



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, FRIDAY, FEBRUARY 10, 2006

No. 16

## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2006, at 2 p.m.

## Senate

FRIDAY, FEBRUARY 10, 2006

(Legislative day of Thursday, February 9, 2006)

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

### PRAYER

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

Let us pray.

Eternal Lord God, from the rising of the Sun to its setting, Your name is great among the nations.

We thank You for Your goodness and for Your wonderful works in our world. Thank You for satisfying our souls' longing for the transcendence.

We pray for our Senators and their staffs. Help them to stand humbly in Your presence, confident of Your power to guide them through our world's turbulence. Keep them from confusion and sin. Give them insights for solving the riddles of our planet and imbue them with compassion. Before they seek forgiveness, help them to forgive. Before they ask for mercy, help them to be merciful.

Give us all such inclusive spirits that we will be led from all bigotry and prejudice. Help each of us to abide in Your love, for You are our source of strength, comfort, and fortitude.

We pray this in Your powerful Name. Amen.

### PLEDGE OF ALLEGIANCE

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

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, today, we will have a brief period of morning business before we resume consideration of S. 852, the asbestos bill. Although Members may come down and make statements relative to the bill, there are going to be no rollcall votes today, as I explained last night.

Last night, we vitiated cloture and confirmed a nomination that was scheduled for a vote today; and given that action, it is not necessary to have that vote this morning.

We did hope to consider and vote on amendments during today's session. However, at this time, there is a motion to waive the budget pending, and that will require further debate.

In addition, we are approaching the final week prior to the President's Day recess. We want to use all our time effectively to work through the asbestos bill and other remaining business. I talked with the Democratic leader about a number of issues that we will address over the course of the next 8 or 9 days. There is the tax reconciliation bill that has gone to conference. We have 10 hours on that. There are the

issues surrounding the PATRIOT Act that needs to be reauthorized.

Great progress has been made over the last 24 hours in a bipartisan way. At the close of business today, I will outline next week's schedule. Senators should plan on a very busy week prior to the recess, with voting over the course of next week.

### ASBESTOS

I briefly want to comment on the asbestos bill and where we are today and the significance of this underlying bill. We have been on this for a week, in terms of debate. I think my colleagues and the American people realize how important this bill is and why it is the first major piece of legislation we are taking in this current session of Congress and have brought it to the floor.

I want to share briefly what my personal experience is with this disease, and it comes from having spent many months in Southampton, England, working as a surgeon a couple of decades ago. To me, those images apply today, of individuals, patients suffering from cancer from asbestos, asbestosis, and the clinical manifestations of the diseases related to it, such as mesothelioma. As we all know, based on the discussions that have taken place, this asbestos fiber is one that causes a reaction that can be a localized reaction in the lungs or a systemic reaction, and it is particularly prevalent in workers in shipyards; and, of course, Southampton was and has been one of the great shipyards in the world. Therefore, you see a lot of this mesothelioma.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The mesothelioma in those patients starts with a shortness of breath that is uncomfortable, but then it gradually builds to this gasping for every single breath. And then it turns into the agony of not getting enough breath into your lungs. It starts with a little bit of a cough associated with that shortness of breath, and that cough eventually turns into a hacking cough with blood coming forth, a loss of the voice, initially becoming coarse and raspy. The symptoms of the most common type of mesothelioma expand to the point that surgery is, in many cases, tried. It is a difficult surgery because of the encasement of the lung with the reaction to this asbestos fiber. It is malignant cancer.

I say that because the reality is there are many patients, victims of exposure to asbestos, who are not being fully compensated by the system we have, the system that is outdated, that is inefficient and unfair. Everybody agrees with that.

If there is one thing we have been able to accomplish over the last week, it is that it is an unfair process that results in a lot of waste and inefficiency—the fact that patients themselves, the victims—out of the dollars that should be directed to them—only get 42 cents of the dollar that is put on the table to compensate them, and that is simply unfair. Our discussions and debate over the last week have pointed to the fact that 58 cents of the dollar that should be going to the victims is being spread through a system that is inefficient and goes, in large part, to the pockets of trial lawyers—not all trial lawyers, but the few who are taking advantage of this system.

