

US Canola Association.  
US Rice Producers Association.  
Western Peanut Growers.

Mr. CONRAD. Maybe the Secretary of Agriculture might want to inform himself of what has been said.

Finally, I have a letter from the State agriculture commissioners telling us, unanimously, disaster assistance was necessary and needed.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

THE NATIONAL ASSOCIATION OF  
STATE DEPARTMENTS OF AGRICULTURE,  
*Washington, DC, April 20, 2006.*

MEMBERS OF THE U.S. SENATE.

DEAR SENATOR: I am writing on behalf of the state commissioners, secretaries and directors of agriculture to express our strong support for emergency disaster assistance for farmers and ranchers as agreed to by the Senate Appropriations Committee in H.R. 4939, the FY 2006 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Hurricane Recovery (report 109-230). Assistance is necessary to help farmers, ranchers and their communities recoup from financial losses due to hurricanes, drought, fires, tornadoes, floods, and other natural disasters.

Nearly all states have been affected by natural disasters and in turn many farms and ranches across this country have suffered losses and damages. About 80 percent of U.S. counties were declared disaster or contiguous disaster counties in the last year. While there are risk management programs, such as crop insurance, disaster loans, and emergency grazing; the relief needed greatly exceeds the levels these programs can provide. Supplemental assistance is being offered to farmers and ranchers harmed by the 2005 hurricane season, however, not all producers will be able to attain the necessary levels of assistance to return to viable production levels.

In addition, the weather-related damages and losses in agriculture have significantly affected specialty crop producers and nursery businesses. States appreciate the provision that also provides grants to states that can be used to provide economic assistance to agricultural producers, and gives priority to the support of specialty crops and livestock. This section demonstrates how the federal government and states can partner with one another in directing assistance to those who need it most.

We understand that the Senate will consider this legislation when they return from the Easter Recess. NASDA strongly urges your prompt action and support of this emergency assistance. We look forward to working with you and your staff on this issue so important to agriculture.

Sincerely,

J. CARLTON COURTER, III,  
*Commissioner, NASDA President.*

Mr. CONRAD. Mr. President, I hope the Secretary of Agriculture gets the message—gets the message—disaster assistance is needed in this country.

I thank the Chair.

THE PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I would like to speak in morning business and ask unanimous consent to speak for up to 10 minutes.

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

## MEDICAL CARE ACCESS PROTECTION ACT

Mr. ENSIGN. Mr. President, yesterday, I introduced the Medical Care Access Protection Act to address our Nation's medical liability crisis.

High medical liability insurance premiums are threatening the stability of our Nation's health care delivery system. These rates are forcing many doctors, hospitals, and other health care providers to move out of high-liability States, limit the scope of their practices, and even close their doors permanently.

The crisis is affecting more and more patients and is threatening access to reliable quality health care services in many States across our country.

Because of unaffordable medical liability insurance premiums, it is now common for obstetricians to no longer deliver babies, and for other specialists to no longer provide emergency calls or provide certain high-risk procedures.

Ask yourself this question: What if you were in need of an emergency procedure? What if you were the woman who had a high-risk pregnancy and could not find a specialist to provide you with the care you needed? The medical liability crisis is threatening access to reliable quality health care services this is happening to patients all over America.

Additionally, some emergency departments have been forced to temporarily shut down in recent years. In my home State of Nevada, our level I trauma center closed for 10 days in 2002. This closure left every patient within a 10,000 square mile area unserved by a level I trauma center.

Jim Lawson, unfortunately, was one of those in need of the trauma unit at that time. Jim lived in Las Vegas, and was just one month shy of his 60th birthday. He had recently returned from visiting his daughter in California. When he returned, he was injured in a severe car accident.

Jim should have been taken to University Medical Center's level I trauma center, but it was closed. Instead, Jim was taken to another emergency room, where he was to be stabilized and then transferred to Salt Lake City's trauma center. Tragically, Jim never made it that far. He died that day due to cardiac arrest caused by blunt force from physical trauma.

Why was Nevada's only level I trauma center closed? A simple fact: Medical liability premiums could not be afforded by the doctors, and there were not enough doctors to provide care. The State had to actually step in and take over the liability to reopen the trauma center.

