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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. AKAKA. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2005

Mr. AKAKA. Mr. President, I rise today to talk about bipartisan legislation that is of critical importance to the people of Hawaii. S. 147, the Native Hawaiian Government Reorganization Act of 2005, would extend the Federal policy of self-governance and self-determination to Hawaii's indigenous peoples, Native Hawaiians, by authorizing a process for the reorganization of a Native Hawaiian governing entity for the purposes of a government-to-government relationship with the United States.

Together with my senior Senator and the rest of Hawaii's congressional delegation, I first introduced this bill in 1999. The bill passed the House in 2000, but, unfortunately, the Senate adjourned before we could complete consideration of that bill.

Since then, I have introduced a bill every Congress. In every Congress, the committees of jurisdiction—the Senate Committee on Indian Affairs and the House Committee on Resources—have favorably reported the bill and its companion measure.

I thank the majority leader, the senior Senator from Tennessee, who is working to uphold his commitment to bring this bill to the Senate floor for a debate and rollcall vote. I must tell my colleagues that he did try to meet his commitment in September 2005 and did schedule it for the floor. But at that time, Katrina happened, and we took it off the calendar.

I also appreciate the efforts of my colleague from Arizona who opposes the bill on substance, but has worked with me to uphold his promise to allow the bill to come to the floor for debate and rollcall vote.

S. 147 does three things. First, it authorizes the Office of Native Hawaiian Relations in the Department of the Interior. The office is intended to serve as a liaison between Native Hawaiians and the United States. It is not intended to become another Bureau of Indian Affairs, as the current program for Native Hawaiians will remain with the agencies that currently administer those programs.

Second, the bill establishes the Native Hawaiian interagency coordinating group. This is a Federal working group to be composed of representatives from Federal agencies who administer programs and services for Native Hawaiians. There is no statutory requirement for these agencies to work together. This working group can coordinate policies to ensure consistency and prevent unnecessary duplication in Federal policies impacting Native Hawaiians.

Finally, the bill authorizes a process for the reorganization of the Native Hawaiian governing entity. And we ask: Why do we need to organize the entity? It is because the Native Hawaiian Government was overthrown with the assistance of U.S. agents in 1893. Rather than shed the blood of the people, our beloved queen, Queen Lili'uokalani, abdicated her throne after being arrested and imprisoned in her own home.

Following the overthrow, a republic was formed. Any reformation of a native governing entity has been discouraged. Despite this fact, Native Hawaiians have established distinct communities and retained their language, culture, and traditions. They have done so in a way that also allows other cultures to flourish in Hawaii. Now their generosity is being used against them by opponents of this bill who claim that because Native Hawaiians do not have a governing entity, they cannot partake in the Federal policy of self-governance and self-determination that is offered to their native brethren in the United States.

My bill authorizes a process for the reorganization of the Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship. There are many checks and balances in this process which has the structure necessary to comply—to comply—with Federal law and still maintains the flexibility for Native Hawaiians to determine the outcome of this process.

Further, my bill includes a negotiations process between the Native Hawaiian governing entity, the State of Hawaii, and the United States to address issues such as lands, natural resources, assets, criminal and civil jurisdiction, and historical grievances. Nothing that is currently within the jurisdiction of another level of government can be conveyed to the Native Hawaiian Government without going through this negotiations process.

I am proud of the fact that this bill respects the rights of Hawaii's indigenous peoples through a process that is consistent with Federal law and it provides the structured process for the people of Hawaii to address the long-standing issues which have plagued both Native Hawaiians and non-Native Hawaiians since the overthrow of the Kingdom of Hawaii.

I want to reiterate to my colleagues that this bill is not race based. This bill is based on the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the legal and political relationship the United States had with the indigenous peoples and their governments preexisting the United States.

Finally, those who characterize this bill as race based are saying that Native Hawaiians are not native enough. I find this offensive. And I ask that my colleagues join me in my efforts to bring parity to Native Hawaiians by enacting my bill.

This effort will continue from day-to-day here. We will continue to bring forward the history of Hawaii and the reasons why we are trying to enact this bill, not only for the benefit of the indigenous people of Hawaii but for the benefit of the United States as well.

