

happy reward, as I trust, of our mutual cares, labors and dangers.

GEO. WASHINGTON.

HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003—MOTION TO PROCEED

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to the consideration of S. 2061.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, let me welcome everybody back from the Presidents Day recess. I also thank Senator BREAUX and congratulate him on the delivery of George Washington's Farewell Address. He is the 112th Senator to give the address. The first reading of George Washington's address actually occurred on February 22, 1862, during a joint session of Congress and was given by the Secretary of the Senate. Beginning in 1893, the Senate made the reading of the address an annual tradition. And since that time, each year, in an alternating fashion between the parties, George Washington's birthday is observed by the reading of the 7,641-word address. I commend Senator BREAUX for his contribution today.

Today the Senate will begin consideration of the motion to proceed to S. 2061, the OB/GYN medical liability bill. Chairman GREGG is here to manage debate, and I encourage Senators to come to the floor to debate this sorely needed women's health access issue.

Due to objections on the other side of the aisle, it was necessary to file a cloture motion on this pending motion to proceed. That cloture vote on proceeding to the OB/GYN medical malpractice bill is scheduled for tomorrow at 5 p.m. Therefore, there will be additional debate time tomorrow before the vote. However, I know many Members are interested in this bill and hopefully are prepared to speak today. We will have no rollcall votes today. The cloture vote will be the first vote tomorrow.

Over the next few minutes I would like to make a statement on the Healthy Mothers and Healthy Babies Access to Care Act.

Mr. President, our medical litigation system is failing the American public. It is failing our communities, our hospitals, our doctors, and our families. Most importantly, it is failing our patients. Its purpose should be to promote the common good and improve the health care of all Americans through the fair and efficient resolution of meritorious medical negligence

claims. But instead of accomplishing this noble goal, our litigation system is out of control. It is broken. It is causing a health care crisis. Due to this broken system of medical justice, medical liability premiums are skyrocketing. The result: The system is in crisis.

The ultimate victims are the patients who see that their access to care being threatened and in some cases their access to care is disappearing altogether. In addition, this ailing system hurts our Nation even more by directly and indirectly costing us billions of dollars. The situation is grave. It is being brought to the Senate floor because it is grave, because the system is broken, and because the crisis is getting worse by the day. Every day that we talk without acting is a day of continued decline.

We have all seen the headlines of the horror stories of hospitals closing obstetric wards; of trauma centers having to shut their doors because of the liability crisis; of expectant mothers unable to find obstetricians, having to switch from obstetrician to obstetrician because their obstetrician is having to leave town or leave their practice; the stories of doctors dropping services of specialized care; the stories of doctors having to move from a State where the liability premiums are so high that they can't afford it to other States where effective liability reform may have already taken place and they have lower premiums. The headlines go on and on and on. Almost daily there are fresh stories and new victims.

The problems are so severe that Time magazine, in its June 9 cover article, devoted the article and the front page to this very problem. The American Medical Association lists 19 States where access to quality care is in serious jeopardy right now. As a physician, as a doctor, this crisis and the worsening of this crisis really strikes home to me personally. When I go back home or travel around the country and talk to my physician colleagues, they tell me of personal stories that are causing changes in the way they practice medicine. Many doctors consider the current medical litigation system as the single greatest threat to providing patients today with affordable, high-quality health care.

At first, the problem of skyrocketing medical liability costs presents doctors with uncomfortable choices. But in the end, it is the patients who are hurt. It is the patients who suffer. Skills of physicians are redirected. They leave their practice. They are no longer available to give care and patients receive less care. No longer is this a problem of an additional expense of doctors or for doctors all across the country; it is now an issue of health care for all.

What makes this situation so tragic is that highly qualified and committed doctors are literally being forced from their fields of medicine, fields they have devoted their lives to, fields they cherish. We are not talking about a few

bad doctors who are leaving. Rather, we are talking about the very best men and women in the health care field today who have devoted their entire professional lives to healing others. These good men and women don't want to drop these specialized services such as trauma care, delivering babies, working in emergency rooms. They don't want to move from already underserved areas, either urban or rural. They don't want to stop seeing those expectant mothers. They don't want to be unavailable if somebody comes to a trauma center or to an emergency room.

Tragically, and all too often, the current liability system leaves them with no choice. The current system doesn't single out bad doctors or negligent acts or poor quality of medicine. Our medical litigation system has not made medical care in the United States safer or better. In fact, in many cases it has made care just the opposite—less safe.

