

Again, I thank Senator FRIST for living up to his commitment he made to me. I appreciate it. What we are going to do is continue to work to let everyone know how outrageous this law is, how far reaching this law is, how dangerous this law is to women, how it walks away from family values, from States rights, from anything decent when one says to a woman who has been raped or is the victim of incest that she is on her own. That is not what this country is about.

At some point, we are going to make sure that this Weldon amendment is either modified so it becomes what it says it is, which is a conscience clause that no one has an objection to, or is repealed.

How much more time do I have remaining?

The PRESIDING OFFICER. The Senator from California has 23 minutes remaining.

#### JOHN BOLTON NOMINATION

Mrs. BOXER. Mr. President, I want to close on a couple of topics. The first one, because I sit on the Foreign Relations Committee, is the nomination of John Bolton to be our Ambassador to the United Nations. I do call on the President to rethink this nomination. Out of the thousands of strong, conservative Republicans who care about the world, there has to be somebody better than someone who has a pattern of not only abusing his staff, called a serial abuser by one witness, but also, and this is really threatening, trying to get them fired if they do not give him the information he wants.

I am talking about false information and reaching down from the very high level at which he has been to the bottom of another agency that he did not even have direct line control over and trying to force not one but two and maybe three intelligence analysts to paint a picture that he wanted to use so that he could present a country as an imminent threat to this Nation, which could have led to some serious ramifications. Of all the people to pick now, it should not be someone who would try to politicize intelligence gathering.

I received another letter on Friday, which I sent to both sides of the committee. I hope this will be looked at. It concerns a case where years ago John Bolton was trying to overturn a U.N. resolution—or have it modified—that dealt with infant formula in the developing nations. Some of my colleagues may remember that issue, where babies were dying throughout the developing world because they were mixing the baby formula with contaminated water, and the U.N. voted very strongly to stop distributing and selling that baby formula. According to this woman, who has a lot of credentials—an attorney who worked with John Bolton—she said that Bolton ordered her to contact these developing nations and tell them to back off and modify

this resolution so that Nestle Company and others could sell their product in the developing world. And this is interesting—conscience clause—she said: My conscience does not allow me to do this because if one baby died as a result of what I did, I could not live with myself. There is a conscience clause in the agency that says if somebody has a conscience problem when given an assignment, they do not have to do it. Well, Bolton said, if you do not do this, you are fired, and he fired her on the spot, according to her. She is going to go under oath and testify to this. Then he found out he could not fire her because she was protected by Civil Service. She comes back to work, and what do they find? Her entire office had been moved. Where is it moved? To the basement of the building. No telephone. A desk and a chair. She loved her job, and she eventually got a telephone down there and worked around John Bolton and stayed there doing her work.

This is yet another story. So we have a pattern of abusive behavior. Some of my friends on the other side of the aisle say, this is just the person we need for the U.N.—somebody tough. If you want someone in the U.N. who has a history of trying to change intelligence information—and now the world knows it.

As my ranking member JOE BIDEN has stated, this is the guy who may have to make the intelligence case against Iran. This is the guy who may have to make the intelligence case against North Korea with this background of using political pressure to get the kind of intelligence he wanted to build a case. This is not the right person. We do not want someone there who will politicize intelligence gathering. I don't think we want someone there who is such a hothead that it will turn a lot of people off.

We have testimony from multiple sources. At first, my friends on the other side of the committee said it is an isolated incident; you are talking about one incident. We have incident after incident.

Oh, he is just the person we need. We want someone tough. Tough is one thing. Tough and principled and committed is one thing. Abusing people is something else. A man is called a serial abuser by someone who has the credentials to know—e-mails back this up—trying to get people fired because they want to do their job.

It was so bad that Colin Powell, the Secretary of State, had to actually go and talk to all these “independent” analysts; his message was, don't you worry about it. You continue to do your work. I thank him for that. The testimony is clear. He went there and told those analysts, don't you be bullied. I am using those words. But the message he had was, don't you worry about it. Do your work. Do your job. It is very clear.

How refreshing it was to see Senator VOINOVICH, at the committee, listen to what Senator BIDEN, in particular, was

saying. They had the information, chapter and verse, proof of why this is not a good appointment.