That is why it is so important for us to address this FAIR Act, which we call it, to debate it and not use procedural moves to kill it. Because once we kill this bill or it is moved off the table, we are not going to be able to come back to it, from a realistic standpoint. This year is so short that we have to address it now or never. That is why we have to be very careful, in terms of having procedural moves that are made and people hiding behind those procedural moves and not addressing the real substance of the bill. The bill itself has strong bipartisan support. We talk about all of the partisanship that characterizes so much of this body in Washington, DC, and in Congress. This bill is not partisan. It is not a Republican or Democratic bill. It has strong bipartisan support.

I have to applaud the leadership of Chairman SPECTER and Senator LEAHY on this bill, taking it through the Judiciary Committee. I want to also point out that people say we have only had 1 day on amendments. We were ready to bring the bill up on Friday. We have had it Monday, Tuesday, Wednesday, Thursday, and now it is Friday. We have had some slow walking on the bill. We had to file a cloture motion to proceed to the bill. It shows the reluctance by some people to say it is a

problem and that it is one that we need to address and fix. But that cloture vote was successful. That postponement was overridden by the will of this body.

About midweek, the other side reversed course and decided to let us debate this bill, and that debate has begun in earnest. We have had a great debate, with a much better understanding among our colleagues and among the American people as to how big this problem is. The fact that the victims, the patients whom physicians are treating, are not being treated fairly by this system, that must be fixed. We have those trial lawyers who are reaping the benefits of this broken system, taking advantage of the system, taking advantage of the funds that are to be used as compensation for those victims or potential victims.

The FAIR Act is a trust fund approach, which is a comprehensive approach. We had good debate yesterday with Senator CORNYN's amendment, in terms of a medical criteria bill. The one item that came out in that discussion is that the trust fund approach in the FAIR Act is the comprehensive approach. Senator CORNYN proposed that we resolve the real problem with a medical criteria proposal, which many of us support in terms of concept, but you have to look at who is left out. The unimpaired claimants are left out of that system. The trust fund addresses those people who may be unimpaired but who are victims and will be victims, from a medical standpoint, in the future.

The bill we talked about yesterday—there is a sort of incompleteness of that bill, but reflecting on the more comprehensive approach of the underlying bill and the fact that it did not address the fact that 40 percent of the awards are going to the victim and 60 percent is going to the system. Wealthy trial lawyers are the real beneficiaries here, which is not addressed in the smaller bills that may be brought forth or the smaller amendments brought to the floor.

It was mentioned yesterday that the medical criteria bill itself leaves out veterans. Again, that is addressed in the underlying FAIR Act, which is on the floor. Under the medical criteria bill, they could not sue the Government for their injuries—the veterans of service who are fighting wars all over the globe—because of sovereign immunity. I was also worried about those victims who worked at companies that are now bankrupt. Again, the medical criteria bill does nothing to ensure that attorneys are prevented from taking from those victims that share of compensation that should be going to the victims.

I know there are a lot of businesses, today and yesterday, that are lobbying Senators on both sides of the aisle because they are concerned that the underlying bill will hurt them in some way. I know some of them argue that the medical criteria approach is the

better solution because it is less complicated than the trust fund. I respect that position. It is a position that we and the leadership and the leaders on this bill, the sponsors, are addressing. We will make sure that we do all we can to ensure that no company is hurt, no company goes bankrupt because of the trust fund approach.

Senator KYL's amendment, which is yet to be debated and fully considered, addresses that very important aspect, to make sure companies are not unduly hurt by the trust fund approach.

I firmly believe we should do what is in the interests of the Nation right now, not just what is in the interests of one company or another, and that is addressed in the FAIR Act—again, open for debate and open for amendment. That is our responsibility, to tackle these big issues.