How? By discouraging doctors from sharing information that could prevent medical errors and by encouraging doctors to order unnecessary and costly tests that sometimes do more harm than good. The exploding costs hit almost all doctors and hurt patients by driving up unnecessarily the cost of medical care of everyone who is listening to me right now. Your health care costs are higher because of these unnecessary and frivolous lawsuits. You are being affected. Our current medical litigation system is the root cause of this crisis. It is an inefficient system that is full of perverse incentives. The current system hurts everyone seeking access to quality and affordable health care, and it hurts the very negligently injured patients it is supposed to be helping.

The system encourages lawsuit abuse by rewarding trial lawyers who file huge claims in friendly venues in search of the big payout. These lawyers often pocket up to 40 percent of any settlement or any payment the injured patients receive. That is 40 cents on the dollar that the trial lawyer pockets that does not get to that injured patient.

At the same time, many of the negligently injured patients—those who deserve to be compensated—never receive any compensation at all because their legitimate claims are too small for that personal injury lawyer who is out there looking for his or her big payday.

(Mr. ROBERTS assumed the Chair.)

The system compensates a few at the expense of the many. The effects of these massive suits are staggering. Between 1995 and 2002, the average claim payout for medical malpractice jumped 83 percent. Between 1997 and 2002, the percentage of medical malpractice payments of a million dollars or more more than doubled.

The mere threat of huge jury awards forces many doctors and insurance companies to settle cases for large amounts, even if they are not guilty.

The current system encourages frivolous lawsuits, unnecessary lawsuits. Most of the cases filed in U.S. courts are without merit, with almost two-thirds being dropped or dismissed; that is, two out of three are being dropped or dismissed. Only 1 out of 20, or 5 percent of cases, actually go on to trial, and a staggering 80 percent of those cases are won by the defendant. These numbers are clear evidence of the rampant abuse of the current system, and the system must be reformed.

It should be no surprise that this excessive litigation is forcing malpractice premiums to rise dramatically. In 2002, physicians in many States saw their premium rates rise by 30 percent or more. In some States, for some specialties, malpractice insurance is rising by as much as 300 percent per year.

We debated this issue last July with a comprehensive bill, S. 11, the Patients First Act. That broad, comprehensive reform measure was designed to put our medical litigation system back to work for all Americans. Bringing the bill forward in July was the first time that the Senate had ever considered comprehensive medical litigation reform as its own freestanding bill. Unfortunately, the measure was never fully debated, as opponents of reform blocked it by filibustering the motion to proceed.

Since that time, the horror stories have not stopped. In fact, they have increased. Because this issue is so critical to the health of Americans, and because this crisis continues to escalate, we will try once again to address it on the floor of the Senate.

This time, instead of bringing up a broad, comprehensive bill and letting it suffer from the same political attacks as before, we have narrowed our focus on one of the groups most severely hurt by the crisis, obstetricians and gynecologists. More importantly, we want to focus specifically on the health care needs of women and children and babies. The underlying bill, the Healthy Mothers and Healthy Access to Care Act of 2003, is narrowly tailored to focus on obstetricians, gynecologists, and other doctors who perform these services. In the more narrow scope, the reform measures are almost identical to the ones in the more comprehensive bill, S. 11.

OB/GYNs, by the very nature of their work, are a higher risk specialty group, so it is understandable that their liability premiums would be somewhat higher than lower risk doctors. However, the amounts that OB/GYNs are paying throughout the country for liability insurance today are staggering. For example, locally, in Virginia, OB/GYNs are paying up to \$84,000 in medical liability premiums per year. At the outset, I will say all OB/GYNs have to have liability insurance. Today, all physicians have to buy medical liability malpractice insurance to practice. Locally, it is \$84,000. In New York, they are paying up to \$124,000 per year. In

Pennsylvania, they are paying up to \$153,000 per year. In Florida, OB/GYNs are now paying up to an astonishing \$250,000 in premiums each and every year to stay in the practice of delivering babies. That is a quarter of a million dollars every year that obstetricians are paying in Florida.

I wish to stress once again that these are payments the doctors are making merely to purchase the liability insurance. Whether or not they have ever had a case brought against them, whether or not there has ever been a medical error or mistake made at all, this is what many obstetricians are having to pay in these States. There is no added value in that \$250,000 to health care. These payments are not helping the patients live better lives or receive higher quality of health care, and these amounts are not being paid just by a few bad doctors. They are being paid by doctors who have never been sued, who are the best in their profession, who have dedicated their lives to helping women and children.

