I heard the Senator from Iowa out here railing about a rule at the Labor Department, and he cannot get his amendment up. Well, one of the reasons he cannot get his amendment up is because we cannot move to this bill. If we could move to this bill, he could offer his amendment. So why is he voting against moving to this bill? Because it appears he is more inclined to support the position of the trial lawyers, who are resisting, in a manner of extreme intensity, any action in this area to try to improve the ability of doctors to deliver care, by making more doctors available to women specifically, or more doctors available in the emergency room, and who are resisting that so aggressively they have told the leadership of the other side, the Democratic leadership: You shall not, if you expect to continue to get our support—the trial lawyers' support—allow this bill to be debated on the floor of the Senate. You shall not allow a motion to proceed. So it is an ironic situation, to say the least.

We hear the Members of the other side saying they want to offer amendments, they want to get this issue up and that issue up. Yet they are filibustering a motion to proceed to a bill which, if we did proceed to it, would allow them to offer the exact amendments they claim they cannot raise. But it appears there is a countervailing force here which is, maybe they do not want to offer that amendment so much they would affront the trial lawyers by allowing this bill to proceed. That appears to be the case.

But in the end, who is the loser? Who is the loser? Well, the loser is, obviously, the doctors who cannot practice what they have been trained to do. We are about to hear from one member of that profession who is an extraordinary example of that profession in quality and ability. And, secondly, the most important, the women, especially in rural areas, who cannot see a doctor if they are having a baby; and people who walk into that emergency room under extreme stress and trauma and suddenly find there is nobody there to take care of them.

Mr. President, I will reserve my further comments because I do see the leader is on the floor. Of course, this is an issue which he has an intimate knowledge of and an intense desire to move forward. I congratulate him for his efforts in this area, and thank him for making this time available to us.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I will take a few moments to comment on a bill that deserves to be debated on this floor and brought to this floor because, as the distinguished Senator from New Hampshire said, the patients—not the doctors and not the system; all of them are disadvantaged—but it is the patients who suffer.

When people hear of patients, they say: That is somebody in a hospital somewhere who is suffering. No, it is you and your children, and everybody who is listening to me. Who knows? You could be driving home today from work, and you might have an accident and have to go to the emergency room or the trauma room. Or after you pick up your kids from school—or maybe they are taking the bus home from school today—if they are struck by a car, or fall down and break a bone, they have to go to the emergency room. Or if you are one of the millions of women who anticipate the joy of having a baby in the near future, it is you who will suffer as you look for an obstetrician, as you look for an obstetrician who will be with you during that prenatal period or over the whole 9-month period.

All of this comes down to a fundamental issue. Our medical litigation system is broken. It is failing. It is failing the American people. It is failing our communities. It is failing our hospitals. It is failing our doctors. It is failing our families. And, most importantly, it is failing our patients.

The medical litigation system should be strong. Its purpose is to promote the common good, first and foremost; and, second, to improve health care for all Americans through the fair and efficient resolution of meritorious medical negligence claims. Indeed, those two purposes—to promote the common good and to improve health care through the fair and efficient resolution of meritorious medical negligence claims—are noble goals.

But instead of achieving these noble goals, our litigation system is out of control and patients are being hurt. Due to this broken system of medical justice, medical liability premiums today are unnecessarily skyrocketing. You will hear the words ''skyrocketing'' and ''runaway'' because that is what is happening. The ultimate victims are the patients—the potential patients, the future patients—and that means all of us, our families and future generations.

The ultimate victims are patients who see their access to care—to that obstetrician, to that emergency room, to that trauma center—threatened and, in some cases, totally disappearing. The American Medical Association now lists 19 States where access to care is threatened. The situation is a crisis that is getting worse day by day by day. That is why as majority leader, in terms of scheduling in the Senate, we are going to keep bringing this issue back because the crisis is getting worse. If we are not successful, we will come back again and again.

While the crisis does affect all people who will need or who need appropriate access to care, it affects those who are seeking help from specialists in particular. When we say ''high-risk specialist physicians,'' they are the ones who are responding to a trauma accident or the neurosurgeon who has to be highly trained to respond to a brain injury, a contusion, a head injury. When we say ''high-risk medical specialist,'' we mean the cardiac surgeon, a high-risk specialty physician who is called in if trauma comes into an emergency room.

These patients who seek the high-risk medical specialist indeed are among the most sick and the ones who most desperately need urgent attention. But our litigation system is increasingly forcing these medical specialists, such as neurosurgeons and obstetricians, to drop their services altogether and not do those higher risk responses; to limit those services maybe to certain hours to not provide those services; not to offer those services in the emergency setting but do them in a much more controlled environment.

It is even causing these high-risk medical specialists to pick up their practices and move from one State,

say, from cities such as Philadelphia, where premiums are skyrocketing, to a city in California that has done a much better job and that is not in crisis because they have legislated appropriately in terms of addressing what was 20 years ago a crisis in California in medical liability. It causes these neurosurgeons and obstetricians—the two areas we are addressing in part with the legislation we are doing our best to bring to the floor over the next 24 hours—to retire from the practice of medicine altogether. They are saying: It is too much, $400,000 as a neurosurgeon in some cities, just for liability premiums. I can't afford that. I am going to leave the whole practice of neurosurgery. It does not make sense for me anymore.

That is the reality today. It is a reality that is getting worse. And when we say it is a crisis, it is a crisis getting worse. And that demands a response by this body. As the services these specialists provide become harder and harder to find, who is hurt? Everybody, yes, but the sickest and, indeed, the most vulnerable are the ones hurt the worst; again, demonstrating the perverse and unintended consequences of a failing medical litigation system. That is why this week we are bringing to the floor this medical liability reform. It is for the patients.

The Pregnancy and Trauma Care Access Protection Act focuses liability reform on two areas: Emergency and trauma care, and obstetrical services, where the services are provided right before, during, and after the delivery of babies. It is these two critical areas that are literally under siege today because they rely on medical specialists who are suffering the most from this lawsuit abuse.

Of course, the true victims are those who need to go to the emergency room, as the distinguished Senator from New Hampshire said. It is not the physicians themselves. It is the people who have to go to the emergency rooms and wait longer for a specialist to be called in because they are not in the hospital, or there is nobody in the region. It is the expectant mother who is having difficulty even finding an obstetrician. And it is the stories that are increasingly occurring of once you get an obstetrician, right after you become pregnant, that obstetrician leaves and moves and another obstetrician comes in, and maybe that obstetrician stays a few months and then another obstetrician. So we have a huge medical problem. It is our responsibility to respond.

Before coming to the Senate, I spent 20 years both training and practicing as a thoracic surgeon, a chest surgeon, which is heart, lungs, trachea—really everything between the diaphragm and the neck. That is what I did. As a member of the thoracic surgical team at Vanderbilt University Medical Center, we handled all of the trauma to the chest, the lungs, the heart. That is what I did every day.

At that level I trauma center, which covered throughout the middle section of Tennessee, if somebody came in with a knife wound to the chest, they would call Dr. FRIST, and I would go down and repair the knife wound to the chest or to the heart, as a medical specialist. Based on that experience, I can tell you that emergency care and trauma care is an absolutely necessary and critical component of our overall health care system.

Each year, there are 110 million visits to the emergency room, and 90 percent of these visits require urgent attention, emergency attention within 2 hours. These are emergencies. As I implied earlier, no one can predict when you are going to need that care. Driving home today, will you be in an accident, or will your child fall down and break a bone climbing a tree this afternoon? That is emergency care that you want a response to immediately.

The Alliance of Specialty Medicine has documented the important details of this critical care. Approximately 28 million Americans visit the emergency room each year due to an accident. Ninety-nine percent will recover after receiving care; in many cases, lifesaving care. Over 3.5 million emergency room visits are related to bone fractures or to broken bones. Of these, 888,000 require hospitalization, and delays in treatment can result in loss of the use of that limb, amputation of that limb, or indeed permanent disability. Over 1.5 million people suffer traumatic head injury with damage to the brain itself.

Neurosurgeons, a focus in the legislation we are debating, perform over 36,000 emergency brain operations on head-injured patients each year. They place little intracranial monitoring devices to control brain swelling in another 8,000 patients each year. Trauma frequently inflicts damage to the spinal cord which runs through the body. Indeed, over 70,000 Americans are hospitalized because of spinal injuries each year. Another 26,000 are hospitalized with acute or emergency or sudden neck injuries.

And, as we all know, nerve tissue heels in a very slow, different way. You cut off blood supply to the spinal cord or to the brain and there is not an immediate response. That tissue pretty much dies forever; very slow recovery. Thus that time of response becomes critical. Delay in treating any sort of injuries to the spinal cord can cause paresthesia or tingling, paralysis, can cause permanent disability, and, of course, can cause death.

My own specialty was the chest and was cardiothoracic, cardiovascular, the heart itself. When you look at emergencies coming in because of heart attack or cardiovascular disease or stroke, the blood vessel is huge. Sixty-five million Americans have some form of heart and blood vessel, or cardiovascular disease, which could lead to a heart attack or stroke; and each year over 1 million Americans suffer a myocardial infarction, or a heart attack. You want to take them to the emergency room because today, as cardiac surgeons, cardiologists, heart specialists—and it is very different today than 30 or 40 years ago—there are medicines you can give and procedures you can do that can open up the blood supply when you have a heart attack and get blood to the heart before the millions of cells die. Every moment counts. It is important to get that blood supply opened by heart specialists.

Unfortunately, our broken litigation system is stretching those moments—if those specialists are not available to respond—into hours. It is stretching them longer and longer, and that causes death of that heart muscle.

Of course, patients and most people listening today expect, if they have an emergency and are going to be rushed to the emergency room, that there will be people to treat them, including heart specialists who can rush down and open the blood vessels; or if they have a brain injury or a concussion or a contusion to the head, they expect there will be somebody there to respond appropriately.

However, that assumption is getting to be less and less true, due in large part to our broken medical malpractice litigation system. Because of runaway medical malpractice costs, many medical specialists have been forced to stop treating patients in the emergency room—the neurosurgeons; the orthopedics, or bone surgeons; the heart and lung surgeons; the obstetricians; the cardiologists; and the list goes on in terms of specialists we have to respond in the emergency room. They are simply saying: I will practice my specialty, but I am not going to do it in the emergency setting. I will not sign up for what we call ''on-call'' for the emergency room or for the trauma team because if I do, my own insurance premiums will skyrocket, or I cannot get the insurance at all. So fewer and fewer specialists are volunteering for this ''on-call'' in emergency rooms.

Because of the high-risk operations they are called upon to perform in these emergency situations, neurosurgeons, the specialty of the brain and spine, have been particularly hit hard by the litigation process. According to the American Association of Neurological Surgeons and the Congress of Neurological Surgeons, between the years 2000 and 2004, that 4-year period, the national average, of medical liability premiums for neurosurgeons increased 100 percent. It literally practically doubled, from $45,915 up to $91,848.

As I mentioned a few minutes ago, in some States, neurosurgeons are now paying insurance premiums of almost $400,000 per year. That is not the cost of doing the medicine or delivering the care or of the practice or being in the operating room or paying the nurses to help you or the cost of the equipment or the cost of the drugs or the cost of your training; that is just a tax of $400,000 placed on top of all those expenses that the physicians pay to have

the opportunity to treat you if you come into the emergency room. It doesn't make sense.

It is a crisis. It is getting worse. It should be no surprise that this medical malpractice liability crisis is having a negative effect on the way these much needed specialists practice medicine. In fact, a recent survey—a fascinating survey—showed that 70 percent of neurosurgeons responding said they have had to make at least one of five practice changes. So if 100 responded, 70 said they have had to do one of these following things to narrow down or change their practice in response to the medical malpractice crisis: referred complex cases, closed their practice, moved to a different state, stopped providing patient care or retired.

Runaway lawsuits are forcing neurosurgeons and other specialists to limit emergency services. Again, it is not the doctor who is being hurt, it is the patients who are being hurt, and it is future patients, and that means potentially everybody listening to me now.

Many patients are rushed to these trauma centers. When I was on call at Vanderbilt Trauma Center as a thoracic surgeon, we had somebody actually in the hospital, or very close to the hospital, practically all the time. For heart disease, heart attacks, you need somebody there almost all the time. Why is that? Because you have a golden hour, especially for spinal disease and heart disease. Every second that goes by that you have the blood supply cut off, especially when you can open that blood supply up, the patient is being hurt.

Unfortunately, patients are having to endure longer and longer waits as these precious lifesaving minutes tick by. If you have a broken bone, a gunshot wound, frequently you might be diverted from one facility to another because of the lack of availability of a specialist or the resources in one of the hospitals. Then you have this frantic search of finding a needed specialist for that broken bone, or that gunshot wound to the heart, or that stab wound.

According to a recent study—because people say that could not be what is happening today, but it is what is happening—76 percent of emergency departments recently have diverted patients to another facility because of a lack of specialty physician coverage. Of these, over 33 percent diverted patients 6 or more times a month, and an additional 28 percent have diverted patients to other facilities 3 to 5 times a month. Over a quarter of hospitals report that the reason they have lost specialty coverage is because of medical liability concerns. These concerns simply discourage specialists from offering their services or volunteering their services for this on-call emergency coverage.

The medical litigation crisis is affecting health care, patient care, all across the country. The consequences are obvious—the consequences of death. Here is an example. According to the Palm Beach Post, a Florida woman, Mildred McRoy, suffered a hemorrhagic stroke in February. That is where you actually bleed into the brain itself, and because the skull is a fixed cavity, when you bleed into the brain, it swells and it requires an emergency response. She was rushed to JFK Medical Center in Atlantis for treatment, but JFK stopped providing around-the-clock neurosurgical coverage in July because of the medical liability crisis. In fact, there wasn't a single neurosurgeon on call in all of Palm Beach County when this occurred. Again, that shows how pervasive the impact is if you don't have specialists signing up because of high medical liability premiums. Ms. McRoy was then transported 40 miles away to North Broward Medical Center. More than 8 hours later she was operated on by a neurosurgeon but died after being in a coma for several days.

That is the story. That is why we must act. We know there is a problem, a crisis, and we know the crisis is getting worse. We know it is going to take action on this floor to reverse it. Florida is one of the 19 States the AMA considers in crisis.

In a few cases, trauma centers and emergency rooms have been actually forced to shut down—as we saw on the chart that was behind me a while ago, which the Senator from New Hampshire had shown—because either the emergency department physicians or the on-call specialists could not obtain medical liability insurance at any price whatsoever. The most infamous example occurred in the summer of 2002 when Las Vegas lost its only level I trauma center. When I use that term, level I, that is the highest level. They can take anything that comes. Level I is the most sophisticated, most prepared, most responsive level of trauma center that we have. Las Vegas lost their level I trauma center which, by the way, was one of the 10 most busiest in the country for several days, forcing residents from that major city of Las Vegas to travel over 100 miles to seek urgent care.

For me as a physician who has gone through 4 years of medical school and 8 years of medical training, what is sad and tragic is we are not getting rid of a few bad doctors. Right now we have highly qualified, highly committed physicians, women and men, who have chosen to dedicate their lives to helping their fellow man—really mankind, humanity broadly—through neurosurgery or obstetrics or heart surgery, and we are literally forcing them to leave the field they cherish, that they spent years working to become so they can help other people. These are people who are devoting their professional lives to healing others, and we are saying because of this medical litigation system, which is out of control: You are no longer going to be able to do that.

They do not want to drop these specialized services. They do not want to make themselves unavailable for emergency care. Indeed, that is why they got into the business. Tragically, and all too often, the medical litigation system, with these skyrocketing, out-of-control costs simply leaves them no choice. In the end, our health care system suffers, but it is the patients who really suffer.

The story is the same for obstetricians. Right now we know women are having a harder time finding an obstetrician. As I said earlier, one might have two or three obstetricians over one pregnancy period today because obstetricians are having to move. A few weeks ago, we brought the Healthy Mothers and Healthy Babies Access to Care Act to the floor of the Senate. That bill specifically addressed the medical liability challenges we have focusing on OB/GYNs and women and the babies they serve. We did that because all across the country, indeed in my home State of Tennessee, the current medical litigation system is forcing many OB/GYNs to simply stop delivering babies.

Floor discussions at that time several weeks ago demonstrated the crisis. It showed the extent of the crisis. There is no reason at this juncture to restate all of the arguments, but the doctor drain has gotten so bad that it is clear that women are having a harder time finding doctors to give them prenatal care and to deliver their babies.

What happened several weeks ago? Unfortunately, opponents to this needed medical liability reform filibustered the mere consideration of the bill on the floor of the Senate. We simply cannot allow people to keep their heads in the sand any longer. The crisis is real. It is time for us to act.

The crisis is getting worse every day. As a physician and as a policymaker, as someone who has had the opportunity, a real blessing, to take care of patients in the setting of trauma, the emergency room, and responding to their needs, I am simply not, as majority leader, going to sit back and allow this crisis to continue to explode.

The legislation itself we are considering, the Pregnancy and Trauma Care Access Protection Act, addresses these two areas—delivering babies and responding to emergency care. Why? Because these areas have been hit the hardest. It is common sense in medical litigation reform that will protect our patients, our families from medical negligence with fair compensation. If somebody has been negligently injured, they deserve just and fair compensation. If there are bad doctors, they need to be punished accordingly.

The problem is the overall system is broken. The overall system has these frivolous lawsuits with these runaway costs. The legislation is based on sound models that have worked in States, that have a demonstrated track record, such as California. It is supported by numerous medical specialty societies and speciality groups. The American

College of Obstetricians and Gynecologists, the American Association of Neurological Surgeons, the American Academy of Orthopedic Surgeons all support this legislation and, of course, the list goes on.

I hope opponents of reform do not make excuses. They seem to put the blame of the crisis everywhere except where it belongs—our medical litigation system. It is time to face that simple fact that we need to reform our medical litigation system. It is in desperate need of reform. It is hurting all patients. It is hurting our vulnerable patients the most.

In addition, I should add that all of this has a huge, unnecessary cost in the practice of defensive medicine, the reaction of our medical system to frivolous lawsuits. These are your health care dollars that are being wasted. These are your health care dollars that are taken from you and not being channeled back into better health care for you.

Congress should act now. I am very hopeful we will be allowed to act now by putting patients first rather than the special interests who have been so vocal in obstructing this bill.

For the sake of all Americans who will be forced to go to the emergency room this year and for the sake of all expectant mothers, I ask my colleagues to allow this debate to move forward tomorrow by voting to proceed to this critical medical litigation reform bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors of S. 2207, the Pregnancy and Trauma Care Access Protection Act: Senator FITZGERALD, Senator CORNYN, and Senator HATCH.

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

Mr. CORNYN. I thank the Chair.

I wish to express my gratitude to the majority leader for his important comments. He brings an expertise to this debate no one else in this body can offer by virtue of his training, education, and extensive practice as a medical doctor in Tennessee. I am not going to speak from the perspective of a doctor because I am not one. I am going to speak from the perspective of a patient because, like it or not, I will be one at some point in my life, and from the standpoint of other prospective patients which would include not only my family and loved ones, but literally everyone within the sound of my voice.

I want to express again my appreciation that the majority leader would bring this issue back up. This is our third attempt in recent months to enact significant medical liability reform. The reason why it is so important to bring this issue back up is to ask our colleagues across the aisle who have obstructed our ability to go to a vote on this important issue to reconsider because the truth is their obstruction of our ability to get meaningful medical liability reform is not hurting doctors only, it is not hurting insurance companies only, it is hurting everyone who has been or will be a patient in a medical care facility or at the hands of a doctor.

We have had the opportunity to discuss these issues before, as I said, but before I get into what I consider the meat of this issue—and that is access to good quality health care for all Americans—let me say on other issues that affect American competitiveness in terms of our ability to compete in a global economy, the ability of employers to provide health insurance for their employees, which is diminishing day by day because the costs of health care continue to go up in part because of our broken medical liability system, that, in turn, puts pressure on the uninsured in our society. Where employers are unable to carry medical insurance on their employees, that means that too many people who cannot afford health care coverage are forced to emergency rooms where they know they can and will be treated. In the vast majority of those cases, they could be more efficiently, more humanely, and more cost-effectively treated in a primary care setting in a doctor's office or in a clinic, but because of the pressures being put on our health care system by a broken liability component, it is hurting us in so many different ways.

As I said, I want to talk about access, but it also hurts us in terms of our global competitiveness, in terms of job creation and job growth, and in terms of diminished access to health care because people have nowhere else to turn if they do not have medical insurance, except the emergency room where they know they can and will be treated but in a way that is insufficient, inhumane, and certainly not cost effective and causes a host of other problems in all of our big cities and everywhere else where emergency rooms are frequently put on divert status because they are so clogged up with cases that probably, in a medical sense, should not be there because they could be treated more cost effectively and more humanely in another setting, but they are there and then the true emergencies are diverted to emergency rooms that are farther away.

The majority leader, Dr. FRIST, talked about the medical consequences of delayed treatment when people have to travel sometimes many miles just to get treated, what complications can occur because of a traumatic injury or because a baby that is delivered because the mother cannot find a hospital that can take her nearby. My point is, it creates a cascading of problems that are not just limited to medical liability but which have a lot of ramifications and a huge ripple effect.

Unfortunately, our colleagues on the other side of the aisle are offering no solutions but are merely trying to score political points, trying to divert the attention to other nonissues and will not allow us to do what we have been sent here by the American people to do and that is to pass legislation that will meaningfully and significantly improve the quality of their lives.

We have had a chance to deal with this medical liability problem before and, unfortunately, we have not done so. My hope is that our colleagues will reconsider and we will do so today. If those on the other side of the aisle are truly serious about their concern for the American people and the quality of health care they receive, I hope they will join us in passing the bill we are discussing today.

The solutions to their professed concerns are right before us. They just need to allow an up-or-down vote. I hope the American people are paying close attention to what is happening, because if we do not get an up-or-down vote it is they who will pay the price for those who would prefer to score political points over actually producing results.

The bill offered by the Senator from New Hampshire, the distinguished chairman of the HELP Committee, the Health, Education, Labor, and Pensions Committee, is designed to improve access to health care, both for women who need obstetrical and gynecological care and for patients who need emergency care.

As I am sure every Member of this body has, I have heard complaints from our constituents about how badly the system is broken.

There are those on the other side of the aisle who would say that, because we have been rejected twice before, by bringing it up a third time this is somehow just a political exercise. I assure them that is not true. We were not allowed to vote before, despite support from a bipartisan majority.

The bottom line is, we are simply unwilling to put up with or to accept, without a fight, the kind of obstruction we have seen on this and so many other important issues.

This bill would provide desperately needed relief to a health care system that is in crisis, focusing especially on emergency room doctors and obstetrics, baby doctors, to critical areas that deserve our support.

This chart has been seen before, and my colleagues will notice that this chart reflects in red States that are in crisis because of the difficulty of purchasing medical liability insurance, the huge increases in cost which have simply caused medical doctors either to retire early or to move to States that have provided some commonsense reform or just discouraging people from getting into the medical profession at all.

The States in red, including my State of Texas, are indicated as States in crisis. The ones in yellow are the States showing problem signs but do not yet qualify as a crisis State, and

the ones in white are States that are currently considered to be OK. I would not suggest by saying that they are currently OK that they have no problems. It is just that they have not gotten to the point that conditions have in my State and other States indicated in red.

The truth is, this crisis is not something that just popped up this week. It is a crisis that we had last fall when we were blocked from bringing up comprehensive medical liability reform for an up-or-down vote. It was a crisis that existed a month ago when we were blocked from having an up-or-down vote for legislation that offered immediate help for mothers and their babies, and it remains a crisis today even as we attempt to debate this legislation and bring it up for another vote.

The fact is, frivolous lawsuits are causing escalating medical malpractice insurance premiums which are driving doctors out of practice. We can debate what the cause of that is, but we cannot debate the result. It is a fact. Indeed, opponents of this legislation do not appear to debate the fact of the result—that is, doctors leaving, retiring, not going into practice, access being denied. They just want to say there may be other causes, but they do not want to deal with this cause because, unfortunately, an important constituency, the personal injury trial lawyers, simply are unwilling to agree that any change in this current broken system can be made.

The problem is that those who are preventing us from taking up this legislation are simply caving in to the demands of this narrow special interest group that are prospering mightily, that are getting rich off the current system, at the same time that the rest of America is getting hurt.

This is a picture of a doctor formerly who practiced in Fort Worth, TX, representing medical specialists, especially neurosurgeons, orthopedic surgeons, obstetricians, and emergency physicians, who are being forced to retire early or move their practices to States where effective liability reforms are in place.

For example, Dr. Malone comes from my home State. He is an orthopedic surgeon who has practiced more than 20 years in Fort Worth, TX. He reluctantly was forced to leave his practice, citing the extreme costs of liability insurance for physicians as being too much of a financial burden for him to bear.

We simply cannot expect physicians to practice their chosen profession after their lengthy education and training and not be able to provide for their families. We don't expect them to do it at a loss to themselves and their families. I don't think we can blame them, when the costs of doing business exceed what comes in the door such that they simply have no choice but to leave.

In the State of Texas, this crisis, particularly as it regards baby doctors, obstetrician-gynecologists, means that out of 254 counties of Texas, 154 of them have no OB/GYN specialist. In other words, a woman who is pregnant and perhaps needs prenatal care, so increasing the chances her baby will be delivered healthy, must travel to another county in order to get that prenatal care from a specialist; or once she goes into labor, she must travel to another county to have the doctor, medical specialist in obstetrics, deliver that baby. This means almost 6 out of the 10 counties in my home State alone have no doctor specializing in obstetrics, representing approximately 2 million Texans in my State.

Let me talk about another story, another case that is worth referring to also in my State. Just last year a pregnant woman showed up at Dr. Lloyd Van Winkle's Castroville office in south Texas. She showed up in Dr. Van Winkle's Castroville office less than 10 minutes from delivery of her baby. Her family doctor in Uvalde, another Texas town, had recently stopped delivering babies altogether, citing medical liability concerns, and this pregnant woman was trying to drive the 80 miles to her San Antonio doctor from her home in Uvalde.

Let me give another story about a woman by the name of Denise Payne. Denise Payne walked into an emergency room recently. The doctors there did not want to treat her. She said, ''They didn't want to touch me because I was pregnant,'' this 38-year-old pregnant woman, who was 6 weeks along in her pregnancy at that time.

Luckily for Denise Payne the delay getting treatment didn't kill her. Although she couldn't get a kidney biopsy in Corpus Christi on the gulf coast of Texas, she was able to get one about 150 miles away in San Antonio, but she doesn't blame the doctors. ''I would say it's because of all the lawyers scaring the doctors,'' she said. ''They are scared to death to treat you.''

Indeed, that reminds me of other situations where I have heard doctors, concerned about their patients, but saying because of the broken liability system, every time you walk into an examining room, every time you walk into the emergency room, every time you walk into the delivery room, you are putting at risk everything that you have worked a lifetime to build for yourself and your family. Physicians and others are simply not able to put up with it, resulting in a crisis that even Ms. Payne, who no doubt was frustrated by her inability to get doctors to treat her in Corpus Christi, had to drive 150 miles away to get treated because she was pregnant and she needed a kidney biopsy. But because she was a higher risk patient who is at a higher risk of medical complications but also a higher risk of litigation, the doctors were scared to death to treat her, so she had to travel a long way to get that treatment.

These stories are not unique to Texas. Let me tell you about Linda Sallard of Arizona. At 2 a.m. on the morning of March 20, 2002, 22-year-old Melinda Sallard woke up with labor pains. She and her husband hopped into their car and started driving the 45 miles to Sierra Vista, which housed the only hospital within a 6000-square-mile area with obstetricians able to deliver babies. En route, they passed the Copper Queen Community Hospital, which was forced to close its maternity unit just 2 months earlier because all the practitioners able to deliver babies had lost their medical liability coverage.

Just 3 miles past Copper Queen, which is where they had a hospital that could have delivered her baby but had since closed its delivery facilities because of medical liability concerns, just 3 miles past this hospital, while her husband continued to drive their car, Melinda delivered her own baby girl, who you can see here in this picture in her lap. She gave birth on a desert highway to her daughter, Susanna. While Susanna, as you can tell from this picture, looks healthy and thriving today, when she was born she was not breathing. So Melinda, after she had the baby by herself, unassisted, without a physician—because she couldn't get to a hospital that had obstetrical services in time—Melinda, after she had her baby, cleared the baby's breathing passage and started CPR. Fortunately, the baby started breathing and Melinda wrapped her newborn in a sweater and held her to her chest as her husband drove them all the way to Sierra Vista Hospital, where the ER staff cut the umbilical cord in the parking lot.

As a result of the medical liability crisis, Sierra Vista is now the only hospital in a county of 140,000 residents that actually delivers babies. All high-risk patients are sent to Tucson, an hour and a half away, in a neighboring county. I shudder to think what could have happened in Melinda's case. Thankfully, as I said, Susanna Sallard is a healthy young girl—no thanks to a medical liability system that almost left her as a casualty.

The skyrocketing liability insurance premiums have also affected emergency and trauma services for patients. This is where the severity of the crisis becomes even more apparent.

Let me tell you about Jim Lawson. This is a picture of Jim Lawson, Mary Rasar's father. Mary lost her father in 2002 when Nevada's only level I trauma center was forced to close because of skyrocketing medical liability costs. The majority leader, Dr. FRIST, told us earlier that level I trauma centers are the ones that handle the most serious trauma cases. But Nevada's only level I trauma center was forced to close in 2002 because of skyrocketing medical liability costs.

Jim Lawson was injured in a car accident in Las Vegas, where he suffered multiple injuries and required immediate care. The State's only level I trauma center, the University of Nevada's medical center, where Mr.

Lawson should have been taken, was forced to shut its doors just days before this accident because rising liability costs had forced insurers to drop coverage on high-risk specialists, high-risk specialists like neurosurgeons, like emergency room physicians, and others who handle the most seriously injured patients.

Unfortunately, as I indicated at the outset, this story does not have a happy ending. Mr. Lawson was rushed to Desert Springs Hospital, where he died while awaiting air transport to the next nearest level I trauma center facility, more than an hour away, at Salt Lake City, UT. So this gentleman, who was in a car accident in Las Vegas, who could have been treated at the University of Nevada's medical center but for the fact it had to shut down because it lost its medical liability coverage, died because the only facility that could treat him was more than an hour away in Salt Lake City.