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

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

MORNING BUSINESS

Mr. VOINOVICH. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

VOTE EXPLANATION

Mr. DURBIN. Mr. President, yesterday, the Senate voted on two motions to invoke cloture to proceed to legislation regarding medical malpractice. Due to a mechanical problem with the plane on my flight from Chicago, I was necessarily absent for this debate and the first vote. Had I been present for that vote, I would have voted against the motion to invoke cloture, and I did vote against the second motion.

Since 2003, the last time Congress considered this issue, 34 States have passed malpractice legislation. Four additional States have pending legislation in this year.

AMA counts 21 States as ''crisis'' States. Of those 21 States, 16 States passed legislation in the past 2 years, and two are currently considering bills.

Instead of considering ways to cap pain and suffering damages for injured patients, Congress should be working on other health care priorities.

Neither S. 22 nor S. 23 do anything to address medical errors, the underlying reason for medical malpractice lawsuits.

According to the Institute of Medicine, medical errors have caused more American deaths per year than breast cancer, AIDS and car accidents combined. It is equivalent to a jumbo jet liner crashing every 24 hours for 1 year.

When I sat on the Government Affairs Committee, Dr. Carolyn Clancy, Director of the Agency for Healthcare Research and Quality, testified about patient safety.

She called medical errors ''a national problem of epidemic proportions.'' She went on to say that Congress and HHS need to make sure that health care professionals work in systems that are designed to prevent mistakes and catch problems before they cause harm.

These bills will do nothing to reach that goal.

The most far-reaching study of the extent and cost of medical errors in our hospitals was published in the Journal of the American Medical Association, the authors of the study analyzed 7.45 million records from 994 hospitals in 28 States, a sample representative of about 20 percent of U.S. hospitals.

They concluded that medical injuries in hospitals ''pose a significant threat to patients and incur substantial costs to society'' and ''are a serious epidemic confronting our health care system.''

The study found that injuries in U.S. hospitals in 2000, just 1 year, led to approximately 32,600 deaths, at least 2.4 million extra days of patient hospitalization and additional costs of up to $9.3 billion. These injuries did not include adverse drug reactions or malfunctioning medical devices.

What do these bills do about these medical errors? Nothing.

Instead, these bills place an arbitrary, one-size-fits-all cap on noneconomic damages, forfeiting the right of a jury to decide the appropriate level of compensation for an injured person.

The answer to this problem is not to have Congress deciding what injured patients should receive. America has judges and juries who make those decisions. One hundred Senators do not have all the facts and should not place a blanket cap on all cases.

Proponents of this bill are saying it is a ''new'' medical malpractice proposal because a patient could receive up to $750,000 in pain and suffering as opposed to the $250,000 cap we considered in 2003.

However, the cap is still $250,000 for a doctor, a hospital or other provider. If a patient is injured at three hospitals or by three doctors, he or she could receive a total $750,000, but the cap is still $250,000 per provider.

Ten years ago, Donna Harnett arrived at a hospital in Chicago, IL, in labor with her first child. She waited nearly 5 hours before being admitted. Following an initial examination, her doctor decided that her labor was not progressing quickly enough and prescribed a drug to help induce more contractions.

Later, when Donna's labor still was not progressing, her doctor broke her water and found that it was abnormal. Rather than consider a C-section, Donna's doctor decided to continue administering the drug, in hopes that the labor would progress.

Six hours later, Donna still hadn't delivered, but her son's fetal monitoring system began alarming, indicating that the baby was in serious respiratory distress. The doctor finally decided that it was time to perform an emergency C-section, but it was another hour before Donna was taken into the operating room.

During that time, the doctor failed to administer oxygen or an IV to help the baby breathe. After Martin was born, he remained in the intensive care unit for 3 weeks. Examinations have since revealed that Martin has substantial brain damage and cerebral palsy—a direct result of the doctor's failure to respond to indications of serious oxygen deprivation and deliver in a timely manner.

Donna's doctor told her never to have more children because there was a serious problem with her DNA, which could result in similar mental and physical disabilities in any of her future children.

Donna has since given birth to three perfectly healthy sons. Donna sued the doctor responsible for Martin's delivery and received a settlement, but this doctor is still licensed and practicing medicine in Illinois—despite several other cases that have been filed against him.