I know the pressures that have come to bear on Senator VOINOVICH. It is not pleasant to be alone. I have been there. I know how it feels. But he is answering to his conscience. I think he did the Senate proud by doing that.

Now we hear other colleagues on the committee saying maybe they need more time and more information.

Again, this can all be avoided. There are so many other people who can do this job. I said before that John Bolton is very loyal to this conservative doctrine. There could be many positions for him in the administration. We need someone in the spirit of John Danforth—Republican, conservative, wonderful former Senator who went to the United Nations, who immediately had the support and the credibility and the respect.

In closing, I will talk about an issue I know the Presiding Officer has been very involved with, and that is the filibuster issue. As someone who once wanted to end a filibuster myself at an early stage, I now understand how foolish I was at that point. Why did I want it to end when I first came here as freshman? We had the majority and the Republicans were thwarting us. It was very frustrating. We wanted to fix everything. I voted to say this filibuster has to go.

Little did I realize that is the way the Senate is supposed to operate in a deliberative fashion. As one of the Founders said, the House is the cup. It gets hot. It is steaming. And when the issues get to the Senate, it is the saucer. They cool down. One of the ways to ensure that is to have extended debate.

#### FILIBUSTER

Mrs. BOXER. Mr. President, there has been so much misinformation on the filibuster I want to make sure I put my thoughts into the record. We hear Republican Senators actually get up and say they never filibustered any judges. I was stunned, so we went back into history and we have a chart for that.

The first filibuster in modern times was started by the Republicans in 1968 against Abe Fortas for the Supreme Court. We know there have been 11 in recent times, 11 filibusters. Here is one in 1971, probably started by the Democrats, William Rehnquist to be a Supreme Court justice. Here is one in 1980, probably started by the Republicans, Stephen Breyer, to be a judge on the First Circuit Court of Appeals. Then in 1984 Harvie Wilkinson, Fourth Circuit Court of Appeals. In 1986, Sydney Fitzwater, to be a judge for the Northern District of Texas. 1992, Edward Earle Carnes to be judge on the Eleventh Circuit. 1994, Lee Sarokin to be a judge on the Third Circuit Court of Appeals. In 1999, Brian Theodore Stewart, to be a judge for the District

of Utah. In the year 2000—and this is my State—there was a major filibuster; we fought hard and we beat the filibuster. We got the votes needed, Richard Paez to be a judge on the Ninth Circuit Court of Appeals and Marsha Berzon to be a judge on the Ninth Circuit.

When we hear Republicans say they never launched a filibuster, you can ask, what? Here is Bob Smith who led the filibuster, Republican, from New Hampshire. Here is what he said:

... It is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez.

Here he is again:

So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role.

Here is a Republican Senator who started a filibuster against two judge nominees for the Ninth Circuit. He called this a "constitutional role." Now we have other Republicans saying the constitutional option is no filibuster. Wrong. You are contradicting your own people here.

Now, ORRIN HATCH himself admitted there were filibusters on the floor:

Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on nomination.

That is ORRIN HATCH. This is the major point I want to make, Who is the real leader out there pushing to end the filibuster on judges? Pushing, pushing, pushing?

And, by the way, it is unbelievable we have confirmed 205 of George W. Bush's nominees to the courts. We have stopped 10. Let me say it again: 205 have gotten through and we have stopped 10.

Now, do the math, and I will say to you: In your life, if you get 95 percent of what you want, wouldn't you go around with a smile on your face? I would. If I got 95 percent of what I wanted from the Senate, I would be so happy. If I got 95 percent of what I wanted from my family—if they sought my way 95 percent of the time—I would be happy; especially when they were teenagers, I would be really happy.

But do you know what. If I were arrogant, and I wanted everything, and I thought I knew best all the time, and I wanted to grab all the power, I would be sunk. So these folks over here, who got 95 percent of what they wanted—205 judges, and then 10 whom we thought were out of the mainstream—and, by the way, wow, are they out of the mainstream—they are unhappy. And now they are going to change the rules in the middle of the game.

For 200 years of our Constitution we have been able to speak and express ourselves. I have to tell you, this is dangerous to our democracy. When one party wants its all, when one party wants to stop minority rights, that is dangerous. And that is where we are.