The underlying bill is not perfect. It needs to remain on the floor. It needs to remain on the floor for discussion and debate. It is a comprehensive approach that I strongly support, that the administration strongly supports, and that much of the leadership in the House, in my conversations with them, strongly supports.

If we do not pass this bill, those victims whom I opened with, the people who are being hurt by the cancer, who are struggling for those last breaths, who do need that operation, are simply not being treated fairly and will not be treated fairly in the future.

Meaningful solutions to these tough and challenging problems are what we are debating. Again, I commend the chairman of the Judiciary Committee for his tremendous work on this important issue.

Mr. SPECTER. Will the majority leader yield for a very brief discussion on this point?

Mr. FRIST. Absolutely.

Mr. SPECTER. Mr. President, I thank the leader very much for the comments he just made. I would like to pick up on just a couple of them.

What is generally misunderstood, notwithstanding how many times we have said it, is that there is no Federal money in this bill. The bill is ironclad that the Federal Government will have no obligation at all, and even though it has been said repeatedly, talking to Senators in the well of the floor yesterday, it has not really sunk in. I can understand why it has not sunk in—because the bill is so complicated—but it is worth repeating. There is no Federal money in the bill.

The objection which is raised is that some future Congress may want to add money to the bill from the Federal Treasury. But that is not a valid consideration for this Congress. We are doing the best job we can here in the year 2006. But if some future Congress 20 years from now or 30 years from now or 15 years from now makes another decision, we have to respect that. We are not so smart to handle the current problems, let alone anticipate what is going to happen a decade or more from

now. So when people raise the issue about more expenditures, they are not doing it because of this bill; they are doing it because of what some future bill may provide.

There is another consideration which the leader and I were just discussing which is worth commenting about on the floor so others may hear it, and that is that out of respect for the committee system, this bill ought not to fall on a budget point of order. The Judiciary Committee has spent years—really working on it for decades but intensively for the past 3 years—and we passed it out 13 to 5, all 10 Republicans for it, albeit with some reservations, and 3 Democrats—Senator LEAHY, Senator FEINSTEIN and Senator KOHL. It is bipartisan.

People are surprised to hear that on the point of order, it is the Budget Committee which makes the determination and not the Parliamentarian. When I tell my colleagues that, they are surprised. But as I conferred with the Parliamentarian yesterday, he confirmed the fact that the practice here is not to have the Parliamentarian rule but to have the Budget Committee rule and really to have the chairman make the decision.

After working intensively on this issue for the 25 years I have been here, and intensively for the past 3 years, it seems to me as a matter of basic equity that we ought not to have this bill pulled from the floor by a single vote when we are in the midst of adding amendments which may cure all of the problems people see. Senator CORNYN, for example, who proposed the medical criteria bill yesterday, has told me that he does not favor upholding the point of order, that he thinks the bill ought to go forward. Senator CORNYN has said he may have as many as four more amendments. Senator KYL has an amendment on the floor now which will protect the smaller companies. Senator COBURN may have an amendment on tightening up the medical criteria.

When we have worked for 3 years intently, why not let this bill stand for 3 more days next week to see if we can work out the problems?

I submit to all of my colleagues, and especially my colleagues on the Budget Committee, this is not where it ought to be decided by a supermajority. This body had very intensive debate on when a filibuster ought to be allowed, and we came to the conclusion that it should be extraordinary circumstances. I think the analogy right on all fours, as we say in the law—on all fours. To defeat this bill by a supermajority, there ought to be some extraordinary circumstance, which there is not. This may be too strong a word, but, frankly, this is how I feel about it: I believe it is insulting to the Judiciary Committee to have these years of work at risk by a single vote because of what another committee says, when we have gone through this bill A to Z and we are still open for business to make changes.

It is worth note, the editorial support which I think is a bit removed.

We have already had the New York Times speak very forcefully.

The Washington Post says, in part, “legislation that serves the public interest” in coming out for the bill.

