

how best to make sure that needed changes occur. As an example of this I want to highlight the efforts of anesthesiologists, who accomplished a nearly sevenfold reduction in anesthesia-related errors through cooperative changes to their systems and practices. Not surprisingly, when anesthesia-related errors decreased, so did insurance premiums. This should be our model of how to effectively address medical malpractice. If we work together, between needed reforms in the insurance industry, and by supporting medical professionals in improving the critical work they do, I know we can tackle this problem effectively.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, first of all, I thank my colleague and friend from Vermont for his excellent statement and comments. I look forward to joining with him on the debate of that issue when we have a chance on Monday and Tuesday next. I share the disappointment of the Senator from Vermont that we will not have an opportunity to address the stem cell issue on the floor of the Senate, which can offer such extraordinary hope to so many families in this country.

We are in the life science century. We have seen this enormous progress that has been made with the mapping of the human genome, with imaging, nanotechnology—breathtaking advances—and stem cell research offers a very similar kind of opportunity. We have legislation that is on the calendar that was approved in a bipartisan way in the House of Representatives, and it has been on the calendar now for about a year. I think most of us were heartened when we heard our majority leader indicate his general support—a change in position—his general support for the items which are in the House bill that is on the calendar now before the Senate. Evidently, though, we will not have an opportunity next week to consider that stem cell bill.

When I think of the stem cell legislation, I think of the possibilities of hope for families who are facing Alzheimer's disease or cancer, Parkinson's disease, diabetes because the possibilities in research are virtually unlimited. There are no assurances of the outcome, no absolute assurance that we are going to come up with cures, but for those who are on the cutting edge of basic and applied research in the science area or in the health area believe that this stem cell research offers enormous possibilities. I wish that had been included in the agenda for next week's discussion about health care, but it has not been.

#### HATE CRIMES

Mr. KENNEDY. Mr. President, I share the disappointment of many that the Republican leadership has delayed calling up the sex offender registration bill. The House passed its version last

September and the Senate Judiciary Committee reported a much improved version to the full Senate last October.

When the House passed its bill, it approved an amendment to improve the Federal hate crimes laws as well. The Senate bill does not include that provision, but many of us had hoped to add it as an amendment. I urge my colleagues to support it.

The inclusion of the Federal hate crimes law is not inconsistent with the goals of the legislation to stop crimes against children. We can clearly do more to protect our communities and encourage them to do so. Hate crimes are a violation of everything our country stands for. These are crimes against entire communities, against the whole Nation, and against the fundamental ideals on which America was founded, and they have a major impact on children. The vast majority of Congress agrees.

Last year, Senator SMITH and I offered our hate crimes bill as an amendment to the Defense Authorization Act, and it passed by a bipartisan vote of 65 to 33. The House passed a nearly identical hate crimes amendment by a vote of 223 to 199, which made it part of its sex offender registration bill. The substantial majority of both Houses of Congress have now voted in favor of the hate crimes proposal, and the time is long overdue to pass these protections into law.

The hate crimes bill is supported by a broad coalition. Over 200 law enforcement and civil rights groups, including the National District Attorneys Association, the National Sheriff's Association, and the National Association of Chiefs of Police, the Anti-Defamation League, and the U.S. Council of Mayors.

A strong Federal role in prosecuting hate crimes is essential for both practical and symbolic reasons. In practical terms, the bill will have a real world impact on the actual criminal investigations and prosecution. The symbolic value of the bill is equally important. Hate crimes target whole communities, not just individuals. Attacking people because they are gay, African American, Arab or Muslim or Jewish, or any other criteria is bigotry at its worst. We must say loudly and clearly to those inclined to commit them that they will go to prison if they do.

The vast majority of us in Congress recognize the importance of passing a hate crimes bill. This year we can make the statement even clearer by turning it into law.