But here is the best of all—and I hope people will know this—when we had

this filibuster on Marsha Berzon, and when we had this filibuster of Richard Paez, guess who voted to keep the filibuster going on Richard Paez. I will give you a clue. He appeared on a big screen over the weekend. I will give you another clue. He was elected by the Republicans to be the majority leader of the Senate, BILL FRIST. He says filibusters are terrible, filibusters are wrong. Yet he voted to continue the filibuster on Richard Paez.

Mr. President, I ask unanimous consent that Executive vote No. 37 of March 8, 2000, on Richard Paez to cut off the filibuster be printed in the RECORD.

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

#### YEAS—85

Abraham (R-MI)	Gorton (R-WA)	Moynihan (D-NY)
Akaka (D-HI)	Graham (D-FL)	Murray (D-WA)
Ashcroft (R-MO)	Grams (R-MN)	Nickles (R-OK)
Baucus (D-MT)	Grassley (R-IA)	Reed (D-RI)
Bayh (D-IN)	Gregg (R-NH)	Reid (D-NV)
Bennett (R-UT)	Hagel (R-NE)	Robb (D-VA)
Biden (D-DE)	Harkin (D-IA)	Roberts (R-KS)
Bingaman (D-NM)	Hatch (R-UT)	Rockefeller (D-WV)
Bond (R-MO)	Hollings (D-SC)	Roth (R-DE)
Boxer (D-CA)	Hutchison (R-TX)	Santorum (R-PA)
Breaux (D-LA)	Inouye (D-HI)	Sarbanes (D-MD)
Bryan (D-NV)	Jeffords (R-VT)	Schumer (D-NY)
Burns (R-MT)	Johnson (D-SD)	Sessions (R-AL)
Byrd (D-WV)	Kennedy (D-MA)	Smith (R-OR)
Campbell (R-CO)	Kerrey (D-NE)	Snowe (R-ME)
Chafee, L. (R-RI)	Kerry (D-MA)	Specter (R-PA)
Cleland (D-GA)	Kohl (D-WI)	Stevens (R-AK)
Cochran (R-MS)	Kyl (R-AZ)	Thomas (R-WY)
Collins (R-ME)	Landrieu (D-LA)	Thompson (R-TN)
Conrad (D-ND)	Lautenberg (D-NJ)	Thurmond (R-SC)
Coverdell (R-GA)	Leahy (D-VT)	Torricelli (D-NJ)
Crapo (R-ID)	Levin (D-MI)	Voinovich (R-OH)
Daschle (D-SD)	Lieberman (D-CT)	Warner (R-VA)
Dodd (D-CT)	Lincoln (D-AR)	Wellstone (D-MN)
Domenici (R-NM)	Lott (R-MS)	Wyden (D-OR)
Dorgan (D-ND)	Lugar (R-IN)	
Durbin (D-IL)	Mack (R-FL)	
Edwards (D-NC)	McConnell (R-KY)	
Feingold (D-WI)	McKulski (D-MD)	
Feinstein (D-CA)		
Fitzgerald (R-IL)		

#### NAYS—14

Allard (R-CO)	Enzi (R-WY)	Inhofe (R-OK)
Brownback (R-KS)	Frist (R-TN)	Murkowski (R-AK)
Bunning (R-KY)	Gramm (R-TX)	Shelby (R-AL)
Craig (R-ID)	Helms (R-NC)	Smith (R-NH)
DeWine (R-OH)	Hutchinson (R-AR)	

#### NOT VOTING—1

McCain (R-AZ)

Mrs. BOXER. So let's hold people accountable for what they do and say. I admit I was foolish on the filibuster when I was a freshman and I came in here. I also wanted everything to go my way. I was wrong. And it is hard for a Senator to say they are wrong. We do not like to admit it. But I was wrong. But how can BILL FRIST lead the charge, say that filibusters are wrong, it is terrible, it is awful, it is against the Constitution, and everything else he says—which I do not agree with any of what he said—and then not address the fact that he voted to sustain a filibuster. It does not make sense.