Let me tell you about Leanne and Tony Dyess. Leanne is a 48-year-old wife and mother of two from Mississippi. This is Leanne and her family. On July 5, 2002, Leanne's husband Tony was involved in a car accident in Gulf Port, MS, and suffered serious head injuries. After removing him from the car, paramedics rushed Tony to Garden Park Hospital in Gulfport, MS. But there were no neurosurgeons there available to treat Tony because rising medical liability costs forced doctors in that community to abandon their practice. Six critical hours passed before Tony could be airlifted to University Medical Center. As a result of the inability to locate a specialist to provide him immediate care, today Tony is permanently brain damaged, mentally incompetent, and unable to care for himself or his children.

In addition to this tragedy and the others I have mentioned, there are numerous other examples from my home State of Texas of tragedies, or near tragedies, or worse than injuries as a result of the inability to get medical care close by because of this crisis.

Another couple of stories: George Kuempe, who recently retired as a reporter for the Dallas Morning News not too long ago, fell from an oak tree and broke his back on a Sunday afternoon in the Austin area. He had to be flown to Scott & White Clinic in Temple, TX, because there were no neurosurgeons available in Austin, TX. There was a long delay in the amount of time necessary to treat his injuries in order to travel just 60 miles up the road. There were hours of delay. Dr. Path Crocker, chief of emergency medicine at Brackenridge Hospital in Austin, where he could have been and should have been treated had a neurosurgeon been available, said this is a warning flag to the citizens of Texas that a major problem is brewing.

In 2002, an elderly man was taken to an emergency hospital room in McAllen, TX, in south Texas in the Rio Grand Valley after falling and injuring his head. After 7 hours, the emergency room could still not locate a neurosurgeon to treat this elderly man's head injury, even though they searched in Corpus Christi, in San Antonio, and Austin. Unfortunately, this elderly man, with a head injury, died because he could not get timely medical treatment for that condition.

There are even more stories that illustrate the lengths to which patients must go just to receive desperately needed care.

Neurosurgeons in Houston, TX, are bombarded with trauma and emergency cases from around the State because doctors have dropped emergency services in efforts to lower their professional liability premiums just so they can earn a living.

You can see Houston, TX, located in the southeast part of our State where patients, let us say, down in the Rio Grand Valley—this shows Harlingen, a distance of 330 miles, which is close to McAllen where that elderly man had a head injury and where he would have to be airlifted to Houston to receive those treatments by a qualified neurosurgeon or other specialist. The time it takes to travel 330 miles from the Rio Grand Valley to Houston, the time it takes to travel from the Rio Grand Valley to San Antonio, or San Antonio to Houston, or El Paso to Houston, obviously, has medical consequences which means people who are injured and suffer more serious injuries and people whose lives could have been saved lose their lives because of this medical liability crisis with which our colleagues on the other side of the aisle simply refuse to deal.

Houston neurosurgeon Bruce Ehni described it like this. He said:

> We are the recipient of much more serious and risky cases that would have otherwise been cared for locally. Here at our hospital in Houston we are receiving hemorrhages, traumas and other dire emergencies from as far away as El Paso on the opposite side of the State, and Brownsville, which is down near Harlingen in the southern part of the State—sometimes up to 600 miles or more away.

Some of the examples include a patient with head trauma and a blown pupil flown in from Harlingen to Houston, more than 300 miles away; an intracranial hemorrhage flown in from Laredo on the United States-Mexico border 300 miles away; and a brain tumor causing an abrupt paralysis flown in from San Antonio, 200 miles away.

Dr. Ehni continued:

> All of these communities have neurosurgeons. The ''bad'' cases end up in Houston despite the presence of neurosurgeons locally because everyone is trying to avoid being sued. It is bad for patients and it is bad for us. We are being dumped on endlessly.

For the rest of this body, and perhaps others listening, let me put all of this in perspective geographically. For a medical transfer from El Paso to Houston, it would be as if a patient was hurt in Washington, DC, and because he could not find a surgeon, he had to be flown farther than Chicago, IL, for surgery. For a transfer from Harlingen to Houston, it would be like forcing a patient to fly from Washington almost to Buffalo, NY. For a transfer from San Antonio to Houston, it is as if a patient were forced to fly from Washington to New York City.

Can anyone in this body state they would be content to have their family or loved one suffer those sorts of delays in treatment if they really needed a medical specialist and couldn't find one? Of course, they wouldn't accept that. Neither should the American people. But that is what they are being forced to do because of the inaction and obstruction of those on the other side of the aisle who will not allow us to have a true debate and an up-or-down vote on this reform to our broken medical liability system.

The chief obstacle to making our health care system the best in the world is our liability lottery. In the liability lottery, people aren't free to act because doctors simply can't meet the demand, and Americans end up paying more for health care and suffering medical complications because of it.

It is not all bad news, I must say. I am glad to say, in response to many of the concerns which I have raised that pertain to my State of Texas, the legislature and the people of my State have acted. Last September voters took to the ballot and passed Proposition 12, an amendment to the Texas Constitution providing caps on noneconomic damages and paving the way for the full implementation of important medical liability reform.

We already have, even though this passed just last September, some of the early signs of beneficial results. One medical liability insurance carrier has reduced their medical liability premiums by 12 percent, and another medical liability insurance company has canceled their planned 19-percent rate increase because of these reforms.

My home State of Texas recognizes the need for government to step in and help address this urgent problem. But more needs to be done, and there is still too little recourse for patients in States without reform.

Let me mention briefly some of those States. In Illinois, more than 15 percent of the neurosurgeons have left the State in the last 2 years. That is according to the American Association of Neurological Surgeons. There are currently no hospitals in the northwest suburbs of Chicago that have 24/7 neurosurgery coverage. Most patients in need of care are transferred either to Rockford, which is 60 miles away, or to the University of Illinois in Chicago, 45 miles away—not quite the distances we talked about in my State but still nevertheless consequential distances in terms of the delay in treatment of serious cases.

In the State of Massachusetts, the home State of Senator KENNEDY and Senator KERRY, a third of the State's hospital beds have closed in the past

decade, and 32 percent of physicians say they plan to leave the State if the practice environment fails to improve. In the 1990s in Massachusetts the number of practicing obstetrician/gynecologists declined by more than 20 percent. In New York, record numbers of people seeking emergency care are overwhelming emergency departments across the State in areas including Long Island, Syracuse, Rochester, and Buffalo. Many doctors and higher risk specialties are eliminating services, retiring early, or contemplating leaving. The exodus of 4,000 doctors in New York alone from 2000 to 2002 has been attributed to a litigious atmosphere in that State.

In North Carolina, in 2002 alone, medical liability rates increased by 50 percent and high-risk specialists are facing increases between 50 percent and 100 percent. Physicians are simply going out of business, leaving a State, or substantially increasing prices as they pass along costs, as they can, to their patients. But the problem is especially acute for obstetricians, neurosurgeons, and emergency physicians.

Finally, the last State I will mention is the State of Washington. Since 1998, Washington State has seen a 31-percent increase in its physicians moving out of the State, and between 1996 and 2001 the number of retirements increased 50 percent with the average age of those retirees dropping from age 63 to age 58.

We know this liability reform can have a beneficial impact on reducing costs and improving access because some States have done it for a while. My State has done it since September and has not yet seen the full benefit although we have seen some very hopeful early signs. California has adopted something called MICRA, which has been the medical liability tort reform package. With MICRA, California has achieved a more stable marketplace and lower premium increases over the years than have other States without the kind of medical liability reform we are advocating today. According to the data, California medical liability premiums grew 167 percent over the past 25 years compared to 505 percent for States without medical liability reform.

I have taken more time than perhaps I should, but I thought it was important to go over in detail what the problem is, what we think the solution may be, at least in part, and demonstrate for our colleagues on the other side of the aisle, if they would allow an up-or-down vote on this legislation, we could see some very real, substantial benefits, not just to physicians.

I like physicians. I respect physicians. But this is not something we ought to do to help members of the medical profession. The reason we ought to do it is to help patients. Like it or not, all of us will be patients at some future point in our lives. The best way we can ensure the good quality health care is available for us and our loved ones, should we need it in the future, is to pass this meaningful reform.

I ask our colleagues to seriously reconsider and not to obstruct this important reform. We know it can help. If they have other ideas they think will add to the substantial beneficial effect of this legislation, let them come to the floor and talk about it. We will be willing to talk to them and engage them on it. If a consensus develops that an even better package can be produced as a result of the kind of debate and negotiations and compromise that characterize this body and which this body is so good at when it works properly, I say, bring it on.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore (Mr. CORNYN). Without objection, it is so ordered.

Mr. ENZI. Mr. President, I rise to speak about the Nation's medical litigation crisis. I begin by explaining where we are in this process. It is the right of the majority leader to bring a bill up for debate. On the Senate side, it requires unanimous consent to have that debate. We have been denied unanimous consent to debate the medical litigation solution.

What are the options? We can have a cloture vote. We will have that tomorrow afternoon. The cloture vote requires 60 votes of approval in order to debate the medical litigation crisis solution. On most of the bills we see brought up, the unanimous consent is almost automatic. However, on this particular bill, we are not even able to debate the bill. We can debate it, but it has no effect. There can be no amendments. There can be no votes until the filibuster is broken.

What happens when the filibuster is broken? Technically there can be 30 hours of debate on that particular right to debate before the actual debate begins. Then when we actually do get to the debate, every single amendment can be filibustered and the bill can be filibustered. Supposing we make it past those roadblocks and the House passes the bill and there are differences between the two, there has to be a conference committee. At that point, there can be three more filibusters.

Our Founding Fathers intended for the Senate to be the cooling saucer for legislation. I don't think they intended it to become a stagnant pond. I do think they intended the bills would be debated and conclusions reached, there would be some time taken, but not all time taken.

We have a medical litigation crisis in this country. The system is broken. We need to start working to fix it. I urge my colleagues to vote for cloture on the Gregg-Ensign bill. It is time to stop filibustering and to start working. We should not be having this filibuster on whether to debate. We need to pass the motion to proceed and get into amendments on the bill if amendments are needed.

This is the third time in this Congress we have brought a medical litigation reform bill to the Senate. We need to pass this legislation. We need to pass some legislation that deals with this crisis. Passing this bill would be the best thing we can do to stabilize medical liability premiums in the short term, which will allow us to retain doctors in states like Wyoming, which will allow people to have access to doctors.

I proposed legislation aimed at solving this problem over the long term and I will speak to that later. But right now, we need to vote in favor of ending this filibuster against this bill so we can begin to debate the bill. I am willing to consider any amendments my colleagues in the minority might have, but we cannot consider any of their amendments until they agree to end this filibuster and begin debate on the bill.

I understand some Senators are concerned this bill would limit the ability of an injured patient to get fair compensation. This bill would do no such thing. This bill will not limit the ability of an injured patient to get fair compensation. This bill would permit full and fair compensation to patients for their economic losses. This is an important point for everyone to keep in mind. If a judge and jury were to decide a person suffered an injury due to a doctor's mistake or a hospital's negligence, that person would still be entitled, under this bill, to receive full compensation for their economic loss, including everything from rehabilitation to lost wages resulting from their injury.

I cannot stress this point strongly enough. This bill would not limit awards for economic losses. What the bill would do is place a ceiling on noneconomic damages. The bill would limit the maximum award for noneconomic damages to $250,000 in States that do not have their own limits on such awards. Noneconomic damages are those for pain and suffering.

I want to ask, How much pain and suffering do you have if you cannot even see a doctor? And if you cannot see a doctor, and you die, who do you sue? The trial lawyers? Maybe so. They are a part of the problem. I am not going to try to cover all of the parts of the problem. We are trying to fix one specific part of the problem. This bill will not take care of the whole thing.

But I want to ask you, How much pain and suffering do you have if you cannot even see a doctor? This is not primarily a city problem. You can have the problem in the city, and doctors are leaving cities as well. But in cities it gets glossed over a bit because there are so many doctors. There are so many doctors everybody anticipates they can find a doctor. Well, there are also more people in cities, so there are

more people waiting in lines to see the doctors. There is a limit to how long you want to wait in line to see a doctor, particularly if you are having an emergency.

This bill only covers two categories; one is emergency medical services, and the other is people who deliver babies. So I ask again: how long do you want to wait in the emergency room?

Is this proposal for a limit of $250,000 for noneconomic damages way out of line? I do not know. I do know California passed this limit. California put a limit of $250,000 on noneconomic damages, and it has made a difference. They are one of the few States in the Nation that is not having the problem.

Now, California, viewed by Wyoming folks, where I am from, is considered to be very liberal. So if they did it, this could not be a conservative move. If California can have a $250,000 limit, why shouldn't other places be able to? You may say: Well, States could pass their own. California did. States can. It is a very long procedure for some States. Wyoming has very limited legislative time, and then a lengthy procedure for having votes of the people before it then comes back to the legislature for additional work. So there are limitations in the States.

This can be handled on a national basis. If you hear this bill would limit an injured patient to receiving $250,000 in compensation, though, you can say that is simply false. There is no other way to put it. That contention is false.

This bill would also only apply, as I mentioned, to obstetrical services and emergency medical services. These are two of the areas of medicine where patients are in the most danger of losing their access to these services.

Once more, I ask, how many will be harmed by not getting to see a doctor? What do you do if you are a woman and you cannot see a doctor to deliver your baby? Baby doctors are particularly hard hit because the child can sue when the child reaches age, so the tail on their insurance is extremely long, and that provides additional opportunities to sue, which means additional cost for the insurance.

But we are also talking about the emergency medical services. In an emergency, as Senator FRIST, the doctor of the Senate, pointed out, every single moment counts. There is, at most, a ''golden hour'' in emergency treatment. So if you have to spend that golden hour traveling 750 miles—as the Senator from Texas showed on his chart of Texas showing how far some people have to travel for specialized care—it could be too late.

Physicians are being hit with six-figure annual premiums in the medical specialties of obstetrics and trauma care. As a result, they are curtailing their practices, retiring early, or moving to States with better legal environments, because a better legal environment means lower insurance premiums.

In Wyoming, we have one of those bad legal environments. We do not have limits on noneconomic damage awards. We do not have limits, despite evidence that shows reasonable limits on noneconomic damage awards have helped control the rising cost of medical liability insurance premiums in other States.

As a result, people in Wyoming are losing access to affordable health care in their communities. The rising cost of medical liability insurance in my State of Wyoming is forcing doctors to curtail their practices or close them entirely. We have a shortage of doctors in Wyoming as it is, and the cost of medical liability insurance is making a bad problem even worse.

I want my colleagues to know we have a full-fledged medical liability crisis on our hands in this country, and particularly in Wyoming. Just last month, the largest of the three insurers in Wyoming announced they would be leaving the Wyoming market later this year. As a result, 381 doctors and 7 hospitals are going to have to find new insurance coverage. Of the two companies that are left, one of them is not writing new policies for emergency and trauma care physicians. So the few emergency room specialists we have in Wyoming soon will have only one company to choose from for their professional insurance.

These insurance company executives are not dumb people. Just as doctors are moving to States with better legal environments, so are the insurance companies.

As I mentioned, some have left Wyoming. People say, well, yes, there go those rich insurance companies. They are going to move somewhere else where they can make a lot more money. Did you know some of them are going broke? If the profit is all that prolific, why are some going broke?

One of the doctors in Wyoming was doing his calculation about whether to stay in business or not, whether to deliver babies anymore or not. He ran a calculation based on the rise in insurance premium costs he had, despite that he has not been sued at all. He found out $25 of each doctor visit goes to pay the insurance. If you are paying $100 for a doctor visit, $25 of that is going to pay for the insurance. The other $75 is not all profit either. It has to go to pay for the nurses, the supplies, the building—all of those things. But $25 of each visit goes to insurance.

I do not care which insurance companies are writing policies in my State, as long as there are some. But I do care when good doctors leave the State. Wyoming is a big State with a lot of small communities. In fact, people out here in the East cannot even comprehend the small communities we have. If you grew up in a small town, you probably got to know your family doctor pretty well. Doctors are part of the fabric of life in the small towns that dot the map of my State. It is not easy for them to pick up and leave, but that is what is happening. As hard as it is for the doctors to leave, it is even harder on the families they serve—the families who have grown comfortable with the care these doctors provide.

I commend Senators GREGG and ENSIGN and our majority leader, Dr. FRIST, for trying again to pass a sensible short-term solution to this Nation's crisis. They have developed a bill that is focused on providing relief to the doctors who serve mothers and their babies, and the doctors who save lives in our Nation's emergency rooms.

Every day, thousands of patients depend on these doctors when it comes time to bring a new life into the world or to save a life that is already here.

I hope we can all agree to support this short-term solution that will maintain access to the services these doctors provide.

I have noticed something interesting during the debate on the issue of medical liability reform. While we have been debating the pros and cons of reform, no one is standing up to defend our current system of medical litigation. I have yet to hear a rousing defense of our medical litigation system. Even some of the lawyers in this body have agreed that frivolous lawsuits are a problem and that our medical liability system needs reform. Why aren't we hearing anyone defend the merits of our current medical litigation system? It is because it is indefensible. Our system does not work. It does not work for patients, nor does it work for their doctors.

The bill we are debating today is a good bill. It will help us stabilize insurance premiums and preserve access to critical medical services. But even the sponsors would probably admit it is a short-term measure that does not address the fundamental problems with our medical litigation system. This is an important bill, but it is just a tourniquet to stop the bleeding. It is not going to heal our broken system.

It reminds me of the town that lived on the edge of a cliff. The town had a tremendous problem because kids fell off of this cliff, and the fall killed a lot of them. They decided they needed to do something about it. After extensive meetings and committee work, they purchased the finest ambulance that could be found, and they put that ambulance at the base of the cliff. They hired the best EMTs they could get so the person could be loaded on to the ambulance and served while they got to the nearest hospital. Somebody then suggested: Why don't you just put a fence on the cliff. And they said: No, we don't do fences.

That is what we are doing with this medical litigation crisis. We are avoiding putting up the fence for the short-term solution and we are letting people fall off the cliff; then we are trying to provide them with the best possible service we can after they fall. What are we going to do when they use this fine ambulance and these great EMTs and they get to the hospital and there is no emergency room doctor? We need the fence and the emergency room doctors

too. This bill is designed to make sure there is medical liability insurance so the doctors can continue to operate.

We like to say that justice is blind. With respect to our medical litigation system, I would say that justice is absent and nowhere to be found.

Every Member of this body wants to make sure that someone who is truly injured by a medical error gets the compensation they deserve. But a number of studies have shown that many patients who were hurt by negligent actions received no compensation at all for their losses.

I have also seen studies that suggest that those who receive compensation end up with about 40 cents on every dollar in insurance premiums, once the lawyers' fees and their courtroom costs are subtracted. So the victim gets 40 cents on the dollar. Somebody else is getting the other 60 cents. I don't think that sounds fair.

What is more, studies have demonstrated the likelihood of a doctor or hospital being sued, and the result of such a suit, bears little relation to whether the doctor or hospital was at fault.

These facts led the congressionally chartered Institute of Medicine to issue a report in 2002. That report called upon Congress to create demonstration projects to encourage States to evaluate alternatives to current medical tort litigation.

In response, I have introduced a bill that would turn these expert recommendations into action. My bill, the Reliable Medical Justice Act, would authorize funding for States to create alternatives to current tort litigation. The funding would cover the costs of planning and initiating proposals. My bill would require participating States and the Federal Government to work together in evaluating the results of the alternatives as compared to the traditional tort litigation. This way all States and the Federal Government could learn from new approaches. We could see if there is not a way to get people fairly and justly compensated, compensated more quickly, and to actually receive the majority of the money, not just a small pittance.

The bill outlines some model approaches States could employ. For instance, one State might want to evaluate the idea of health care courts where judges with special expertise could hear medical cases. This concept is similar to the special courts we have for taxes, domestic violence, drugs, and other complex and emotional issues. That way we would get some fairness between cases. One person with the same kind of hurt would get compensated the same way, approximately, that somebody else with that same hurt had, not based on who picked the best lawyer or who picked the best injury—with fairness, quickness, and the victim receiving the money.

Another State might want to test an administrative approach. For instance, a State could set up classes of avoidable injuries and a schedule of compensation for them and then establish an administrative board to resolve claims related to those injuries. A scientific process of identifying preventable injuries and setting appropriate compensation for them might offer better results than the randomness of the court system.

Another State might want to provide health care providers and organizations with immunity from lawsuits if they make a timely offer to compensate an injured patient for his or her losses. This could give a health care provider who makes an honest mistake the chance to make amends financially with a patient without the provider fearing that their honesty would land them in a lawsuit.

The point of my bill is there are plenty of ideas for better ways to resolve medical disputes. One of the best ways Congress can help fix the flawed litigation system in the long term is by encouraging States to test alternatives and to learn from them.

As I speak, some States are already looking into alternatives. My State of Wyoming is one of them. Another is Massachusetts, where the Governor is working with Harvard University on an innovative project. Another is Florida, where the Governor's task force recommended projects for which my bill could provide support.

Believe it or not, both Newt Gingrich and the editors of the New York Times have endorsed this idea. If Newt Gingrich and the New York Times can agree on something, maybe we can find enough support for it in this Chamber as well.

I want to remind my colleagues that I support the Gregg-Ensign bill. It will provide some short-term relief for this medical liability crisis. We don't have time just for testing at the moment. We are losing the doctors who provide emergency care and the doctors who deliver babies. In my own State, several of the doctors have quit delivering babies because they can't afford the insurance. Others have had to cut back on the number of babies they deliver to be able to afford the insurance. That means ladies having babies are not able to get doctors with the necessary expertise.

We need short-term relief from the medical liability crisis, and I know many of my colleagues will join me in voting for it. But I know that some will vote against it. Regardless of whether you feel this is the right solution for the short term, let's acknowledge that our medical litigation system is failing us and that we must work together to find a long-term solution.

Medical lawsuits are supposed to compensate people fairly and deter future errors, but most patients don't get fair and timely compensation. There is nothing to show that lawsuits are deterring medical errors or making patients safer.

I urge Members to vote for the Gregg-Ensign bill. I also ask that Members take a serious look at S. 1518. My basic reason for introducing S. 1518 is that most patients don't want to sue their doctors. If their doctor made a mistake, they want an apology. They want to be compensated for their loss. They want the situation to be resolved quickly and fairly. I believe most physicians want the same thing. They want to apologize. They want to make amends financially.

If patients and their doctors want the same thing, what stands in the way? Our legal system, that is what.

Our legal system pits doctors against their patients. Doctors cannot apologize to their patients because admitting a mistake might end a doctor up in court, and probably would. As a result, doctors order more expensive tests and spend less time getting to know their patients—anything to protect against a career-threatening lawsuit.

Patients feel this distrust, and they respond in kind. If a patient has a bad medical outcome, they assume their doctor was at fault, even if there was nothing their doctor would or could have done differently.

Sometimes bad outcomes happen in health care, and no one is at fault. But if a doctor doesn't feel free to say ''I am sorry'' when he or she makes a mistake, how will a patient know whether their doctor is at fault? It is hard to blame the patient for assuming the worst.

This is a fundamental flaw in the way we resolve medical disputes today. The courtroom stands between the people who matter most—the patient and the doctor. The courtroom ought to be the last resort for resolving disputes, not the only resort. Patients and doctors ought to be on the same side, working together; but fear of the legal system puts them in opposite corners and pits them against one another.

There has to be a better way. My bill would be another step toward replacing the medical lawsuits with a better and fairer system for compensating and protecting patients. But it is a long-term solution, and we do have a short-term solution, the Gregg-Ensign bill. I hope we can work together to find the long-term solution, but that we will do the short-term solution now.

Again, our debate now is whether we get to the debate the bill. Unless we have cloture tomorrow, we won't actually get to debate the short-term solution.

I want to recap and remind you that this bill doesn't limit economic damages. It will assure that we can have emergency care, that doctors who deliver babies can continue to deliver babies.

If you don't get care at all, how much pain and suffering will you have? How much injury can be caused if you cannot go to a doctor in your community and you have to travel extensively to do it?

This bill is a limit on noneconomic damages, similar to the limit in California, where the crisis has been averted. I ask my colleagues to support cloture on the motion to proceed so we can proceed to pass the Gregg-Ensign bill, so we will have a short-term solution to the medical liability crisis we face in our country, which keeps us from getting the medical treatment we need, when we need it.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I rise in strong support of S. 2207, the Pregnancy and Trauma Care Protection Act of 2004. I strongly encourage my colleagues to vote for this very important legislation.

This is the third time in the 108th Congress that I have come to the floor to argue for medical liability reform. It should not be this difficult to pass a piece of legislation that will improve access of all Americans to timely and efficient medical care, reduce the cost of hospitalization insurance and health insurance, and do something about the enormous cost of defensive medicine being practiced today by physicians throughout the country, which is contributing also to the high cost of health insurance premiums.

I start off today by telling a story of the Schweiterman family in Ohio's rural west-central Mercer County. Doctors Jim and Tom Schweiterman are brothers who, along with their father, who is retired, have delivered about 5,700 babies over the years. The family has a 113-year history of bringing babies into the world. Their great-grandfather started the current medical practice in 1896. They have never been sued for a delivery.

Yet this family is giving up delivering babies because of escalating malpractice insurance costs. Their insurance rates rose from $32,000 6 years ago to this year's quote of $78,000. Dr. Jim Schweiterman stated he would continue to deliver babies if he could just break even, but unfortunately, because of insurance costs, he cannot. Their last delivery will take place this September.

This is happening all over the United States. This legislation is a must. It is important because the effects of medical liability crises can be felt most acutely by obstetricians/gynecologists and emergency room physicians.

Data from the American Medical Association indicates that 19 States currently face a medical liability ''crisis'' and 25 States show ''problem signs.'' That is 44 States out of our 50. The doctors in these 44 States will either leave the practice of medicine entirely or move their practice to a neighboring State with better malpractice insurance rates. This phenomenon cries for national legislation.

One category of patients impacted greatly by this crisis and who we are trying to help with this legislation is women of childbearing age. One out of every 11 obstetricians nationwide has stopped delivering babies and, instead, scaled back their practices to gynecology only. In addition, one in six has begun to refuse high-risk cases. Most alarming is recent data showing that for a third year in a row, the number of obstetrics/gynecology residency training slots filled by U.S. medical students declined by 65.1 percent—the lowest level ever. People are not going into residencies in OB/GYN and in ER.

How does this affect a woman's access to care? As premiums increase, a woman's access to general care, including regular screenings for reproductive cancers, high blood pressure, cholesterol, diabetes, and other serious health risks, will decrease.

With fewer health care providers offering full services, the workload has increased significantly for those who still do. Wait time increases, putting women at risk.

Women receive less prenatal care in our current environment. Improved access to prenatal care has resulted in low infant mortality rates, an advance now threatened as OB/GYNs drop obstetrics. As you may have read, for the first time since 1958, the U.S. infant mortality rate is up. According to the preliminary data released this month by the statisticians for the CDC, the Nation's infant mortality rate in 2002 was 7 per 1,000 births. That is up from 6.8 in 2001, and some experts are attributing that to poor access to quality prenatal care.

Another group of physicians that has been significantly affected by the medical liability crisis, and that we are trying to help out with this legislation, is emergency room physicians. When patients rush to the ER, they assume the hospital will be open and doctors will be there to treat them. However, to secure affordable medical liability insurance, or to minimize their risks of lawsuits, many physicians, including neurosurgeons, orthopedic surgeons, cardiothoracic surgeons, obstetricians, and cardiologists, are no longer able to serve on-call to hospital emergency departments. In extreme cases—for example, Nevada, Florida, and Pennsylvania—emergency departments and trauma centers have been forced to shut down completely because the physicians have been unable to secure medical liability insurance at any price. It is not available.

In fact, in the past 10 years, hundreds of emergency departments have closed in the United States in such States including Arizona, Florida, Maryland, Mississippi, Nevada, Ohio, Pennsylvania, Texas, and West Virginia. Over the same period, the number of visits in the Nation's emergency departments climbed over 20 percent. While more Americans are seeking emergency medical care, emergency departments continue to lose staff and resources and are almost at the breaking point.

In addition, three in four of emergency departments diverted ambulances in the last 12 months. I will repeat that. Three of four emergency departments diverted ambulances in the last 12 months in part because no specialists were available.

Of these, one-third diverted patients six or more times a month, and an additional 28 percent diverted patients three to five times a month.

This is devastating, especially in light of the volume of patients treated by emergency room physicians. Each year there are 110 million visits to emergency rooms in the United States. Over 3.5 million ER visits are related to bone fractures. Of these, some 885,000 people have such severe fractures which can cut off or reduce blood flow to a limb or lead to shock. Patients cannot afford delays in treatment which can lead to death, amputation of a limb, loss of use of a limb, or permanent disability.

Each year, over 1 million Americans suffer a heart attack. Approximately 20 percent of heart attack victims will die. Cardiologists and cardiovascular surgeons can perform lifesaving treatments and, in some cases, can even reverse heart damage if the patients are treated promptly. Stroke patients treated within 90 minutes of the onset of their symptoms show the most improvements.

We need this legislation to keep these ERs open and fully staffed and to make sure there are no delays in treatment that can result in death or permanent injury.

How does this affect a person's access to care in the emergency room or the trauma care center? Today, in many hospitals, there is no neurosurgeon available to treat patients with major head trauma or no orthopedic surgeon to care for patients with open fractures.

According to a recent study, over 70 percent of the Nation's hospitals, again, were forced to divert patients in the past month. That is a startling statistic. According to a recent study, over 70 percent of this Nation's hospitals were forced to divert patients in this past month, in part because of lack of specialists on call.

Neurosurgeon Thomas Hawk of Columbus stopped providing trauma and emergency care in an effort to reduce his liability premiums. He also writes to me:

> I see lots of patients each week from West Virginia who cannot find neurosurgical care and are coming all the way to Columbus, OH, to get care.

This is another problem, the transferring of patients. Because of the growing scarcity of oncall specialists, patients now wait longer for care in emergency departments. As I mentioned, many are being transferred to other facilities. This can be deadly for elderly patients experiencing heart attacks or strokes which require immediate medical attention.

In fact, the emergency physicians at Akron's two level I trauma centers—Akron is fortunate; they have two

trauma centers, Akron General Medical and Akron City Hospital—often treat patients from other areas of the State, including Youngstown and Cleveland. Youngstown is, I think, an hour away, and Cleveland is 45 minutes away. I do not see how my colleagues can claim we are not in the middle of a crisis.