More than 35 percent of neurosurgeons have altered their emergency or trauma call coverage because of the medical liability crisis. This means that patients with head injuries or in need of neurosurgical services must be transferred to other facilities, delaying much needed care.

An example of this problem was brought to my attention by Dr. Alamo

of Henderson, Nevada. Dr. Alamo was presented with a teenager suffering from myasthenia gravis. She was in a crisis and in need of immediate medical treatment. Because of the medical liability situation, there was no emergency neurologist on call to assist this young woman. Dr. Alamo called several in the area, and none of them wanted to take her case because of the medical liability situation. So Dr. Alamo had the young woman transported to California by helicopter to receive the medical care she needed.

These kinds of situations should not happen and should not be forced to happen because of the medical liability crisis we have in America today. Stories such as these are becoming all too common across our country.

I recently heard of seven patients who died in Chester County, Pennsylvania, because they did not have access to neurosurgical care. These patients were transported to neighboring counties instead of being treated locally where there was no available neurosurgeon. Some of these patients died during transport, and others died while on the operating table. This is unacceptable.

Women's health care is also in serious jeopardy. In Pennsylvania, the legal climate caused nine maternity wards to close over the past several years. And hundreds of OB/GYNs have left the State, retired, or limited their services. This story is being repeated all over America.

The bottom line is that patients cannot get the health care they need when they need it most. By definition, I believe this is a medical crisis. This crisis is affecting more and more patients, and it is threatening access to care.

To address the growing medical liability crisis in my State of Nevada, legislation was enacted that includes a cap on noneconomic damages and a cap on total damages for trauma care.

In order to control health care costs and make health care more readily available, we must extend similar protections to other States.

Our entire Nation needs serious medical liability reform now.

Without Federal legislation, the exodus of these providers from the practice of medicine will continue, and patients will find it increasingly difficult to obtain needed care. This is not a Republican or Democratic issue; this is a patient issue. Simply put, patients cannot find access to care when they need it most in many areas.

I introduced the Medical Care Access Protection Act to address the national crisis our doctors, hospitals, and those needing health care face today. My legislation is a comprehensive medical liability reform measure. The bill sets reasonable limits on noneconomic damages, while also providing for unlimited economic damages.

The Medical Care Access Protection Act is a responsible reform measure that includes joint liability and collateral source improvements, and limits

on attorney fees according to a sliding award scale.

My legislation also includes an expert witness provision to ensure that relevant medical experts serve as trial witnesses instead of so-called "professional witnesses" who are used to further abuse the system and further drive up medical costs.

My bill also preserves States' rights by keeping the State medical liability statutes in place and by allowing States that enact medical liability reform bills in the future to supersede the Federal limits on damages.

The Medical Care Access Protection Act uses the Texas style of caps on noneconomic damages which has brought real reform to the Texas liability system. This provides a cap of \$250,000 for a judgment against a physician or a health care professional. In addition, the patient can be awarded up to \$250,000 for a judgment against one health care institution. Judgments against two or more health care institutions cannot exceed \$500,000, with each institution liable for not more than \$250,000. Thus the noneconomic damages can total \$750,000.

The Texas style of caps on noneconomic damages is working. Patients are experiencing better access to health care, and Texas communities are finding it easier to recruit new doctors. At least 3,000 new doctors have established practices in Texas since the law's passage in 2003. Many of these doctors are serving in medically underserved areas of the State. Some counties, such as Cameron County along the Texas-Mexico border, are experiencing unprecedented success in physician recruitment—the opposite of what is happening in Pennsylvania.

The number of medical specialists in Texas is also growing. Patients have access to more specialists and emergency room physicians. Since 2003, Texas has gained a total of 93 orthopedic surgeons and more than 80 OB/GYNs.

Insurance costs have decreased significantly for doctors and hospitals. Medical liability rates, which had been out of control, have been going down. Physicians' insurance rates had risen by as much as 54 percent in the last few years. But with medical liability reform, physicians in Texas have seen their rates drop by a significant amount. More than 4,000 Texas physicians have opened new professional liability policies. Some of these doctors are new to the State.