We have soldiers dying in Iraq, in Afghanistan. Lord knows where they are going to go in this very dangerous world. And the mission: to make sure democracy thrives. Do you know that when I was in Iraq, we were told one of

the reasons the minority groups there, the Kurds, felt comfortable was they knew they were going to copy the model of this democracy, including the filibuster?

They said: Oh, we know we are going to have our rights heard because we are going to have the right to filibuster. They even told that to a Republican Senator who went over there.

By the way, when I was in the Palestinian territories—this is another interesting part of my trip—the first thing the Palestinians said they want to do is make sure their people get a monthly social security benefit that is guaranteed. I truly wanted to ask the Minister there—I think he was the Minister of the Interior—to please contact President Bush and tell him that a guaranteed social security benefit was their first priority, as the President tries to undo the guaranteed benefit for Social Security. That trip I went on was fascinating in so many different ways. But mostly, what I realized was, we need to be the model of freedom and democracy. If we start taking away minority rights, if we start saying we cannot stand to hear each other—by the way, I understand it. I know it is painful to hear me speak for some of my colleagues who do not agree with me. They say: Oh, I can't listen to one more word. And I feel the same way when they start talking about things with which I fundamentally disagree.

But that is what it is about here because all of America has to be represented here, from the most liberal, to the most conservative, to everything in between. All of us have to feel represented. But if we stop the ability of the other to debate and discuss, especially on judges, where it is a lifetime appointment, at a very high salary—they never have to face the electorate. This is the only moment.

So what if we say they have to meet a higher bar? That is a good thing on behalf of the people. Because—guess what—do you know what they rule on? They rule on everything to do with your life. They rule on whether there should be child labor. They rule on whether you should be harassed and exploited in the workplace. They rule on whether you have the right to clean air and safe drinking water. They rule on everybody's rights: voting rights, civil rights, human rights. They rule on whether your child can get a good education. They rule on whether corporate America must provide a safe workplace for you. They rule on whether the Federal Government can say that people who pollute have to clean up that pollution.

Why do you think there are so many people who want to get every single judge? Because they want judges of a certain philosophy. That is wrong. We should work for mainstream, fair judges—that is what we need on the bench—who can see all sides. But when one side wants everything, when 95 percent is not enough, when 205 to 10 is not good enough, beware of what is coming down. Do not change the rules

in the middle of the game. That is not fair. That is not right. It is throwing a fit over something, when you have gotten 95 percent of what you want.

You do not change the rules in the middle of the game, like they did in the House on the Ethics Committee. Do not do that. That is not right, it is not fair, and it is wrong. It is wrong for the American people.

Everyone in the world looks to America—everyone in the world. When we start weakening our rules around here, and weakening the rights of the people to exercise the rights they have been given as Senators, we are in a lot of trouble.

So, Mr. President, I have gone through a number of issues, starting off with the most solemn, which was reading the names of those in the military who have died, who were either from California or were based in California. I promised my constituents I would always come to the floor periodically to remember them. The saddest thing: 26 percent of the dead soldiers happened to be either from California or based in California. That is a huge number. So it is with a very heavy heart that I did that.

But we have a lot to do, a lot on our agenda. I hope we will stay focused on the things that matter to the people—on the things that matter to the people. Let's not spend time changing the rules of the Senate that we have had for so many years. Let's not do that. Let's do the work. Let's get a success strategy for Iraq. Let's get health care for our people. Let's get education for our children. Let's make sure the air is clean and the water is safe, that we protect our beautiful places. Let's make sure we attack this issue of gas prices, which in my State we are seeing \$3 a gallon. I wrote to the FTC, and I said: Please investigate what is going on with the refiners. Please look at these mergers that are coming at us now that will make it even worse.

We have work to do. But, no, we have to have our leader go on a Sunday, or whatever, and—big publicity—address a group about changing the rules of the filibuster. This does not meet the test, it seems to me, of doing the job.

We know there will be fallout. That is the nuclear option, and nuclear explosions have fallout. It doesn't mean shutting down the Senate, but I can assure you, it is going to mean working harder in the Senate, working really hard, working on some things that maybe we haven't worked on in a while, forcing that. But I have to tell you, 205 to 10, you should be smiling, not frowning, not addressing people and saying how terrible you are doing. You should be happy. It is a heck of a lot better than a lot of Democratic Presidents have done. You should be happy.

