The issue of end of life treatment is such a sensitive subject and no one should decide for anybody else what that person should have by way of end-of-life medical care. What care ought to be available is a very personal decision. However, living wills give an individual an opportunity to make that judgment, to make a decision as to how much care he or she wanted near the end of his or her life and that is, to repeat, a matter highly personalized for the individual.

Individuals should have access to information about advanced directives. As part of a public education program, I included an amendment to the Medicare Prescription Drug and Modernization Act of 2003 which directed the Secretary of Health and Human Services to include in its annual ''Medicare and You'' handbook, a section that specifies information on advance directives and details on living wills and durable powers of attorney regarding a person's health care decisions.

As ranking member and chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I have worked to provide much-needed resources for hospitals, physicians, nurses, and other health care professionals.

An adequate number of health professionals, including doctors, nurses, dentists, psychologists, laboratory technicians, and chiropractors is critical to the provision of health care in the United States. I have worked to provide much needed funding for health professional training and recruitment programs. In fiscal year 2008, these vital programs received $334 million. Nurse education and recruitment alone has been increased from $58 million in fiscal year 1996 to $149 million in fiscal year 2008.

Differences in reimbursement rates between rural and urban areas have led to significant problems in health professional retention. During the debate on the Balanced Budget Refinement Act, which passed as part of the fiscal year 2001 consolidated appropriations bill, I attempted to reclassify some northeastern hospitals in Pennsylvania to a Metropolitan Statistical Area with higher reimbursement rates. Due to the large volume of requests from other states, we were not able to accomplish these reclassifications for Pennsylvania. However, as part of the fiscal year 2004 Omnibus appropriations bill, I secured $7 million for 20 northeastern Pennsylvania hospitals affected by area wage index shortfalls.

As part of the Medicare Prescription Drug and Medicare Improvement Act of 2003, which passed the Senate on November 25, 2003, a $900 million program was established to provide a one-time appeal process for hospital wage index reclassification. Thirteen Pennsylvania hospitals were approved for funding through this program in Pennsylvania. This program has been extended on several occasions and has provided a total of $164.1 million for Pennsylvania hospitals.

The National Institutes of Health—NIH—are the crown jewels of the Federal Government and have been responsible for enormous strides in combating the major ailments of our society including heart disease, cancer, and Alzheimer's and Parkinson's diseases. The NIH provides funding for biomedical research at our Nation's universities, hospitals, and research institutions. I led the effort to double funding for the NIH from 1998 through 2003. Since I became chairman in 1996, funding for the NIH has increased from $12 billion in fiscal year 1996 to $30.2 billion in the fiscal year 2009 Senate LHHS Appropriations bill.

Regrettably, Federal funding for NIH has steadily declined from the $3.8 billion increase provided in 2003, when the 5–year doubling of NIH was completed, to only $328 million in fiscal year 2008. The shortfall in the President's fiscal year 2009 budget due to inflationary costs alone is $5.2 billion. To provide that $5.2 billion in funding, I recently introduced with Senator HARKIN, the NIH Emergency Supplemental Appropriations Act. This supplemental funding would improve the current research decline, which is disrupting progress, not just for today, but for years to come.

In 1970, President Nixon declared war on cancer. Had that war been prosecuted with the same diligence as other wars, my former chief of staff, Carey Lackman, a beautiful young lady of 48, would not have died of breast cancer. One of my very best friends, a very distinguished Federal judge, Chief Judge Edward R. Becker, would not have died of prostate cancer. All of us know people who have been stricken by cancer, who have been incapacitated with Parkinson's or Alzheimer's, who have been victims of heart disease, or many other maladies.

The future of medical research must include embryonic stem cell research. I first learned about embryonic stem cell research in November 1998 and held the first congressional hearing in December of that year. Since that time I have held 19 more hearings on this important subject. Embryonic stem cells have the greatest promise in research because they have the ability to become any type of cell in the human body.