The Washington Times, which is noted for its more conservative view, endorses the bill today, saying, “this bill should pass.”

One of the issues which the Washington Times raises is the key one raised by the Budget Committee as to what is going to happen in the future; that is, as they say:

and how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

OK, we are still working on it. But the Washington Times faces up squarely to that consideration as to what a future Congress may do.

I have found that, while talking to Senators individually and they begin to understand it, there is a good response. I have visited individually with many Senators on both sides of the aisle, and I intend to continue to do so when we have the time to do so. But it is my hope that my colleagues will look closely at respect for the committee system and what the Judiciary Committee has done here and will at least give this bill a few more days and will not superimpose a supermajority on legislation which ought to be decided, as our customary Democratic procedures are, by a democratic vote.

I thank the distinguished leader of our party for all of his hard work on this, bringing it to the floor, and his steadfast support, and notify all of our Republican colleagues that the leader and Senator MCCONNELL and Senator SESSIONS and Senator DEWINE and maybe others and I will be talking individually, and I put my Democratic colleagues on notice, too, that I am about to call them up for a private meeting.

I ask unanimous consent that the editorials I referenced from today's Washington Post and Washington Times be included in the RECORD.

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

[From washingtonpost.com, Feb. 10, 2006]

#### FORWARD ON ASBESTOS

In a triumph of good sense and bipartisan cooperation, the Senate voted on Tuesday to go forward with a bill that would fix the broken asbestos litigation system. Hundreds of thousands of asbestos injury claims have already landed in the courts, contributing to the bankruptcy of more than 70 companies. Without reform, this process will drag on, triggering the bankruptcy of yet more firms, many of which have only tenuous asbestos connections, because the main firms responsible have already gone under. Meanwhile, many who are ill from asbestos-related diseases won't be able to get timely compensation or, in some cases, any compensation. Unless the bill passes, Navy veterans, for example, will go uncompensated for diseases caused by asbestos on ships. Veterans are not allowed to sue the government, and many of the shipbuilders are long since bankrupt.

The bill will be debated and amended, and it may face a second attempted filibuster before it gets a vote. Some amendment may be reasonable at the margins, but the bill's central idea—to replace litigation with a \$140 billion compensation fund to be financed by defendant companies and their insurers—must be preserved. Democrats complain that the fund won't have enough money to compensate asbestos victims; Republicans complain that the fund will have too much money, the raising of which will constitute a burden on small and medium-size firms. The fact that the bill is being attacked from both directions suggests that its authors, Sens. Arlen Specter (R-Pa.) and Patrick J. Leahy (D-Vt.), have balanced competing interests in a reasonable manner.

Unfortunately, the bill's critics are not always so reasonable. Sen. Harry M. Reid of Nevada, the Democratic minority leader, has complained, “One would have to search long and hard to find a bill in my opinion as bad as this.” He has even described the legislation as the work of lobbyists hired by corporations to limit asbestos exposure. But the truth is that the bill's main opponents are trial lawyers, who profit mightily from asbestos lawsuits and who constitute a powerful lobby in their own right. Mr. Specter and Mr. Leahy are in fact model resisters of special interests who have spent more than two years crafting legislation that serves the public interest. For Mr. Reid to demean this effort in order to fire off campaign sound bites is reprehensible.

[From the Washington Times, Feb. 10, 2006]

#### THE ASBESTOS DEBATE

There are three questions the Senate should focus on as it considers the Fairness in Asbestos Injury Resolution Act: Will the proposed \$140 billion asbestos trust fund actually cost \$140 billion, or will its fine print eventually require it to pay out much more? Can the medical criteria be tightened to ensure that only people who have genuinely suffered harm from asbestos are compensated? And how can one minimize the chances of some future Congress putting taxpayers on the hook for likely overruns?