When I have given speeches in the past, I have given testimonials from dozens upon dozens of physicians in Ohio who have been affected by this crisis. Every week I see many of them. But this time instead I would like to talk about some other States to show that this crisis does not just affect my home State of Ohio or States such as Nevada or Pennsylvania, but it is widespread throughout the country and should cause many of my colleagues from other States to support this legislation or explain why they cannot.

In Illinois, according to the American College of Emergency Physicians, fewer inpatient beds and staffing shortages are contributing to severe overcrowding and ambulance diversion. A 2003 report from the Metropolitan Chicago Health Care Council indicated the city's hospitals are unprepared to meet the future health care needs of their patients. According to the American Association of Neurological Surgeons, more than 15 percent of Illinois neurosurgeons have left the State in the past 2 years.

In addition, since January of 2003, 59 doctors have left the St. Clair-Madison County area. Just since October 2003, as premium renewals are considered at the end of the year, over 10 physicians have left, including 3 orthopedic surgeons.

Also in Illinois, according to a November 2002 survey, 63.5 percent of responding Illinois OB/GYNs have been forced to make changes in their practice, such as quitting obstetrics, retiring, relocating, decreasing gynecologic procedures, and no longer performing major surgery. Almost 50 Illinois OBs stopped practicing obstetrics recently, forcing 7,776 pregnant Illinois women to find new OB/GYNs to provide obstetrics care.

I don't know how we can take this situation. I have six grandchildren, and I cannot think of a worst situation than if one of them had a problem pregnancy and were told by their OB/GYN: I am sorry, I can't handle it because if I do, my insurance premiums are going to skyrocket. And yet in Illinois, 50 stopped practicing.

An orthopedic surgeon in Oakbrook Terrace, IL, told the story of a 5-year-old child who was struck by a car and sustained a fracture of the femur and small skull fracture with minimal underlying brain contusion. He stated:

> Such injuries would typically be treated by . . . an orthopaedic surgeon and then a neurosurgeon. . . . In this case, the neurosurgeon on call would not see any patient under 18. A pediatric orthopaedic surgeon was in attendance . . . but without a neurosurgeon . . . a transfer to Loyola had to be arranged. At Loyola, no pediatric orthopaedic surgeon was available, so the adult orthopaedic trauma surgeon had the child's leg placed in traction, inserting a pin just above the knee in order to hang the weights which pulled on the leg. The plan was to keep the child in traction for a few weeks, and then place the child in a cast. The family, after 2 days at Loyola, desired transfer of care back to their home town. The liability crisis has created a situation where this patient had to endure two useless ambulance rides with a broken femur, several extra days of hospitalization, and insertion and removal of a traction pin. This waste of resources and interference with medical care is repeated endlessly across the nation.

In New Jersey, according to the State Hospital Association, hospital liability premiums jumped 50 percent on average in 2003, and the average annual hospital premium increased to $1.4 million.

In addition, a survey of more than 1,000 obstetricians found 23 percent had left their practices last year because they could not afford liability coverage, and only one pediatric surgeon is left in each of Ocean and Monmouth Counties, according to the State medical society. Some hospitals do not even have obstetricians on call.

Also in New Jersey, in January of 2002, there were 85 practicing neurosurgeons in the State. A little more than a year later, an estimated 20 have been forced to stop practicing. Warren County residents, including its 200-bed hospital, saw its only two neurosurgeons leave in September 2002. The closest neurosurgery center is now more than 1 hour away from these residents.

In North Carolina, the average size of liability claims increased by approximately 80 percent over 10 years. Some physicians are going out of business, leaving the State or substantially increasing prices as they pass on costs to their patients. The Senator from North Carolina, who was a Presidential candidate, should be very familiar with those statistics. The problem is especially acute for obstetricians, neurosurgeons, and emergency physicians.

In fact, in nine counties in the rural southern region, there has been a 3-percent decrease in specialty physicians, despite a nearly 8-percent increase in population between 1999 and 2002. At the same time, specialty physicians in all rural counties have increased only 1 percent, while the general population in those counties grew by 7 percent.

Neurosurgeons have been particularly affected by the medical liability crisis and many are stopping or limiting their trauma and emergency care in an effort to obtain affordable liability insurance. As a result, many hospitals, including Moore Regional Hospital in Pinehurst, NC, no longer have 24-hour neurosurgery coverage. Patients who suffer injuries during the wrong time are transferred to Chapel Hill sometimes after waiting for hours.

What about Florida? In Florida, liability premiums increased 75 percent in 2002. The average premium per physician was 55 percent higher than the national average. Emergency departments across the State are transferring patients to other hospitals because of shortages of cardiologists.

Between 1998 and 2002, 30 professional liability insurers left Florida. That is, the insurance companies have just left Florida because of the multiplicity of medical lawsuits that have been filed. Thirty-four percent of Florida physicians have stopped or reduced their emergency care coverage.

At Orlando Regional Medical Center, where Disney World is located, is one of only six level I trauma centers in the State. Think about this. This is the State of Florida, one of the fastest growing States in the United States. They have six level I trauma centers in the State. For those people who travel to Florida, I am sure that one of these days they are going to start taking that into consideration about going to the State of Florida because of the fact they do not have the trauma centers they need to take care of the people who come down from all over the country.

All of the neurosurgeons on staff at the Orlando Regional Medical Center, which is one of the six level I, have what they call ''gone bare'' and no longer have any professional liability insurance. So what has the hospital done to take care of the situation? Listen to this. The hospital has resorted to paying the doctors $4,000 per day to cover the call schedule and enable them to keep their door open to traumas.

In addition, Orlando Regional Sand Lake Hospital has had to eliminate both of its on-call orthopedics and urology coverage in its emergency department due to a lack of physician availability.

The stories from Florida are particularly egregious, so much so that I cannot understand how my colleagues from that State are not supportive of this legislation. I cannot figure it out. With what is going on in Florida, I cannot understand why the two Senators from that State cannot be supportive of this legislation.

Dr. Richard Foltz from Fort Lauderdale, FL, writes:

> There are no neurosurgeons in Palm Beach to do brain surgeries or take ER call. They try to transfer patients across county lines all the time. I have no insurance and have gone bare. My last premium notice was over $400,000 a year.

According to neurosurgeon Troy Tippett, there are no longer any neurosurgeons in the Pensacola, FL, area who treat pediatric patients who are often considered high risk in liability terms. Children suffering from head and spinal injuries are airlifted more than 200 miles away. Think about that, airlifted 200 miles away to get treatment they ought to be able to get in their own community.

A Winter Park OB/GYN dropped his obstetric practice after his premiums rose from $48,000 to $100,000. At that rate, he would have to work 6 months

of the year just to pay his liability premiums. Instead he, along with four other obstetricians, gave up obstetrics altogether.

I could go on and on with one story after another about the fact we are losing surgeons and we are losing obstetricians all over this country. We are just talking about two of the specialties right now. We are concentrating on these two right now because we know they are the most in need and the shortage is most acute.

The legislation we are debating today gets us on our way to turning these statistics around. It provides a commonsense approach to our litigation problems that will keep consumers from bearing the costs of costly and unnecessary litigation while making sure those with legitimate grievances have recourse through the courts.

I would like to point out the argument that the insurance industry is ripping off doctors—and we hear that all the time on this floor—and raising rates to make up for investment losses is preposterous. I would again invite those Members who believe this to read the article I submitted for the RECORD during our last debate in February entitled ''Did Investments Affect Medical Malpractice Premiums,'' where it is concluded that asset allocation and investments returns have had little, if any, correlation to the development of the current malpractice problem.

I am not going to bore my colleagues today with statistic after statistic about what has happened to medical malpractice insurance companies in this country, but most of them are out of business. Most of them are limiting what they make available to doctors based on the type of medicine the doctor practices.

I would also like to point out testimony given to the Ohio Medical Malpractice Commission by a man by the name of James Hurley of the American Academy of Actuaries. In his testimony, Mr. Hurley tried to debunk a few misconceptions about the insurance industry and medical malpractice, one of which is the idea that insurers are increasing rates because of investment losses, particularly their losses in the stock market.

In response to this, Mr. Hurley states unequivocally, that in establishing rates insurers do not recoup investment losses.

I ask unanimous consent that a letter of March 26, 2004, from James Hurley be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN ACADEMY
OF ACTUARIES,
March 26, 2004.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: On behalf of the American Academy of Actuaries' Medical Malpractice Subcommittee, I appreciate the opportunity to provide an actuarial perspective on the issues related to patient access to health care and, in particular, the availability and pricing of medical malpractice insurance. As Congress considers medical malpractice liability reform (include S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004), the subcommittee feels it is important to highlight certain misconceptions in the current debate so Congress can more effectively address problems related to the availability and affordability of this insurance.

DETERMINING RATES.—Ratemaking is the term used to describe the process by which companies determine what premium is indicated for a coverage. In the insurance transaction, the company assumes the financial risk associated with a future, contingent event in exchange for a fixed premium before it knows what the true cost of the event is, if any. The company must estimate those costs, determine a price for it and be willing to assume the risk that the costs may differ, perhaps substantially, from those estimates. A general principle of ratemaking is that the rate charged reflects the expected costs for the coverage to be provided, not what has been paid or is going to be paid on past coverage. It does not reflect money lost on prior investments. In short, a rate is a reflection of future costs.

In general, the actuarial process used in making these estimations for medical malpractice insurance starts with historical loss experience for the specific coverage and, usually, for a specific jurisdiction. Rates are determined for this coverage, jurisdiction, and a fixed time period. To the appropriately projected loss experience, a company must incorporate consideration of all expenses, the time value of money and an appropriate provision for risk and profit associated with the insurance transaction.

Some lines of insurance coverage are more predictable than other lines. The unpredictability of coverage reflects its inherent risk characteristics. Most companies would agree that costs and, therefore, rates for automobile physical damage coverage, for example, are more predictable than for medical malpractice insurance because automobile insurance is relatively high frequency/low severity coverage compared to medical malpractice insurance. In the case of auto physical damage, one has a large number of similar claims for relatively small amounts that fall in a fairly narrow range. In medical malpractice insurance one has a small number of claims that have a much higher average value and a significantly wider range of possible outcomes. There also is significantly longer delay for medical malpractice insurance between the occurrence of an event giving rise to a claim, the reporting of the claim, and the final disposition of the claim. This longer delay adds to the uncertainty inherent in projecting the ultimate value of losses, and consequently premiums.

RATES DON'T RECOUP PAST INVESTMENT LOSSES.— The ratemaking process is forward looking. In establishing rates, both state insurance laws and actuarial standards of practice prohibit recoupment of past investment losses. Instead of trying to make up for past losses, the general ratemaking practice is to choose an expected prospective investment yield and calculate a discount factor based on historical payout patterns. For medical malpractice, the insurer often expects to have an underwriting loss that will be offset by investment income. Since interest yields drive this process, when interest yields decrease, rates will increase.

Insurers are restricted in their investment activity due to state insurance regulation and competition in the market. The majority of invested assets are fixed-income instruments. Generally, these are purchased in maturities that are reasonably consistent with the anticipated future payment of claims. Losses from this portion of the invested asset base have been minimal, although the rate of return available has declined.

TORT REFORMS.—Tort reform has been proposed as a solution to higher loss costs and surging rates. Reforms modeled after California's Medical Injury Compensation Reform Act, or MICRA, are proposed to alleviate some of the financial pressure on the medical malpractice insurance system. The Subcommittee, which takes no position for or against tort reforms, observes the following:

A coordinated package of tort reforms is more likely to achieve savings in malpractice losses and insurance premiums than an individual reform, like a cap on pain and suffering or non economic damages only.

While a cap on non economic awards could substantially reduce claim losses (on a per-event basis and at some level low enough to have an effect; such as MICRA's $250,000) other tort reform elements, such as a mandatory collateral source offset rule, are also important.

Such reforms may not assure immediate rate reductions, particularly given the size of some rate increases being implemented currently. The actual effect, including whether the reforms are applied as intended, will not be immediately known.

These reforms are unlikely to eliminate claim severity (or frequency) changes but they may mitigate them. The economic portion of claims is not affected if a non-economic cap is enacted. Thus, rate increases are still likely to be needed.

Such reforms should reduce concerns about large dollar awards containing significant subjective non-economic damage components and make the loss environment more predictable.

Thank you very much for your consideration. Please do not hesitate to contact me or Greg Vass, the Academy's Senior Casualty Policy Analyst, at 202–223–8196 if you have any questions or would like additional information.

Sincerely,
JAMES HURLEY, ACAS, MAAA,
CHAIRPERSON,
Medical Malpractice Subcommittee.

Mr. VOINOVICH. Throughout my career in public service, health care has been one of my top legislative priorities and certainly was a high priority while I was Governor of the State of Ohio and mayor of the city of Cleveland. All of us want access to quality, affordable health care. When the quality is not there, when people die or are truly sick due to negligence or other medical error, they should be compensated.

When healthy plaintiffs file meaningless lawsuits to coerce settlements or to shake the money tree to get as much as they can get, there is a snowball effect and all of us pay the price. For the system to work, we must strike a delicate balance between the rights of aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole.

I repeat that again. For the system to work, we must strike a delicate balance between the rights of the aggrieved parties to bring lawsuits and

the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole.

I have been concerned about this issue since my days as Governor, as I mentioned. In 1996, I essentially had to pull teeth in the Ohio legislature to pass my tort reform bill which would have placed caps on noneconomic and punitive damages, established proportional liability, and created a rebuttable presumption that a hospital was not negligent regarding negligent credentialing, among other provisions.

I signed the bill into law in October of 1996. Three years later, the Ohio Supreme Court ruled it unconstitutional. Had that law withstood the supreme court scrutiny—and I think today it would because we have a different supreme court—Ohioans would not be facing the medical access problems they are facing today—doctors leaving their practice, patients unable to receive the care they need, and cost of health insurance going through the roof.

Next to the economy and jobs, the most important issue facing America today is health care. In fact, it is a part of the reason why our economy is in trouble. We have too many uninsured, and those who have insurance face soaring premiums every year, making it less likely they can continue to pay for them.

In addition, employers face spiraling costs and in some cases do not even provide insurance, and those that do have been forced to increase their premiums and pass on the added costs to their employees, whose family budgets are often already stretched razor thin.

In other words, I see people in business every day who say, Senator, I want to provide health care for my employees but the cost of it has gone up to the point where I cannot afford to provide it for them. Or, in the alternative, Senator, I am going to provide it for them, but I am going to ask them to pay for more of their premiums. And, Senator, in so many instances my employees cannot pay the additional premiums, and because they cannot pay the additional premiums, they lose their health insurance.

I believe that providing the sort of commonsense approach found in the Pregnancy and Trauma Care Access Protection Act of 2004 is one way to deal with this escalating cost of health insurance in the United States. The bill will give patients greater access to care. It will provide medical liability for those physicians who provide prenatal delivery and postpartum care to mothers and babies. Patients would not have to give away large portions of their judgment to their attorneys. Truly injured parties can recover 100 percent of their economic damages. Punitive damages are reserved for those cases where they are truly justified. Doctors and hospitals would not be held liable for harm they do not cause and physicians can focus on doing what they do best, practicing medicine and providing health care.

I, again, urge my colleagues to vote for cloture so we can debate this issue and have an up-or-down vote on this legislation. We owe it to the people of this country to have a robust debate of this on the Senate floor.

I close my remarks this afternoon by reading a letter from Laurence E. Stempel, an MD from Columbus, OH. This is from the letter he sent to his patients on June 23, 2003:

On June 17, 2003, I received my professional liability insurance rate quote for the upcoming year, and it is 64 percent higher than last year. I have seen my premiums almost triple during the past 2 years, despite never having had a single penny paid out on my behalf in 27 years as a physician. Even worse, during this time the insurance company has reduced the amount of coverage that I can purchase from $5 million to only $1 million . . .

In other words, his insurance has gone up astronomically and he is getting about 80 percent less coverage than he had before. He said:

while jury verdicts have skyrocketed, often exceeding $3.4 million. If I were to purchase this policy, I would be putting all of my family's personal assets at risk every time that I delivered a baby, or performed surgery. I refuse to do that.

I have therefore decided to retire from private practice. . . .[T]he final day of my current liability insurance policy [is when that will happen.]

This is not a decision I have taken lightly, but unfortunately it has become necessary. For many of you, I have been part of your life for years. I have delivered your babies and helped you through some of life's most difficult challenges. It has truly been an honor.

We have to stop this from happening in this country. We have the power to do something about it on the floor of the Senate, and it is about time we faced up to our responsibility and did something about it.

I ask unanimous consent that the entire letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LAURENCE E. STEMPEL, M.D.,
June 23, 2003.

DEAR FRIENDS, As you know, our country is in the midst of its worst medical liability crisis ever. Hardly a day passes without a mention of the ''malpractice crisis'' in the newspapers or on the nightly news. In fact, just a couple of weeks ago, it was Time Magazine's cover story. This is a national problem, and a truly frightening one. For example, Las Vegas had 130 obstetricians a year ago. There are now 75, and by the end of the year, there will probably only be 40 left to care for the 23,000 women who deliver there each year. Women are driving to Utah and California for prenatal care. Closer to home, there were nine obstetricians in Athens, Ohio, a year ago. There are now four, and soon there will only be the two who teach at the medical school. Some hospitals around the nation have closed their obstetric units.

On June 17, 2003, I received my professional liability insurance rate quote for the upcoming year, and it is 64% higher than last year's rate. I have seen my premiums almost triple during the past two years, despite never having had a single penny paid out on my behalf in twenty-seven years as a physician. Even worse, during this time the insurance company has reduced the amount of coverage that I can purchase from $5 million to only $1 million, while jury verdicts have skyrocketed, often exceeding $3-4 million. If I were to purchase this policy, I would be putting all of my family's personal assets at risk every time that I delivered a baby or performed surgery. I refuse to do that.

I have therefore decided to retire from private practice on July 31, 2003, the final day of may current liability insurance policy. This is not a decision that I have taken lightly, but unfortunately it has become necessary. For many of you, I have been part of your life for years. I have delivered your babies, and helped you through some of life's most difficult challenges. It has truly been an honor.

There is always a silver lining in every cloud. I am looking forward to being able to devote more time to teaching medical students and obstetric residents, a pursuit that has occupied about a third of my professional time during recent years. I will also be able to spend more time with my wife and family, whom I have often neglected during the past years due to the responsibility of my practice.

I know that these changes will be a serious inconvenience for many of you. For those of you who are currently pregnant, I will try to find each and every one you a competent and caring obstetrician to help you through the rest of your pregnancy and delivery. For those patients who have a gynecology appointment schedule after July 31, it will be necessary for you to reschedule with another physician. I would like to recommend the physicians of Associates in Central Ohio Obstetrics & Gynecology (phone 889–6117). This group has an office in Suite A of my building, as well as a couple of other offices around town. I have known all of these physicians for years, and I taught most of them when they were medical students or obstetric residents. Furthermore, I have traded call with this group for a number of years. They have agreed to be the custodian of my patients' charts, and to see my patients if they would like. If you would prefer to see another physician, they have agreed to forward the pertinent information upon receipt of a signed request.

Thank you again for the honor of being your physician. I will miss each and every one of you.

Sincerely,

LAURENCE E. STEMPEL, M.D.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

EXTENDING TRADE ADJUSTMENT ASSISTANCE

Mr. WYDEN. Mr. President, software programmers in Beaverton, OR, every day have to compete with those in Beijing. I think it is very important for the Senate to set in place bipartisan policies that are going to finally give a fair shake to our workers who are competing in tough global markets.

I come to the floor this afternoon because I have developed, with the support of Senator COLEMAN, our colleague from Minnesota, a bipartisan proposal that would give the Senate a chance to help hundreds of thousands of laid-off

high tech workers and service employees by extending trade adjustment assistance benefits to them so they can receive job training, income support, and health insurance tax credits.

So often these workers have lost their jobs through no fault of their own, and we know—especially the distinguished Presiding Officer of the Senate—these high tech workers have been the envy of our American workforce. There is extraordinary ingenuity among these hundreds of thousands of programmers and engineers and designers who have helped drive our economy in this century. Their creativity has generated an exceptional wave of economic prosperity, and trade agreements on services and intellectual property helped carry the fruits of the work of our workers around the globe.

Information technology developed by American workers transformed the world and the way business is done. Overseas cable costs have dropped by as much as 80 percent in the last 5 years which, as the distinguished Presiding Officer knows, has spread the Internet far and wide. The Internet has made it a lot cheaper to send work through a phone line than to ship a bulky package on an airplane.

Globalization of technology has globalized the technology workforce. So, in fact, the workers I am honored to represent in Beaverton, OR, do have to compete against workers in Beijing, and certainly geography is increasingly less important in determining where a job can be done.

But the transformation from an economy built on smokestacks to one built on packages of light has come at a heavy price. So often trade agreements in the past considered these high technology and service workers as an afterthought. The irony is now some of the very same workers who launched the technology revolution have actually become its victims. Hardly a day goes by without a front-page story in our country about an American programmer on his way out who is having to train a foreign worker who will replace him.

Senator COLEMAN and I have been working with a number of colleagues. Senator BAUCUS on this side of the aisle has been exceptionally helpful. We talked with a number of colleagues on the other side of the aisle. Senator COLEMAN and I have developed a bipartisan proposal to make sure these workers, who have not gotten a fair shake in the past, do have an opportunity to get back into our marketplace economy.

It is not a moment too soon. The American Electronics Association 2003 Cyberstates report found unemployment among computer programmers jumped from 4.5 percent in 2001 to 6.2 percent in 2003. High tech employment fell by 540,000 jobs to 6 million in 2002 and a further loss of 234,000 jobs was expected in 2003.

The average American may think the Federal Government is helping those technology workers and service workers whose jobs have been displaced by trade. But the reality is that assistance is not available because the trade assistance law, which was authored in 1962 for displaced manufacturing workers, did not contemplate the tremendous number of jobs we now have in the technology sector, with all of those software programmers and engineers and designers. The U.S. trade assistance laws were designed for the manufacturing era.

Since 1962, when workers lost their jobs in a manufacturing plant as a result of trade, they could get help through the Trade Adjustment Assistance Act. The Trade Adjustment Assistance Act has, in fact, helped hundreds of thousands of those displaced workers. But workers in the technology and the services sector, which now accounts for four-fifths of the U.S. workforce, have not been eligible for trade adjustment assistance. Time after time when a displaced software developer, accountant, or someone who has worked in the telemedicine field has gone knocking on the doors of the Trade Adjustment Assistance Program, they have been turned away. The bipartisan amendment I have developed with Senator COLEMAN will open the doors of the Trade Adjustment Assistance Act to the hundreds of thousands of displaced technology and service sector workers.

All of these workers who have been displaced by trade and by global marketplace forces deserve the same kinds of benefits. All of them have a chance to use these programs as a trampoline back into the private economy, so they can capture the jobs for which their skills have blessed them. Our amendment will establish equity in the program between manufacturing and service workers.

The Wyden-Coleman amendment will cover three categories of trade-impacted service workers: those who lose their jobs when their employer closes or lays off because of import competition; public and private sector service workers who lose their jobs when their facility moves overseas; and secondary service workers who provide services to a primary firm where workers are eligible for trade adjustment assistance and where a closure has caused a layoff or closure at a secondary firm.

This is an extraordinarily important statute because it provides retraining, income support, health insurance tax credits, and other benefits to workers who lose their jobs. It can also help secondary workers or individuals who supply parts or services and who may have lost their jobs because their facilities shut down due to import competition or they move overseas. This is exactly the type of trade-displaced service worker opportunity that our citizens need.

A self-described ''newly employed software engineer'' from Hillsboro, OR, wrote in December that ''my job was moved to India where the company can pay Indians a fifth of what they pay Americans.''

Another wrote:

> [A]s a 50-year-old high-tech manufacturing engineer with 26 years' experience, I was laid off in December 2002. I am sure the new factory the company is building in China will prevent my ever returning. I can't even get hired into an entry level position anywhere because I am over-qualified.

These unemployed Oregonians and the hundreds of thousands of other information technology professionals who have lost their jobs deserve an opportunity to get the training, health care, and income assistance so they can get back on their feet and use their skills in the private marketplace. The Trade Adjustment Assistance Act would target these kinds of workers who have been hurt by unfair competition.

Globalization of information technology hardware production from 1995 through 2002 cut information technology hardware costs 10 to 30 percent, translating into higher productivity growth and adding $230 billion to our gross domestic product. Information technology became affordable to business sectors that were previously bypassed by the productivity boom.

We are now talking about the small and midsized companies in health care, construction, and a host of related fields. But as information technology hardware prices declined, the importance of information technology services and software increased to almost 70 percent of information technology spending in 2001. With the growth in software and services outpacing hardware spending by almost two to one, the demand for cheaper information technology services has lent strength to this whole trend to move these jobs offshore. No one appears to have anticipated the extraordinary speed in which all of this has taken place or the scale of jobs moving offshore.

The workers who lost their jobs and their livelihoods from jobs that have gone overseas cannot afford to wait for the higher skilled jobs that economists keep telling them is right around the corner. Higher value and higher paid systems integration jobs may come along, but in this period unemployed information technology professionals seem to feel they are more likely to see Elvis than a sudden proliferation of new highly skilled information technology jobs.

At the end of the day, what I am saying, along with the distinguished Senator from Minnesota, is it should be irrelevant whether an individual works in today's economy in the services and technology sector or whether they work in the manufacturing area. Each of our workers who has been displaced by trade should be eligible for the same benefits. That is what our bipartisan proposal would do. The hundreds of thousands of workers who have been laid off in every part of our country in the technology sector and in the service sector are looking to whether the

Senate will modernize the trade adjustment laws so they finally can get a fair shake and so they can pick up the skills and the health care and the income support that is going to let them get back on their feet, use their ingenuity, and use their work ethic to have a chance for a high-skill, high-wage job once again.

I call on the Senate in a time of discussion about gridlock and the inability to move forward on important legislation. This is an example of two Senators who have worked with colleagues from both political parties to come up with a proposal that can help hundreds of thousands of workers in an economic crunch today that is sure to continue. We hope the Senate will move expeditiously on our legislation.

It seems to me, to put it in the context of my home State, that when a worker who is a software programmer in Beaverton, OR, works hard and plays by the rules, it ought to be the job of the Senate to say when that worker is up against a software programmer in Beijing and the Beijing worker works for a fraction of the wages of the worker in Beaverton we create policies which are going to make it possible for our workers to move ahead to have the kind of quality of life that will allow them to support a family and participate in the community.

I call on the Senate to pass our bipartisan proposal as soon as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what is the parliamentary situation? Are we back on the motion to proceed?

The PRESIDING OFFICER. We are on the motion to proceed.

Mr. HATCH. Mr. President, today I rise to speak in support of S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004.

This bill helps to remedy the exploding medical liability and litigation crisis in our country, which is preventing patients from receiving high-quality health care—or, in some cases, any care at all—because doctors are being driven out of practice. In fact, this crisis hits us on two fronts, preventing many Americans from getting the vital health care they need, and raising the overall costs of health care for nearly all Americans.

As you will recall, this legislation is not our first attempt to relieve this crisis in access to care. Most recently, we debated S. 2061, which failed to receive the 60 votes necessary to invoke cloture in February, and we debated S. 11 prior to that. We can ill afford to ignore the many Americans whose doctors are retiring early or restricting their practices because of rising malpractice costs.

This health care crisis is jeopardizing access to health care in my home State of Utah and around the country.

The medical liability crisis is also inhibiting efforts to improve patient safety and stifling medical innovation. Excessive litigation is adding billions of dollars in increased costs. The Congressional Budget Office estimates that total savings to Medicare, Medicaid and the Federal Employees Health Benefit Program would be $15 billion in direct health care costs by passing medical liability reform. A Department of Health and Human Services report estimates that we could save $70 billion to $126 billion in defensive medicine costs. And they are really on the conservative side. I said 20 years ago, as a former medical liability defense lawyer defending doctors, health care providers, nurses, and so forth, knowing that most of those suits were frivolous to begin with, that there was at least $300 billion in unnecessary defensive medicine. Now we all want defensive medicine. We want doctors to do everything they can to help. But I am talking about unnecessary defensive medicine, unnecessary tests, unnecessary costs, unnecessary x-rays, unnecessary MRIs, unnecessary CAT scans, unnecessary cardiovascular tests, unnecessary respiratory tests and other types of tests that are not needed but are insisted upon by doctors because they want to have in their history every possible protection.

Even the American Medical Association admits there are at least $65 billion in unnecessary defensive medicine costs. When you get the AMA to admit that, you know it probably is a lot higher. In fact, it is costing every American, because we will not do anything about getting these frivolous suits under control. It is wrecking our health care profession in this country.

The liability crisis is also reducing access to high-quality health care. The 2004 survey by Medical Group Management Association of almost 13,000 physicians found that 15.6 percent of responding groups reported that their physicians plan to retire, relocate or restrict their services over the next three years.

These numbers have been consistent in large studies done in New York, California, Colorado and my home state of Utah.

However, the equally troubling statistics are that only two percent of cases with actual negligent injuries result in claims and less than one-fifth—17 percent—of claims filed actually involve a negligent injury. In other words, the deserving injured are going uncompensated, while a great deal of litigants with spurious claims tie up our court system and cost all of us unnecessary billions of dollars.

This situation has been likened to a traffic cop who regularly gives out more tickets to drivers who go through green lights than to those who run red lights. That is clearly no way to ensure traffic safety, and we should not accept such an inefficient and inequitable method of ensuring patient safety.

These numbers are a searing indictment of the current medical liability system. I believe we can do better for the American people and the Pregnancy and Trauma Care Access Protection Act is an important step along that path. We must do better.

Today's proposed legislation addresses two areas in dire need of relief: trauma care and obstetrical care.

Many physician groups are no longer able to be oncall for hospital emergency departments. As medical care to trauma victims, especially children, is by its nature high risk, many doctors can no longer afford to treat pediatric trauma patients. The problem is also acute for women who need obstetrical and gynecological care because OB/GYN is among the top three specialties with the highest professional liability insurance premiums. This has led to many doctors leaving their practice and to a shortage of doctors in many States, including my own home State of Utah. For example, Utah physician Dr. Catherine Wheeler would have to deliver more than 60 babies each year just to pay for her medical liability insurance, which is over $70,000. Although she works 80 hours per week, after she pays her malpractice premiums and other costs, she takes home money for only 2½ months of the year.