#### UNANIMOUS CONSENT REQUEST— S. 1086

Mr. KENNEDY. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Democratic leader, but no later than May 25, 2006, the Senate proceed to the consideration of Calendar No. 251, S. 1086, and that it be considered under the following limitations:

That there be 1 hour of debate on the bill, with the time equally divided and controlled by the two leaders or their designees; the only amendment in order, other than the committee-reported substitute amendment, be a Kennedy-Smith hate crimes amendment on which there will be 2 hours of debate with the time equally divided and controlled in the usual form; that upon the use or yielding back of time on the amendment, without further intervening action or debate, the Senate proceed to vote in relation to the amendment; that upon disposition of the Kennedy-Smith amendment and the yielding back of time on the bill, the committee substitute, as amended, if amended, be agreed to; the bill, as amended, be read a third time, and without further intervening action or debate, the Senate proceed to vote on passage of the bill.

The PRESIDING OFFICER. In my capacity as a Senator from Minnesota, at the request of leadership, I object.

Objection is heard.

Mr. KENNEDY. Mr. President, I regret that the Republican leadership has blocked our efforts to have a vote on this amendment. I expect that they will move forward on the immediate passage of the underlying bill. We should also get a vote on hate crimes. It is long overdue. It is clear that the Republican leadership will do anything to stop our hate crimes bill. I don't think it is right to delay consideration of the Senate bill on sex offenders, so the battle on hate crimes must continue. Given today's objections, let's move ahead on S. 1086.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### TORT REFORM AND RELATED ISSUES

Mr. BURNS. Mr. President, next week should be a week of looking at our health care system and debating on the direction that I think the policy should go in that area. Not only do we have tort reform that has been suggested by the leader, but also the ability of small business to band together across States to lower the cost of insurance, especially small business owners who have less than 10 employees, and sole proprietors, and even individuals, to band together and do something about lowering their costs of insurance.

Today, I want to open minds and start setting the framework of what this debate is all about that will occur next week.

It is about the unrestrained escalation of jury awards that are driving

up the cost of many medical procedures. Consequently, many of our best and brightest in the medical field are limiting services, retiring early, or move to States where liability premiums are stable in order to carry out their Hippocratic Oath. The true victims of this disturbing trend are the vulnerable and sick among us whose access to quality care becomes more restricted with each day that this crisis is not addressed. It is time for responsible legislators to do what is right for our health care system and the medical community and pass S. 22, the Medical Care Access Protection Act of 2006 and S. 23, the Healthy Mothers and Healthy Babies Act.

The consequences of this trend fall hardest on women and children. Contrary to what the other side may say, the exploding cost of liability insurance has limited access to OB/GYNs. It has caused women to receive less prenatal and preventive health care, and many low-income women to lose critical access to community clinic services.

This is not happening because of a sudden increase in physician negligence. It is happening because of the ever increasing number of lawsuits filed against health care providers each day. By and large, these are meritless suits filed by trial lawyers who seek to take advantage of the justice system in order to enrich themselves. I urge members of the Senate not to fall prey to the influence of these trial lawyers, and we know they have it. Every time this issue has come before this body, the trial lawyer lobby has flexed its muscle to put a stop to its progress. If we work together we can come to a plan to address this situation.

Who is it that these trial lawyers are opposing? It is not only the pleas for help from doctors, who overwhelmingly support reform, it's also the will of the American people, who support medical liability reform at a rate of 75 percent. And the reason they support it is not because they think those who have been harmed by a doctor's negligence shouldn't be compensated, it's because they know how these trial lawyers are hurting them, their families and neighbors. They see the commercials from these so called law firms on late-night television offering to sue any doctor over anything and everything possible. Or they or someone they know has had difficulty finding an OB/GYN to deliver a baby.

In fact, to give this issue even more of a human face, my daughter had to give up delivering babies because she could no longer afford the crushing burden of inflated insurance costs imposed upon her by these trial lawyers bringing frivolous lawsuit after frivolous lawsuit against OB/GYNs.