During the 109th Congress, the House companion bill to S. 471, the Stem Cell Research Enhancement Act, was passed by Congress but vetoed by President Bush. The vote to override the veto in the House failed. The legislation would expand the number of stem cell lines that are eligible for federally funded research, thereby accelerating scientific progress toward cures and treatments for a wide range of diseases and debilitating health conditions.

In the 110th Congress, S. 5, the Stem Cell Research Enhancement Act, of which I am a lead cosponsor and is identical to the 109th Congress legislation, was passed by Congress, but a vote to override the veto in the House again failed.

During the course of our stem cell hearings, we have learned that over 400,000 embryos are stored in fertility clinics around the country. If these frozen embryos were going to be used for in vitro fertilization, I would support that over research. In fact, I have provided $3.9 million in fiscal year 2008 to create an embryo adoption awareness campaign. Most of these embryos will be discarded and I believe that instead of just throwing these embryos away, they hold the key to curing and treating diseases that cause suffering for millions of people.

The many research, training and education programs that are supported by the Federal Government all contribute to this Nation's efforts to provide the best prevention and treatment for all Americans. But without access to health care, these efforts will be lost. But with the plan outlined in the Health Americans Act, we can provide health care coverage for the 47 million uninsured Americans. This bipartisan bill is where the health insurance reform debate needs to begin—with a market based approach to reforming health insurance. The time has come for concerted action in this arena. I urge my colleagues to take action on this important issue.

FILLING THE TREE

Mr. SPECTER. Mr. President, as we near the end of the 110th Congress, it is my hope that when we return for the 111th Congress, that there will be more comity and more bipartisanship and more accomplishment than we have seen in this Congress and in prior Congresses. I have spoken at some length on the Senate floor about this subject. I am about to introduce a prepared written text, but the essence of my concern arises because of the practice of limiting the amendments which Senators may offer on the floor and the problems of confirming judges, especially in the last 2 years of a President's administration.

The great value of the Senate on the American political scene, which has earned this august body the title ''the world's greatest legislative body,'' has been the right of any Senator at any time to offer virtually any amendment on any bill. That, plus unlimited debate, has made this Chamber a unique place among modern democracies, where great ideas can be stated, can be articulated, and can be debated, and where, with sufficient debate, sufficient analysis, and sufficient merit, they can attract great public attention. But that has been thwarted in recent years—the last 15 years specifically—by both Republican and Democratic majority leaders so that, as usual, when there is a problem with this institution, there is bipartisan blame.

Senator Mitchell, Senator Lott, Senator Frist, and Senator REID have all used this practice. The first three Senators used it on some nine occasions

each, as detailed in the written floor statement which I am about to introduce for the record. Senator REID has used it some 15 times. The practice has been that the majority leader, who is entitled as a matter of Senate practice to first recognition, takes the floor and offers amendments so that there is a process where no other Senator can offer an amendment. That is called filling the tree. That has resulted, then, in the followup on a cloture motion to cut off debate. Then it becomes a bipartisan wrangle, with one half of the aisle—Democrats—voting for cloture to cut off debate and Republicans, in a partisan context, voting against cloture. I have voted against cloture because as a matter of principle I do not think we ought to end the debate before we have had a debate or before Senators have had an opportunity to offer amendments. That has resulted, as I see it, in gridlock on the Senate floor, so the Senate has really become dysfunctional.

I contrast the kinds of work weeks we have had, with very few votes, to the management of the comprehensive immigration bill during the 109th Congress where we had some 227 amendments filed and some 27 votes, which is the way I think the Senate ought to operate.

Then, beyond the issue of filling the tree and stopping Senators from proceeding with the offering of amendments, we have had the problems of the filibuster. Again, there is bipartisan blame, blame on both sides of the equation.

Mr. President, in the last 15 years, the ''World's Greatest Deliberative Body'' has degenerated into a ''do-nothing Senate'' due to abusive procedural actions taken by both Republican and Democratic majority leaders. The Senate has been gridlocked and has become dysfunctional.