You should bring us judges that are mainstream, and there wouldn't be any filibusters. I have supported so many. You succeeded 205 times. You failed 10 times because you tried to put people

on there who really were so far out of the mainstream it would be dangerous.

Can't we compromise this thing and come together? Let's get back to work.

I ask unanimous consent that my prepared text on the Weldon amendment be printed in the RECORD.

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

#### WELDON AMENDMENT

Mr. President, I rise this evening to talk about the Weldon amendment, a sweeping provision endangering women's health that was slipped into the 2005 appropriations bill at the last minute without any hearings, discussions, or votes.

In November, Senator Frist promised me an up or down vote on repealing the Weldon amendment by the end of April. Last week, I decided to hold off on that vote for the time being.

First, the Weldon amendment will expire in less than 6 months. I believe that the best way to defeat this provision right now is to work with Senator Harkin and Members on both sides of the aisle to remove or modify it in the next spending bill.

I have talked at length with Senator Harkin about this. He has promised that he will work closely with Senator Specter and me to underscore our commitment to a real conscience clause for doctors and hospitals without undermining our commitment to the health of women across our country.

Second, two lawsuits have already been filed challenging the constitutionality of Weldon. Their arguments are compelling and I believe that the plaintiffs one of which is the California attorney general—will prevail.

There has been a lot of misinformation about Weldon. So I thought it would help to show this provision in black and white:

Here is what Weldon says:

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization or plan.

I have read this language over and over again. And nowhere do I find the words "religion, morals, beliefs, or values."

That is because Weldon is not a conscience clause. It is a denial clause because it could deny women emergency care when their lives are in danger, deny low-income rape victims reproductive health care, deny doctors the right to give their patients vital information, and deny states the ability to enforce critical laws ensuring the health of women.

Some are saying that Weldon is needed to protect the religious beliefs of doctors and hospitals that don't want to perform abortions. But that is not true.

No Federal law forces any doctor to perform an abortion. And no Federal law forces any hospital to perform an abortion, unless the woman will die without an emergency procedure.

In fact, we already have many Federal and State laws protecting the conscience of our health care providers, including the 1973 Church amendment.

That conscience clause says that public authorities may not require any individual or

health care entity that receives financial assistance under our federal health programs to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel. Or discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

It is not just the Federal law that offers protections. As you can see on this chart, some 46 States—almost every one of them—have enacted their own conscience clauses for doctors and providers who don't want to provide abortions.

Some are claiming that Weldon is simply a clarification of current law. I find that amazing, given that it takes hours for even the most seasoned attorneys and lawmakers to make any sense of this provision. There is nothing clarifying about it.

Weldon is a giant loophole that effectively bars federal, state, and local governments from enforcing laws protecting the reproductive health of women.

Most Americans, including most people of faith, believe that we need to strike the right balance between honoring personal beliefs and protecting the public at large.

In one survey, 89 percent of people said they oppose allowing insurance companies to refuse to pay for medical services on religious grounds.

Weldon takes it a step further, allowing any insurance company, HMO, or other entity to refuse to provide services or referrals on any grounds, and in any circumstances, even if a woman's life is in danger.

Late last week, Rev. Carlton Veazey, the president of the Religious Coalition for Reproductive Choice, brought me 2,000 petitions from people of faith in all 50 States.

These petitions said that, "Weldon is not just bad law, it is immoral law, dangerous law, and women will be hurt by it, some perhaps even killed by it."

What do our consciences say about that?

What do our consciences say about helping the thousands of women who become pregnant as a result of rape each year? The Weldon amendment makes no exceptions for them, or for women whose lives are in serious danger.

Weldon tells our State and local governments that they can not ensure that any woman, including victims of rape and incest, receive abortion referrals and services without losing all their Federal health, education, and labor funding.

Weldon tells our State and local governments that their title X clinics no longer

have to refer a poor woman who asks about an abortion, even if she has been raped or her life is in danger.

Weldon tells our State and local governments that they should no longer honor the Hyde amendment, which provides Medicaid coverage for low-income women who are victims of rape or incest, or whose lives are in danger.