Utah Medical Association data show that medical liability insurance premiums continue to increase rapidly, creating pressure on doctors to restrict service in Utah. In 2002, there was a 30-percent rise. Last year, premiums rose 20 percent. This year, they are projected to increase 15 percent in Utah.

Studies by both the Utah Medical Association and the Utah Chapter of the American College of Obstetricians and Gynecologists, ACOG, underscore the problem in my State.

Utah Medical Association data show that over half of the family practitioners in Utah have already given up obstetrical services or have never practiced obstetrics even though they were trained to do so. Of the remaining practitioners who still deliver babies, nearly one-third say they plan to stop providing OB services within the next decade—most within 5 years. A Utah ACOG survey found that 15 of the 106 members polled had already stopped practicing obstetrics, and 21 of the remaining 91 plan to stop within 5 years. These changes in practice, such as retiring, relocating, or dropping obstetrics because of the medical liability reform crisis, leaves almost 1,500 pregnant women in Utah without OB/GYN care.

The medical liability crisis, while affecting all medical specialties and practices, hits OB/GYN practices especially hard. Astonishingly, over three-fourths—76.5 percent—of obstetrician/gynecologists report being sued at least once in their individual careers. Indeed, over one-fourth of OB/GYN doctors will be sued for care given during their residency. These numbers have discouraged Americans finishing medical school from choosing this vital specialty.

Currently, one-third of OB-GYN residency slots are filled by foreign medical graduates, compared to only 14

percent one decade ago. OB/GYN doctors are particularly vulnerable to unjustified lawsuits because of the tendency to blame the doctor for brain-injured infants, although research has proven that physician error is responsible for less than 4 percent of all neurologically impaired babies.

Jury awards have been escalating at an alarming rate. Data from Jury Verdict Research show that the average liability award increased 176 percent from 1994 to 2001. The average jury award is $3.9 million. Over half of all awards are $1 million or more. This crisis is threatening Americans' confidence in our health care system to take care of their medical needs. Over three-fourths of Americans fear that skyrocketing medical liability costs could limit their access to care, and indeed that is already happening. AMA, the American Medical Association, data show that 19 States—19 States—have serious patient access problems, and 25 more, including my own home State of Utah, are nearing crisis.

An August 2003 GAO report concluded that actions taken by health providers as a result of skyrocketing malpractice premiums have contributed to health care access problems. These problems include reduced access to hospital-based services for deliveries, especially in rural areas.

In addition, the report indicated that States that have enacted tort reform laws with caps on noneconomic damages have slower growth rates in medical malpractice premiums and claims payments. From 2001 to 2002, the average premiums for medical malpractice insurance increased about 10 percent in States with caps on noneconomic damages. In comparison, States with more limited reforms experienced an increase of 29 percent in medical malpractice premiums each year.

Medical liability litigation directly and dramatically increases health care costs for all Americans. In addition, skyrocketing medical litigation costs indirectly increase health care costs by changing the way doctors practice medicine.

''Defensive medicine'' is defined as medical care that is primarily or solely motivated by fear of malpractice claims and not by the patient's medical condition. According to a survey of 1,800 doctors published in the journal entitled Medical Economics, more than three-fourths of doctors felt they must practice defensive medicine. A 1998 study of defensive medicine by Dr. Mark McClellan, using national health expenditure data, found that medical liability reform had the potential to reduce defensive medicine expenses by $69 billion to $124 billion in the year 2001. You can imagine what that number is today.

I remember, as a medical malpractice defense lawyer, I would tell doctors: You are just pigeons in a shooting gallery. The fact is, physicians have to have a history of treatments they have provided to their patients so they can prove that they did everything possible to prevent any real problems with their respective patients. Consequently, doctors have had to do that over the years because of the skyrocketing medical liability claims being made, a good 90 percent of which are, for the most part, spurious and frivolous.

The financial toll of defensive medicine is great, and especially significant for reform purposes, as it does not produce any positive health benefits. Not only does defensive medicine increase health care costs, it also puts Americans at avoidable risk. Nearly every test and every treatment has possible side effects; thus, every unnecessary test, procedure, and treatment potentially puts a patient in harm's way. Seventy-six percent of physicians are concerned that malpractice litigation has hurt their ability to provide quality care to patients.

What can we do to address this crisis? The answer is, plenty; and there are excellent examples of what works. Last March, HHS released a report describing how reasonable reforms in some States have reduced health care costs and improved access to quality health care. More specifically, over the last 2 years, in States with limits of $250,000 to $350,000 on noneconomic damages, premiums have increased at an average of just 18 percent compared to 45 percent in States without such limits.

California enacted the Medical Injury Compensation Reform Act, also known as MICRA, more than a quarter century ago. MICRA slowed the rate of increase in medical liability premiums dramatically without affecting negatively the quality of health care received by California State residents. As a result, doctors are not leaving California.

Furthermore, between 1976 and the year 2000, premiums increased by 167 percent in California, while they increased three times as much—505 percent—in the rest of the country. Now, both percentage increases are high, but 505 percent is extremely high in comparison to a very litigious State like California. Consequently, Californians were saved billions of dollars in health care costs and Federal taxpayers were saved billion of dollars in the Medicare and Medicaid Programs because of the California restraint on medical malpractice claims, especially those that are not proper claims.

No one in this body, perhaps with the exception of our colleague from Tennessee, Dr. BILL FRIST, our majority leader, is more keenly aware of the defects in this system than I am. I used to try these cases, and I can say from a practical standpoint that a lot of lawyers bring cases that really are frivolous, because the cost of defending these cases can be in the hundreds of thousands of dollars.

Many insurance companies will pay off those defense costs to get rid of the case rather than take the chance a runaway jury will cost them even more. That is what is happening. It is happening in hundreds, perhaps thousands, of cases throughout the country. Most of these cases should have never been filed, however, there are a small number of cases that are very serious and it is appropriate for our judicial system to take care of them.

Before coming to Congress, I litigated several medical liability cases. I have seen heart-wrenching cases in which mistakes were made, where there was negligence. But more often, I have seen heart-wrenching cases in which mistakes were not made. Doctors were forced to spend valuable time and resources defending themselves against these frivolous lawsuits.

A recent Institute of Medicine report, ''To Err is Human,'' concluded that:

> The majority of medical errors do not result from individual recklessness or the actions of a particular group. This is not a bad apple problem. More commonly, errors are caused by faulty systems, processes, and conditions that lead people to make mistakes or fail to prevent them.

We need reform to improve the health care system and processes that allow errors to occur and to identify better when real medical liability has occurred. The reform I envision would address litigation abuses in order to provide swift and appropriate compensation for malpractice victims, redress for serious problems, and ensure medical liability costs do not prevent patients from accessing the care they really need. So we need to move ahead with legislation to improve patient safety and reduce medical errors, and we need to urgently address the medical liability crisis so more women are not denied access to quality medical care because it has become too expensive for their OB/GYN doctors to continue their practice, and so we do not jeopardize trauma patients' access to urgently needed medical attention.

The Pregnancy and Trauma Care Access Protection Act of 2004 will allow us to begin ensuring that women, babies, and trauma patients get the medical care they need and deserve.

Without tort reform, juries are awarding astounding and unreasonable sums for pain and suffering. A sizable portion of those awards goes to the attorney rather than the patient. It is often estimated as high as 50 percent. The result is doctors cannot get insurance and patients cannot get the care they need.

All Americans deserve the access to care, the cost savings, and the legal protections States like California provide their residents. Today's bill will allow us to begin to address this crisis in our health care system. It will give trauma patients and women and their babies access to their doctors, and it will enable doctors to provide high quality, cost-effective medical care.

America's medical liability system is broken. It is not ensuring patient safety, and it is causing shortages of vital health care throughout the country. Congressional action to pass medical

liability reform legislation is imperative. I strongly support this legislation and I urge my colleagues to support cloture and end this filibuster that will now be the third time effective changes in these laws is being attempted. Our pregnant women deserve better. They deserve the best quality care the medical system can provide. Our trauma victims deserve better. We are finding all over the country trauma centers are either starting to shut down or severely cutting back because they can no longer afford to fight these frivolous cases. They can't function in a health care system that doesn't work. That is a tragedy, especially for those who suffer from trauma-related injuries.

I hope our colleagues will vote for cloture on this bill. I hope we can proceed and pass medical liability reform which is long overdue. I strongly support S. 2207 and urge my colleagues to do what is in the best interest of patients and health care providers throughout the country.

I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Vermont.

Mr. LEAHY. Mr. President, it is remarkable that in 29 years here in the Senate—several times the Senate under the control of Democrats, several times the Senate under the control of Republicans—I have never seen so little accomplished and I have never seen so much political posturing on the Senate floor which then gets put into fundraising letters and fundraising appeals. I have never seen so much special interest legislation. But the bottom line is I have never seen so little accomplished. Probably there is a corollary.

Instead of doing the people's business, we seem to be doing political action committee business. And that is why, of course, nothing gets done.

Let's talk about this. If there were ever a piece of legislation on which politics is being played, it is the medical malpractice bill. It is a one-size-fits-all bill for a problem that is really different from State to State. Basically we are telling the 50 State legislatures and Governors that the Members of the U.S. Senate know a lot more about their States' needs than they do and that the U.S. Senate will dictate a change. We will override their courts and their legislatures. We will override their laws and we will make life better for them. But when we do, of course, we yank away the rights of the States and the people there. Whenever we target the rights of the public and we try to figure out ways to run roughshod over a State, we ought to be pretty careful how we do it.

Normally you would think we would have committee hearings. We would try to have a bipartisan bill. We would have something that would demonstrate to the States, as we take away their rights, that such a move has been considered by all 100 Senators and there is a consensus. Instead, we have a piece of legislation written by lobbyists and special interests that is so bad nobody even dares send it to a committee—not even friendly committees. They send it right to the floor.

This is the third time the Republicans have taken this partisan approach. Last July they employed this partisan tactic and failed to pass legislation. Earlier this year, they tried to rush through the Senate a bill to limit the legal rights of the most vulnerable patients—mothers and infants—and they failed. Now they are again rushing an extreme bill overriding the laws of each of the 50 States. This time, however, the bill is not limited to obstetrical and gynecological care. Now they want to extend the restrictions on legal rights to trauma and emergency care. The third time for this partisan approach is no charm. Republicans' mad dash to push through this proposal in this election year under the guise of reducing health care costs is a blatant attempt not to reduce health care costs, which we would all support, but to exploit their own political agenda.

I remember the article last year in Washington Monthly, titled ''Malpractice Makes Perfect: How the GOP Milks a Phony Doctors' Insurance Crisis.'' This article was so good, it was nominated for a National Magazine Award. It shows how Republicans launched a sophisticated lobbying campaign with business interests to manipulate the medical malpractice debate and change it from one about medical errors and fair compensation, pitting one political constituency against another.

I commend to my colleagues the article to which I referred from the Washington Monthly of October 1, 2003, by Stephanie Mencimer.

Mr. President, the article points out clearly that even if we passed this legislation, insurance rates would not have come down. There is no one who with a straight face can say that if we pass this legislation, then insurance rates will come down. Insurance companies would not be spending so much money trying to get this passed if they thought so.

Once again, Republicans have proposed a plan that would cap non-economic damages across the Nation at $250,000—whether you live in California, Ohio, Vermont, or anywhere else; no matter what the injury, that is the cap.

The so-called medical malpractice reform debate too often ignores the men, women and children whose lives have been dramatically—and often permanently—altered by medical errors.

I will give you a real-life example in my State of Vermont. On April 7, 2000, Diana Winn Levine had a severe migraine headache. That is something that has probably happened to most of us at one time or another. She went to a health center in Plainfield, VT. She was a musician. She received a painkiller and an injection of a mild sedative, Phenergan. This combination was injected into her artery rather than her vein, and resulting circulatory problems led to this musician having to have two amputation surgeries on her right arm.

Ms. Levine sued the corporate giant, Wyeth, for improper instructions for using its drug, Phenergan. As she said:

I never expected to sue anyone in my life; I'm not the suing type.

Sometimes it takes something like this to make it known when a drug is not being used right.

There was a full trial. I remember reading the account of the trial. When they went to swear Ms. Levine in for her testimony, the bailiff asked her to raise her right hand. Of course, she had no right hand. That jury in Vermont—and our juries are pretty careful—found that Ms. Levine deserved $2.4 million for her past and future medical expenses, and $5 million for the ''daily pain she does suffer and for the loss of enjoyment of her life.'' Of course, most of that would have been slashed by this legislation. Crowds of the children Ms. Levine had worked with on musical projects—children she'd brought joy to as a musician—sat in the courtroom of the Montpelier Superior Court. She said:

That was the day they actually showed pictures of my dead hand . . . before amputation, with the gangrene. I worried about how the kids would react to my disfigurement. I told the mom to cover her eyes. But afterward she came up to me and said, ''We just didn't know what you have been through.''

Now, Wyeth, of course, was well represented. They had a team of six lawyers—two from Vermont and four from Washington, DC. They did, after all, have 2003 revenues of $15.8 billion and keep a $1.3 billion reserve fund because of the ongoing litigation over their diet drugs.

Again I say: This musician would have been cut out entirely if the U.S. Senate were to overwrite the laws of our State.

Mr. President, I ask unanimous consent that the article from the Burlington Free Press be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Burlington Free Press, Mar. 16, 2004]

VT. WOMAN WINS $7.4M LAWSUIT

(By Stephen Klernan)

A Marshfield musician who lost an arm to a medical error has won one of the largest lawsuit awards in Vermont history.

Diana Winn Levine, owner and creative director of Rebop Records, had sued the multinational health products company Wyeth for having improper guidelines for the drug that damaged her hand and forearm and led to amputation.

A Montpelier jury on Friday awarded Levine $7.4 million.

''Sometimes it takes something like this to make it known, when a drug is not being used right,'' Levine said Monday.

The weeklong trial, pitting a central Vermont bass player and guitarist against one of the world's largest health products companies, featured testimony by family

members and well-known Vermont musicians, as well as gallery crowds of children involved in Rebop recordings.

NOT THE SUING TYPE

Levine was suffering from a migraine April 7, 2000, when she went to the Health Center in Plainfield. She received a painkiller, and an injection of a mild sedative, Phenergan.

In what she called ''a medical blunder,'' the drug entered her artery rather than her vein. Resulting circulatory problems led to two amputation surgeries on her right arm.

The case against Wyeth pertained to the company's instructions for using the drug, Levine said.

''I never expected to sue anybody in my life; I'm not the suing type,'' she said. Then she learned that ''Phenergan, which is toxic, can be given in three ways. The other two are fine. What happened to me can happen, it is foreseeable.''

The trial, in which she was represented by Richard Rubin, David Kidney and Kerry DeWolfe, featured considerable drama.

IMPORTANCE OF MUSIC

''We played a lot of music for the jury,'' Rubin said, ''We showed videotapes of her performing.''

Folksinger Jonathan Gailmor testified on Levine's behalf.

''Jon expressed it so amazingly, how important music is in life, and how he couldn't even imagine losing the ability to play,'' she said.

Crowds of the children Levine has worked with on musical projects, such as Rebop's latest CD ''Even Kids Get the Blues,'' sat in the courtroom in Monptelier Superior Court.

''That was the day they actually showed pictures of my dead hand,'' before amputation, with the gangrene,'' Levine said. ''I worried about how the kids would react to my disfigurement. I told the mom to cover her eyes. But afterward she came up to me and said, 'We just didn't know what you have been through.' ''

PUBLIC AIRING

Rubin said one powerful moment in the trial came accidentally.

''We'd spent all this time establishing what it is like to lose your right hand, even if you're not a musician. When someone offers to shake your hand, what do you do? When someone is handing you change at the cash register, what do you do?''

Then Levine's turn on the witness stand arrived. The baliff came to swear her in, asking her to raise her right hand.

''We looked at each other, and it hit me first,'' Levine said. ''Then we cracked up. There's my prosthesis, so I said, ''You mean this?''

''She laughed,'' Rubin said, ''but it was a poignant moment.''

She was afraid to testify, Levine said, and publicly relive the experience of losing her arm, ''but once you get up there, it just comes out.''

Levine became comfortable enough, Rubin said, she showed the jury how her prosthesis works.

Levine said the ''ultimate'' was when her 21-year-old daughter testified. ''What mother gets a chance to have her daughter up there, basically saying all these things about how much she appreciated me, and her upbringing in a house full of music?''

DAVID VS. GOLIATH

Wyeth had a team of six lawyers, Rubin said, two from Vermont and four from Washington, D.C. The company, with 2003 revenues of $15.8 billion, makes Robitussin, Advil, Centrum and many other health products. The company also has a $1.3 billion reserve fund for ongoing litigation over its diet drugs.

Attorneys for Wyeth did not return calls seeking comment.

''But we did not make this case anti-drug company, or anti-out-of-state company,'' Rubin said. ''This case was really about Diana's loss of her ability to play and write music.''

''Music is my way of healing and processing everything that happens to me,'' Levine said. ''The right hand is just the core of your playing. And so much of writing comes not from your head but from what your hands do.''

Rubin said the suit sought $2.4 million for Levine's past and foreseeable medical expenses, plus $5 million ''for the daily pain she does suffer and for the lost employment of her life.''

The amount of money seems large, he said, but is actually based on ''an hourly rate. We asked the jury to award $25 per hour for her pain and suffering, 16 hours a day, for the next 20 years.''

The jury deliberated about four hours before awarding her the entire $7.4 million.

''The jury came in, and I'm like, 'Prop me up,' my knees were so weak,'' Levine said.

State Court Administrator Lee Suskin, said he could only recall one larger financial result from a suit. ''We don't keep track of these things, but it seems an usually large award.''

''That's just on paper,'' Levine said. ''It's almost certain that they will appeal. My bank account is no fuller than it was a month ago.''

Wyeth did make one strategic error, Rubin said.

''There was nobody here from Wyeth who knew about the drug and was prepared to defend it from the corporate perspective,'' he said. ''The jury never saw anyone from Wyeth but their lawyers.''

Even if there is an appeal, Levine said, ''There's something about retelling that helps you to finish it. And to move on.''

CRACKING EGGS

Levine said phantom pain, in which her mind thinks she still has an arm, remains a daily problem. ''You look down there and you see, there is no arm there, kiddo. But the brain thinks there is a giant Mickey Mouse hand that always feels like pins and needles, and as the day goes on it gets worse.''

Her salvation is the children she works with, she said, ''They take my mind off it; they have become my healing partners.''

Otherwise her life continues to be ''an improvisation. I rode a bike the other day. . . . It was like being six years old all over again, I've gone from feeling like I was battling one-handed, to feeling like I'm conducting one-handed. . . .

''It has become pretty easy to crack an egg one-handed even if I do wind up with little bits of shell in my eggs.''

Mr. LEAHY. We know a lot of our health care system is in crisis. We know some of the giants of our health care system would probably like this legislation to go through so they can make higher profits. Much of our health care system is in crisis. That is what we ought to attack.

Dramatically rising medical malpractice insurance rates are forcing some doctors to abandon their practices or to cross State lines to find more affordable situations. Patients who need care in high-risk specialties, such as obstetrics, and patients in areas already underserved by health care providers, such as many rural communities, are too often left without adequate care.

But this bill does nothing to actually reduce medical malpractice insurance rates. Of course, each State has a different experience. Insurance remains largely a State-regulated industry because the States found that is the way it works best. But each State ought to look at and be left to solve their own unique problems. We should not tell their Governors and legislatures we are not going to let them solve their own problems because we will take it over for them.

We don't have the kind of crisis in Vermont that others do. We have worked very well with our legislature, and we are still working hard to find answers, as other States have. You know, it is funny. We hear so many speeches that we want to get power out of Washington. We want States to be able to do what they want. We don't want Washington dictating everything. Well, not exactly. When you get some very wealthy contributors and very powerful PACs and say, Yes, but if you don't let Washington take care of our special interests, nobody will—suddenly it changes.

This is an attempt to tally points on some election year political scoreboard for powerful special interests at the public's expense. I am looking at the big picture.

Some States, such as my own, Vermont, while experiencing problems, do not face as great a crisis as others. Vermont's legislature is considering legislation to find the right answers for our State, and the same process is underway now in other States. In contrast, in States such as West Virginia, Pennsylvania, Florida, and New Jersey, doctors have walked out of work in protest over the exorbitant rates being extracted from them by their insurance carriers.

Instead of letting States find solutions that are best for their citizens, the Republicans prefer this attempt to tally points on some election year political scoreboard for powerful special interests, at the public's expense. Instead of looking at the big picture—at overly broad antitrust immunity, ways to reduce medical errors, and at other real issues that could make a real difference—the majority has chosen to coddle big insurance companies instead of to cure the problem.

Instead of letting the States continue to find solutions that are best for their citizens, they would take a chainsaw to the legal rights of the American people and to the prerogatives of each of the 50 States we represent here in the United States Senate.

Thoughful solutions to the situation will require creative thinking, a genuine effort to rectify the problem, and bipartisan consensus to achieve real reform. Unfortunately, these are not the characteristics of the bill before us. Indeed, S. 2207 is a partisan bill that was introduced only a few days ago without any committee consideration.

Ignoring the central truth of this crisis—that it is a problem in the insurance industry, not the tort system—the

majority has proposed a plan that would cap noneconomic damages across the Nation at $250,000 in medical malpractice cases.

The notion that such a one-size-fits-all scheme is the answer runs counter to the factual experience of the States. Most importantly, the majority's proposal does nothing to protect true victims of medical malpractice and nothing to prevent malpractice in the first place.

We are fortunate in this Nation to have many highly qualified medical professionals, and this is especially true in my own home State of Vermont. Unfortunately, good doctors sometimes make errors. It is also unfortunate that some not-so-good doctors manage to make their way into the health care system as well. While we must do all that we can to support the men and women who commit their professional lives to caring for others, we must also ensure that patients have access to adequate remedies should they receive inadequate care.

High malpractice insurance premiums are not the direct result of malpractice lawsuit verdicts. They are the result of investment decisions by the insurance companies and of business models geared toward ever-increasing profits as well as the cyclical hardening of the liability insurance market. In cases where an insurer has made a bad investment, or has experienced the same disappointments from Wall Street that so many Americans have, it should not be able to recoup its losses from the doctors it insures.

The insurance company should have to bear the burdens of its own business model, just as the other businesses in the economy do. And a nationwide arbitrary capping of awards available to victims—as the majority has proposed again and again—should not be the first and only solution turned to in a tough medical malpractice insurance market.

The problem at hand deserves thoughtful and collaborative consideration in committee to achieve a sensible solution that is fair to patients and that supports our medical professionals in their ability to practice quality health care. One aspect of the insurance industry's business model requires a legislative correction: Its blanket exemption from Federal antitrust laws. Insurers have for years—too many years—enjoyed a benefit that is novel in our marketplace. The McCarran-Ferguson Act permits insurance companies to operate without being subject to most of the Federal antitrust laws, and our Nation's physicians and their patients have been the worse off for it.

Using their exemption, insurers can collude to set rates, resulting in higher premiums than true competition would achieve—and because of this exemption, enforcement officials cannot investigate any such collusion. If Congress is serious about controlling rising premiums, we must objectively limit this overly broad exemption in the McCarran-Ferguson Act.

More than a year ago, I introduced the ''Medical Malpractice Insurance Antitrust Act of 2003,'' S. 352. I want to thank Senators REID, KENNEDY, DURBIN, EDWARDS, ROCKEFELLER, FEINGOLD, BOXER and CORZINE for cosponsoring this essential and straightforward legislation.

Our bill modifies the McCarran-Ferguson Act with respect to medical malpractice insurance, and only for the most pernicious antitrust offenses: price fixing, bid rigging, and market allocations. Only those anticompetitive practices that most certainly will affect premiums are addressed. I am hard-pressed to imagine that anyone could object to a prohibition on insurance carriers' fixing prices or dividing territories. After all, the rest of our Nation's industries manage either to abide by these laws or pay the consequences.

Many State insurance commissioners police the industry well within the power they are accorded in their own laws, and some States have antitrust laws of their own that could cover some anticompetitive activities in the insurance industry. Our legislation is a scalpel, not a chainsaw. It would not affect regulation of insurance by State insurance commissioners and other State regulators. But there is no reason to continue, unexamined, a system in which the Federal enforcers are precluded from prosecuting the most harmful antitrust violations just because they are committed by insurance companies.

Our legislation is a carefully tailored solution to one critical aspect of the problem of excessive medical malpractice insurance rates. I had hoped for quick action by the Judiciary Committee and then by the full Senate to ensure that this important step on the road to genuine reform is taken before too much more damage is done to the physicians of this country and to the patients they care for. But our legislation to narrow this loophole in the Nation's anti-trust laws for medical malpractice insurers has languished for more than a year in the Senate Judiciary Committee.

Instead of conducting hearings and a markup on our bill, the majority now rushes a ''tort reform'' agenda item to the floor without any committee consideration.

If Congress is serious about controlling rising medical malpractice insurance premiums, then we must limit the broad exemption to Federal antitrust law and promote real competition in the insurance industry, as well as attack this problem at its core by reducing medical errors across our health care system. Unfortunately, the partisan bill before us is not designed for creating a solution to a serious problem. Instead, it is designed purely for politics, and that is not only a waste of the Senate's time and of the public's trust; it is also a shame.

Overly broad antitrust immunity, which the insurance companies have, allows them to fix prices any way they want, whether it is justifiable or not. Antitrust immunity allows them to take their failed investments and try to make it up by charging doctors higher malpractice insurance. We ought to find ways to reduce medical errors. But the big thing is we end up coddling these insurance companies. We don't call them to task. We don't get them to say whether they are spending out this money on malpractice awards. Of course, they are not. A lot of their losses came because they speculated wrong in the stock market. Suddenly, we have to bail them out. Get rid of their antitrust immunity, something that makes no sense in today's day and age with conglomerates. Make them actually say what they base it on. You will find that they are not beginning to pay out the amounts their malpractice claims say they are.

We are fortunate in this Nation to have so many highly qualified medical professionals. This is especially true in Vermont. But you have to know sometimes good doctors make mistakes, just as sometimes a good engineer will make a mistake. But it is also unfortunate that sometimes not-so-good doctors manage to make their way into the health care system. I think we should do all we can to support the men and women who commit their professional lives to caring for others, but we also ought to have some way of responding when somebody gets highly inadequate medical attention.

When you have a case, as I said before, like the Levine case in Vermont, when you have somebody whose livelihood was playing musical instruments and they lose an arm because Wyeth Pharmaceuticals made a mistake, then there should be some way to respond. Under this legislation, they would not be able to.

The bottom line is, we have a piece of legislation that is designed to be introduced not to improve the question of medical malpractice insurance, it is designed not to make hospitals safer, it is designed not to make patients safer, it is designed not to save money. It is designed to raise money. I guarantee you after the vote on this issue, all the fundraising letters will go out: Isn't it terrible, isn't it terrible, the Senate is standing in the way of much-needed malpractice reform?

It will not say: There were some in the Senate who were willing to stand up and not let the Senate run roughshod over our State legislatures.

It will not say: There are some in the Senate who were willing to stand up and say the insurance companies are not telling the truth on this issue.

It will not say: Some in the Senate were saying the very powerful contributors to the Republican Party with their $1 million ads are wrong and somebody had to say no. It won't say that.

But what it will say is the Senate would have wasted another week and a whole lot of fundraising letters will go out.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, the thought occurred to me, even though we have not done much here in the last few days, the last few months, or so, we see a number of people come to the floor and say we have to have immediate votes on the handful of the remaining judicial nominations. They say there is a handful out there we have to have. Interestingly, they are ignoring that 173 judges have already been confirmed, ignoring the fact that when Democrats were in control of the Senate we moved President Bush's judges through a lot faster than Republicans have. But I suppose if they talk enough about it, people will not realize the Republicans have moved far slower on President Bush's nominees than the Democrats did. But there is another point.

What they are really saying is that we have to give $163,000 a year lifetime jobs to three of the most controversial judicial nominees submitted by President Bush. To hear them talk, one would think this is the number one priority on the part of the American people: is giving three judges—highly controversial, highly political, highly ideological—a lifetime job paying $150,000, $160,000, $170,000 a year.

Frankly, I think a lot more people are worried about the millions of Americans who have lost their jobs and the millions more who worry they are going to be the next victims of outsourcing. I think that is really what is on the mind of the American public, not three more highly paid lifetime judicial appointments. They are far more worried about the millions of Americans who are out of jobs, millions of Americans who are seeing their jobs go to India and everywhere else, and millions of American families where both mother and father bringing in paychecks are barely making the mortgage. They are not the ones getting the $160,000 a year lifetime jobs.

For the public and for the Democratic Members of the Senate, our higher priorities right now have to do with the millions of Americans who are trying to find or keep their jobs. Our higher priorities have to do with securing adequate health care for the members of our National Guard and Reserves. Our priorities have to do with getting decent health care for our veterans and our service men and women who have brought the injuries home from service in Afghanistan and Iraq.

To be charitable, these crocodile tears about judicial nominations are just a tad disingenuous. Let's review the record.

The earlier Democratic-led Senate confirmed more Bush judicial nominees than the Republican-led Senate has. We confirmed 100 of the 173 Bush judicial nominees. Democrats actually did better for the President than the Republicans have.

So 173 have been confirmed. Six of the most controversial have been blocked. Two of them have been unilaterally appointed by the President during Senate recesses. One has withdrawn to rejoin a lucrative job with a law firm. So three were blocked. I have never heard so many tears shed for these three. I don't see any tears shed for the millions of Americans out of work. I don't see any tears shed for the millions of Americans whose jobs are being outsourced, but one would think that, with these three, the whole Nation is collapsing.

The irony is the same people coming down here to the floor and crying about these three, sobbing about these three, did not say one word when they blocked 61 of President Clinton's nominees. They blocked 61, and you would think the sky is falling because we stopped three. Oh, give me a break.

Let's look at what they do not want to do. During the past two weeks, we have wasted so many hours in quorum calls and cloture votes to serve the Republican leadership's goal of avoiding votes on votes that will help American families. The Republican leadership is blocking a vote on raising the minimum wage. They are blocking a vote on extending unemployment benefits. They are blocking a vote on protecting people from the new overtime regulations of the Department of Labor. Why?