Because of these skyrocketing premiums and the constant threat of litigation, many obstetricians are leaving their practice because they simply cannot afford it. Who can blame them? If an obstetrician delivers 100 babies a year, and let's say just in Florida they are paying \$250,000 for that opportunity to deliver babies, that is a tax of over \$2,000 each time that obstetrician delivers a baby. If you are a mother listening, or an expectant mother who is getting ready to go in the hospital, I am saying that there is an additional \$2,000 tax that the doctor is paying, which may well be passed on to you because somebody has to pay it. That is money that doesn't add to the care of your baby, or to the care of the delivery, or to the safety of the delivery, or to health care itself.

Women living in rural areas have an additional problem. They are finding now that there are too few doctors to deliver the babies in these rural communities. By now, most of my colleagues have heard the horror stories of women having to drive hours just to see an obstetrician, or in the course of a 9-month pregnancy, having two, three, four, or five obstetricians because many doctors are having to leave either a region or the practice altogether. A June 9 Time magazine article tells the tragic story of an expectant mother in rural Arizona having to drive 2 hours on a desolate highway just to see a doctor.

This should not happen in America. We should be encouraging physicians to practice in rural, underserved areas, not chasing them away with the threat of frivolous lawsuits. It should be no surprise that the American College of Obstetricians and Gynecologists is one of the strongest supporters of meaningful medical liability reform. Of course, they support this narrowly tailored bill. Their primary concern is women's access to affordable, quality health care. They are uniquely situated to un-

derstand the threat the current system has placed on women's health and babies' health, and they are demanding action by Congress. They will not tolerate filibusters or blocking this issue. I urge my colleagues to listen to their unique concerns.

In a statement to the Senate Judiciary and HELP Committees last year, the American College of Obstetricians and Gynecologists very clearly outlined the problem facing women. They said:

An ailing civil justice system is severely jeopardizing patient care for women and their newborns. Across the country, liability insurance for obstetricians-gynecologists has become prohibitively expensive. Premiums have tripled and quadrupled practically overnight. In some areas, OB/GYNs can no longer obtain liability insurance at all, as insurance companies fold or abruptly stop insuring doctors.

When OB/GYNs cannot find or afford liability insurance, they are forced to stop delivering babies, curtail surgical services, or close their doors. The shortage of care affects hospitals, public health clinics, and medical facilities in rural areas, inner cities, and communities across the country.

These are the words of the American College of Obstetricians and Gynecologists, the ones on the front line in women's health care today.

The system is broken. The system is hurting women and babies today. This was very clearly spelled to the Senate Judiciary and HELP Committees last year.

I have a series of letters from doctors in Tennessee and, indeed, from around the country. At the appropriate time, I will enter several of these letters into the RECORD rather than take the time now because there are Senators in the Chamber who wish to debate this particular issue. Let me simply say that as a physician, as majority leader, as a representative of the people of the great State of Tennessee, I have letters from Paris, TN, from Athens, TN, Shelbyville, TN, from Memphis, TN, from obstetricians who are basically saying there is a crisis going on and asking that we do something about it.

I do hope the opponents of reform at least acknowledge the severity and gravity of the problem and don't run from it once again. We must acknowledge the symptoms of the crisis before we start to address its cause. Unfortunately, these horror stories are truly just the tip of the iceberg of the problems caused by our broken litigation system. The system costs our country directly and indirectly billions of dollars—wasted dollars, I would argue—each year. These costs are the sort of costs that don't find their way into letters to us as elected officials or into newspaper articles, but they hurt the American people.

The fear of these outrageous lawsuits forces doctors, for example, to practice defensive medicine. Slowly, but surely, people are understanding what defensive medicine is. As a doctor, I know these pressures all too well.

In order to avoid lawsuits—frivolous lawsuits—and to make sure they would

be fully protected in the event they were called into question by an unnecessary or frivolous lawsuit, we find extra tests and procedures are ordered. They are unnecessary to the care of that particular patient or that particular patient's problem. It is a waste. Yet the system we have today incentivizes those unnecessary tests.

These extra steps add little, if anything, to the quality of health care, but they add a lot to the bottom line of health care costs because hundreds of thousands of doctors actually order these unnecessary tests. The cost adds up.

We all hear of the \$700 CAT scan or MRI scan for a routine headache that an emergency physician orders simply out of practicing defensive medicine. It is no surprise to me that surveys show 75 percent or more of doctors acknowledge practicing defensive medicine.