This bill should pass; Senators Arlen Specter, Pennsylvania Republican, and Patrick Leahy, Vermont Democrat, are due accolades for getting this far on a longstanding problem that has befuddled everyone for decades. Many asbestos victims have suffered or died of mesothelioma or other illnesses while the courts and Washington struggled with a resolution. The victims and their families deserve to be made whole.

One good sign is the 98-1 Senate vote Tuesday to move forward, indicating broad agreement that the FAIR Act is acceptable as a starting point for the full Senate's debate. The other is trepidation from Senate Minority Leader Harry Reid: After making noises about a filibuster, Mr. Reid said the bill benefited “a few large companies” while supposedly leaving the little guy in the lurch. Really? Why, then, do insurance giants All-State and AIG oppose the bill? Why are many plaintiffs anxious to see it pass? In reality the big guys speak through Mr. Reid—in this case, unscrupulous lawyers who stand to profit greatly from keeping asbestos cases in the courts. Under the FAIR Act, fees for lawyers top out at five percent of the award—far less than they get in court.

Of course, there are good reasons to worry about the “little guy”—just not the ones Mr. Reid suggests. If previous federal “trust fund” schemes are any indication, this fund could bleed billions of dollars only a few years from now and demand either a federal bailout or a return to the courts. The first is bad for the average taxpayer; the other is

bad for most claimants. As for the first, the nonpartisan National Taxpayers Union opposes the trust fund on the grounds that a bust is likely. It calls the fund "a fiscal time bomb." The second would land claimants back in limbo in courts (to the great pleasure of asbestos lawyers, of course, who clog up the system with questionable cases).

The precedents show how daunting this month's debate will be. As we've reported previously, only one of the many smaller trust funds created over the years has been able to meet its obligations, according to Francine Rabinovitz, a trust-fund expert at the University of Southern California. Last year she told Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, that "none of the bankruptcy trusts created prior to 2002 have been able to pay over the life anywhere close to 50 percent of the liquidated value of qualifying claims." Claims against the Johns Manville bankruptcy fund—one flawed effort to solve asbestos-injury claims—outstripped resources by a factor of 20.

That begs some questions. Will this \$140 billion fund "sunset" in three years like its conservative critics say it will? Even the Congressional Budget Office predicts it will bleed \$6.5 billion a year by 2015.

What about the medical criteria? A group of conservative senators on the Judiciary Committee worried about the fund's solvency cited this among concerns when they sent the bill to the Senate floor last year. Sens. Jon Kyl, Arizona Republican, and Tom Coburn, Oklahoma Republican, said that they were "deeply concerned that this fund will run out of money and prove unable to pay all qualifying claimants."

This debate will play out fully in the Senate over the coming days. In the meantime, it's worth pointing out what the FAIR Act offers that nothing previously has: A light at the end of the tunnel for claimants. Under FAIR, compensation ranges from \$25,000 for people who suffer breathing difficulties to as much as \$1.1 million for victims of the deadly cancer mesothelioma. It has taken long enough to get this far. The Senate is close to leading the way out.

**THE PRESIDING OFFICER.** The majority leader.

Mr. FRIST. Very briefly in response, this is an important bill that, again, is not a partisan bill at all. If you look at the votes today, you will see the split is between each caucus. I say that because so many bills come to the floor as partisan bills or bills proposed by one party, and they see such discussion and procedural moves. It is incumbent upon each Senator, looking within themselves and their own conscience, to ask the question: Is this a problem that deserves fixing?

I believe, based on the discussions today—that is the good thing about this last week—that it is a tragedy in terms of the victims, in terms of the jobs lost, in terms of the pensions lost—all due to a broken system. It would be a tragedy if we did not address it. We have a bipartisan bill which has come out of committee. It is open for debate on the floor of this body.

Just to clarify, we do have pending a budget point of order that needs to be discussed. Every Senator must understand what our chairman was saying through conversations because we will have a vote early next week on this

point of order. If the point of order is upheld, then the bill itself disappears and we have other legislation onto which we will move. That means we will not have fulfilled our obligation, our responsibility through having a bipartisan bill come out of the Judiciary Committee which is brought to the floor for debate and discussion, recognizing a huge problem faces the American people. That responsibility would be shoved aside.