The uniqueness of the U.S. Senate has been that any Senator could offer any amendment on virtually any bill at any time. That opportunity, plus unlimited debate, made the Senate the place where great ideas could be presented to the American people and be debated extensively to provide the basis for legislative changes on public policy to govern the Nation.

That changed in 1993 when majority leaders started using their powers of first-recognition to offer a series of amendments called ''filling the tree.'' This procedure precludes any other Senator from offering amendments to the legislation under consideration. Senator George Mitchell used this procedure nine times in the 103d Congress from 1993 to 1994, Senator Trent Lott used it nine times in the 106th Congress from 2000 to 2002, and Senator Bill Frist used it nine times in the 109th Congress from 2005 to 2006. Thus far in the 110th Congress during 2007–2008, Senator HARRY REID has used the tactic 16 times.

The legislation on global warming illustrates the unproductive nature of this practice. On June 2, 2008, Senator REID called up the Warner-Lieberman bill. On June 3, 2008, I filed and discussed on the Senate floor a series of proposed amendments based on competing the Bingaman-Specter climate change bill. On June 4, 2008, Senator REID used his power as majority leader of getting first-recognition to offer eight amendments which filled the so-called tree thus precluding me or any other Senator from offering any amendments. Senator REID then filed a motion for ''cloture'' to cut off debate on June 4 to set the stage to vote on the bill without any amendments. It then became a partisan issue with Republicans opposing cloture and Democrats favoring it. I opposed cloture to cut off debate since there had been no debate and no opportunity to amend the bill. On June 6,, cloture was not invoked.

Reciprocal finger pointing then began, with Democrats blaming Republicans for stymieing the legislation by filibustering and Republicans responding that the Democrats were responsible for killing the bill. This practice has been used 16 times during the 110th Congress, stopping the Senate from acting on bills such as FAA Reauthorization—H.R. 2881—Lieberman-Warner Climate Security—S. 3036—and the Energy Speculation Bill—S. 3268.

Sometimes, after the tree has been filled, there will be extensive negotiations among Senators to agree on a limited number of specified amendments that both sides are willing to vote on. In part, this is done to limit the time it will take to finish the bill. More often, it is done to eliminate the tough votes where Senators will have to take positions on controversial issues which could be used against them in future campaigns, including 30-second television spots.

As a result of these practices, Senate floor time has been filled with quorum calls where negotiations are in process to limit the number of votes which will be taken or to find ways to resolve the most contentious issues without votes. On many weeks, the Senate has had little floor debate and votes. For example, the following occurred: one vote, April 28–May 2; 3 weeks with two votes, January 22–25, January 28–February 1, and September 15–19; 1 week with three votes September 8–12; 1 week with four votes, June 9–13; 5 weeks with five votes, April 21–25; May 19–23; June 3–6; June 16–20; July 21–26; 2 weeks with six votes, April 14–18; March 3–7.

This inactivity is contrasted with Senate action on the comprehensive immigration reform bill which was debated from May 15 to May 25, 2006, with 227 amendments filed and 27 rollcall votes.

A far better procedural practice is to allow Senators to offer amendments under time agreements. These are agreed to by unanimous consent and allow Senators to have their amendments considered in an expeditious manner. Thus, the Senate can work its will. The public then understands the issues involved and Senators are compelled to take positions by voting. That procedure is obviously totally undercut by the majority leader's filling the tree to abort traditional Senate practices.

To stop the practice of filling the tree and revert to traditional Senate debate and votes, I proposed S. Res. 83 on February 15, 2007, which would have stopped the majority leader from filling the tree. Notwithstanding repeated efforts to get this proposed rule change acted upon, nothing has been done.

Senate action has also been stymied by the use of the filibuster or other procedures to thwart the confirmation of Federal judges. These practices have been utilized by both Democrats and Republicans in the last 20 years. In the last 2 years of President Reagan's administration, 1987–1988, the Democrats failed to confirm 10 district court nominees and 7 circuit court nominees. In addition, the time required to confirm circuit court nominees increased from 195 days during President Carter's administration to 257 days during President Reagan's administration.