Here is what the Hyde amendment says:

None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for any abortion. . . .

The limitations established in the preceding section shall not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. . . .

What if a poor woman is raped by her uncle? Say she does not have a job. She relies on Medicaid for her health care. She is not told about the option of emergency contraception and becomes pregnant.

What if she cannot emotionally bear to give birth to her relative's child—her rapist's child?

Under the Hyde amendment we say Medicaid must pay for her abortion if she is the victim of rape or incest. But, under Weldon, that is no longer the case.

What if she goes to her regular Medicaid managed care organization, but is never told that these services are covered, and never referred anywhere else? The States can no longer enforce the Hyde amendment, or even their own laws helping rape and incest victims.

What do our consciences say about helping women who will die without emergency abortions?

Weldon has no exceptions for women whose lives are in danger.

It tells States that they cannot enforce laws ensuring that poor women who face life-threatening situations will receive abortion referrals or services.

It undermines the 1986 Federal Emergency Medical Treatment and Active Labor Act, EMTALA, which says that if a pregnant woman comes to a hospital with a life-threatening situation, she will receive the treatment needed to be stabilized, even if that includes an abortion.

This law states:

If any individual comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide . . .

. . . within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, . . .

A San Francisco doctor called my office to tell some of these tragic stories. One of her patient's blood was not clotting. She was bleeding for over an hour.

If she had been sent home or encouraged to continue her pregnancy, she would have likely died. Thankfully, she got care.

Another woman, a married mother, came to the hospital with an ectopic pregnancy, which means the pregnancy was developing in her cervix. If a woman grows a pregnancy in her cervix, she can die.

Again, this doctor was able to save her life.

But, what if these woman had walked into a hospital that refused to provide emergency abortions?

The Congress passed the Emergency Treatment and Active Labor Act to ensure that no

one is ever turned away if their lives are in danger.

Now, Weldon tells a hospital or HMO to ignore this law. It says they can let a woman die if they don't want to perform an abortion.

And there is nothing States can do about it without losing all their Federal labor, health, and education funding.

Weldon allows all health care companies to gag doctors, and deny women vital information about their reproductive health options.

Weldon tells State and local governments they can no longer protect the doctor-patient relationship through Federal or State laws without losing all their Federal health, education, and labor funding.

Weldon conflicts with current title X Federal regulations, which require family planning clinics to:

Offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:

- (A) Prenatal care and delivery;
- (B) Infant care, foster care, or adoption; and
- (C) Pregnancy termination.

(i) If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and *referral upon request*, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.

Under Weldon, a title X clinic can take our funding, but refuse to give women information. Think about what this could mean for the poor women who rely on these clinics.

Last year, a married Latina woman in her early 30s came to one of our title X family planning clinics in Los Angeles. She had two children under six.

She had been to the clinic before because her husband is unfaithful. He had infected her with severe STDs.

When she became pregnant again, she was very scared about having the baby. Her home life was extremely unstable, and she was worried about the impact of STDs on the fetus.

She made the extremely difficult decision to have an abortion. She asked the clinic to refer her. It did. That was the law.

But now Weldon is in direct conflict with this Federal regulation saying that title X family planning clinics that serve poor women must give them a referral if asked.

Now clinics can ignore this law. Women can be left without information. And States have no power to act.

The American College of Obstetricians and Gynecologists says:

The Federal refusal clause would jeopardize a physician's ability to inform a patient of all her legal medical options at federally funded Title X family planning clinics, and would categorize the Title X referral requirement as discriminatory—effectively gagging physicians across the country.

According to ACOG ethical guidelines, "Under all conditions of practice . . . consultation and referral should be carried out in the patients' best interest."

Weldon is not in the patient's best interest. It allows title X clinics, HMOs, and anyone else to deny our health care professionals their right to free speech and their patients the right to full information about their options.

If States try to enforce their own laws, they could lose billions of dollars in Federal labor, health, and education funding. For example:

All 50 States have the power to ensure that hospital mergers don't undermine the public interest. In some cases, an attorney general

might determine that, for a merger to go forward, the two parties must find some way to protect the reproductive health care of women.