I encourage my colleagues to look at this point of order, what it means in terms of procedure, and then answer the question, Is there a problem out there? And if the answer is yes, now is the time to fix it.

I yield the floor.

#### RESERVATION OF LEADER TIME

**THE PRESIDING OFFICER (Mr. ISAKSON).** Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

**THE PRESIDING OFFICER.** Under the previous order, there will now be a period for the transaction of morning business until 10 a.m.

The Senator from Missouri is recognized.

Mr. TALENT. How long is the morning business going on, Mr. President?

**THE PRESIDING OFFICER.** Until 10 a.m.

Mr. TALENT. I ask unanimous consent to speak as in morning business for up to 30 minutes.

**THE PRESIDING OFFICER.** Is there objection? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I request recognition after the Senator and that I be allocated 30 minutes as well.

**THE PRESIDING OFFICER.** The Senator from Missouri has asked unanimous consent that he be recognized for up to 30 minutes. Is there objection?

Mr. KENNEDY. Reserving the right to object, I wonder if the Senator would extend the unanimous consent request to include that I be recognized following him and that I be recognized for 30 minutes.

Mr. TALENT. I will so modify my request.

**THE PRESIDING OFFICER.** Is there objection? Without objection, it is so ordered.

Mr. TALENT. Mr. President, the Lord willing and the creek don't rise, as my mom used to say, I will not use the whole 30 minutes.

**THE PRESIDING OFFICER.** The Senator is recognized.

#### CLONING

Mr. TALENT. Mr. President, 9 years ago, scientific advances in the technology of nuclear transfer permitted the cloning of a sheep named Dolly. The immediate reaction of most Americans, and most Members of Congress,

was to try to make certain that this process was never used to create a human being, never allowing a human Dolly to be cloned. I remember thinking at the time that I personally did not want to live in a world where I was walking down the street and saw myself coming in the opposite direction.

Why this reaction? After all, cloning is an acceptable thing in the agricultural world. The difference, of course, is that human beings have a unique dignity. When parents decide to have a child, they do it for the benefit of the baby, to nurture that new life to live up to the potential and live out the plan which God created for him or her. All of us agree that people should not be cloned because the only reason you clone something is to use it, and human beings should and do exist for reasons of greater dignity than simply to be used by others. I think we all understand that if we were ever to allow a race of clones to be created as workers or body parts warehouses for society, we would cheapen the dignity of humanity to the point where none of the rest of us would be safe in our lives or freedoms.

Yet, despite this shared impulse against cloning, it has been 9 years since Dolly was created, and no safeguards against cloning have passed the Congress. Nor are there prospects of any such bill passing in the near future. The reason is that there is an area of overlap between the issues of cloning and stem cells. Many scientists believe that stem cells from a cloned human embryo may have unique advantages for medical research. This part of the scientific community has resisted the total ban on cloning which has been introduced each of the last 6 years in the belief that such a ban would inhibit one important aspect of stem cell research. Both sides have settled into what has now become a rigid stalemate, like the Western Front in WWI. Even though the idea of cloning human beings is morally repugnant to most of us, there is currently no Federal prohibition or even regulation of any aspect of human cloning, or for that matter of warehousing body parts and creating "fetus farms," and no prospect of getting such prohibitions.

I have spent the better part of a year researching this issue, meeting with people on all sides: groups who oppose cloning embryos to get stem cells, scientists who support it, parents who don't know who or what to believe but who are desperate for a cure for their children. Many to whom I have spoken have strong opinions about the underlying moral issues. In every case, I respected the sincerity and passion of those whom I spoke with. I have strong opinions of my own.

I believe human beings are precious. I am concerned about the tendency of our society to devalue people because they are too old, too young, or too inconvenient to have around. At the same time, I understand the desperation of parents whose children are sick