During these past two wasted weeks, 687,000 more Americans filed first-time claims for unemployment insurance, yet Republicans are only talking about three jobs. Give me a break. I suspect the reason they are talking about these three is because they do not want the American people to know they blocked unemployment benefits, they blocked raising minimum wage, they blocked protecting overtime compensation. These are the people who actually have to go out and pay their mortgages. These are the people who actually try to figure out how they are going to pay to send their children to school. These are the people who live from paycheck to paycheck.

I say they blocked the Senate from extending unemployment benefits. According to figures recently released by the Labor Department, the unemployment rate held steady at 5.6 percent because hundreds of thousands of people stopped looking for work. They could not find work. This has left too many unemployed Americans without benefits for months.

They call it an economic recovery. It is a jobless economic recovery if it is an economic recovery at all because millions of Americans still cannot find jobs. Our law gives them 26 weeks of unemployment benefits, and up until the last day of 2003, if you were still looking for a job, our law would offer a 13-week extension. We tried to make a 13-week extension. Can we do it? No. Do you know why? Because the Republican leadership will not even allow us to vote on it. Are they afraid that maybe some of their own Members might now be feeling more compassion for these millions of Americans who are out of work than they do for three lifetime appointments?

Which priorities are they serving? Apparently not most working Americans. They would not even allow a vote on the Cantwell amendment.

Then we tried to raise the minimum wage. Why now? The last minimum wage was signed into law by President Clinton almost eight years ago. While they are caterwauling about a $160,000 lifetime job for three nominees, do they really believe that families could meet their basic needs on a minimum wage of just $5.15 an hour? The people who are making $5.15 an hour are real Americans, and the Republicans will not even allow us to vote for the first time in eight years to raise the minimum wage. The purchasing power of today's minimum wage is already below that of the minimum wage before 1996. To save the same purchasing power as it had in 1968, the minimum wage would need to be $8. Even in Vermont, where our state leaders have helped working Vermonters earn wages that are somewhat more livable, the minimum wage is still worth less than it was 35 years ago.

More people are out of work, underemployed, and struggling to keep roofs over their family's heads and food on the table than at any time since the administration of Herbert Hoover. Today there are more economic pressures squeezing them, with health care costs becoming unaffordable and gasoline prices reaching the highest level in my age. Despite the millions of American families with children who would directly benefit from a raise in the Federal minimum wage, Senate Republicans blocked a vote on the Boxer-Kennedy amendment to the welfare bill that would raise the minimum wage to $7 an hour in three steps over a 2-year period.

The Republican leadership is also blocking the Senate from making sure hard-working Americans are fairly compensated for working overtime. The Bush administration will soon be releasing final regulations changing the Federal rules on overtime pay. They will cut eight million middle-class Americans out of the ability to earn overtime pay.

We give tens of thousands of dollars in tax breaks to the people who go to these large fundraisers, but we take away overtime for eight million Americans who are barely making it? In fact, the regulations are so slanted against American workers that they will include a list of cost-cutting suggestions for big businesses to show them precisely how they can avoid paying overtime compensation to workers not singled out in the rules.

Bipartisan majorities in both the Senate and in the other body oppose what the Bush administration wants to do in taking away overtime pay from eight million Americans, but this year

the President threatened to veto the Omnibus appropriations bill if it included provisions to overturn the overtime regulations. After all, too many people who attend these large fundraisers have been told we will find a way for them to take those eight million workers off the overtime rolls. And unfortunately the Republican leadership in this and the other body said, yes, Mr. President, if you want to take those eight million off, we will go along with you, we will take them off.

Of course, we want to have another vote, a vote on the Harkin amendment, to express our disapproval of the labor regulations, either vote it up or down. After all, the Republicans are in the majority in this body. If they want to approve of the move of the administration of President Bush to deny overtime pay to eight million Americans, then they can vote and say they agree with it. We want a vote one way or the other, but they will not allow the vote. They are blocking that vote.

So I think we ought to talk about real people, people who live from paycheck to paycheck. We ought to talk about the votes that are being blocked to extend unemployment insurance, the votes that are being blocked to raise the minimum wage, the votes that are being blocked that might allow them to collect overtime pay for overtime work. One can imagine in the corporate boardroom they suddenly say, wait a minute, we could just have somebody work another 20 hours and we do not have to pay any overtime, we do not have to hire extra people, man, this is wonderful for us. And they can talk about it when they go out to the golf club.

We ought to ask, where are the priorities of the American people? Where are the Democratic priorities in the Senate? Where are the Republican priorities in the Senate? Should our top priority be right now to find good six-figure jobs for a handful of the President's most controversial activist judicial nominees, or should we give our time and attention to the millions of Americans living paycheck to paycheck who need help, the eight million Americans who are suddenly going to find they cannot earn overtime pay, and millions of Americans who have not had a raise in the minimum wage for eight years?

I think the priorities of the Democratic Members of the Senate are the people's priorities. Unfortunately, the priorities of my friends on the other side seem to be the priorities of the very privileged few.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, we all know we are likely to pass only a few major tax bills this election year, and we know one of the most important tax bills is the jobs in manufacturing bill that comes up for a cloture vote tomorrow. We know the only way the JOBS in manufacturing bill can pass is a ''yes'' vote on the motion to stop debate or, as we call it in the Senate, cloture. That vote will be tomorrow.

Once again, we must ask, will the Democrats say no to cloture? Will they say no to stopping debate? Will they refuse to allow us to get to finality on this very important bipartisan legislation that when it comes to a final vote will overwhelmingly pass in the Senate? Will they go on record opposing the provisions that are in this bill? Democrats should not because this is a bipartisan bill. This is a bill that every Democrat member of the Senate Finance Committee voted yes on to report it from committee.

Keep in mind that the jobs in manufacturing bill could be the last train out of town this year. It has to get done if we are going to end the sanctions and tariffs that have been put on U.S. exports to Europe as a result of the United States not following our own trade agreements.

Each time a Member votes against stopping debate, it lessens the chance that this bill is going to go forward. In fact, it kills off many good measures in the jobs in manufacturing bill. From the very beginning, this bill was overwhelmingly bipartisan. In fact, there was a bipartisan agreement that we need to pass this bill because there is a bipartisan agreement of long standing that the United States agrees to international trade agreements, and we have an obligation to do our part and live up to those agreements.

A ''no'' vote on this motion tomorrow is an obstruction to the bipartisanship that is expressed in the language of this bill.

I would like to briefly go through some of the measures that are in this jobs in manufacturing bill. What I am going to refer to is what a lot of Members of both political parties have asked for the consideration of by my committee and for inclusion in the language of this bill. I will go over what is in this bill and sincerely ask why the Democrat leadership is willing to tell its members to kill the bill by voting no to stopping debate.

This bill will end $4 billion a year of sanctions against the United States and our exports. As of March 1, those sanctions are being imposed against U.S. exports of grain, timber, paper, and manufactured goods.

You will later hear my comments on the products that are being hit right now by sanctions. I think each Member ought to know how this is affecting the economy of their district.

First, manufacturing jobs are good jobs in America. They pay 15 percent above the national average. If jobs are related to exports, there is a tariff on your exports in another country and we aren't competitive, those jobs aren't going to exist very long.

Think about what that would do in Waterloo, IA, for one-fifth of the tractors that come off the assembly line being exported. We couldn't afford to lose one-fifth of the jobs at John Deere in Waterloo, IA, because of these tariffs.

We can end the sanctions that are in this bill, but will the Democrats say no to cloture so we don't end sanctions?

This bill provides $75 billion of tax relief to our U.S.-based manufacturing sector to promote factory hiring here in the United States. It is not going to benefit corporations for that portion of their manufacturing overseas.

Will the Democrats say no to $75 billion worth of help, and help create jobs in factories in America, particularly considering the fact that every day you hear comments about outsourcing, and they expect us to do something about outsourcing? This bill will do something about outsourcing.

The jobs in manufacturing bill extends the research and development tax credit through next year. This is a domestic tax benefit that generates research and development in the United States. That translates into good high-paying jobs for workers in the United States—not overseas. The amendment we had on research and development passed overwhelmingly with a bipartisan vote.

Why would Democrats say no to a bipartisan provision in this bill? Will they? I hope not.

The jobs in manufacturing bill extends for 2 years many tax provisions that expired either last year or are going to expire this year. This would include items such as a work opportunity tax credit and the welfare-to-work tax credit and make the merger of those credits permanent. Senator BAYH and Senator SANTORUM asked for these provisions, and we included them. Will these Senators vote for cloture? They should.

Senator BREAUX and Senator SNOWE asked for a provision that allows naval shipbuilders to use a method of accounting which results in more favorable income tax credit treatment. We included that provision in this bill for Senator BREAUX and Senator SNOWE. They each have reasons to vote for cloture to get these amendments to the President for his signature.

There are enhanced depreciation provisions to help the ailing airline industry. Senator LINCOLN, Senator BROWNBACK, and Senator ROBERTS asked for these provisions. I hope they will vote to stop debate tomorrow so we can get to finality on this legislation.

There are what is referred to as new homestead provisions. These were requested by Senator DORGAN, Senator BAUCUS, Senator THOMAS, Senator ENZI, and Senator CRAPO. I hope these Senators will vote to stop debate so

what they have asked me to do can get to the President for his signature.

There are rural development provisions to create businesses in counties that are losing population. For example, they provide incentives for starting or expanding rural businesses in a rural outmigration county when it hits a certain percentage of outmigration.

At the request of Senator DORGAN, we also included a new market tax credit for high outmigration counties. These credits help economic development in rural counties that have lost over 10 percent of their population.

There is only one way this homestead and the new market provisions can become law; that is, to have the Senate stop debate. That takes 60 votes.

For Senators we have tried to work with to get their provisions included, if they aren't willing to help stop debate and move this bill along, why would they even ask me to include provisions in the bill if they do not want this bill to move along?

The jobs in manufacturing bill includes brownfields revitalization which was requested by Senators LAUTENBERG, DOLE, and INHOFE. The bill helps tax-exempt investors that invest in the cleanup and remediation of qualified brownfields sites.

I hope those Senators who asked me to include their provisions in my bill will decide they should vote to stop debate. Without getting over that hurdle, you never get to final passage.

Senators BOB GRAHAM, BREAUX, and HATCH asked us to include the mortgage bonds revenue measure. It would repeal the current rule that doesn't allow revenue bond payments to be used for issuing new mortgages.

There are 70 cosponsors of this bill. The 70 Members who took time to study this provision on mortgage revenue bonds and signed it surely want this bill to become law. Otherwise, why would they put their signature on it? That means that tomorrow those 70 Senators ought to be stopping debate so we can move on to finality.

Another provision is allowing a deduction for private mortgage insurance. This was asked for by Senator LINCOLN and Senator SMITH. It benefits people struggling to afford a home. I hope no one votes against their idea. Home ownership is the dream of all Americans. It is the American dream. This provision helps that along a little bit.

Some might say we have the highest percentage of home ownership this country has ever seen at 68 percent. Yes. But what about the other 32 percent? This might help some of those people who might not otherwise be able to afford a home.

In most cases, you have to buy mortgage insurance. If you buy mortgage insurance, it costs money for lower income people who are on the edge of owning a home or not owning a home. This might just help them get their loan through. But a vote against cloture would be a vote against this deduction that might bring the American dream to a few more young people.

Our bill includes the tax credit for employers for wages paid to reservists who have been called to active duty. Senator LANDRIEU and Senator ALLEN asked for this provision. I hope we will have their vote tomorrow, if they are serious about helping our guardsmen and reservists who have been called to action because of the war on terrorism. Otherwise, what is the point of asking me to put this in the bill if they are not helping us to move it to finality?

At the request of Senator SCHUMER and Senator CLINTON, we have extended and enhanced the Liberty Zone bonds provided for the rebuilding of Lower Manhattan. We also included $200 million in new tax credits to be used for rail infrastructure projects in the New York Liberty Zone; again, responding to the needs of the people in New York because of what happened on September 11. These two Senators came to me and asked for consideration of these provisions in this bill, and in a bipartisan way, we try to do things and we have responded accordingly.

Are they serious about getting these provisions into law for their New York constituents? If so, then they ought to vote for cloture and move this bill to finality.

We even included the renewable communities provisions requested by Senators CLINTON and SCHUMER.

Will the Senate Democratic leadership ask their members to vote against Liberty Zone funding for meeting the needs of the people of New York by voting no on cloture? We should not deny funding for the Liberty Zone just to prove a political point on a proposed labor regulation that may never be finalized in the first place. Even if it is finalized, Congress can always overturn it under the Congressional Review Act.

Hundreds of regulations are proposed in Washington every week. Very few make it to the finish line. So why is the Democrat leadership holding up funding for the Liberty Zone over a proposed regulation? This is not responsible governance. This is not responsible opposition. There is a legitimacy in our form of government, one party being in the opposition and the other party being in the majority. They play a very important role in making people responsible. Do we hold up every piece of legislation because it is an election year and Members think next year they might be in a majority, so they can do what they want to do?

All of these requests that are made to me, why not hold them up until next year? Then I would not have to be considering them at this point. If they are important, we ought to move this legislation along. In other words, we should have responsible opposition in the process of everybody making their points.

The Liberty Zone needs our help, and we need to behave as adults and get this bill completed.

In the jobs in manufacturing act we increase small business industrial development bonds to spur economic development in rural areas. This was requested by Senator PRYOR and Senator THOMAS. I hope they will vote for cloture tomorrow.

We have bonds for rebuilding school infrastructure. These were requested by Senator CONRAD.

We have included tribal bonds in the jobs in manufacturing bill, requested by Senator CAMPBELL and Senator JOHNSON. I am sure this is supported by Senator DASCHLE, as well, because he has a record of supporting Native American projects. These bonds allow the same rules that apply to tax-exempt bonds for State and local governments to apply to Native American tribes issuing tax-exempt bonds to finance facilities on their reservations. That is just an explanation, not something new. In other words, if it is good for one State and local government, why shouldn't it be good for the governance of our tribes?

We have included tribal school bonds, again, as requested by Senator JOHNSON and Senator CAMPBELL. Under current law, there is no class of bonds designated for the purpose of encouraging school construction on Indian reservations. This provision fills that void. We have a tribal new markets tax credit which was added at the request of Senator DASCHLE and Senator CAMPBELL. This amendment adds $50 million a year to economic development on reservation land.

Will the Democrat leadership tell Democrats to vote against closing debate and kill these Native American measures? Again, if they do not want to get it done, why did they come to me and ask for me to include these things?

We have also included the Civil Rights Tax Fairness Act. This is at the request of Senator BINGAMAN and Senator COLLINS. This is very important.

We have Senator CONRAD and Senator SANTORUM and Senator BUNNING asking we add a change in section 815 of the Tax Code. The provision suspends applicable rules imposing income tax on certain distributions to shareholders from the policyholder's surplus account of a life insurance company. This is included in the bill.

We have a special dividend allocation rule that benefits farmers' cooperatives. Senator LINCOLN and Senator COLEMAN asked it be included.

We have other farm provisions that give cattlemen tax-free treatment if they replace livestock because of something beyond their own control, such as drought, floods, or weather-related conditions. Senator DASCHLE and Senator THOMAS asked for that.

At the request of Senator CANTWELL and Senator THOMAS, we included a provision that allows payments under the National Health Service Corps loan repayment program to be exempt from tax. This is an important measure to enhance the delivery of medical services in rural America.

We included the passenger rail infrastructure tax credits at the request of

Senator CARPER. It provides $500 million for intercity passenger rail capital projects. We also included the shortline credits requested by Senator SMITH and Senator BROWNBACK.

At the request of Senator ROCKEFELLER and Senator HATCH, we added a provision to allow taxpayers to apply their bonus depreciation against the alternative minimum tax credits. This measure is very important to the steel mills of West Virginia; hence, Senator ROCKEFELLER.

A provision benefiting Oldsmobile dealers was included at the request of Senator BAUCUS and Senator BINGAMAN. The proposal provides tax-free treatment for Oldsmobile dealers because their franchise is being terminated.

How many times have we heard Members talk about the need to make broadband available in rural communities? We know it is essential to the economic competitiveness of rural America, particularly since we see so many Asian companies, so far in advance of the United States in broadband. To keep our economy competitive, it ought to be here. But we also know many Democratic Senators support this. It is, likewise, in the bill.

Senator MURRAY and Senator SMITH asked for the forest industry bond provisions in this bill. That allows nonprofits to use tax-exempt bond financing to acquire forest land, to achieve better balance between the goals of conservationists and the timber industry. Up to $1.5 billion in bonds may be issued under this program. That, sir, is a lot of conservation money.

At the request of Senator BOXER, we have included a proposal that would allow employers to take a 50-percent tax credit against the FICA taxes for wages paid to the first responders who are called to active duty. We added a second measure at Senator BOXER's request. This proposal would allow farmers and ranchers to take a 30-percent credit for the installation of irrigation equipment which reduces water use. The credit would be limited to land that has received drought assistance during the past 3 years.

Anyone who votes against cloture is voting to kill all the items I just listed. Why would people come to me as chairman of the Senate Finance Committee and ask me to include provisions in the bill if they do not want to get this bill to the President for signature? Tomorrow, they have their chance.

We had debate extended on this bill 2 weeks ago, and we had a vote to stop debate. Debate was not stopped. So tomorrow we vote again. We have to get over this hurdle to get all these provisions that have been requested in this bill and to get it to the President for his signature.

I hope Members are sincere about all this legislation that is introduced. I hope Members are sincere in telling me how important their amendments are to this bill. I hope Members will show that sincerity tomorrow when we have a chance to stop debate and complete this bill.

All the beneficial provisions I have just discussed are being held hostage this minute because the Democratic leadership is pushing for a vote on an issue that is not even in this bill. The vote is an attempt to embarrass the administration in an election year about a proposed labor regulation on overtime. The Democrats said the regulation was going final, and they had to add it to the jobs in manufacturing bill; otherwise, they would block this bill. That was 2 weeks ago. The regulation is still not final. And who knows, the way bureaucracy moves, it may never be final but continue to tilt at windmills, and what will come.

But it seems to me that it is politics all the time. It is politics from the Democrat leadership, and it is obstructing an important piece of legislation. More importantly, right now, it is obstructing legislation that most of the members of the other party have asked me to include in this bill. Now, why do you ask me to include it in the bill if you are not going to vote to get the bill to the President? This sort of obstructionism is inexcusable because we have worked hard throughout this process to make sure that everyone's concerns—both Republican and Democrat—were incorporated into this bill. Why? Because I know you do not get anything done in this body that is not bipartisan.

People who want to be partisan can be partisan, but they are not going to get done what they want done either. So you bring the Senate to a standstill. We have tried, in the spirit of bipartisanship, to respond. This legislation and all these amendments included are responding to that bipartisanship. You see that effort in the amendments I just listed.

But if it were not overtime, it would be something else to obstruct this bill. It could be the minimum wage; it could be trade adjustment assistance for services; it could be some kind of health care issue—anything to block the jobs in manufacturing bill at the very same time people on the other side of the aisle are complaining because we are not doing enough to stop outsourcing. This bill will help do that.

It is all about the Democratic leadership keeping the European Union sanctions in place to drive down the economy, because if the economy is not very good this fall, they think they have a better chance of electing their people. This is outrageous when you consider the bipartisan history of this jobs in manufacturing bill.

The JOBS bill is a completely bipartisan bill. Construction of the bill began when Senator BAUCUS was chairman of the Finance Committee in 2002. Senator BAUCUS and I have always worked with our Finance Committee colleagues on the bipartisan development of this Foreign Sales Corporation/Extraterritorial Income Act repeal and also the international tax reform provisions of this bill.

Let me emphasize, there is not one provision in this JOBS bill that was not agreed to by both Republicans and Democrats. I have already said, every Democrat in the committee—all 10 of them—voted for this bill to be reported out of committee. We have acted in good faith to produce a bill that protects American manufacturing jobs and to make our companies globally competitive—the same thing you hear Senator KERRY speaking about on the campaign trail, about making our corporations competitive. In fact, he even has a proposal that would reduce corporate taxes the same way we do.

Let's get on with the business at hand and finish this bill; vote for cloture tomorrow, stop debate, put this bipartisan jobs in manufacturing bill ahead of partisan politics. Then we can show the people of this country that the adults are in charge of the Senate, and we can get the JOBS bill—creating jobs in manufacturing—out of the Senate and eventually to the President.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Mississippi.

Mr. LOTT. Mr. President, I appreciate the chairman's comments on the need to move this legislation forward.

Mr. President, let me just inquire in terms of parliamentary procedure, are we open for general debate?

The PRESIDING OFFICER. We are on the motion to proceed. There are no limits on debate.

Mr. LOTT. Thank you, Mr. President.

I did come to the floor last week and speak to the need to move this very important jobs growth, FSC/ETI issue and not have a filibuster and complete our work. If we do not, we are going to see that we are going to be hit by a continuing increase in fines by the European Union because we are not complying with the World Trade Organization ruling of over a year ago.

I also said we stand to benefit from the tax proposals in this legislation, and I urged that we complete this work. In fact, I said we have no alternative but to complete this work. I am glad the leadership is going to continue to push this issue because we must get it done.

I do want to say now that I understand that perhaps a decision was made to attach tax provisions from the Energy bill to this bill, and I think that was a mistake. I am going to have to review what that means in terms of my own vote. Instead of helping move this legislation, and other legislation, it may have complicated both of them. But I hope we can find a way to get this done.

Mr. President, the reason I came to the floor this afternoon, though, was to speak in support of S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004. We have a health care crisis in America. Health care is becoming more and more difficult to obtain, to afford, and to be assured that it is the quality that you might need. In rural States such as mine and Senator GRASSLEY's State of Iowa, the

issues of access and distance, or being able to get trauma care or care from obstetricians and gynecologists, present real problems.

I also think we have to acknowledge that the cost is becoming more and more difficult and more and more prohibitive. The cost of health care insurance continues to go up. The cost of medical liability insurance continues to go up. When you talk to trauma emergency care doctors, when you talk to OB/GYNs, they are paying $85,000, $100,000, $125,000 for medical liability coverage. How much will it be? There is no limit?

There is no question, in my mind, many of these doctors are now practicing what we would describe as defensive medicine. They are prescribing additional procedures. They are taking extra precautions to make sure they do not get sued. That, by the way, continues to drive up the cost of health care. So it has become a big problem in this country.

Escalating jury awards and the high cost of defending lawsuits, even the frivolous ones, are increasing medical liability premiums nationwide, and they are having devastating effects on the health care of millions of Americans. Medical specialists, including neurosurgeons, obstetricians, and emergency physicians, are being forced to cut services, retire early, or move their practices to other States.

This past Saturday night, I was in Augusta, GA, for an event for Congressman NORWOOD, a Congressman who has been very much involved in patients' rights and health care issues. I was informed that one of the neurosurgeons in Augusta recently moved from my State of Mississippi. It is not an isolated incident. It is a pattern. Augusta has several neurosurgeons. Mississippi has a declining number, even in places where they are needed to provide trauma care services in larger metropolitan areas.

Nineteen States are in full-blown medical liability crisis now, and 25 States are showing signs of crisis. Only 6 States are considered stable, each of which has instituted reforms.

Ninety-eight percent of osteopathic students acknowledged in a recent survey that medical liability issues will influence their future career decisions. Seventy-three percent say medical liability issues will ''significantly'' influence their decisions—in other words, where they practice, whether they practice, and what kind of medicine they practice.

Medical liability costs the Federal Government well over $50 billion per year. The source of that information is the Department of Health and Human Services. I have heard the discussions over the years: Well, you guys from Mississippi, and other similar States, have always talked about the States should deal with these issues. This is a States rights issue. It is a State problem.

Let me tell you what: When it costs the Federal Treasury $50 billion, this is a national problem. This is not just a problem in Mississippi, Alabama, Arkansas, or Iowa; it is a nationwide problem. Very few States—even those that have passed medical liability reforms—have been able to stem this tide of abuse and costs that are really causing difficulties in a number of States and in the health care of this country. So we have to do something.

Here we are in the Senate with this crisis looming out there that affects children, babies, mothers, elderly, emergency care needs; all of them have been held up while the Senate cannot even proceed to debate the legislation. That is what we have here, the motion to proceed. That is indefensible. How could we not at least take this issue up and have a full discussion about its dire consequences?

Let's talk a little bit about what the bill does. This is not something that just popped out of a committee or hasn't been thought through clearly. This issue has been pending for a long time. Some of the legitimate concerns have been addressed.

The bill provides reasonable guidelines to govern liability claims related to the provision of obstetrical, gynecological, emergency and trauma care goods and services. I want to emphasize, this is a limited bill. This is not all medical professions. This is targeted to those people who treat us when we are in the greatest need of health care, when we are going into an emergency room or a trauma facility as a result of an automobile accident, or doctors who deliver and look after our children and the mothers of those children. Can we not at least provide some medical liability reform and protection there so we can keep these doctors in the practice?

More and more in my State and all across the country doctors who have in the past practiced obstetrical and gynecological work are dropping the obstetrician part because they are being sued. The insurance is becoming prohibitively expensive in terms of the cost it is putting on these doctors.

The bill sets a statute of limitation of 3 years after the date of manifestation of an injury or 1 year after the claimant discovers or should have discovered the injury. That is reasonable. You can't say 5 years later: I had a problem back there. It says you have to exercise your right within 3 years or 1 year after you discovered it.

It allows recovery of unlimited economic damages, but it limits noneconomic pain and suffering damages to $250,000. This is obviously a place where some restraint needs to be employed. This is where certain juries in certain counties in certain States, mine included, have been rendering multimillion dollar decisions for pain and suffering. I think some reasonable limits there clearly would be appropriate.

This bill allows the court to restrict the payment of attorney contingency fees by applying a percentage scale based on the amount of the judgment. These lawsuits should not be about attorneys' fees. The lawsuits should be about medical costs and medical liability. What is a reasonable recovery when you do in fact have some legitimate claims?

Don't get me wrong. I do think in the American system of jurisprudence, you have a right to take your grievance to court. I would defend that. I am an attorney. But I do think the system is being abused, and it has become more about attorneys' fees than it has the injuries that were incurred.

The bill sets out qualifications for expert witnesses. Again, that is an area where there have been some abuses I am personally familiar with. It permits courts to reduce damages received by the amount of collateral source benefits to which a claimant is entitled; in other words, money paid by another entity such as a health insurance provider.

It authorizes the award of punitive damages only where a high standard is met of clear and convincing evidence that a defendant acted with malicious intent to injure or deliberately failed to prevent injury that was certain to occur.

This is very good legislation. It is targeted. It is limited in the impact it would have on restricting the coverage, but also it is limited to these particular areas of specialty I have noted.

Let me go to my own State of Mississippi, since our State is really being adversely affected by these medical liability cases. It is one of those States which has been described as a judicial hellhole. I don't like to hear that. When various entities identify my State in that sort of way, I resent it. Even if they are right, I don't like to hear it. But there is no question we have had lots of problems in my State of Mississippi. We have had a tremendous explosion of lawsuits in this health care area, very large verdicts. Physicians who are practicing in Louisiana, Mississippi, Texas, and West Virginia can clearly demonstrate how medical lawsuits have hurt our health care system. The doctors will tell you about that.

A recent survey that was done by the American Tort Reform Association, in cooperation with other groups such as the Mississippi State Medical Association, points out 84 percent of the physicians surveyed report they are very concerned about the effect of medical litigation on the practice of medicine. Eighty-one percent report they have changed the way they practice medicine because of litigation concerns. That means more cost. That is what I was referring to at the beginning. They have been requiring and prescribing more and more procedures to protect themselves against these lawsuits. And by the way, in many instances, the procedures are not necessary and not required medically. They are required to defend yourself against a frivolous lawsuit.

Eighty-six percent of the physicians believe states with a liability crisis like Mississippi increase medical malpractice insurance costs. And the list goes on. There is no question it is creating a real problem.

Again, specifics: Half of my State's 82 counties now have fewer physicians to treat patients than were available in 2001. Mississippi has fewer physicians per capita than 48 other States. So when we lose a physician, it really hurts because we already are in dire straits. In 16 Mississippi counties, the numbers of physicians remained unchanged from 2000 to 2002, but the population in those counties increased during the same period. The population growth in 62 percent of Mississippi counties outpaced a stagnant or decreasing base of physicians to treat those patients. The source of this information is the Mississippi State Medical Association.

Approximately 100 doctors have left or plan to leave the State of Mississippi. The source of that information is a Time magazine article of June 9, 2003.

Mississippi had a net loss of 73 physicians in 2002. The number of physicians licensed in the State in 2001 was 5,710. But in 2002, this number had dropped to 5,637. Since the population is increasing, since we have certain areas of the State that have experienced tremendous growth, you would think we would be increasing the number of physicians per capita. The numbers are going in the wrong direction.

I ask unanimous consent that other statistics I have about what is happening in my own State be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

This net loss of 73 physicians is all the more disturbing because the total number of physicians licensed in 2002 actually includes 414 newly licensed doctors—meaning that there were approximately 500 doctors practicing in the state in 2001 who were not practicing in the state by 2002. The source of my information is a Mississippi State Medical Association news release of August 14, 2002.

Furthermore, another disturbing trend is the decrease in the number of medical licenses that are being issued each year. In 2000, the medical board issued 470 new licenses; in 2001 the number was 456; and in 2002 the number was 414. The number of new licenses dropped steadily by 39 percent from 1997–2002. The source of my information is a Mississippi State Medical Association news release of August 14, 2002.

Mississippi can't afford to lose doctors when the state's population increased by 271,442—or 10.5 percent—between 1990 and 2000. The State population of 2,573,216 in 1990 grew to 2,844,658 in 2000. The source of this information is the U.S. Census Bureau.

Only two neurosurgeons remain in practice on the Mississippi Gulf Coast, and general surgeons are in short supply because of the state's medical liability crisis. ''Everybody is reduced to the same low level of trauma care that we had 20 years ago,'' said Steve Delahousey, vice president of operations at American Medical Response ambulance service. My source is the Biloxi Sun Herald, Jan. 29, 2003.

Increasing costs of medical liability insurance has reduced the number of neurosurgeons in the State by one-third, creating holes in the State's trauma system. My source is the Greenwood Commonwealth, April 25, 2003.

One major medical liability insurer, St. Paul Cos., has withdrawn from the Mississippi market, forcing as many as 1,000 physicians to find other insurers. My source is the New Orleans Times Picayune, February 2, 2003.