Donna is thankful that she has money from a malpractice settlement to help cover the costs associated with Martin's care that are not covered by health insurance—such as the used, wheelchair-accessible van that she purchased for $50,000, and the $100,000 for renovating the new home she purchased to make it accessible for Martin.

If the law we are debating today had been in place when Donna filed her malpractice suit against the doctor who delivered Martin, she doubts that she would have been able to keep him out of an institution, because as someone who sustained permanent injuries as a newborn, Martin would not have been eligible for an economic damage award.

The problem with malpractice premiums is a cyclical insurance problem. We had a crisis during the 1970s and again in the 1980s. Dozens of States have passed tort reform. Yet we find ourselves faced with the same problems. That is because we haven't looked closely at insurance companies.

Property casualty insurers had a record year in 2005.

The property casualty insurance industry made $43 billion in profit last year.

The difference between the cost of the policies offered to doctors and hospitals, and the payouts from lawsuits is enormous. Payouts have remained steady while premiums have skyrocketed.

Wonder where that money is going?

Jeffry Immelt, the CEO of GE, made $19.23 million last year.

Martin Sullivan, CEO of American International Group, made $11 million.

Stephen Lilienthal, CEO of CNA Financial Corporation, made $3.2 million.

A. Derrill Crowe, CEO of ProAssurance, made $1.5 million.

This bill completely ignores the role of insurers in this problem.

Between 1993 and 2003, the annual premiums Americans paid for their health insurance increased by 79 percent and employer contributions to their employee insurance increased by 90 percent.

We need to be looking at the underlying reasons for rising health costs, and these bills do nothing to achieve that goal.

In fact, a new CBO report, published last Friday concluded that ''the estimated effect of implementing a package of previously proposed tort limits is near zero.''

In other words, capping pain and suffering for patients will not bring down health insurance costs.

Proponents of limiting pain and suffering claim frivolous lawsuits are at the root of the problem, but these bills do nothing to cut down on the number of lawsuits. They only punish those who have legitimate cases.

The people whose cases make it to jury verdicts have surmounted many hurdles. Cases without merit are thrown out before they ever reach the jury. Why would we want to limit pain and suffering for those whose cases make it through the system?

Medical malpractice is a complicated and multifaceted problem that requires a variety of solutions.

First, we must improve patient safety. Medicare is starting to embrace something called Pay for Performance that will go a long way toward improving quality.

The idea of Pay for Performance is to pay doctors based on whether they fulfill certain quality standards and use the best treatment methods, rather than simply reimbursing for all services performed.

Under a Medicare pilot program, doctors can qualify for bonuses if they provide services like vaccines and cancer screening, and eliminate unnecessary procedures.

Here is an example of how it can improve quality.

Hackensack University Medical Center in New Jersey signed up for the program. It agreed to report its performance on a variety of measures.

Right away, the hospitals noticed some problem areas. Under clinical guidelines, a patient who has had orthopedic surgery should be taken off IV antibiotics after 24 hours. Longer use of the drugs don't prevent infection, they cost money, and they can lead to greater antibiotic resistance.

Hackensack hospital found that 25 percent of their surgery patients were being kept on IV antibiotics longer than 24 hours. Within one week of the launch of the Pay for Performance program, 94 percent of patients were taken off the drugs on time.

Second, we must improve oversight. We have something called the National Practitioner Data Bank, which was set up to allow licensing boards and employers to check on doctors' records before they are hired so problem doctors could not move from state to state.

This data bank is not working. According to the federal Department of Health and Human Services, nearly 54 percent of all hospitals have never reported a disciplinary action to the data bank.

Federal law requires that hospitals and medical boards be penalized if they don't report to the data bank. But no fine or penalty has ever been levied.

Further, hospitals sometimes agree not to report doctors they are forcing from their staffs to smooth their departure. Also, physicians' names are removed from malpractice settlements to keep them out of the data bank.

The failings of the data bank create problems like the one faced by Gwyneth Vives. Three hours after giving birth to a healthy boy in 2001, Vives, a scientist at Los Alamos National Laboratory in New Mexico, suffered a complication and bled to death.

The OB/GYN who tended to Ms. Vives had a troubled history. She had previously been forced to leave a job at Duke University Medical Center in North Carolina when questions arose about her surgical skills and her complication rate.