The exact number is hard to calculate, but reports have put the cost of defensive medicine at tens of billions of dollars per year. When you realize that three out of four doctors frequently order tests or procedures, these total dollar figures, indeed, are realistic. In fact, a recent Government report estimated reasonable liability reform would save the country health care costs of \$70 billion to \$126 billion per year in defensive medicine expenditures.

In addition to these massive indirect costs, the Federal Government would save over \$14 billion directly over 10 years with comprehensive liability reform, according to the Congressional Budget Office. The CBO attributes most of these savings to the Medicare and Medicaid programs which would experience lower health care costs. The Federal Government would also realize savings from lower costs of health care benefits for Federal employees.

The current medical litigation system also impedes our ability to improve patient safety. The threat of excessive litigation by unscrupulous lawyers discourages doctors from openly discussing medical errors in ways that, if that discussion could take place, would dramatically improve health care delivery in this country.

These facts were outlined and well documented in the 1999 Institute of Medicine report "To Err Is Human." That is why in addition to the reforms in this bill which hopefully we will be considering on the floor of the Senate, most of us are strong supporters—or we should be—of S. 720, the Patient Safety and Quality Improvement Act. This is vital legislation that will encourage a culture of safety and quality by providing for voluntary reporting of patient safety data without the fear of being sued.

Some of the opponents of the legislation we are debating today will try to confuse the medical malpractice issue with patient safety. If you listen closely, you will hear them say, in effect, that we need to maintain our broken medical liability system in order to re-

duce medical mistakes. Do not be misled. This argument amounts to nothing more than defending the status quo. In fact, as the IOM has said, and as we know from adopting voluntary reporting and learning systems in other contexts, such as in general aviation—more lawsuits don't improve quality—they make matters worse.

Our health care system must put a greater emphasis on preventing medical errors, not hiding or suppressing these errors due to fear of lawsuits. To create such a system, we must pass both patient safety legislation and litigation reform. And I am committed to passing patient safety legislation too. It is now being blocked by at least one Senator on the other side of the aisle despite the fact that it has passed the HELP committee unanimously.

Fortunately, we know how to address the cause of the crisis because reform measures have already succeeded at the state level. The Healthy Mothers, Healthy Babies Access to Care Act is based on these reforms. It is a common sense measure that will restore balance to our broken litigation system in the narrow area of OB/GYN services. It will protect the right of the negligently injured patient to sue for just compensation while curtailing lawsuit abuse. Though this bill has a narrow scope, it is comprehensive reform with several critical components. Let me briefly mention just a few key provisions.

The bill ensures that injured patients will receive a larger percentage of their award by limiting attorneys contingency fee to a reasonable sliding scale. For awards over \$600,000, lawyers can keep 15 percent of any payment. Currently, lawyers in many states can take up to 40 percent of all awards and settlements, leaving the injured patient grossly undercompensated.

The bill places a statute of limitations of three years on bringing a suit. This ensures that a suit will be brought in a timely manner and evidence preserved.

The bill controls excessive awards for noneconomic damages by placing a \$250,000 cap on these types of awards. Noneconomic damages are subjective awards for pain and suffering that cannot be easily quantified. They contribute greatly to the personal injury lawyers' lawsuit abuse. Of note, the caps contained in this bill are "flexible" and do not preempt state law. Thus, if a state has already defined a different cap on noneconomic damages or subsequently passes a different cap—whether higher or lower—that State designated cap prevails.

At the same time, the bill ensures that negligently injured patients will receive full economic damages. Economic damages are the out-of-pocket expenses that a victim might suffer due to a doctor's negligence, such as hospital costs, doctor bills, long-term care, other medical expenses, and lost wages. When a patient is negligently injured, they deserve full economic recovery.

Experience at the State level clearly shows that comprehensive medical liability reform works. The Healthy Mothers, Healthy Babies Access to Care Act is modeled after California's Medical Injury and Compensation Reform Act, or MICRA, which became law in the mid 70's. Thanks to MICRA, California doctors and patients have been spared the medical liability crisis that other states are facing. You simply don't hear the horror stories about OB/GYNs quitting their practice or women unable to find an obstetrician in California. This is true despite the fact that it is a big State with a high cost of living. In fact, since MICRA passed, total insurance premiums paid in California have risen by only 167 percent while total insurance premiums paid for the rest of the country have risen by 505 percent—more than three times as much.