The Indiana supreme court has held that limits on State medical assistance for abortion in cases of life endangerment, rape or incest are unconstitutional under the State constitution because they do not include exceptions for women's health.

The New Mexico supreme court held that a regulation limiting medical assistance for abortion in cases of life endangerment, rape or incest is unconstitutional under the New Mexico constitution.

A court in Illinois has held that under a law limiting State medical assistance for abortion to cases of life endangerment is unconstitutional, under the constitution of Illinois.

Under Weldon, States face a Hobson's choice between denying reproductive health services and information to women or losing billions of dollars in Federal labor, health, and education funding.

They are told they have to ignore their constitutions, to ignore Federal law and State law. They are told they no longer can find creative ways to ensure women's health.

In New Jersey, a court approved an arrangement that set aside some of the assets of a secular hospital prior to its acquisition by a Catholic hospital.

The assets were meant to support the continuation of the secular hospital's mission of providing reproductive health services, which it would not be able to fulfill after the merger.

Now, New Jersey can no longer enforce this arrangement without risking more than \$7 billion in Federal funding.

Now, some say that States are free to enforce laws protecting reproductive health. They say States can do whatever they want if they just give up Federal funds. Sure.

Let's look at what States would lose. And, keep in mind: these numbers are very conservative.

This chart has California losing at least \$37 billion in Federal funding, but our Attorney General has put the number at \$49 billion.

No State can afford to give up substantial resources that help educate and care for its children, provide for and train its workers, and bring health care to all its citizens.

This is not about choice, it is about coercion.

That is one of the many reasons why the California attorney general has sued in Federal court, a lawsuit that I believe will prevail.

The suit says the Weldon amendment is unconstitutional because it restricts a woman's right to abortion when necessary to preserve her life or health.

It says that Weldon exceeds Congress's spending power because it is so vague.

In *South Dakota v. Dole*, 1987, the court said that when "Congress desires to condition the States' receipt of federal funds, 'it must do so unambiguously, enable[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.'"

Another lawsuit filed in the District of Columbia on behalf of health care clinics makes the same claim. It says: "The amendment 'leaves Title X grantees to guess how to meet Weldon's mandate while meeting the mandates of [Title X regulations], and, indeed, whether this is even possible.'"

If States aren't sure how to comply with Weldon, they cannot make a knowing choice. And, with the amount of funding at stake, they are bound to err on the side of extreme caution, thereby creating a chilling effect.

The California lawsuit says that Federal funding conditions must be rationally related to the Federal interest in the program receiving them.

What does unemployment insurance or No Child Left Behind funds have to do with reproductive health?

Nothing. But the penalties under Weldon are so unconstitutionally extreme and coercive that States have no choice but to comply.

This amendment is unconstitutional and dangerous.

It is not a conscience clause. We already have that.

It is a denial clause that will cause unnecessary hardship for victims of rape, women whose lives are in danger, poor women who rely on their doctors for information, and States that will be forced to choose between protecting women and losing billions of dollars in funds.

If the Senate wants a new conscience clause, we can draft a real conscience clause.

I will work with my colleagues on both sides of the aisle to do just that.

But I will not back down until we alter or repeal the Weldon language as written and do right by the women, doctors, and States across America.

#### ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

The PRESIDING OFFICER (Mr. CORNYN). Under the previous order, the Senate stands adjourned until 9:45 a.m. on Tuesday, April 26, 2005.

Thereupon, the Senate, at 6:20 p.m., adjourned until Tuesday, April 26, 2005, at 9:45 a.m.

#### NOMINATIONS

Executive nominations received by the Senate April 25, 2005:

##### DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

JAMES H. BILBRAY, OF NEVADA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

PHILIP COYLE, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ADMIRAL HAROLD W. GEHMAN, JR., UNITED STATES NAVY, RETIRED, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

JAMES V. HANSEN, OF UTAH, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GENERAL JAMES T. HILL, UNITED STATES ARMY, RETIRED, OF FLORIDA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW

POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

GENERAL LLOYD W. NEWTON, UNITED STATES AIR FORCE, RETIRED, OF CONNECTICUT, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

ANTHONY JOSEPH PRINCIPI, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

SAMUEL KNOX SKINNER, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

BRIGADIER GENERAL SUE ELLEN TURNER, UNITED STATES AIR FORCE, RETIRED, OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION (NEW POSITION), TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

##### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BRIAN D. MONTGOMERY, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE JOHN CHARLES WEICHER.

##### DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHARLES E. JOHNSON, OF UTAH, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, VICE JANET HALE, RESIGNED.

##### INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

ROBERT B. HOLLAND III, OF TEXAS, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF TWO YEARS, VICE CAROLE BROOKINS, RESIGNED.

##### DEPARTMENT OF STATE

ROGER DWAYNE PIERCE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO REPUBLIC OF CAPE VERDE.

##### IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

##### *To be major general*

BRIGADIER GENERAL RITA M. BROADWAY, 0000  
BRIGADIER GENERAL BRUCE A. CASELLA, 0000  
BRIGADIER GENERAL DAVID L. EVANS, 0000  
BRIGADIER GENERAL WILLIAM H. JOHNSON, 0000  
BRIGADIER GENERAL LARRY KNIGHTNER, 0000  
BRIGADIER GENERAL DENNIS E. LUTZ, 0000  
BRIGADIER GENERAL ROBERT A. POLLMANN, 0000  
BRIGADIER GENERAL WILLIAM TERPELUK, 0000  
BRIGADIER GENERAL BRUCE E. ZUKAUSKAS, 0000

##### *To be brigadier general*

COLONEL LIE-PING CHANG, 0000  
COLONEL PAUL E. CRANDALL, 0000  
COLONEL STUART M. DYER, 0000  
COLONEL GEOFFREY A. FREEMAN, 0000  
COLONEL WILLIAM D. FRINK, JR., 0000  
COLONEL WILLIAM H. GERETY, 0000  
COLONEL GEORGE R. HARRIS, 0000  
COLONEL JEFFREY A. JACOBS, 0000  
COLONEL DEMPSEY D. KEE, 0000  
COLONEL DOUGLAS E. LEE, 0000  
COLONEL CHARLES D. LUCKEY, 0000  
COLONEL BERT K. MIZUSAWA, 0000  
COLONEL ELDON P. REGUA, 0000

COLONEL STEVEN W. SMITH, 0000  
COLONEL RICHARD A. STONE, 0000  
COLONEL ROBIN B. UMBERG, 0000  
COLONEL MARGARET C. WILMOTH, 0000

##### IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 152:

##### *To be general*

GEN. PETER PACE, 0000

##### IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 154:

##### *To be admiral*

ADM. EDMUND P. GIAMBASTIANI, JR., 0000

##### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

##### *To be lieutenant*

DANIEL J PRICE  
STEPHEN Z KROENING  
JESSICA S KONDEL  
SHANNON M RISTAU  
NICOLE S LAMBERT  
CHADWICK A BROWN  
NICOLE D COLASACCO  
CHAD M CARY  
JENNIFER E PRALGO  
SEAN D CIMILLUCA  
CHARLES J YOOS III  
KEITH A GOLDEN  
SHAWN MADDOCK  
WILLIAM D WHITMORE  
DOUGLAS E MACINTYRE  
SARAH L DUNSFORD  
SARAH K MROZEK  
JOSHUA D BAUMAN

##### *To be lieutenant (junior grade)*

MICHAEL C DAVIDSON  
DAVID E FISCHMAN  
SILAS M AYERS  
PAUL A HOUSEHOLDER  
NICOLA SAMUELSON  
PATRICK L MURPHY  
COLIN D LITTLE  
LEAH A HARMAN  
JASON R MANSOUR  
MICHAEL J STEVENSON  
BRIANA J WELTON  
ABIGAIL S HIGGINS  
BRENT J POUNDS  
AMANDA L GOELLER  
SARAH E JACKSON  
TIMOTHY D SALISBURY  
BENJAMIN S SNIFFEN  
MARK A BLANKENSHIP  
FIONNA J MATHESON  
JONATHAN E TAYLOR  
ANDREW P HALBACH  
NATHAN S PRIESTER  
WILLIAM I WELLS  
SARAH K JONES  
STEPHEN P BARRY