According to the New Mexico Medical Board, she lied to get her New Mexico license, saying she had never lost hospital privileges.

After Ms. Vives died, the OB/GYN went to Michigan and got a license.

We must improve the national practitioner database system so the few doctors who are causing medical injuries cannot simply move to another State.

Contrary to popular belief about frivolous lawsuits, 95 percent of people who are injured by a doctor do not sue.

Studies have shown that the most significant reason people sue is because they feel their doctor or hospital did not acknowledge the problem, or apologize. In other words, they are angry.

Based on this data, a program called ''Sorry Works'' has been launched. Under the program, doctors and hospital staff conduct analyses after every patient injury, and if a medical error caused the problem, the doctors and hospital staff apologize, provide solutions to fix the problem, and offer upfront compensation to the patient, family, and their attorney.

This approach helps alleviate anger and actually reduces the chances of litigation and costly defense litigation bills. The program has worked successfully at hospitals such as the University of Michigan Hospital system, Stanford Medical Center, Children's Hospitals and Clinics of Minnesota, and the VA Hospital in Lexington, Kentucky.

I am proud to say that Illinois is the first State to enact a Sorry Works pilot program statewide.

My colleague from Illinois, BARACK OBAMA, has introduced a bill in the U.S. Senate to facilitate federal funding for apology programs.

The insurance industry has a blanket exemption from Federal antitrust laws. Using their exemption, insurers can collude to set rates, resulting in higher premiums than true competition would achieve—and because of this exemption, enforcement officials cannot investigate any such collusion.

There was an article in the Washington Post last Friday about Hank Greenberg, the former chairman of one of the largest malpractice insurers in the country, American Continental Group.

Mr. Greenberg has been sued by New York Attorney General Eliot Spitzer for fraudulent transactions aimed at manipulating the insurer's financial statements and deceiving regulators and investors.

If Congress is serious about controlling rising medical malpractice premiums, we must revoke this blanket exemption created in the McCarran-Ferguson act.

I am a cosponsor of a bill introduced by Senator LEAHY called the Medical Malpractice Insurance Antitrust Act. Our bill modifies the McCarran-Ferguson Act for the most pernicious antitrust offenses: price fixing, bid rigging, and market allocations.

Who could object to a prohibition on insurance carriers' fixing prices or dividing territories for anticompetitive purposes. After all, the rest of our Nation's industries manage either to abide by these laws or pay the consequences.

We need to stop insurers from gouging doctors and hospitals and this bill is a step in the right direction.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On March 7, 2006, in New York, NY, Victor Lopez and David Andrade were sentenced separately to 8 years in prison for their involvement in a series of beatings that targeted gay men. Lopez and Andrade would pick up gay men, then beat and rob them. According to police, these attacks were motivated by the victims sexual orientation.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

HONORING OUR ARMED FORCES

STAFF SERGEANT JOSEPH E. PROCTOR

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave man from Indianapolis. Joseph E. Proctor, 38 years old, was killed on May 2 in a suicide bombing near his observation post in Iraq. Leaving his life and family behind him, Joseph risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

After September 11, many Americans, including Joseph, felt a deep calling to help their country in its time of need. In the wake of the attacks, despite his family's concerns over his safety, Joseph signed up for the Indiana National Guard, where he had served 20 years ago as a young man. After his Guard service in the mid-1980s, he went into the Army on active duty and served in Desert Storm. Joseph re-enlisted in the Guard in 2002, and began work as a refueler in Iraq. His brother Eddie told a local news outlet that Joseph had seen his military service as a way to help out fellow soldiers. He recounted Joseph's selflessness, saying that one of the reasons Joseph went to Iraq was to give other soldiers a break to come home and see their families. At the time of his death, he was supposed to return home in just 2 weeks.

Joseph was killed while serving his country in Operation Iraqi Freedom. He was assigned to the 638th Aviation Support Battalion in Noblesville. This brave soldier leaves behind his wife, Beth, and three children, Joe, 20, Cassandra, 17, and Adam, 11, years old.

Today, I join Joseph's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Joseph, a memory that will burn brightly during these continuing days of conflict and grief.

Joseph was known for his dedication to his family and his love of country. Today and always, Joseph will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Joseph's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Joseph's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Joseph Proctor in the official record