In Cleveland, MS, three of the town's six OB–GYNs have stopped delivering babies. Yazoo City's 14,500 residents have no OB–GYNs. According to the Mississippi State Medical Association, insurance rates for OB–GYNs have increased from 20–400 percent in the previous year. My source is the Mississippi State Medical Society.

Loss of doctors at Gulfport-Memorial: As of summer 2003, Gulfport-Memorial had 24 hour neurosurgery coverage, and now they have no neurosurgery coverage at all; had 6 neurologists, and now have 1; had 6 orthopaedic surgeons, and now have 3; had 3 vascular surgeons, and now have 2; had 9 OB–GYNs, but 2 retired due to malpractice insurance crisis, and now have 7. The source of my information is Dr. Arthur Matthews.

''Nursing homes in Mississippi have been faced with increases in total premiums as great as 900 percent in the past two years. Since Medicare and Medicaid pay most of the costs of nursing home care, these increased costs are borne by taxpayers, and consumer resources that could otherwise be used to expand health (or other) programs.'' The source of this information is a HHS medical litigation report, March 3, 2003.

Mr. LOTT. I want to make this point. We used to have several, then we had three, now we have one insurance company that is providing medical liability insurance in my State of Mississippi. This is a problem that is of great concern to leaders in the State of both parties, in the medical profession, in the business world, and those of us who are trying desperately to advance the State economically and have had some success bringing major industries into the State. While a major industry may want to know, do you have a good interstate system, do you have international airports, good schools, can you provide affordable housing, they don't always immediately ask about the accessibility of hospitals and do you have the doctors who are needed, but that is a question that eventually they come to. It is one that will affect us in the future if we don't do something about it.

Let me tell you what it means when you don't have the doctors you need. I want to give some specific examples.

Tony Dyess of Vicksburg, MS, received serious head injuries in a car accident on July 5, 2002. Since a specialist in brain injuries, or neurosurgery services, was not available in Gulfport, MS, he had to be airlifted to another hospital which led to Tony having permanent brain damage and no longer having the ability to care for himself or to have a job. The source of that is the American Medical News, May 26, 2003.

Fortunately for Elmoe Kee III of Woodville, the withdrawal of insurance coverage by St. Paul malpractice insurance provider from the State of Mississippi did not occur before he was attacked by a bank robber in a small rural county at Wilkinson County Savings Bank where he served as president. He would have most certainly died if he had not been able to get doctors to treat him almost immediately at Catchings Clinic in Woodville, MS. With the withdrawal of St. Paul as a malpractice provider, seven of the eight doctors in the area, including those at Catchings Clinic, Field Clinic in Centreville, and Gloster Clinic were left without a malpractice insurance provider beginning on June 30, 2002. The source of this information is the Jackson Clarion-Ledger of June 27, 2002.

On April 18, 2003, John Fair Lucas IV of Greenwood received a severe head injury due to a one-person car accident. Since the Delta Regional Medical Center no longer has around-the-clock neurosurgery services because of the impact of the medical malpractice insurance crisis and the loss of that coverage, John had to be airlifted to Jackson, losing valuable time because the distance from that area of Greenwood, MS, down to Jackson is about a 2-hour drive, or certainly a 30-minute helicopter ride, and he lost valuable time for the surgical procedure needed to reduce pressure on the brain. Sadly, John passed away on May 28, 2003. The source for that is the Greenwood Commonwealth newspaper, April 25, 2003.

''Jill Mahaffey says she got lucky. She and her husband are here, they live in the Delta, too. She got lucky. She heard she's pregnant. She's getting there, getting ready. She goes to the doctor, he says, I've got to leave—OB/GYN getting ready to leave because of lawsuits, because of the threats. Because even if you're a doctor who practices good medicine, you're going to get sued in this State and in other States. Believe this or not, fortunately, she was getting toxic and the doc induced labor before he quit his practice. She says she was lucky. And she was.'' This is a quote from President Bush's address to Madison High School in Madison, MS August 7, 2002.

Amber Peterson's obstetrician in Cleveland, Mississippi stopped practicing 3 weeks before her due date, and she had to drive out of State, over a hundred miles, to Memphis, Tennessee, to get the care she needed. The source of this information is the U.S. Department of Health and Human Services, from a report dated July 24, 2002.

Marine Hawkins, 20, of Boyle, Mississippi, was shocked to hear from her obstetrician that he was closing his practice—just 2 weeks before her due date of July 21. The nearest doctor is 30 minutes away. She doesn't have a car and will have to rely on relatives to get there. ''This isn't what I needed now,'' she said. The source of this information is the Houston Chronicle, July 20, 2002.

In February 2003, Sharkey-Issaquena Community Hospital in Rolling Fork,

MS saw its insurance premiums rise from $163,000 to $223,000. Because of this rise, the hospital was forced to close its doors for 3 weeks while the hospital looked for an alternative insurance policy after being discontinued by its previous insurer. During these 3 weeks, Sharkey-Issaquena had to contract paramedics to treat patients while they were being transported by ambulance to the closest hospital. The source of this information is the American Medical News May 26, 2003.

In 2002, 10 physicians left Greenwood Leflore Hospital because of the State's problems with medical liability insurance. Also during 2002, the hospital's liability insurance premium increased from $150,000 per year to $1.3 million. The source of this information is The Greenwood Commonwealth, June 26, 2003.

On Sept. 30, 2002, officials at Forest General Hospital announced they are eliminating nearly 300 positions—200 of which were already vacant—to save an estimated $7.6 million in the new fiscal budget. Citing causative factors that prompted the cuts, hospital president Bill Oliver stated that Forrest General was hit last year with a dramatic increase—about $4 million—in medical malpractice insurance. The source of this information is the Hattiesburg American Oct. 2, 2002.

Mr. President, let me talk a little about exactly what is happening with the doctors in my State.

In February 2003, 14 doctors in the Oxford area in various medical fields were left without malpractice insurance and were forced to close their doors because their insurer, Doctors Insurance Reciprocal, went into receivership on February 13. Doctors are slowly, surely leaving the area to go to bigger areas, or even to other States.

I was in my hometown area, Pascagoula and Moss Point, MS, on the Gulf Coast, and met a new impressive doctor in the community. He was also involved in the trauma unit because he was an orthopedic surgeon. He moved to Mississippi from the State of Missouri. He is an African-American doctor. He was doing a great job. He told me because of the insurance coverage situation, even though his family wanted to stay on the Mississippi Gulf Coast, it looked as if they might have to return to Missouri. Other doctors have been either leaving the State or getting out of the practice of obstetrics.

In the case of Dr. Don Gaddy, as well as four other obstetricians and three nurse-midwives, they filed notice to take a 1-year leave of absence from Memorial Hospital at Gulfport, MS, because of extreme increases in medical malpractice insurance coverage. The source of this information is the Biloxi Sun-Herald, April 18, 2003.

Dr. Gregory Patton, an OB–GYN with the Oxford Obstetrics and Gynecology Associates PA in Oxford MS, reports that his malpractice insurance premiums have gone up 60 percent—with each doctor paying $67,000. The source of this information is The Daily Mississippian June 10, 2003.

Drs. Blackwood and Baugh's temporary departure left no OBs in Cleveland for about 10 days. Only one family physician continues to deliver babies at the local hospital. But the malpractice insurance providers that are protecting them are only ''Band-Aid insurance.'' The source of this information is American Medical News Sept. 9, 2002.

Dr. Kurt Kooyer left the small town of Rolling Fork after getting fed up with lawyers filing suit against him without even the patients' knowledge that they were filing suit against their physician. Dr. Kooyer was the only pediatrician among three physicians in town who lowered the infant mortality rate from an average of 10 deaths per 1,000 live births to 3.34 deaths per 1,000. Dr. Kooyer now lives in North Dakota. The source of this information is The Clarion-Ledger Aug. 23, 2002.

''Dr. Frothingham, you talk about a man with heart. You think Kooyer has a heart? Wait until you hear Frothingham. He's a great Mississippian; grew up here; thought he might try to live in South Carolina, realized what he was missing, came back to Mississippi. He's a neurosurgeon. He talked with deep compassion about a man who suffered a trauma, a fellow he was with—Johnny was with us today. He's a guy who understands that practicing medicine is more than just technology. It's concern and care. They're running him out of business. There's too many frivolous lawsuits. And that hurts the state and it hurts the country. It hurts the people.'' This quote is from President Bush's address to Madison High School in Madison, MS, August 7, 2002.

On July 15, 2003, Drs. Derveloy and Gilmore, the only two heart surgeons in Oxford, are closing their practice. They contribute their relocation to a shortage of key elements: facilities, cardiologists, affordable medical malpractice insurance and regional referrals. Dr. Derverloy is joining an existing group off heart surgeons who are practicing in Tupelo, and Dr. Gilmore recently accepted an offer to set up a heart surgery program in Decatur, Ala. The source of this information is The Oxford Eagle June 8, 2003.

Also in Oxford, the two cardiologists with the Oxford Heart Clinic, Dr. Nelson Little and Dr. Timothy Wright, are merging their practices with a Tupelo office, but will keep their local office open, which followed the loss of Oxford's only two heart surgeons, Drs. Derveloy and Gilmore. The source of my information is The Oxford Eagle, June 8, 2003.

Five doctors at the Family Practice/After Hours Clinic on U.S. 98 West have posted a sign on their doors informing patients that no appointments are being scheduled for 2003. The physicians are also filling out applications for licensing in Alabama and Louisiana. The doctors explain the possible departure from Mississippi by the clinic's malpractice insurer informing them recently that their premiums will increase 45 percent on Jan. 1, 2003. The source of my information is the Hattiesburg American, Oct. 2, 2003.

OB/GYN Mark Blackwood of Cleveland has seen his practice load nearly double since three physicians quit delivering babies in the area. His insurance lapsed in July, forcing him to close his clinic for ten days leaving dozens of patients without a physician to deliver their babies. He and his partner have seen an increase in the number of suits filed against them since the new legislation passed. The source of this information is the Mississippi State Medical Association Dec. 1, 2002.

Radiologist Ken Duff was able to get coverage less than twenty-four hours before his old policy expired. He and his eleven partners cover two hospitals in Hattiesburg, facilities ion Columbia, Collins and Tylertown, as well as two large outpatient facilities. Without diagnostic radiology services patients have to wait longer to get test results, and other physicians will have to find new specialists to consult. The group desperately needs new recruits to cover demand. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

General Surgeon Brian Anthony of Bay St. Louis practices more defensive medicine and no longer does vascular work. He plans to retire 10 years early because of the litigious environment. He says other physicians often consult him in order to document their cases and to reduce their exposure. He and the remaining surgeon in the area are considering whether they will continue to provide trauma services. The source of this information is the Mississippi State Medical Association Dec. 1, 2002.

Neurosurgeon Terry Smith has not had a vacation in five years because there is not enough neurosurgery coverage to take care of his patients. He is one of only three neurosurgeons covering trauma cases for seven hospitals on the Gulf Coast. When he lost his insurance in August 2002 he had to go on staff with a hospital in order to continue to practice in the area. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

Otolaryngologist Gene Hesdorffer of Hinds County had to close his practice on December 31 and was forced into full-retirement because he could no longer afford insurance. His insurance carrier informed him they were doubling his rates despite the fact that he has never been sued. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

OB/GYN Al Diaz of Ocean Springs has insurance until December 2002. He has lived on the Coast for 20 years but is now looking at practice in Mobile, Alabama, and Slidell, Louisiana. Both his son and daughter-in-law are training in Louisiana but will not return to practice in Mississippi. The entire group of

four OB/GYNs just renovated their clinic in Ocean Springs and opened an office in Biloxi when they were told their insurance carrier would no longer be doing business in the State. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

Surgeon Cecil Johnson of Lauderdale County plans to retire soon. Until then he will continue to order more tests, x-rays and consultations in order to back up diagnoses. He also plans to drop vascular surgery in hopes that he will be able to find more affordable insurance. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

Internist Bob Lewis of Wilkinson County spent a week treating patients at the local emergency room while his clinic was closed. The group could not find coverage and the only quote they could get was $355,000. The four-man group paid $67,000 last year. Family Practice physician Jennings Owens and his group serve nearly 40,000 patients. He is upset that the hospital had to hire physicians in order to insure them. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

ER physician Bob Corken had to find insurance from Lloyd's of London for this ER group which services a hospital in Washington County and three others in the Delta and Central Mississippi. Corken found insurance at the eleventh hour in order to avoid work stoppages and temporary closure of at least one emergency room. The source of this information is the Mississippi State Medical Association, Dec. 1, 2002.

Orthopaedic Surgeon Alan Swayze, MD of McComb took on more patients last year than ever before—partly because there are few orthopaedic surgeons in the area. Now he is leaving Mississippi and opening a practice in Georgia because his liability insurance to practice in Mississippi skyrocketed to $125,000 per year. His premium in Georgia will be $14,000 annually. The hospital administrator in McComb said the prospects of recruiting replacement physicians to McComb is ''bleak.'' The source of this information is the Enterprise Journal, June 12, 2003.

In April 2002, State Commissioner George Dale said, ''It's just a matter of time until insurance companies will say they're not going to cover medical providers in Mississippi.'' That time has arrived. Dozens of insurers have either discontinued writing medical malpractice in Mississippi or raised their premiums to such a level that doctors—like those at the Family Practice/After Hour Clinic—are being forced to consider relocating out of state. According to a survey conducted recently by the Rating Division at the Mississippi Insurance Department, 36 companies offered medical malpractice insurance in all categories in 2000. As of Sept. 10, there are only two licensed regulated, companies still providing medical malpractice insurance to physicians and surgeons in Mississippi. The main reason insurance companies give for hiking premiums and/or leaving the state is their concern about Mississippi's civil justice system, which has generated over 100 verdicts of $1 million in the last 6 years. The source of this information is the Hattiesburg American, Oct. 2, 2002.

Fifteen medical malpractice insurers have withdrawn from offering coverage in Mississippi in the past five years. The source of this information is an HHS medical litigation report, March 3, 2003.

''We've had trouble recruiting and had physicians say they are not interested in coming to Mississippi because of the malpractice insurance rates,'' according to Dean Griffin, executive officer of Baptist Memorial-Golden Triangle Hospital. The source of this information is The Associated Press, March 20, 2003.

A poster on the large wooden doors leading into Delta OB/GYN explains it all: ''It is with much regret that we must inform you that our office will be closed effective 7/14/02 until further notice. Due to the current malpractice crisis in the State of Mississippi, our liability insurance has been canceled.'' The source of this information is the American Medical News, Sept. 9, 2002.

Mr. President, I ask unanimous consent that the entire list of physicians who are no longer delivering babies in Mississippi be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PHYSICIANS NO LONGER DELIVERING BABIES WITHIN MISSISSIPPI

Total: 54.

ADAMS COUNTY (3):

Ob-Gyn T.L Purvis of Natchez.
Family Practice physician Dr. Ana Leurinda of Natchez.
Family Practice physician Jody Nance of Natchez.

ALCORN COUNTY (1):

Family Physician Dr. Erica Noyes of Corinth.

AMITE COUNTY (1):

Family Practice physician Mutahhar Ahmed of Liberty.

ATTALA COUNTY (4):

Family Practice physician Tim Alford of Kosciusko.
Family Practice physician Anson Thaggard of Kosciusko.
Family Practice physician Richard Carter of Kosciusko.
Family Practice physician Stanley Hartness of Kosciusko.

BOLIVAR COUNTY (3):

Family Practice physician Don Blackwood of Cleveland.
Family Practice physician Bill McArthur of Cleveland.
Family Practice physician Scott Nelson of Cleveland.

COAHOMA COUNTY (1):

Ob-Gyn Dr. Joseph O. Sims of Clarksdale.

COPIAH COUNTY (1):

Family Practice physician Fred McDonnell of Hazlehurst.

COVINGTON COUNTY (2):

Family Practice physician Word Johnston of Mt. Olive.
Family Practice physician David Wheeler of Mt. Olive.

DESOTO COUNTY (1):

Family Practice physician Dr. Pravin Patel of Coldwater.

FORREST COUNTY (1):

Ob-Gyn Hilda McGee of Hattiesburg.

FRANKLIN COUNTY (1):

Family Practice physician Bo Gabbert.

GRENADA COUNTY (1):

Ob-Gyn Sidney Bondurant of Grenada.

HARRISON COUNTY (3):

Family Practice physician Karen Mullen of Biloxi.
Ob-Gyn Maria Moman of Gulfport.
Ob-Gyn Oney Raines of Gulport.

HINDS COUNTY (3):

Family Practice physician Charles Guess of Jackson.
Family Practice physician Wayne Johnson.
Ob-Gyn Beverly McMillan of Jackson.

HOLMES COUNTY (1):

Family Practice physician Charles Campbell.

JACKSON COUNTY (2):

Ob-Gyn Tom Singley of Pascagoula.
Ob-Gyn Jack Hoover of Pascagoula.

JEFFERSON COUNTY (1):

Family Practice physician Shanti Pansey of Fayette.

LAMAR COUNTY (1):

Family Practice physician Stephen Harless.

LEAKE COUNTY (1):

Family Practice physician David Moody of Carthage.

LEE COUNTY (1):

Ob-Gyn Jack Kahlstorf of Tupelo.

LEFLORE COUNTY (3):

Ob-Gyn S. R. Evans of Greenwood.
Ob-Gyn Ed Meeks of Greenwood.
Ob-Gyn Terry McMillin of Greenwood.

OKTIBBEHA COUNTY (2):

Family Practice physician L. H. Brandon of Starkville.
Family Practice physician John Hollister.

PANOLA COUNTY (1):

Ob-Gyn Purnima Purohit.

PEARL RIVER COUNTY (2):

Ob-Gyn Anthony Grieco of Picayune.
Ob-Gyn James Blount of Picayune.

RANKIN COUNTY (1):

Family Practice physician John Boone of Brandon.

SIMPSON COUNTY (2):

Family Physician Dr. Sherry Meadows of Mendenhall.
Family Physician Dr. Terry Meadows of Mendenhall.

SUNFLOWER COUNTY (1):

Family Practice physician W. L. Prichard of Indianola.

WARREN COUNTY (2):

Family Practice physician John Ford.
Family Practice physician Lamar McMillim.

WASHINGTON COUNTY (3):

Ob-Gyn Dr. Elmertha Burton of Greenville.
Family Practice physician James Adams.
Family Practice physician Hernando Payne.

WILKINSON COUNTY (1):

Family Practice physician James Leake of Centreville.

WINSTON COUNTY (2):

Ob-Gyn Glen Peters of Louisville.

Family Physician Dr. DeWitt Crawford of Louisville.

Mr. LOTT. Mr. President, this is not a short list. This is a lengthy list, with probably as many as 40 counties listed. In Adams County, they lost three physicians who had been delivering babies. Attala County, in the center of the State, lost four family practice physicians who had been doing deliveries; they got out of the practice. In Harrison County, one of our more metropolitan areas on the Gulf Coast, three doctors got out of delivering babies. The list goes on and on.

Pretty soon it is going to be hard to have a baby delivered in my State. That causes me a great deal of concern.

Mr. President, I hope we can get the votes tomorrow to proceed on this issue and have a full debate and a vote. This is not some massive tort reform, although I think we need it. I hope we will later visit the issue of class action reform.

This is very targeted legislation that will address a serious problem in many States—the majority of States across this country, where we are losing the services of these physicians in these critical areas. I would hate to have to explain to my State how I would not even vote to proceed, let alone not vote to have some limits on medical liability for doctors who deliver babies and treat their mothers and who care for us when we have accidents and go to the emergency room.

I think this is very carefully drafted legislation, very thoughtful. I certainly hope the Senate will see fit to proceed to a full debate and vote on this critical legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

PENSION FUNDING EQUITY ACT

Mr. MCCONNELL. Mr. President, I want to briefly address a conference report that we will hopefully be voting on in the Senate this week; that is, the conference report called the Pension Funding Equity Act.

The House of Representatives passed this bill overwhelmingly last week. This is a bill that addresses the urgent need to establish an appropriate interest rate for determining pension plan liabilities. The conference agreement provides for a temporary replacement only for the 30-year Treasury bond in determining the pension plan's liabilities.

The Government stopped issuing this bond in 2001, and continuing to use this outdated interest rate would require companies to make unnecessarily large contributions to the pension plans.

If this change is not made, the administration estimates it will cost American companies $80 billion over the next 2 years. This is $80 billion over the next 2 years, not the standard 10 years by which we usually measure legislation.

This is $80 billion that companies could put to better use creating jobs, purchasing equipment, providing raises to workers, or pursuing any number of worthwhile business activities.

This is legislation that cannot wait. It needs to be passed this week. A previous temporary replacement rate expired January 1 of this year, 2004. Unless the Senate acts prior to the recess, by the end of this week, companies will be required to make the first of their inflated contributions based on the flawed interest rate on April 15, while we are not here. So this is it; the last opportunity to address this great inequity is this week. Again, these are funds that companies could otherwise use to create jobs, invest in new equipment, and provide raises to workers.

I believe I am safe in saying that every Member of the body has heard from his or her constituents about the need to solve this problem before April 15. The House recognized the urgency of this matter and passed this conference agreement on a bipartisan vote of 336 to 69 last Friday. That was an overwhelming bipartisan recognition that this conference report needs to become law and needs to become law now. It is critically important that the Senate do the same and send this to the President for his signature before April 15.

We spend a lot of time talking about jobs and job security on the Senate floor, and we should be talking about jobs and job security. This pensions conference report is an opportunity to stop talking and start acting. We ought to seize this opportunity and pass this very much needed legislation this week.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent to speak as in morning business for up to 5 minutes.

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

UNIVERSITY OF TENNESSEE LADY VOLS

Mr. FRIST. Mr. President, I see my colleague from Tennessee in the Chamber. I know shortly he will be addressing the issue under consideration, that of medical liability. In seeing him, I did want to, for a couple of minutes, talk about a very important event that will occur later this evening.

The State of Tennessee, which both he and I represent, is once again at the height of March Madness. Congratulations to the University of Tennessee Lady Vols, who will play for their seventh NCAA title tonight against a familiar foe, the University of Connecticut Huskies.

Coach Pat Summitt has maintained a championship basketball program at the University of Tennessee for three decades. This upcoming matchup, to be played in a few hours, will be the Tennessee native's 102nd NCAA tournament game. Coach Pat Summitt has led the team to an overall record of 851 wins and 166 losses in 30 seasons.

Under the watchful eye of the winningest coach in women's basketball history, the Lady Vols have advanced to the NCAA Sweet 16 and the Elite Eight in 19 of the last 23 years. Tennessee is making its third straight Final Four appearance, setting a new NCAA record with 15 such appearances. The win over Stanford in the 2004 Midwest Regional final gave the Lady Vols their 14th 30-win season in Coach Pat Summitt's 30-year career at Tennessee.

This is an especially big game for the Lady Vols seniors. During their 4-year stint at Tennessee, they have yet to clinch a national championship. They did garner a No. 1 seed for a nation leading 16th time in 2004.

It is the seniors' outstanding play that has blazed the trail to the 2004 NCAA championship game. Senior Tasha Butts scored the winning basket at the buzzer in both games of the Midwest regional. Senior LaToya Davis scored with 1.6 seconds left in Sunday night's Final 4 matchup to keep Tennessee's national championship hopes alive.

Butts, Davis, and fellow senior Ashley Robinson accounted for one-third of the team's total production in the 2004 NCAA Tournament. They have attributed 47 percent of Tennessee's points, 77 percent of its assists, and 39 percent of its three-pointers. Together these exceptional student athletes have produced 30 points, 21 rebounds, 10 assists, 4 steals, and 3 blocked shots per game.

Tennessee, although a perennial powerhouse, has not won a national title since 1998. Under the tutelage of a basketball living legend, combined with the heart of the Lady Vols' seniors, Tennessee hopes to bring the glory of women's basketball back to Rocky Top.

I wish both teams good luck tonight, and I hope to join the Tennessee Lady Vols at a White House victory celebration later this year. Go Vols.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are not. The Senate is considering a motion to proceed.

Mr. ALEXANDER. Mr. President, I wish to respond to the majority leader's comments, if I may. I, as a great many Americans, am going to be watching the Connecticut-Tennessee basketball game tonight at 8:30 eastern time.

Connecticut has a wonderful tradition, a terrific coach, and great players. They have won the last couple of years. But the Naismith Coach of the Year this year is Pat Summitt. For those of us in Tennessee, she is the coach of the year every year.

Senator FRIST has mentioned her achievements as a coach, which I think we must take for granted in Tennessee. We expect Pat Summitt to be in the Final Four. We expect her team to be in the finals. We expect her often to win, and we sometimes forget how hard that is.

Twenty-five years ago, it might have been easy when women's basketball

was starting. Today, there is a lot of parity. There are a good many great coaches. There are many teams inspired by Pat Summitt. It is an enormous accomplishment for Coach Summitt to have this team in the finals once again. One day, when she is finished—and I hope that is no time soon—I will look back and say how could that have happened, and how much could one woman build this game and make such a difference?

She does one other thing that I think is important to hear. This is a time when we hear about athletes, which we wish we hadn't heard, young men and women suddenly exposed to fame, money, and television with bad results. You do not hear about many of Pat Summit's young women. It was true a few years ago when I was president of the University of Tennessee that every single young woman who completed her eligibility at Tennessee on a Pat Summitt team has received her degree or is in the process of completing her degree requirements—every single one. That was true 10 years ago. I suspect it is still true today.

If you watch those young women when they are interviewed, before, after the game, or any other time, they look like future coaches. They speak well. They conduct themselves well. They are graceful toward their opponents. They make us proud to be Tennesseans when we see them. So this team not only wins, its coach and players conduct themselves brilliantly as scholars and as competitors, and they bring out the best in our country.

Pat Summitt, I suppose, is not for every young woman who wants to play college basketball. She is a tough competitor. I think that is one reason why she is such a good coach and why she gets many of the greatest players. She and her staff bring out the best in players, and they want to play for Pat Summitt. There are little girls around this country who play basketball in sixth, seventh, and eighth grade who dream of growing up to play for Pat Summitt.

One other thing I would add. Pat Summitt has kept her coaching team together for a long time. Mickie DeMoss, her assistant, left for the University of Kentucky to take a well-deserved head coaching position there. Mickie DeMoss is a great recruiter and will be a great head coach, I believe. Many people thought when Mickey went to Kentucky, Pat would not be able to recruit as well. I am sure the competitive urge in Pat Summitt caused her to go out and recruit what is already being called the ''Fabulous 6,'' the All America player of the year for the last 2 years and five other young women who are coming to the University of Tennessee next year on scholarships. Many basketball analysts say it is the best women's recruiting class ever.

Senator FRIST and I salute Coach Pat Summitt, not just for being Coach of the Year this year, but, in our book, for being coach every year and for effort in the incredible graduation rate of the young women who have played for her and helping them grow into womanhood and to represent our State and our country in that sport very well.

Mr. President, if I may speak on another subject, I come to the floor today to express my concern, once again, with the rising cost of medical liability insurance and what this means for patient access to medical care in Tennessee. This is a subject we have talked about many times on this floor, and it is a subject I hear about often when I am in Tennessee.

Last February, we debated this issue right here and, unfortunately, we were not even able to get to a vote on it. We were not able to invoke cloture, we were not able to vote on the issue of medical liability insurance.

Today we are limiting our debate to just this issue: the care for mothers and babies and for anyone with an emergency medical condition. That is all we are talking about in this legislation—mothers and babies and anyone of any age with an emergency medical condition.

These are the individuals who have the highest need for medical care in our country, and the lack of access to that care can prove deadly.

The increasing cost of medical liability insurance is creating a patient access crisis because doctors are leaving the practice of medicine rather than pay the high cost of medical malpractice insurance.

For example, in the Hardin County General Hospital in Savannah, in west Tennessee, the only OB/GYN doctor left the hospital to practice in another State because Tennessee's insurance premiums were too high. High medical liability insurance is one more reason it is difficult to recruit specialists to rural areas.

We need to make certain we ensure access to good care in emergency rooms for all Americans, all Tennesseans. Yet neurosurgeon Rick Boop of Memphis, TN, wrote me to say:

> I have seen three children die recently of shunt malfunctions in emergency rooms which did not have a neurosurgeon who could perform procedures on children. All neurosurgeons can provide a simple shunt revision, but many are being forced to stop caring for children in order to retain or reduce their liability premiums.

All three of these children died awaiting helicopter transport to a children's hospital—

Where there was a specialist who could perform that type of procedure.

More and more Americans are seeking emergency room care. In Tennessee, for example, the number of emergency room visits increased by almost one-third, 31 percent, over a 3-year period. The largest increase in usage was among individuals in our TennCare program, our Medicaid program. These are the people who need the most help, our poorest people in Tennessee. We need to make sure specialists are available in the emergency rooms of this country and Tennessee to care for these patients.

In 2002, the average net medical liability premium for an OB/GYN in Tennessee was $33,600. In 2003, the premium was up to $41,980. In 2004, it increased again to $49,408. This is a 47-percent increase in medical malpractice insurance premiums over the past 3 years. This is not sustainable over time if we expect to have doctors, specialists in the hospitals, in the emergency rooms, to care for mothers and babies and the most vulnerable in our society.

Two years ago, I met a young woman who had just graduated from the University of Tennessee Medical School. She was looking forward to going into her OB/GYN practice in a rural area of Tennessee. She told me her medical malpractice insurance premium 2 years ago was $70,000 a year and she had never delivered a baby in her practice.

I believe S. 2207, the Pregnancy and Trauma Care Access Protection Act, will help protect access to care for mothers and babies and Tennesseans in emergency medical conditions. This bill will still allow unlimited economic damages, but it places a sensible cap on non-economic damages. I hope we can agree to have a vote to reach cloture on this important legislation.

I often express my concern for federalism, for the importance of allowing States and local governments to exercise their rights and responsibilities and not be overridden by the Federal Government except when it is absolutely necessary. In this case, this legislation allows States to set their own caps if they prefer a lower cap or if they prefer a higher cap. In this case, we ought to act because Americans should have an equal opportunity to health care, particularly if they are mothers, children and the most vulnerable and poor in our society.

I ask that the full Senate agree that we vote—be it up, or down, and I will vote yes—on this important legislation to help those who need help the most.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. DOLE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I rise to continue to speak about the Foreign Sales Corporation Extraterritorial Income Act that is before Congress that we call the JOBS and manufacturing act. I wish to bring the Senate up to date on the status of this not just as a jobs bill but as a major economic policy legislation.