Similarly in the last 2 years in the administration of President George H.W. Bush, 1991–1992, the Democrats failed to confirm 10 circuit court nominees and 43 district court nominees. Further, the time required to confirm a circuit court nominee increased from 257 to 319 days during President Bush's administration.

The Republicans retaliated when Senator Lott was the majority leader by refusing to give hearings to President Clinton's nominees or by refusing to have the Senate vote on nominees after they reported out favorably by the Judiciary Committee. At the end of the 106th Congress, 1999–2000, the Senate returned 17 circuit court nominees and 24 district court nominees to the President, and the time required to confirm a circuit court nominee had increased from 319 to 439 days.

In the final 2 years of President Clinton's administration, a Republican Senate confirmed 15 circuit court judges and 57 district court judges. To date, the Democratic Senate has confirmed 10 of President Bush's circuit court nominees and 48 district court nominees. An additional 10 district court nominees may yet be confirmed. President Bush has nominated an additional 9 circuit court judges who have not been confirmed and he has nominated an additional 20 district court nominees who it appears will not be confirmed, assuming that 10 of pending district court nominations will be confirmed. In the 110th Congress, the time required to confirm a circuit court nominee increased from the 439 to 906 days.

The Senate was engaged in an especially bitter controversy from 2003–2005 when the Democrats engaged in 23 filibusters to stop the confirmation of 10 circuit court nominees: Miguel A. Estrada, Richard Griffin, Carolyn B.

Kuhl, David McKeague, Priscilla Richman Owen, Charles W. Pickering, Henry W. Saad, William H. Pryor, William G. Myers, and Janice Rogers Brown. At least four other nominees were blocked by the mere threat of filibuster: Terrence Boyle, William Haynes, Brett M. Kavanaugh, and Susan B. Neilson.

Republicans then threatened retaliation with the so-called nuclear or constitutional option. That plan would have called upon Vice President CHENEY to rule that 51 votes could invoke cloture. That ruling would then be appealed, and under Senate procedure, a majority of 51 votes would sustain the ruling of the chair. In that manner, it was contemplated that at least 51 votes could be obtained from the 55 Republican Senators.

On May 23, 2005, the eve of a vote set for the following day to invoke the nuclear or constitutional option, the so-called ''Gang of 14''—7 Democrats and 7 Republicans—agreed to enter into a compromise to confirm Janice Rogers Brown, William Pryor, and Priscilla Owen, and to reject William Myers and Henry Saad, so there was never a determination as to whether Republicans had sufficient votes to invoke the nuclear/constitutional option.

With the 7 Democrats and the 7 Republicans in the ''Gang of 14'' breaking party lines, there would have been insufficient votes to maintain the filibusters or to invoke the nuclear/constitutional option. With 7 Democrats from the ''Gang of 14'' voting for cloture, there would have been 62 potential votes—55 Republicans and 7 Democrats—to invoke cloture. With 7 Republicans voting against the nuclear/constitutional option, there would have been a maximum of only 48 votes, 55 minus 7.

In order to break the filibuster impasse on the confirmation of Federal judges, I proposed S. Res. 327 on April 1, 2004 and S. Res. 469 on March 4, 2008. These resolutions provided for a 90-day timetable for fair consideration of all judicial nominees with the following benchmarks: within 30 days of the President submitting a judicial nomination, the Judiciary Committee would hold a hearing; within 30 days of the hearing, the committee would vote on the nomination; and within another 30 days, the Senate would hold an up-or-down vote on the nomination. I was willing to modify this timetable; but it would move the issue forward to some compromise timetable.

This rule change would not affect the existing rules that require 60 Senators to cut off debate on legislative matters. It would apply only to judicial confirmations.

The basis for the rule change was that public policy was better served by determining confirmation on professional qualification without engaging in the ''cultural wars'' to elevate ideology over professional judicial qualifications.