The medical liability structure in Texas is working. These types of outcomes should be shared by every State and ultimately every patient in America. The American Medical Association has removed Texas from its list of States experiencing a medical liability crisis. It should be our goal that every State in America be removed from the crisis list.

Let's put an end to this crisis once and for all. Let's enact meaningful medical liability reform today.

The Medical Care Access Protection Act is not a battle of right versus left; it is a battle of right versus wrong. This bill is the right prescription for patients. We need to secure patient access to quality health care services when they need it most.

Let's make sure expectant mothers have access to OB/GYNs and trauma care victims have access to necessary services in their hour of most critical need. And let's make sure we continue to provide patients with the opportunity to receive affordable, accessible, and available health care for years to come.

The Medical Care Access Protection Act is substantially different from legislation we have brought to the Senate floor in previous years, and it warrants serious consideration.

We are going to have a vote on whether to even debate this bill next week. The American people need to contact their Senators. They need to say: Let's bring the bill to the floor and have an open and honest debate on this measure. Are you going to stand with the trial lawyers, or are you going to stand with the patients in America? That is the question we have to ask ourselves. It is time for us to stand with the patients. If the people of America want change, they will have to contact their legislators. This has to be a grassroots effort that rises up from across the country.

I believe the time for action is now. As we consider this bill, I hope Senators will put aside partisan differences and political alliances and will put the patients of America first.

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

The PRESIDING OFFICER (Mr. VITTER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

BRIAN M. COGAN TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

The PRESIDING OFFICER. According to the previous order, the Senate will go into executive session.

The clerk will report the first nomination.

The legislative clerk read the nomination of Brian M. Cogan, of New York, to be United States District Judge for the Eastern District of New York.

The PRESIDING OFFICER. All time is yielded back.

Mrs. MURRAY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, I endorse the nomination of Brian Mark Cogan for the U.S. District Court for the Eastern District of New York. Mr. Cogan graduated from the University of Illinois in 1976, and received a law degree from Cornell in 1979. He is admitted to the bar in both New York and Florida. From 1979 to 1980, he was a law clerk for Judge Aronovitz in the U.S. District Court for the Southern District of Florida, and he was an associate and later a partner and general counsel for the law firm of Stroock & Stroock & Lavan.

Mr. Cogan possesses the qualifications to be an outstanding Federal judge. He had a hearing before the Judiciary Committee, which I chair, and we voted him out unanimously.

Based on his record, I urge my colleagues to support his confirmation today.

I thank the Chair and yield the floor.

Mr. LEAHY. Mr. President, this afternoon the Senate will confirm two more lifetime appointments to the Federal judiciary, Thomas Golden of Pennsylvania and Brian Cogan of New York. These confirmations will bring the total number of Senate-confirmed judicial appointments since January 2001 to 240, including the confirmations of two Supreme Court Justices and 43 circuit court judges.

Democrats in the Senate have been cooperative in considering and confirming consensus nominees. In fact, 100 judges were confirmed during the 17 months when there was a Democratic majority in the Senate compared to only 140 judges in the other 45 months under Republican control.

This morning, the Senate Judiciary Committee reported out another five judicial nominees unanimously. When they are considered and confirmed by the Senate, we will not only reach 245 judicial confirmations, but we will equal the number of judicial nominations considered in the entire session in the election year of 1996 when a Republican Senate controlled consideration of President Clinton's nominations. In session not a single nomination to the court of appeals was considered, not one. Of course this year we have already joined in confirming Judge Michael Chagares to the Third Circuit and I expect Democratic Senators to join in confirming the nomination of Milan Smith to the Ninth Circuit when that nomination is scheduled by the majority leader.

Unfortunately, the Senate Republican leadership is again bent on seeking to use nominations to score partisan points. Our job is to fulfill our duty under the Constitution for the American people so that we can assure them that the judges confirmed to lifetime appointments to the highest courts in this country are fair to those who enter their courtrooms and to the law, rather than to advance a partisan agenda. Regrettably, this is not the first time the Republican leadership in