Of course, insurance companies—we have heard they make all kinds of money. I tell you, in my State of Montana I think only a very few companies offer any kind of medical liability. While the trial lawyers' bank accounts

have continued to grow, the number of doctors able to perform one of the most important acts a doctor can perform has gone down and patients are the ones being hurt.

Given the choice between siding with doctors and patients or the legal community, I think I will take the side of the doctors and the patients every time.

That is not to say if a person has been wronged or harmed by negligence, they shouldn't be able to recover their economic loss. It is time for us to step up to the plate and set the policy and finally do something to ease this cost of not only insurance but our total health care system.

Those who would oppose medical liability reform will say there is no problem, there are no frivolous lawsuits, and these reforms only harm those who have been hurt by doctors' negligence. Those assertions are simply false. No two ways about it. Let's look at the facts. On any given day there are nearly 125,000 lawsuits pending against health care providers, and 75 percent of these will close with no payment.

Some would say that is not bad, there is no harm, 75 percent will close with no payment—so what? The cost comes to the medical community when you have to pay for and provide a defense. Statistics show that of cases that do go to trial, 86 percent of the doctors will be found not liable. Still, the cost of defending the case is very costly. Consequently, the doctors who are targeted by these lawsuits will spend an average of \$90,000 to defend themselves. That is added into the cost of our health care, not only for providers but also into our insurance premiums.

More striking is the impact these suits have on American access to quality medical care. One in seven obstetricians no longer delivers babies due to the fear of being sued; 30 percent to 50 percent of high-risk specialists are sued every year. That is a high number. How would you want to spend all this time and money, and then fall into a category that, once you go into practice, you have a 30- to 50-percent chance of being sued every year while you are in practice?

Mr. President, 79 percent of physicians practice defensive medicine. What is that? It is ordering costly and unnecessary tests due to the fear of being sued, of not covering all the bases—not only covering all the bases but maybe covering them twice. This adds between \$83 billion and \$151 billion per year in added costs to patients and their physicians.

The impact on my State of Montana and other rural States has been even more disturbing. Today there are only 104 obstetricians practicing in Montana. The population of Montana is 900,000. Over the past decade, liability premiums for many hospitals, including many nonprofit critical access hospitals in Montana, have risen nearly 1,000 percent.

I am a big proponent of rural health in order to maintain smaller hospitals, critical access hospitals, and delivery of health care services closer to the people. I think I have 12 or 13 counties that have no doctors at all—none, zip. That concerns me. People who live in those counties should have access to health care providers. Right now those of us in rural America simply cannot afford this. Right now, in Montana, we are very thin in those low populated counties that are remote from a bigger city that may have a larger medical corridor. As a result, many in my State travel hundreds of miles to see a doctor, sometimes all the way to cities such as Seattle and Minneapolis, Salt Lake City, or Denver, CO, for specialized care. I fear this situation will only worsen if we do not act now.

We can't continue to sit back and allow this to go on, and allow this situation to damage our health care system. Our doctors cannot afford it and, more importantly, our loved ones who rely on access to affordable health care cannot afford it, either.

I urge my colleagues to pass both of these bills, S. 22 and S. 23. These bills bring a fair and reasonable reform to medical liability systems, the system that will work. In fact, the model we are sort of patterning this one after is working in Texas. Since the enactment of similar laws in the State of Texas, the largest liability carrier has dropped its premium by 22 percent, competition in the health care liability market is increasing, premiums are stable or down, and access to health care is up. I think that is what we want to see happen.

Clearly this approach is working to the benefit of doctors and patients and, more importantly, I want to put the emphasis on patients. The only people hurt by these commonsense reforms are the folks who make a living in frivolous lawsuits. So I call upon this body to reject their money, their influence, and do what is right for the American people, especially young mothers, and for healthy babies.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

#### MEDICAL LIABILITY CRISIS

Mr. BURR. Mr. President, some in this institution suggest that there is no liability crisis in health care in America. I am here today to say that I don't think anyone in America believes that. They may believe it in this institution. As a Senator from North Carolina, I can state no one from North Carolina believes it.