As a practical political matter, filibusters have not been used to block Supreme Court nominations, where there is substantial public visibility even though many Senators would like to have done so. The conventional wisdom was that in a high visibility situation like Supreme Court confirmations, many Senators would not support a filibuster unless a good reason could be publicly articulated to do so. With less visible circuit court nominees, that reluctance was absent.

For example, no filibuster was mounted against Justice Clarence Thomas even though there was substantial ideological opposition to his confirmation. Democrats did not have 60 votes to invoke cloture. Justice Thomas was ultimately confirmed 52–48. Similarly there was no effort to filibuster the nominations of Justice Ruth Bader Ginsberg or Justice Stephen Breyer even though there was substantial Republican ideological opposition. Justice Ginsburg was confirmed 96 to 3 and Justice Breyer was confirmed 87 to 9.

During the confirmation hearing of Justice Samuel Alito, the Democrats sought to gain traction about a filibuster trying to associate Justice Alito with the Concerned Alumni of Princeton, an organization which reputedly discriminated against women and minorities. The Democrats' effort failed to secure a subpoena for the Concerned Alumni of Princeton records and informal inquiries found no connection between that organization and Justice Alito. Thus, the effort to muster a filibuster sputtered and was not pursued.

During my travels through Pennsylvania during the August recess, I heard many complaints from my constituents at town meeting about partisanship in the U.S. Congress. The consistent comments were that people were sick and tired of partisan bickering. It is reflected in the public opinion polls which give the Congress very low ratings.

My proposed rule changes would have a profound effect on allowing the Senate to take care of the people's business by eliminating the gridlock and providing for up and down votes in the judicial nominating process based on professional competence and not ideology.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

UNANIMOUS-CONSENT REQUEST—S. 1375

Mr. MENENDEZ. Mr. President, I rise today because there are far too many women in America suffering in silence from postpartum depression and it is time to let them know that they are not alone. It is time to lift the veil of shame and secrecy—this condition is not their fault and they can get help.

The Melanie Blocker Stokes MOTHERS Act would establish the first comprehensive legislation to assist new mothers suffering from postpartum depression and educate women about this disabling condition that affects 800,000 women each year.

It would help provide support services to women suffering from postpartum depression and psychosis and would also help educate mothers and their families about these conditions.

In addition, it would support research into the causes, diagnoses and treatments for postpartum depression and psychosis.

It attacks postpartum depression on all fronts with education, support, and research so that new moms can feel supported and safe rather than scared and alone.

We know—doctors and psychologists know—that there are all too many mothers in need who are suffering in silence. All too many mothers are unaware of the condition and go without the treatment and support they so desperately need.

I introduced this bill because I was inspired by the story of Mrs. Mary Jo Codey—the former first lady of New Jersey—who publically shared her struggle with postpartum depression. It was her courage and strength that helped change New Jersey law—and now, hopefully, will help change our Nation's laws.

But postpartum depression affects women all over this country, not just in my home State, and that is why I was proud to introduce this legislation with Senator DURBIN and work with the support of Senator KENNEDY. I saw the companion legislation of Representative RUSH sail through the House—passing 382–3—and we were all set to pass this bill when one singular Senator signaled his objection, essentially blocked the bill, and the whole process ground to a halt.

One Senator's objections and American women are left without relief and support from a disabling and often undiagnosed condition affecting as many as one in five new mothers experiencing symptoms.

One Senator's objections, and American women are left without this strong program to make sure they no longer have to suffer in silence and feel alone when faced with this difficult condition.

One Senator's objections, and American women are left with few places to turn when they show signs of depression, lose interest in friends and family, feel overwhelming sadness or even have thoughts of harming the baby or themselves.

Many new mothers sacrifice anything and everything to provide feelings of security and safety to their newborn child. It is our duty to provide the same level of security, safety and support to new mothers in need.

We were on our way to taking those steps when a single Senator stepped in and blocked it from happening.

For the millions of American women who have suffered or soon will suffer from postpartum depression we need to pass this bill today.