This, of course, is bipartisan legislation. This is legislation that was designed to respond to the World Trade Organization's adverse ruling on a benefit under the old law for U.S. exporters and to bring our law into conformity with that World Trade Organization ruling, but to do it in a way that

actually creates jobs in America and emphasizes domestic manufacturing so American manufacturers are going to benefit from this legislation on what they do in the United States, not what they do overseas.

Foreign corporations that come into the United States are going to benefit under this legislation as long as they set up plants and manufacture in the United States. This bill has an acronym, J-O-B-S, and it is truly jobs-creating legislation.

We have problems with this now because some people who even support this legislation want to stall it so they can use it as a vehicle for getting some of their pet projects through the Senate. When everybody is saying, and rightly so, that we have not created enough jobs in manufacturing and we have a bill before the Senate that will do it, I do not know why anybody would want to hold this bill up, but there is a playing of politics and, in my view, then when one plays politics, the people's business is neglected.

First, there is a lot in this bill on which we all agree: The tax benefit I refer to is the foreign sales corporation extraterritorial income benefit. That benefit provides a roughly 5-percent corporate rate tax cut for U.S. exporters of manufactured products.

As everyone knows, there is a disturbing economic statistic about U.S. manufacturing and that was that there was a downturn in the manufacturing index starting March of 2000. I emphasize that because everybody thinks this recession started under President Bush, but if one looks at the manufacturing index, they would find the manufacturing index started to turn down March of 2000. It just now has bottomed out and it is just now that it looks as if there is going to be an increase in hiring in manufacturing.

Fortunately, with the tax relief in place in this bill and with other stimulative measures that have been passed last year, manufacturing has come back. Unfortunately, manufacturing employment has not come back to previous levels, and that is what this bill deals with. Both sides, meaning both Democrat and Republican, agree there is a problem with the loss of manufacturing jobs. Both sides also agree that the loss of this previous benefit will result in a tax increase on U.S. manufacturers. Following the simple rules of Economics 101, if something is taxed higher, there is less of it.

There is some dissent on my side of the aisle, the Republican side, which I want to mention so that I am candid in not everybody who opposes this bill is on the Democrat side.

We have Senator KYL and Senator NICKLES, as an example. They are Republicans. They question the wisdom of the current law benefit.

I was also surprised to hear last week that one Member from the other side—quite a liberal Member, as a matter of fact—in effect agreed with Senator KYL and Senator NICKLES. That Member questioned the wisdom of the foundation of this bill—the tax deduction for domestic manufacturers. That Member took to task, as he said, the authors of the legislation.

I wonder if that Member bothered to check to see the authors were also Republicans and Democrats on the Senate Finance Committee. In fact, every member of the Senate Finance Committee who is a Democrat voted for this bill to come out of committee.

In any event, with the exceptions noted—meaning one Democrat plus Senator KYL and Senator NICKLES, also—there is general agreement on both sides that we need to replace current law with a manufacturing benefit which will agree with the General Agreement on Tariffs and Trade, the international agreement that decides the rules of trade.

Conversely, I have not heard anyone say it is wise to sit idly by while our exports get hit with tariffs put on our products in a legal way by Europe, causing our products to be uncompetitive.

In general, both sides agree we need to deal with this tariff problem. We need to deal with this adverse World Trade Organization ruling. Both sides agree we have a responsibility to remove the tariffs against our exports. But yet there doesn't seem to be agreement it should have been done yesterday. It is OK if it is done down the road in another 6 months when we have another 6 percent tariff put on. At least that appears to me to be the way some people are acting.

If we agree on the problem and on the substance of this bill, why can't the job be done? Why can't this bill get to the President? It appears to me the two sides disagree on the outcome for this bill.

I think dealing with this bill goes to the heart of our responsibility as a Senate. We take an oath to uphold the Constitution. The Constitution provides Senators with a unique power somewhat different than in the House of Representatives. That unique power also carries unique responsibilities. Where there is a compelling public policy problem and there is a consensus around the legislation that solves that problem, it is our responsibility as Senators to do everything in our power to make it happen.

Said another way: If we have a bill before the Senate that is going to pass the Senate 90–10, or by a wider margin than that, and there is an agreement it ought to be done, why doesn't it get done?

We all know the Senate is an institution that renders easily to gridlock and to delay. I suppose we would have to blame our Founding Fathers because they contemplated a Senate where the majority would set the agenda and the minority defines its agenda with amendments and debate. Those powers of delay and obstruction are properly resorted to when the majority is ramming something through on a partisan agenda. There is, however, a reflective responsibility on the part of the minority leadership and its members where the legislative item is a bipartisan product. That seems to me to be a responsibility to be constructive. It is irresponsible then for minority leadership and members of the minority to obstruct a consensus item.

It is the height of irresponsibility to obstruct and delay when the item is a bipartisan compelling matter such as this bill is. It is simple. Is the United States going to abide by international agreements we have already approved in this Senate?

It is our responsibility to set an example for the rest of the world because we are outstanding in exemplifying the rule of law and the protection of individual freedoms. Some people might say we ought to give that notoriety to England because our law comes from England. But I think you would all agree when it comes to individual freedom we have even advanced beyond England.

Are we going to have a constructive approach to this legislation? I have to say to my fellow Senators: It is in our hands. Either we can continue to play these political games or we can do the job we were elected to do.

Some have said something such as we will take a limited time on amendments. That misses the point. The point is the majority is led by Senator FRIST. We have all played this game straight. The majority amendments to this bill have improved the bill in ways that will get even more votes for it. All those amendments we have offered have been bipartisan.

For example, the Hatch-Murray amendment on research and development credit and the Bunning-Stabenow amendment on accelerating the manufacturing deduction—you recognize those Senators' names immediately and know there is one Democrat and one Republican. That is the way things get done in the Senate.

The Democratic leadership has taken this bipartisan bill and turned it into a political football.

We have an amendment on overtime that was previously voted on and that is a sticking point.

There are other showstoppers planned by the Democratic leadership. In this case, you have one side—the majority—using the power of setting the agenda in a constructive way. I define that constructive way as bipartisan because nothing gets done in the Senate that is not bipartisan.

Then you have the other side—the Democratic side—using its power of amendments and the power of delay solely for politically destructive purposes.

That imbalance can't last for long. If it does last for long, the Senate is brought to a halt. It is kind of like the law of physics. For every action there is a reaction.

There shouldn't be this kind of tension on a must-do—in other words, a

must-pass—bipartisan bill. When it is this way on a must-pass bipartisan bill, something is out of whack. Republicans will eventually be fed up with the gamesmanship on the other side. It will mean the Republican political amendments—those which the Democrats do not like—are going to be brought up because for every action there is a reaction. That is going to lead to a vicious circle and this bipartisan bill will be more bogged down than it is presently.

Another route Republicans could take is to switch to an agenda item that is not like this one. It would be a bill that has heavy political overtones. It would not be as compelling as this bill. It probably wouldn't necessarily be a must-pass bill.

Again, if we were to do that, the victim would be this very good must-pass bipartisan bill.

From the Republican side, let me say to every Democrat, we don't want to go that way. We will do everything we can to avoid going that way.

Maybe the Democratic leadership thinks a designed plan to deter us from taking care of the people's business is good politics. Blame the Republicans, they may be thinking. They may be thinking: We have a liberal press, we can get away with it. They will protect us. They do all the time, anyway. It is kind of an encouragement. Maybe they think it is more important than actually helping the workers which this bill will help; and the U.S. businesses that are at risk because of this Euro tax; in other words, the European tariff on our products going from the United States to Europe.

It isn't that simple. There will be accountability. There has always been in the case of cloture votes. We don't want to go the route of a cloture vote. None of us want to go there again. But we could go there again. There is a petition on file. The American people expect us to do our jobs and not play politics.

I have talked about our responsibility as Senators. Let me put it in the context in my role as chairman of the Senate Finance Committee. Thanks to the good people of Iowa, I have seniority to chair the oldest standing committee in the Senate, the Finance Committee. I am pleased to work with my friend, our ranking Democratic member, Senator BAUCUS. Not to toot our horns too much, but I am proud of our committee. We respond to big, tough issues in a businesslike, professional manner. We do not always agree, but most of the time we do agree.

From my view, this foreign sales corporation replacement bill has been handled in the best bipartisan tradition of our Finance Committee. Senator BAUCUS and I developed this bill as partners. All Democrats, even Senators Daschle and Kerry, participated in and supported this bill out of the Finance Committee. They are Members of this committee. All of the amendments I put up for this bill have been bipartisan amendments. They are amendments that have improved the bill.

Who can argue with the domestic job benefit extended by the research and development credit? That was a bipartisan bill. Who can argue with enhancing the manufacturing deduction? That was a bipartisan amendment. Democratic Members were accommodated in the committee and on the floor with a managers' package. Senator BAUCUS and I developed that package shoulder to shoulder.

The latest version includes the bipartisan package of energy tax incentives approved by the Senate Finance Committee last year for farmers in the Midwest, the South, timber harvesters in the Northwest, or wind farms across the country. This package is going to produce and create jobs. This package has twice passed the Senate without dissent.

For all the Senators from my region and other places who said they could not support cloture on the Energy bill last winter because of the MTBE issue, here is your chance to vote for an energy bill that does not have anything to do with MTBE. Members do not have to worry about your personal injury lawyer friends calling upon you to fight the MTBE thing because they want to protect their own income. Members do not have to worry about offending them. That is not in this bill. Members got a chance to vote an energy bill they wanted.

This maneuvering bothers me. So I brought along a chart that draws from a favorite activity in the Midwest. I am talking about a game of football. The gridiron does not necessarily have anything to do with the gridlock that is occurring on this bill, but it illustrates the problems we have.

This JOBS bill is very near the Senate goalline. Unfortunately, politics is driving the Democratic leadership to move the goalposts. When we came into session in January, Senator FRIST was criticized by the Democratic leadership for not moving to the JOBS bill right away. At that time, the goalpost was very clear, very close, right there where it always is on the football field. That was in January.

After we finished the highway bill and a couple of other things, Senator FRIST attempted to move the jobs in manufacturing bill. Much to my surprise, we were ambushed by the Democratic leadership with unrelated amendments. I thought I had an understanding as floor manager. That understanding was we were going to do amendments first that were related to the bill and then move to other amendments. That agreement was not carried out.

From my standpoint, this was an unfortunate event. In budget discussions, I made clear I opposed putting this JOBS bill in the reconciliation package because I had assurances that the Democratic leadership wanted the bill passed. In fact, my ranking Member, Senator BAUCUS, 2 days before Republicans went to Philadelphia for our retreat in January to make our plans for this year, told me. I want to move this JOBS bill; do not let the Republicans include this JOBS bill in the reconciliation because reconciliation is obnoxious to the bipartisanship of the Senate. It is obnoxious to the minority.

When we were making our plans in Philadelphia, my colleagues responded to that request from my Democrat ranking Member and we did not include this bill in the process of reconciliation. It happens that my view was not shared by the House leadership or even by the Senate leadership or by the White House. I took the position in leadership meetings and in the Senate Budget Committee Republican caucus deliberations that the Democratic leadership would not politicize this bill; we would get it passed.

I was ambushed on March 3rd. In fact, it looks like I was wrong and others were right.

So we have a second goalpost here. It was the amendment of my colleague from Iowa on overtime. It did not matter that we had voted on that amendment previously. It did not matter that the amendment dealt with proposed—not final, proposed—Department of Labor regulations. No, none of that mattered. That amendment was and still is a showstopper to this bipartisan bill that everyone agrees ought to pass the Senate. When it comes to a final vote, it will pass overwhelmingly.

We are now at that second goalpost. The demands of the Democratic leadership still change. We were talking about a single-digit list of amendments. Not anymore. Now that it looks like an overtime vote may be in the picture, there is a goalpost yet farther away. For the first time, we are hearing of other amendments not even in the jurisdiction of the Finance Committee, such as an increase in the minimum wage, another showstopper. We cannot finish the bill, we are told, even though we are told the substance is great. This is the greatest bill since sliced bread is the opinion of people all over the Senate. But we cannot finish the bill because of this new goalpost.

Heaven help us how that might turn out.

There is a final goalpost out there. It is way, way out there, as you can see. It is getting to conference. We may move through all of these goalposts but then be blocked from going to conference because the Democrats have decided they should never agree to go to conference on a bill unless they can dictate the outcome. Effectively, that does not just shut down the Senate; that shuts down the whole Congress.

Now, let me ask you: Is this any way to legislate? Is this a proper exercise of leadership? Is this right when jobs are on the line and people back home expect us to move consensus legislation? You have to wonder: Is all this obstruction really worth it?

Now, my sense is, the political imperative of stopping this bipartisan bill is

very strong. It seems the Democratic leadership is so fearful or resistant to getting a bipartisan JOBS bill to the President's desk that they are going to do anything to block it. Just keep moving the goalposts; pretty soon you will not see them. I think the record reflects this view I have that somehow there can be no JOBS bill that gets to the President of the United States.

Now, do you know what I would be willing to do? If there is something with the title of this bill, called a JOBS bill, that is obnoxious to the minority, because it might make a Republican President look good, well, I will change the name of it. You guys name this bill. It is OK with me. The title has nothing to do with the substance of it in the sense of legislative dominance, but we try to say, in the title of a bill, what we are intending to accomplish. What we are intending to accomplish in this jobs in manufacturing bill is to stop this outsourcing that you hear so much about, to create jobs in manufacturing in America, and not just jobs but good jobs, because manufacturing jobs that are related to exports pay 15 percent above the national average. They are good jobs.

I have predicted they cannot let this bill get to the President of the United States for political reasons. I hope I am proven wrong in the next few days. But I can say this: It is time to get the job done. In a few days, I hope we can move back and pass this jobs in manufacturing legislation. It is, in fact, a bipartisan piece of legislation. It is, in fact, a piece of legislation that deserves better treatment than it has received so far.

So tomorrow I hope, for all these reasons, particularly the reasons I gave earlier this afternoon—that there are so many amendments that have been added to this bill at the request of Democrats and Republicans alike, but I emphasize the Democrats—they have something in this bill they have asked for. They have asked for me to consider it. If they do not vote to stop debate tomorrow, to move on this legislation, get it to the President, why did they come to me in the first place and ask me to put their favorite piece of legislation in this bill?

It is all good legislation. I do not find fault with the people who have asked me to do it. It is all good public policy. But, also, it was not something real pertinent to the primary purpose of this legislation. But we are helping them get their bill passed by cooperating with them. I would like a little cooperation in return. I would like to have all the Members who we have tried to accommodate—both Republican and Democrat—vote to stop debate and move on to final passage of this bill, so we can create jobs in manufacturing.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Madam President, I ask unanimous consent to proceed as in morning business for not to exceed 12 minutes.

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

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2288 are printed in today's RECORD under ''Statements on introduced bills and joint resolutions.'')

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from New Hampshire.

Mr. SUNUNU. I ask unanimous consent that I be allowed to speak for 5 minutes as in morning business, and I further ask consent that immediately after my remarks Senator HARKIN be recognized.

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

VOICE OVER INTERNET PROTOCOL REGULATORY RELIEF ACT

Mr. SUNUNU. Madam President, I rise to speak today on legislation I introduced this week called the VOIP Regulatory Freedom Act of 2004. This is legislation that deals with the issue of voice communications sent using Internet protocol that many Members of this body may not be familiar with or may not have heard a great deal about; but it is a new technology that takes advantage of the growing broadband networks that are in place in this country to send voice messages, much the same as one might send an e-mail or an instant message. It is a growing area of technology and innovation, but it is one where there is not a very clear path regarding regulatory and taxing jurisdiction, and there are not a lot of laws on the books that clearly address this new technology.

In order to encourage continued investment in and continued use of this application and this system for sending voice traffic and in order to make sure consumers continue to have the benefits of lower costs, new features, and better service that is the potential of this technology, I have introduced legislation this week.

First and foremost, S. 2281 declares this is a technology that uses national and global broadband data networks, the Internet, that we have all read and heard so much about by this point in time. It recognizes these are international networks, global networks, and therefore we should have Federal jurisdiction in this area.

Second, it takes the step of preempting States from regulating in this area, the area related to voice-over-Internet-protocol applications, because what we do not need is a patchwork of 50 different sets of regulations that would stifle the innovation, the investment, and the productivity we all hope will come from this technology.

Even worse, the regulations some States have already begun to try to apply are not regulations developed for the Internet, broadband, or a voice-over-Internet-protocol application. They are really designed for a copper wire circuit switch telephone network that was invented 100 years ago and for which most of these State regulations were developed in the 1930s, 1940s, and 1950s. It is an outdated system and we should not be trying to force old regulatory structures on this new technology.

Third, the VOIP Regulatory Freedom Act of 2004 that I have introduced will clarify the definition for information services, for VOIP applications, in a way that can be easily understood given new and emerging technologies.

I was not in Congress at the time, but Congress wrote the 1996 Telecommunications Act that talked about information services and telecommunications. Quite frankly, it did not envision these kinds of voice applications being offered over the public Internet or over private networks. So as a result, we have had lawsuits, not surprisingly. In America, if one is unsure of what is happening, if one does not like the law, get a lawyer and sue, but we have had lawsuits because of the lack of clarity in some of these definitions. My bill would clarify the definition of voice-over-Internet-protocol. It states clearly what it is and what it is not from a regulatory perspective, and then treats it much like we would any other information service that uses Internet protocol, whether it is an e-mail, an instant message, or sending other data over the Internet.

This bill does address a lot of key concerns regarding telecommunications and the old telephone circuit switch telephone network. The bill makes sure that voice-over-Internet-protocol providers participate in existing Federal universal service programs. In other areas, such as E–911 emergency calling, and disability access, the bill calls for an industry group to work out the implementation of these important features for the new technology. S. 2281 will make sure we do not apply the old access charges to this new technology. We put forward a requirement for the FCC to work out a new system for intercarrier compensation and, of course, we recognize law enforcement will need access to these new voice-over-Internet-protocol applications and state it has to be the same or better access but no less than the access available for information services that currently exist today.

Finally, the bill protects consumers by ensuring that this new service won't be taxed at the State level. Everyone knows the more you tax something the less you get. If you want to discourage investment, innovation, and capital from moving into important new services like this, then raise the taxes and discourage that investment. From my perspective, this would be the wrong direction.

I think this bill provides for enormous opportunity for consumers, including robust features and functions, more options, and lower prices.

It is important to note that we have narrowly tailored this bill to deal with the voice-over-Internet-protocol applications. It should be clear that is not an effort to rewrite the 1996 Telecommunications Act.

I urge my colleagues to take a look at the legislation and step forward. Let me know your views and thoughts. We are likely to have hearings on this bill in the Commerce Committee in the coming months. I look forward to a vigorous and substantive debate.

ECONOMIC MALPRACTICE

Mr. HARKIN. Mr. President, before us right now is a motion to proceed to what is called the medical malpractice bill, for short. In fact, that is what it is—to change the tort system in America to take away the right of any person who has been injured to seek redress in court for noneconomic damages and also for punitive damages. It is called the medical malpractice bill. We have had it here a number of times before. It is not going anywhere because it is not a true compromise. There may be a compromise that could be worked out on this issue, but this bill represents a one-sided view. It is not going anywhere. The Republicans know this. They know it is not going anywhere, but they brought it up.

I thought the FSC bill—the JOBS bill—which they brought up earlier was a must-do bill. There was a jobs bill. They are going to put people to work. Yet it languishes somewhere.

In the meantime, we brought up the TANF bill. Now we brought up the medical malpractice bill.

It makes you wonder what the priorities are of the majority party in the Senate. There is a lot of talk about who is obstructing what around here. But I think it is clear to any casual observer that the majority is basically kind of filibustering their own bills, obstructing their own bills. And sometimes, as in the case of the gun bill that was up before us a few weeks ago, the Republican majority even voted against its own bill. But it chews up a lot of time. It takes up a lot of time on the Senate floor, but nothing goes anywhere.

That is what we are facing again with this so-called medical malpractice bill, or the motion to proceed to it. The majority party knows it is not going anywhere. So they want to talk about medical malpractice. There has been a few speakers on the floor today on the Republican side talking about medical malpractice.

I think what the country wants us to focus on and wants to hear us debate and discuss and vote on is the economic malpractice of the Bush administration. That is right, the economic malpractice of the Bush administration.

I mean by that the fact we have had a loss in jobs in this country over the last 3 years unlike anything we have seen in 70 years.

This chart shows that not since the Great Depression have we had a loss of jobs for any President during his first term—some more than others, but we have always had a positive indication of job creation.

It is interesting to note that most of these took place under Democratic administrations—Roosevelt, Truman, and Eisenhower had a little bit but still had some; Kennedy, we had good job creation; Johnson, very healthy job creation; even under Nixon, pretty good; Ford, back down; Carter; even under Reagan; Bush, it is down; Clinton, up a little bit more. All positive, Republicans and Democrats, until this President, the only President in 70 years to have negative job growth.

That is why I call it the economic malpractice of the Bush administration—the only President in all of those years to preside over negative job growth in our country.

Not only are we not discussing on the Senate floor these issues pertaining to workers, but we are precluded by the majority from even offering amendments and getting a vote on them.

I tried earlier on the so-called FSC bill that everyone talks about, the so-called JOBS bill they had here, to offer my amendment to disallow the promulgation of proposed rules that would change the overtime laws in our country.

Last year, to refresh everyone's memory, about this time—a year and a month ago, as a matter of fact—the Department of Labor came out with a proposed change in overtime rules.

The Fair Labor Standards Act has been in existence since 1938. We have had changes in basic overtime laws. But in every single case, when it has been done, it has always been done with consultation with Congress after open hearings with the public having input.

These proposed rules came like a bolt of lightning in the midnight hour. No public hearings were held. Not one public hearing was held on these proposed changes in overtime rules. No hearings were held by Congress. No witnesses were called to talk about what these proposed changes might mean in the workplace. They just put the rules out there.

Now the Department of Labor is about to issue its permanent change in regulations.

That is why last summer this Senator offered an amendment on the Senate floor to disallow these rules from going into effect. The Senate adopted my amendment on a bipartisan vote. We had quite a few Republicans vote for it. The House of Representatives then voted to instruct its conferees to go along with the Senate on that provision. That was on the appropriations bill. The White House came in and got it knocked out. Then we were forced to vote on the appropriations bill without that provision in it.

I said at that time in January I was going to find any vehicle I could to try to revisit this issue because the Congress had spoken; that we did not want these rules to go into effect which would take away the rights of up to 8 million American workers to get paid time-and-a-half overtime if they worked over 40 hours a week.

The first bill I could do this on was the FSC bill, which was brought out by the Finance Committee to the floor. They termed it a jobs bill.

I pointed out then, and I point out again today: How can you have a meaningful jobs bill on the floor of the Senate if we are not going to speak about it, debate it, and vote on whether we are going to take away the rights of people in this country to get paid time and a half for over 40 hours a week? Yet that is what happened. I offered the amendment. The majority will not permit a vote on it. They tried all kinds of parliamentary maneuvers, tactics, recommits, all kinds of funny parliamentary games just to keep us from voting on it.

I don't know what they are so afraid of. Are they afraid members of the President's own party might vote to say those rules shouldn't go into effect? They did last summer. I compliment them for it. That is courage. I know the President and his Department of Labor want to drastically change our overtime laws. They want to do it through the regulatory process—not through the legislative process.

Quite frankly, the Bush administration thought they could put these new rules into effect quietly with no hearings before anyone knew what was going on. But they were wrong. They got caught with their hand in the cookie jar.

The fact is, public outrage over the proposed new overtime rules has gotten stronger and stronger as Americans learn more about the details. At this point, the administration has about as much credibility on the issue of overtime as they do on the weapons of mass destruction in Iraq. In other words, the administration has zero credibility on this issue.

The Department of Labor claims it simply wants to give employers clearer guidance as to who is eligible for overtime pay. But ordinary Americans are not buying this happy talk. They know the administration is proposing a radical rewrite of the Nation's overtime rules. American workers know these new rules will strip them of their right to fair compensation. So we will continue to press for a vote on this and on a couple of other issues.

Last week on the TANF bill, the temporary assistance to needy families, Senator BOXER of California offered the amendment to raise the minimum wage, now at $5.15 an hour, to $7 an hour over 2 years. The majority will not vote on that, either. So that bill has gone by the wayside, too, because they do not want to face the music and

vote on whether we increase the minimum wage. Mr. President, $5.15 is the minimum wage now—mostly women, heads of households with children.

I point out again, since 1967, if the minimum wage had just kept pace with inflation, the minimum wage would be over $8 an hour right now. Yet we are only asking for $7 an hour.

I wonder what the hue and cry would be in this country if we had indexed CEO compensation the way we indexed the minimum wage increases since 1968. We would probably be better off in this country, to tell you the truth.

So we tried to bring up a minimum wage increase. We tried to stop these rules on overtime from going into effect to strip people of their overtime. We have tried to increase unemployment compensation, to get more unemployment compensation to workers whose unemployment benefits had run out. There are 1.1 million workers this last week who lost their unemployment benefits because of time running out. We want to extend that. The majority will not let us.

The administration is all for an economic stimulus when it involves tax breaks for people making more than $200,000 a year. When it comes to economic stimulus involving raising the income of people at the bottom of the economic ladder, whether by increasing the minimum wage or creating jobs directly, which is what the highway bill will do, the President is even threatening to veto the highway bill.

We passed a bipartisan highway bill in the Senate. The House passed something substantially less. The President has threatened to veto that. Actually, the House bill for my own State of Iowa would mean 12,000 jobs less than that passed by the Senate. Yet the President has threatened to veto even the House version.

There is a frustration among American workers right now. They know they are working harder. They know they are working longer. But something is wrong. They are not getting adequate compensation. As this chart indicates American workers are working longer hours per year than workers in any other industrialized country. In fact, since 1979, every single industrial country has reduced its work hours except one, the United States. In Japan, since 1979, they have gone down 286 hours a year. Germany has gone down 489 hours per year. Even Canada went down 31 hours a year. Australia went down 44 hours per year. But the United States went up an average of 32 hours per year. We are the only country increasing the number of hours worked per year.

Not only that, as we found out earlier—I quoted the New York Times Sunday article by Steven Greenhouse—unscrupulous businesses in America are cheating people out of their overtime. I may not have mentioned a guy by the name of Drew Pooters, retired member of the Air Force military police. He went to work in a Toys ''R'' Us store in Albuquerque. He was stunned by what he found his manager doing.

> . . . his manager was sitting at a computer and altering workers' time records, secretly deleting hours to cut their paychecks and fatten his store's bottom line.
>
> ''I told him, 'That's not exactly legal,' '' said Mr. Pooters, who ran the electronics department. Then he out-and-out threatened me to not talk about what I saw.

Mr. Pooters quit. Then he got a job managing a Family Dollar store, one of 5,100 in that discount chain. Top managers there ordered him not to let employee total hours exceed a certain amount each week. One day he said the district manager told him to use a trick to cut payroll, delete some hours electronically.

Experts on compensation say the illegal doctoring of hourly employees' time records is far more prevalent than most Americans believe. The practice, called ''shaving time,'' is easily done and hard to detect with the simple matter of computer keystrokes.

I earlier had this article printed in the RECORD.

The article revealed in Toys ''R'' Us, in Dollar Stores, Taco Bell, Pep Boys, Wal-Mart employees, et cetera, workers are basically being cheated out of their fair compensation. Many are being cheated out of overtime.

Here is what the Wall Street Journal article said about this:

> While employees like overtime pay, a lot of employers don't. Violations are so common that the Employer Policy Foundation, an employer-supported think tank in Washington, estimates that workers would get an additional $199 billion a year if the rules were observed. That estimate is considered conservative by many researchers.

American workers are being cheated out of over $199 billion a year by unscrupulous employers.

Here we have the Department of Labor legally—trying to do it legally—taking away workers' rights to overtime pay. The Steven Greenhouse article in the New York Times showed on Sunday there is a rampage in this country of illegal activities taking away workers' rights to their adequate pay. Why isn't the Department of Labor focusing its time and energy in going after these unscrupulous employers, making an example of them so others will not be encouraged to do the same thing rather than trying to legally take away workers' rights to overtime?

That is why I say this Bush administration is committing economic malpractice.

You do not have to be from Iowa to know that you do not fertilize a tree from the top down. You fertilize the roots. That is how we need to stimulate the American economy, by applying stimulus directly to the roots. There are obvious ways to do this. One, instead of tax cuts for the wealthy, you focus tax cuts on working people. Secondly, you increase the minimum wage. You put more money in the pockets of hard-working people who, by necessity, have to spend every penny. Three, you extend benefits for the long-term unemployed, again, who, by necessity, are spending every dollar they receive. Four, you pass a highway bill that is as generous as possible.

We need to rebuild our Interstate Highway System in this country. Take a drive on any one of them. They are beat up. They are disintegrating. They are a patchwork here and there. They are causing delays in trucking. They are beating up our cars and taking away from the productivity of America. Our bridges need to be replaced. Sewer and water systems need to be upgraded.

These are good jobs. These are jobs that employ Americans. When you think about construction jobs in this country, that is what I call insourcing jobs rather than outsourcing jobs because, you see, if you are building a bridge or a highway, a sewer and water system, or maybe a new school, when you think about it, most of the products are made in America. Think about it. The cement is made here. The rebars, the rerods, and all that for construction are made here. When you put up a building, you put up wallboard. That is made here—and electrical wiring, electrical conduits, electrical switches, electrical lights, plumbing. When you think about all that goes into construction, most—the vast majority—of the products are made in this country.

Guess what else. All of the labor done is here in America. You do not outsource those jobs. Those are American jobs. What do you get out of it? You put a lot of people to work. You improve the productivity of America. You get a lasting benefit of things that last for a long time, and that helps us be a more productive and vibrant Nation.

It seems we can spend billions of dollars in Iraq and Afghanistan to rebuild those countries. We need to invest money like that here in America. For every $1 billion spent on these projects, we sustain or create more than 47,000 jobs for American workers. That is the direction we ought to be going, rather than more tax cuts for those who make over $200,000 a year.

I do not have it with me, but I saw a cartoon in the paper today that I thought said it all. There was a gasoline pump, with gas that cost about $1.90 a gallon. This American worker had obviously just filled his tank, and he was up at the window paying. In back of the window sat what looked like one of the Saudi Arabian princes saying, ''Thank you,'' and taking our American worker's money. The caption below it was: There goes the tax cut.

