

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

the Senate has chosen to pursue a partisan agenda using judicial nominees. Sadly, published reports during the last couple of weeks indicate that the Senate Republican leadership is, instead, preparing to cater to the extreme rightwing faction that is agitating for fights over judicial nominations. We will see that when they insist on confrontation over such controversial nominations as Judge Terrence Boyle, Norman Randy Smith or Brett Kavanaugh. Despite Democratic cooperation in the confirmation of scores of nominees and the undeniable fact that we have treated this President's nominees more fairly than Republicans treated those of President Clinton, they seem intent on using controversial judicial nominations to stir up their partisan political base.

Rather than address the priorities of Americans by focusing on proposals to end the subsidies to big oil and rein in gas prices, rather than devote our time to passing comprehensive immigration reform legislation, rather than completing a budget, the Republican leader came to the floor last week to signal a fight over controversial judicial nominations. One of the nominations that the Republicans want to rubberstamp is that of Judge Terrence Boyle to the U.S. Court of Appeals for the Fourth Circuit. We have learned from recent news reports that, as a sitting U.S. district judge and while a circuit court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments. In at least one instance, he is alleged to have bought General Electric stock while presiding over a lawsuit in which General Electric was accused of illegally denying disability benefits to a long-time employee. Two months later, he ruled in favor of GE and denied the employee's claim for long-term and pension disability benefits. Whether or not it turns out that Judge Boyle broke Federal law or canons of judicial ethics, these types of conflicts of interest have no place on the Federal bench. Certainly, they should not be rewarded with a promotion. They should be investigated.

The Republican leadership would rather have the Senate be a rubberstamp for rewarding this administration's cronies with lifetime appointments to high Federal courts. They have tried before. If the White House had its way, we would already have confirmed Claude Allen to the Fourth Circuit. He is the former Bush administration official who recently resigned his position as a top domestic policy adviser to the President. Last month we learned why he resigned when he was arrested for fraudulent conduct over an extended period of time. Had Democrats not objected to the White House attempt to shift a circuit judgeship from Maryland to Virginia, someone now the subject of a criminal prosecution for the equivalent of stealing from retail stores would be a sitting judge on the Fourth Circuit

confirmed with a Republican rubberstamp.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With today's confirmation of Thomas Golden to be a district court judge in Pennsylvania, 21 of President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State except California.

With this confirmation, President Bush's nominees will make up 21 of the 43 active Federal circuit and district court judges for Pennsylvania—that is more than 49 percent of the Pennsylvania Federal bench. On the Pennsylvania district courts alone, President Bush's will now sit in 18 of the 36 judgeships.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite records that showed these to be well-qualified nominees, these nominations were blocked from Senate consideration.

So while I congratulate Thomas Golden and his family on his confirmation, I remember those who were not treated so fairly by Senate Republicans.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Brian M. Cogan, of New York, to be United States District Judge for the Eastern District of New York?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING) and the Senator from Utah (Mr. HATCH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER (Mr. COLEMAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 113 Ex.]

YEAS—95

Akaka	Dorgan	McConnell
Alexander	Durbin	Menendez
Allard	Ensign	Mikulski
Allen	Enzi	Murkowski
Baucus	Feingold	Murray
Bennett	Feinstein	Nelson (FL)
Biden	Frist	Nelson (NE)
Bingaman	Graham	Obama
Bond	Grassley	Pryor
Brownback	Gregg	Reed
Burns	Hagel	Reid
Burr	Harkin	Roberts
Byrd	Hutchison	Salazar
Cantwell	Inhofe	Santorum
Carper	Inouye	Sarbanes
Chafee	Isakson	Schumer
Chambliss	Jeffords	Sessions
Clinton	Johnson	Shelby
Coburn	Kennedy	Smith
Cochran	Kerry	Snowe
Coleman	Kohl	Specter
Collins	Kyl	Stabenow
Conrad	Landrieu	Stevens
Cornyn	Lautenberg	Sununu
Craig	Leahy	Talent
Crapo	Levin	Thomas
Dayton	Lieberman	Thune
DeMint	Lincoln	Vitter
DeWine	Lott	Voinovich
Dodd	Lugar	Warner
Dole	Martinez	Wyden
Domenici	McCain	

NOT VOTING—5

Bayh	Bunning	Rockefeller
Boxer	Hatch	

The nomination was confirmed.

#### NOMINATION OF THOMAS M. GOLDEN TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Thomas M. Golden, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to recommend to my colleagues the confirmation of Thomas M. Golden to the U.S. District Court for the Eastern District of Pennsylvania.

Mr. Golden graduated from Penn State University in 1969, and received a law degree from Dickinson School of Law in 1972. Thereafter, he has been in the practice of law with Stevens & Lee, first as an associate and then as a partner. And from 1979 to the present, he has owned his own firm, Golden Masano Bradley and serves as managing partner in that capacity.

Mr. Golden enjoys an excellent reputation for academic achievement, for lawyerly skills, for integrity, and for community service. Alvernia College awarded Mr. Golden a doctorate of human letters for service to the community and legal profession in 2003. He is past president of the Pennsylvania Bar Association and the Berks County Bar Association.

Holding those positions is demonstrative of active community service, taking on responsibilities to promote the public welfare beyond his work as a private practicing attorney.