How many American workers, who are told by this President they got a tax cut for this or that, are now seeing it go to pay for imported oil, to pay for the increased price of gasoline because this administration will not take their friends in Saudi Arabia to task to keep these prices low, will not let some of the oil out of our Strategic Oil Reserve

right now to counter these increased prices? So we find whatever little money the worker may have gotten in a tax cut going to pay for the increased price of gasoline. Again, economic malpractice, economic malpractice by this administration.

So we can go to the medical malpractice bill. Quite frankly, again, we are focusing on medical malpractice and whether someone can sue for damages, and this and that. While there may be a reasonable compromise on this issue at some point, this bill is not it. But I wonder—I truly wonder—how many of the 43 million Americans who have no health insurance coverage whatsoever would think this is the major health care issue that we ought to be debating and voting on in the Senate Chamber. They are not interested in medical malpractice or suing. They just need health insurance. They need coverage for themselves and their families. Here we are talking about lawsuits, when what we ought to be talking about is how we are going to get health care coverage to people in America.

The other side can talk all they want about obstructionism and who is holding up what. We have said, time and time again, as I said on my overtime amendment—I am not obstructing anything. I will take a time agreement. We have already had enough discussion. In 15 minutes we can have a vote. In 15 minutes we can have a vote on the minimum wage. In 15 minutes we can have a vote on extending unemployment compensation.

Who is obstructing what around here? It is simply that the majority side does not want to have these votes under the time-honored tradition of the Senate to debate, discuss, and vote. It seems as if the majority side now wants to turn the Senate into just another House of Representatives—come out with a closed rule. I know that sounds kind of funny. What does that mean? What it means is the majority party brings out a bill. You cannot amend it. You cannot change it. You either have to vote for it the way it is or not vote. If they have the majority votes, they want to pass it.

That is not the way to run the Senate. It is not the way to debate and vote in the Senate. The way to do it is to have our debates, have our votes, and move on. Sometimes you win; sometimes you do not. But, to me, that is what the American people want us to do.

We are doing nothing in the Senate right now—nothing. The reason we are doing nothing is because the other side will not let us vote. So here we sit with bill after bill that is brought out, trying to game the system so we cannot have votes on these meaningful issues.

They say: Well, these are just political games. No, they are not political. When you are talking about taking away a worker's right to overtime pay; when you are talking about increasing the minimum wage for a single mother with kids to feed, who is being cheated out of her overtime pay; when you are talking about a family whose unemployment benefits have run out, and they do not know where to turn, it is not political. It is just focusing on the real needs of America—our working families—and not focusing on giving yet more tax breaks to those who already have too much in our society.

Mr. President, I will close my remarks—I see others want the floor—to say we will be back. I do not like to quote too much the present Governor of California but: I'll be back.

Time and time again, I will be back to offer this overtime amendment, until we have a vote on it, and until we can express ourselves on these onerous rules that the Department of Labor wants to foist on the American worker.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, tomorrow we will cast an important vote for our constituents. Once again we have come back to the Senate floor to press for legislative change on an issue that is critical to health care for all Americans. Time and again we have attempted to stop skyrocketing health care costs due to the runaway tort system under which trial lawyers abuse the court system with spurious claims that drive up insurance premiums for physicians and hospitals and drive them to practice expensive defensive medicine; in other words, performing costly and unnecessary procedures to be sure they won't be sued.

Last year I was a cosponsor of S. 11, the Patients First Act of 2003. The Democratic minority precluded us from completing work on that legislation. In February, we targeted a very narrow range of the medical profession to try to see if our colleagues would help us out in one area, the OB/GYN specialty, with S. 2061, called the Healthy Mothers and Healthy Babies Access to Care Act. Again the Democratic minority denied us cloture so we could not consider the bill.

It is time to stop this obstructionism. Here we are again. This time I hope my colleagues will join in voting for cloture so we may enact the needed reforms to the medical liability system.

This legislation addresses lawsuits for health care liability claims related to the provision of obstetrical, gynecological, emergency, or trauma care. With good reason, we again include the OB/GYN specialty. The dramatic increase in OB/GYN premiums—more than 160 percent over the last 16 years—has greatly outpaced the rate of inflation, and many physicians and hospitals have been unable to keep up with these escalating costs. In my State of Arizona, OB/GYN practices face premiums averaging $67,000, up 16 percent in just 1 year's time. Think of this for a moment. I am not sure what the average salary or wage of an American earner is today, but it is nowhere close to $67,000. That is what your OB/GYN doctor has to pay before he or she can even think about delivering your baby. That is the cost we have driven up.

My colleague from Iowa talked about the large number of people who can't afford health insurance. This is one of the reasons they can't afford health insurance. We have so driven up the cost of practicing medicine and the cost of health care by virtue of this broken tort system that a lot of people can't afford insurance and, in fact, employers can't afford to provide insurance for them. Let's do something about it. This legislation does something about it.

I would like to share the account of a physician in Paradise Valley, AZ, a woman with whom I spoke about 3 or 4 weeks ago who told me the story of her desire from the time she was a preteen to deliver babies and how she worked hard all through school to get good grades so she could go to medical school and eventually complete her residency. She did that. She had started out as a little girl volunteering in the hospital. She always wanted to deliver babies. After hard work and her degree, she ultimately delivered more than 5,000 babies over the course of 17 years. By the way, the vast majority were without any complications, and she has one of the best reputations as a physician in our community.

On one occasion, much to the surprise and dismay of the labor and delivery team, a baby was delivered with complications and cerebral palsy. While a group of doctors conducted a peer review of the case and determined there was no fault on the part of any of the physicians, the doctor who delivered the baby—this woman of whom I speak—3 years after the incident got sued.

Initially the plaintiff requested $2 million which was her insurance policy limit. Deciding it was better to settle and avoid long, costly litigation, the insurance company persuaded her to offer to settle the case, which she did. But then the plaintiff asked for $10 million from the physician and another $5 million from the hospital. This highly competent, highly dedicated, and motivated physician found herself consciously practicing medicine differently. For instance, performing a lot more cesarean deliveries in order to lessen the risk of complications to the baby, just in case. She was filled with a new anxiety that had never been present before. Frankly, she said it took a lot of joy out of the work she had enjoyed so much for the previous 17 years.

Eventually she stopped delivering babies because of the skyrocketing insurance premiums due to the claim that had been filed against her and, candidly, because of the trepidation she felt now she had been sued and the fact she might be sued again. Incidentally, her case was ultimately settled for less than the policy limits. But here is a

physician who was a tremendous contributor to the profession, to our community, to the health of mothers, and the health and viability of a lot of new babies. She is no longer practicing her profession because of the tort system. This physician's story is far too common. It needs to be addressed, and we can address it through the legislation before us.

In addition to the reforms for obstetricians and gynecologists, S. 2207 will cover physicians who treat patients in emergency circumstances—not just in the emergency room but in any emergency circumstance—from frivolous lawsuits. Many physicians find themselves distanced from what led them into the profession in the first place—their desire to help people, just as the physician I talked about. Emergency rooms and trauma centers are flooded with patients who need help from accidents and disasters, all very unfavorable situations. These professionals give their very best to try to address the patient regardless of the circumstance, without even asking whether they have the ability to pay, focused on stabilizing the patients and providing excellent care.

Imagine the effect on the physician and the hospital when after treating a patient in an emergency situation, they are faced with a lawsuit, particularly a lawsuit that does not have merit or seeks an excessive award. The result is frequently the emergency rooms are understaffed, sometimes even have to close. The trauma centers are losing specialists and, in some cases, closing. The physicians are not there to provide this kind of emergency care.

Since no one knows exactly whether and where an emergency will take place, this legislation covers emergency services anywhere, not just those that occur in the emergency room. For example, if a family practitioner assists a person in an emergency at a mall where somebody had a heart attack, the doctor would be subject to the protection of this bill. If an internist helps a person in an automobile accident at the side of the highway and assists that individual, that care would also be protected by this legislation.

The benefit of this legislation is while it makes specific reference to the OB/GYN doctors, it also addresses any emergency services, not just those performed by emergency room physicians or in a trauma center.

As with previous bills, this legislation will hold physicians and insurers accountable for medical expenses in instances when they are clearly wrong. S. 2207 will maximize returns to the patients instead of the trial lawyers by setting percentage caps on contingency fees. These are the fees the lawyers receive. The bill would allow lawyers to be well compensated for their work but not at the unfair expense of the plaintiffs. Patients would have 3 years from the date of injury to bring forth a claim. In the case of minors, that statute of limitations would be extended.

The bill will allow for unlimited awards of economic damages but place reasonable caps on the so-called noneconomic damages or pain and suffering damages. If we can pass S. 2207, we should therefore see tremendous benefits: a reduction in the backlog of these cases in our courts; a reduction and perhaps elimination of these excessive jury awards; a reduction in the amount of money paid by the insurance companies to settle the cases. They incur great expenses in defending the cases in court and even processing the claims for settlement. Even those that are dismissed cost money. Physicians spend a large amount of money to defend themselves even in those cases they win. A large number of these cases are settled out of court to prevent the so-called mega award, the big award that can bankrupt a practice.

But something else will happen if we pass this bill. As I said, my colleague from Iowa complained about too many people not having insurance and one of the reasons why is because it has been expensed beyond their ability to pay or their employer's ability to pay. Why? Because the insurance company has to take into account these malpractice awards, even the possibility a physician will be sued. Imagine this: When a physician has to pay $67,000 in premiums for the ability to deliver babies, think about how that additional cost has to be shifted to the beneficiaries, the patients, the people who receive the care, because the insurance companies have to make sure whatever happens, their costs are covered.

So if we are going to talk about making it easier for people to get insurance, making it easier for physicians to be able to continue their practices, for hospital emergency rooms to continue to stay open, and all of the other kinds of care to be provided, even that situation where you have a wreck on the side of the road and a doctor stops and renders emergency care to you—any one of those situations—then we need to deal with this bill tomorrow.

This has been around far too long, and tomorrow is our opportunity to right this wrong, vote for cloture, and enable us to take a final vote on the bill. We should not condone a system that literally forces physicians to retire early, as the physician from Paradise Valley I spoke of had to do. Sometimes they relocate to a different State with friendlier laws. We should not force that either. Sometimes they drop high-risk services or they go into teaching or hospital administration. We lose a lot of very competent physicians that way. This leads not just to improper staffing among physicians, obviously; more important, it compromises patient care.

We have heard the patient and physician stories and we have seen the charts about the skyrocketing costs. We know of the facilities that have had to close, emergency rooms and labor and delivery sections—all as a result of the high cost of a broken tort system. I ask my Senate colleagues to join me in support of S. 2207 so we can provide quality health care to citizens across this Nation.

Mr. President, our constituents deserve nothing less, and that is all we are asking for tomorrow—to give our constituents a chance to receive the best health care they can receive, the best health care our system can provide. That is not occurring today and, far worse, it is going to continue to deteriorate in the future if we allow the trial lawyers and those who serve the trial lawyers to continue to obstruct this commonsense legislation.

I urge my colleagues to end the obstructionism, end the partisan bickering. Our constituents sent us here to accomplish and work together for sound results. Everyone knows we need this kind of reform. The vote tomorrow is a vote to determine whether there will be a final vote on the bill. It only takes 40 Senators on the other side to say, no, we won't allow a vote to occur. That is a filibuster. That is obstructionism. That is a negative, partisan unwillingness to allow the will of the majority to work on behalf of the people of this country.

I urge my colleagues tomorrow to please support the cloture vote, which will enable us to get to a final vote on this important bill. If we do that, I think we can go home this fall and all be very proud, whether we are Democrats or Republicans, or others, tell our constituents we accomplished something for them in the area that perhaps, other than freedom, is most important for every one of us, and that is quality health care. We owe our constituents nothing less.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, the Pregnancy and Trauma Care Access Protection Act of 2004 that is now before the Senate is a matter of very real importance to real Americans. I have a good friend, an obstetrician, in Mobile, AL. We go to church together. He teaches Sunday school class. He is a former president of the State association, as I recall. He was talking to me at church a few months ago about a doctor who left the practice. His malpractice insurance was around $80,000, and he delivered around 80 children a year. That is $1,000 per delivery that doctor paid for malpractice insurance.

This is a reality. I was with a doctor I know from the group that treats my mother in Mobile, AL, just a week ago, and he told me people in the profession are retiring earlier and earlier because they are getting tired of the stress and

strain of being micro-managed through litigation; that people do not have to do that after a number of years and good people are leaving the practice over this issue.

Everybody in this body will say we need to do something about it; it is time for us to fix it; there is a problem; and we need to do this and that. But there is a strong influence, I have to say, from the trial bar in the Senate. They are very active politically, everybody knows it. They are aggressive, and they contribute large sums of money. Just a very few lawyers contribute large sums of money to political campaigns, and so far they have been able to block reforms.

The Senator from Kentucky, the assistant majority leader, Mr. MCCONNELL, proposed legislation that would eliminate lawsuits against restaurants and food companies if somebody gets fat. You go to the store and you ask for Little Debbie's. They sell them to you. That is what you want, isn't it, for Heaven's sake? They want to sue the company that gave the customer what they wanted. It is legal, so there should not be a cause of action under any definition of law.

At that hearing, the premier witness, without a doubt, was Professor Schwartz, who is the editor of the most widely used textbook on torts in America. We got into a little bit of a philosophical discussion because some people suggest that it somehow is not legitimate that we in Congress should pass a law involving lawsuits; that it ought to be left to the sanctified courts; that they are somehow better than the political branch, and that we ought to never pass a law that affects the courts. Of course, that is hogwash. I asked him about that, and he said it plainly and we discussed it at some length.

Congress says what the statute of limitations is. If you file a lawsuit within 2 years, 5 years, 6 years, but 1 day late, you have no lawsuit; it is out; the statute of limitations runs. Congress sets that limitation. Every State has limitations on damages. We create causes of actions that have never existed before by explicit statutory action.

There is a law in the code that if somebody rolls back your odometer and you sue them, you get an automatic $1,500 if you can prove they rolled back your odometer. In Kentucky, I am sure they roll back some odometers. Most cars we get in Alabama are rolled back in Tennessee, Mr. President, and are shipped to the State. We created that cause of action—it never existed before—for actual damages, whatever would be sufficient. I filed a lawsuit under it one time.

I say all that to say Professor Schwartz is correct. We have every right to look at what is happening in America. I am not going to talk at length tonight, but I say we have a serious problem in this country that is impacting health care in America. It is reducing the number of physicians who are willing to practice, particularly to deliver babies.

I was in Ashland, AL, the hometown of Gov. Bob Riley of Alabama, in Clay County. I visited their hospital because our prescription drug bill did a lot for rural hospitals. We had a big meeting and everybody was there. They talked about how the year before they had given up the delivery of babies in Ashland, AL, at that hospital. They no longer deliver babies in the State. I have some numbers that were pretty dramatic to me that indicated how many of these hospitals had quit delivering children. Why? Because they get sued. The amount of malpractice it takes to do that is rather dramatic.

According to the Alabama Department of Public Health, only 58 hospitals in Alabama have labor and delivery services. That is down from 70 in 1999. Twelve hospitals since 1999 have quit delivering children. Only 14 of the hospitals that are left have full-time neonatologists and neonatal intensive care units. Those 14 are located in the five biggest cities: Birmingham, Montgomery, Mobile, Huntsville, and Tuscaloosa.

Those are big issues. Thirty-four of the 67 counties in the State do not have OB delivery services. That was not true 30 years ago. This is a recent trend. Sometimes it is better, I will admit, that a person go to a hospital, but we have a lot of people who believe in midwives because of the bonding and the personal attention a mother gets. They believe in that. I am not a believer in that. But a good doctor who knows the family, who knows the mother, maybe they go to church together, who cares about the family, used to deliver babies in a large way in Alabama. That kind of practice is going away today. We are creating a circumstance in which fewer and fewer people are willing to undergo that type of practice.

Health insurance is way up. The delivery of health care has been constricted as a result of unnecessary, oftentimes illegitimate lawsuits. In fact, it has almost gotten to the point where a physician who delivers a child is held to be a guarantor of the healthiness of that child.

If something is wrong, too often somebody looks around to find somebody to sue; the doctor who did it or the hospital in which it was delivered is the one who is sued.

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

Mr. SESSIONS. I would be delighted to.

Mr. MCCONNELL. It occurs to the Senator from Kentucky, in listening to observations of the Senator from Alabama, what has evolved in America is that we believe we are a society of victims, everybody is a victim? If somebody is wrong in my life, if I have a bad outcome in my life, it must be somebody else's fault. So beyond the obvious abuse of the legal system, it encourages the notion that personal responsibility is no longer a factor in American life.

I ask my friend from Alabama if he is also disturbed about this growing notion that I have no responsibility for the outcomes in my life, if anything goes wrong it must be somebody else's fault and obviously the solution to that is to sue.

Mr. SESSIONS. I think the Senator from Kentucky is exactly correct. We do have far too much of that. We have a lawsuit lottery mentality, jackpot justice. People file suits and they seek huge amounts of money in hopes they will recover.

My daughter does some defense work in a law firm. She is a lawyer. She was telling me about a nursing home case, and a person had bed sores, and there was a big lawsuit. She said, you know what they discovered? They had learned in some way that Ronald Reagan had bed sores.

These kind of things can happen, but they were having to pay a large amount of money. Maybe they were negligent, maybe they deserved to pay, but I just say there is this mentality that if something goes wrong somebody has to pay. As the Senator from Kentucky knows, the one who pays is the one who has insurance. That means the hospital or the doctor normally. They are the ones who are getting whacked. It may be that nobody investigated to see if maybe the mother drank alcohol too much during the pregnancy or something. Any number of things could have occurred that would have caused that.

I conclude by saying I am pleased to see this legislation move forward. It is not insignificant. I am hearing from my physicians that they feel strongly that the quality of their lives, as well as the excellence of their practice, have been adversely impacted by litigation.

A doctor was in my office recently who is a leader in the medical association. He said, Jeff, I am telling you maybe as much as 50 percent of the medicine we practice is driven out of fear of lawsuits. We could reduce the cost of medicine by a tremendous degree if we could contain the threat of lawsuits.

There is no doubt that lawsuits have recompensed people who needed it for a wrong. When a person commits a wrong, they should pay. There is no doubt about it. I know the Presiding Officer and the Senator from Kentucky, in their law school there was a community standard of excellence.

Everybody is not expected to be the best surgeon in America. Everyone is not expected to be the best lawyer in America. Take somebody who is a professional and they were expected to give the best skilled work they could give under the circumstances. They should not be found negligent. They should not ignore a patient. They should not fail to give the kind of care

that everybody knows ought to be given. But just because one person has a steadier hand or has more experience maybe and can do a surgery slightly better than another one does not mean, and never has meant under American law, that there is a liability question.

I think the Senator from Kentucky is correct. What has concerned me is the erosion of the standard of negligence and error. A physician or a hospital should commit an error, negligence, before they should be required to compensate someone who has had an unfortunate result in that hospital. We have gotten away from that.

This bill, of course, allows for full recompense for damages and injury for any cost for medical care; any cost for future treatment or hospitalization, which in a lifetime could be millions of dollars; $250,000 in pain and suffering, in addition to the compensatory costs; and $250,000 or twice the compensatory damages for punitive damages. Those things are allowed for in the bill; it just simply says there is a limit.

When a person can sue somebody for $50 million and get a jury—juries really have a difficult time deciding between $2 million and $30 million, and they come up with $15 million. How did they come up with that number? This says that one gets fully compensated for however much it costs, for any damages that are sustained as a result of the negligence of a physician. In addition to that, one can get punitive damages and pain and suffering, but it is limited. I think that would go a long way to making lawsuits settleable so both sides know the framework they are operating under. Then a lawsuit can be settled. Without a limit on the top, it is very difficult to settle that lawsuit.

I believe this is good legislation. I hope it can move forward. I hope we do not see it obstructed and blocked as we have others. I hope we can get an up-or-down vote.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader.

Mr. MCCONNELL. Mr. President, before the Senator from Alabama leaves, I want to thank him again for the hearings he held on the Commonsense Consumption Act, not the bill before us today but another measure that makes, as the title implies, common sense. The common sense embedded in that bill is that it is improper to sue a food manufacturer or a distributor for damages claiming that the seller made you overweight. It is simple justice. It would not deny any of the traditional claims against a distributor or manufacturer of food, but it would prevent such a ridiculous lawsuit.

The American people overwhelmingly support this legislation by well up into the 80 percent. The legislation passed the House of Representatives by an overwhelming bipartisan vote and is at the desk in the Senate. Hopefully sometime this year we will get an opportunity to call that up and see if maybe the Senate will let us at least pass a very modest legal reform bill that deals with a problem that is beginning to evolve in our society of victimhood.

Mr. SESSIONS. If the Senator will yield, I would note that Professor Schwartz, as I said, the editor of the most utilized textbook on lawsuits and torts in America, strongly supports the legislation. He feels it is appropriate. I will ask the Senator, does he not agree, based on his experience as an attorney, that we have muddled over and glossed over the question of fault?

In the Senator's bill, if they sell food that is contaminated and a person gets sick, if they sell food that has a bug in it or something, somebody can still sue. If the food is unhealthy a person can sue, but if it is perfectly healthy food and it is the food one ordered they ought not to be able to bring a lawsuit. Is that not the intent of the Senator's legislation?

Mr. MCCONNELL. The Senator from Alabama is correct. That is, of course, the underlying principle of this legislation. I thank him for having the hearing and for giving people an opportunity to come forward and have their say on this important legislation.

As I said, it is at the desk and we hope sometime during the course of the second session of this Congress we will have a chance to address it.

Mr. SESSIONS. One more question. Has not the question of fault always been the cornerstone of American law with regard to lawsuits and negligence and liability, that somebody has to be at fault, have done something beyond the standard of care to cause a damage? That is when there is a lawsuit. Is not getting away from that one of the reasons that we are having so much abuse in the legal system?

Mr. MCCONNELL. That is what we always were taught. As the Senator indicated, in school that is what tort law was about. If one was not negligent, if they did not cause the harm, they should not be held liable. We have gotten away from that in this country. It is a very dangerous trend. It is time for the Congress of the United States to begin to redress this imbalance. I thank my friend from Alabama.

Mr. President, on the matter before us upon which we will be voting cloture on the motion to proceed tomorrow, the Pregnancy and Trauma Care Protection Act introduced by Senator GREGG and Senator ENSIGN, this is our third attempt this Congress and our second attempt in 6 weeks to try to do something about the medical liability crisis that is forcing patients all across the country to go without critically important medical services. On both previous occasions, a majority of the Senate has voted to try to solve this problem.

Unfortunately, though, only one brave soul on the other side of the aisle voted to support even taking up such a measure.

But hope springs eternal and maybe the third time is a charm. So we come back to the Senate to try once again to give our colleagues on the other side of the aisle a chance to join us in implementing real reforms for a problem that is all too real for many of our fellow citizens.

As we did the last two times, we brought reform legislation to the floor. We are offering the American people a proven remedy—not a placebo. The bill we hope our colleagues will let us consider, like its two predecessors, is based upon California's successful MICRA reforms. The Pregnancy and Trauma Care Access Protection Act would allow plaintiffs to recover unlimited economic damages—up to a quarter of a million dollars in noneconomic damages and punitive damages up to the greater of a quarter million dollars or twice the economic damages.

We recognize the reluctance of some of our colleagues to implement MICRA's reform on a nationwide scale, proven though these reforms are. So rather than propose the comprehensive reform we tried to advance last year for all medical practitioners, we are attempting a modest first step. The provisions in S. 2207 would apply only to two of the medical specialties that are suffering the most in this crisis: OB/GYNs and emergency care services. That is all this bill would touch.

Though extremely modest in scope, this bill is crucial to protecting the doctors who practice in these two areas and the millions of American patients who rely on them. For example, OB/GYNs provide some of the most critical medical services. Sadly, they also bear the highest premiums. As a result, women and children across our country are placed in danger as they struggle oftentimes unsuccessfully to find even basic obstetrics care.

In addition, emergency room doctors are the primary care physicians for many Americans. According to the Alliance of Specialty Medicine, each year there are 110 million visits to emergency departments. More than 90 percent of these visits are patients who need to be seen in 2 hours or less. And approximately 28.3 million Americans visit the emergency room each year due to an accident or unintentional injury. Ninety-nine percent of those patients will recover after receiving lifesaving care from an ER or trauma center.

Thus, when ER doctors and trauma care physicians curtail their practices or go out of business altogether because of the medical liability crisis, the people who suffer the most obviously are the American families.

Let us turn to the crisis in Kentucky. This chart illustrates Kentucky's crisis in obstetric services.

Sixty percent of Kentucky's counties are without OB/GYNs.

This chart takes a look at the counties. The red counties, which the occupant of the Chair and our colleagues can see, are many counties. Sixty-nine of one hundred twenty counties in Kentucky have no OB/GYN.

In addition to that, the next chart illustrates the availability of emergency services in Kentucky. 43 percent of Kentucky's counties are without emergency room physicians. That is 52 of the 120 counties.

All of the red counties all across the Commonwealth of Kentucky have no ER doctor at all—none.

Another 21 percent of Kentucky counties have only one specialist in emergency medicine for the entire county.

So you can see in our State, the Commonwealth of Kentucky, there is a serious crisis—an absence of OB/GYN care and an absence of emergency room doctors. A principal reason for that, not surprisingly, is the medical malpractice crisis that we have in the Commonwealth of Kentucky.

This is a serious problem. We have county after county in crisis. Just to give you an example, Perry County in southeastern Kentucky technically has a practicing OB/GYN. But that one doctor stopped delivering babies during the last year. If you are in Perry County, it doesn't do you much good. They have an OB/GYN but she does not deliver babies.

Eighty-two of Kentucky's one hundred twenty counties don't have either an obstetrician or have one obstetrician.

This is a serious problem in the Commonwealth of Kentucky.

Six weeks ago, when we were asking our colleagues to consider the Healthy Mothers and Healthy Babies Access to Care Act—S. 2061— I discussed the crisis in obstetric and gynecological services in my home State of Kentucky.

Kentucky does not have liability reform. Not surprisingly, liability insurance rates for OB's in Kentucky, for example, increased 64 percent in just 1 year, from 2002 to 2003. Also not surprisingly, in just the last 3 years, Kentucky has lost one-fourth of its obstetricians. Moreover, Kentucky has lost nearly half its potential obstetric services during this time, when one factors in doctors who have limited their practices.

According to the Kentucky Medical Association, 60 percent of the counties in Kentucky do not have any OB-GYNs.

Other counties, such as Perry County in southeastern Kentucky, technically have a practicing OB-GYN, but that one doctor has stopped delivering babies within the last year. So if you are in Perry County, that doesn't do you much good.

Another 8 counties—like Greenup, Lawrence, and Johnson Counties in northeast Kentucky—have just one OB-GYN in each county.

So if you are a woman in these counties, you had better hope that there isn't another woman having a baby at the same time you are, or that the doctor is not out of town or busy with another patient. If that happens, then you are going to have to drive through the hills on the back roads of eastern Kentucky to try to find a doctor to deliver your baby.

All told, 82 of Kentucky's 120 counties have no OB's or have just one OB.

Now, you may be thinking that, although this is far from ideal, couldn't the women in these situations simply go to the emergency room and have an ER doctor deliver their baby? Maybe in the old days women could do this, but they can't do this anymore.

Another casualty in the medical liability crisis has been in the provision of emergency medical services. According to the Kentucky Medical Association, medical liability premiums for ER physicians increased, on average, an astounding 204% from 2001 to 2002!

The situation of Dr. David Stanforth is illustrative. He is a partner in an emergency medicine group serving three hospitals in Northern Kentucky. Dr. Stanforth had his malpractice insurance cancelled 3 years ago and then switched insurance policies to obtain coverage. His premiums have since tripled to $800,000 per year, even though there wasn't a malpractice award against his ER group during that period.

The result of situations like Dr. Stanforth's are all-too-predictable.

According to the Kentucky Department of Public Health, 43% of Kentucky counties do not have any doctors specializing in emergency medicine. Another 21% of Kentucky counties have only one emergency room physician. All told, then, 64% of Kentucky counties do not have any ER doctors or have only one ER doctor for the entire county.

To come back to the crisis in obstetric services that I was discussing, if you are a woman in eastern Kentucky who is delivering a baby, not only are you not going to be able to find an O.B. to delivery your baby. You are not going to be able to find an ER doctor to help you either. Instead, you are going to have to drive until you find some doctor—any doctor—if you're lucky, to help with your delivery.

Unfortunately, too many women are not so lucky. They end up delivering their babies in the backseat of a car or on the side of the road.

This situation cannot continue. I applaud Senators GREGG and ENSIGN for their determination to do something about this crisis. I hope my colleagues on the other side will let us try to solve this problem with meaningful reform and will vote to invoke cloture on the motion to proceed.

I thank the Chair.

I will conclude by saying the principal reason for the crisis is the rising cost of medical malpractice insurance, and the inability of these physicians, dedicated though they may be to public health and serving people in the Commonwealth of Kentucky, who simply can't afford to stay in business. They cannot make a living doing what they went to medical school to do and what they want to do with their lives, which is to take care of women and babies and to save people in the emergency rooms of the Commonwealth.

We will have an opportunity tomorrow, once again—as I said earlier, hopefully a third time will be a charm—to take the simple step of going to the bill and giving us an opportunity in the Senate of addressing what is indeed a national medical crisis.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On February 29, 2004, a transsexual man who was planning to undergo an operation to make him a woman, was found shot to death in his car parked outside his apartment in Georgia. The Atlanta Police are canvassing local bars seeking information from anyone who knew the victim.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

NATIONAL PUBLIC HEALTH WEEK

Mr. SARBANES. Mr. President, I recognize the American Public Health Association's 14th annual National Public Health Week. I specifically want to acknowledge and commend the Association on its theme this year: ''Eliminating Health Disparities: Communities Moving from Statistics to Solutions.''

Our public health practitioners affect all areas of life as they fulfill their mission of promoting health and preventing disease at the broader ''population'' level. The American Public Health Association is the oldest and largest organization of public health professionals and has had an enormous influence on public health priorities and policies for over 100 years.

As we begin National Public Health Week, it is clear how the Association's selection of a particular theme can make a significant difference in how we develop our health agenda as a nation. I think this year's choice will be no exception and that it will be an impetus for frank and thoughtful discussion about what should be one of the