Over the next day or two as we discuss this bill, opponents of reform will likely go to great lengths to blame the current crisis on insurance companies, the stock market, the bond market, doctors, hospitals and on and on. I fear we will hear this crisis blamed on just about everyone and everything except for the true cause—the current litigation system. The system is broken. This broken system is hurting patients and now is the time to fix it.

I urge my colleagues to support the Healthy Babies, Healthy Mothers Access to Care Act. This narrowly tailored, commonsense reform of our broken and inefficient medical litigation system will be a big step in improving our health care system for all Americans. Passage of this measure will help ensure access to quality health care for women and babies, protect negligently injured patients, and save our country billions of dollars in health care costs every year.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The highly competent clerk will now report the motion to proceed.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 2061, a bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

The PRESIDING OFFICER. The distinguished Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for up to 4 minutes.

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

(The remarks of Mr. STEVENS are printed in Today's RECORD under "Morning Business.")

Mr. STEVENS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I join with my colleague from Alaska in congratulating Senator John Glenn on the honor he received.

I am rising today, however, to speak about the bill which is hopefully going to come before the Senate and on which the majority leader has been so eloquent, as he often is. Especially when there are issues concerning the care for other people, the majority leader has truly established a record that is unique, certainly in the Senate, with the hands-on experience of physically saving lives as a result of his skills as a surgeon and a doctor. He has decided to bring to the Senate the issue of how we make sure women in this country have adequate access to doctors, especially during that period in their lives when they are delivering children.

I personally cannot think of anything more important to our culture than babies. If we were to pick one event in the life of a citizen of this country—or I suspect anywhere in the world—that really is an event of great wonder and alters a person's view of the world and how they work with the world, it is when one has a child. Certainly they want to make sure their children are delivered in a safe way and with the best medical help that can be obtained.

This is why this bill is so important, because trial lawyers do not deliver babies. Doctors deliver babies. If we do not have enough good doctors dealing with women who are about to deliver or who are becoming pregnant or who believe they wish to have a child, and to deal with them in a manner which allows women to have ready access so that they do not have to drive miles in order to see their doctor or they do not have to wait days in order to see a doctor because there are not any available, if we do not have that structure in our society then we put at risk our ability as a society to have healthy children and to have mothers who are comfortable and feel safe about the experience of childbirth. That is something that is serious.

Regrettably, that is where we have arrived as a society. Whether we like it or not, we have arrived at a time where women in this country are at significant risk of not being able to see a baby doctor because the baby doctors in this country are being driven out of the business by the cost of their errors and omissions insurance. That insurance has skyrocketed dramatically in the last few years as a result of lawsuits, and further in my statement I will get into some specific statistics that will show why these lawsuits are occurring and what their impact has been on the actual ability of doctors to practice, in a statistical term.

All of us who work in this area of trying to address the concerns of getting women decent access to doctors so they can have children safely have heard stories and anecdotes which are so regrettably consistent in the sadness of the tales that there has to be a great deal of truth to them. It is also supported by the numbers and statistics.

Last week I had the chance to meet with four obstetricians in New Hampshire. Two of them had to get out of the business of delivering babies. It was the favorite part of their practice. They were OB/GYNs. The cost of their insurance had increased so dramatically they could no longer afford to go into the operating room and deliver a child. Neither of those two doctors had ever had a claim against them relative to the children they had delivered before they gave up the practice, and they delivered quite a few.

Two of the other doctors were still delivering babies, but they had significantly curtailed their practice or their practice had been dramatically impacted by the cost of their insurance. One doctor told us everything he earned in the first 5 months of his practice every year went to pay his insurance premiums relative to a potential claim against him, and he never had a claim against him personally. There had never been a claim. Yet his premiums had jumped over 100 percent in the last 3 years. He was finding it very difficult to stay in the business of delivering children, but because he was the only doctor in that part of our State who was really doing that, he felt a social obligation to continue delivering babies, as well as the fact that he personally loved the practice of delivering babies. It was getting to a point where he was not sure how much longer he could do this.

Also at this meeting there were two doctors who should have been there but were not because they had left the practice. They were two doctors from northern New Hampshire, which is a rural part of our State. They are no longer practicing and delivering our children. As a result, there is no doctor in northern New Hampshire today who delivers babies. There is no OB/GYN because they have been driven out of the practice of medicine. Those two doctors have left the practice in that area. One moved to another State and the other simply dropped the business of delivering babies.

The stories go on. They are real and they impact real people. In order to see a doctor, a woman in northern New Hampshire today who is pregnant has to now drive from Colebrook, NH, probably down to Hanover, NH, or at least down to Littleton at the closest, which is a long drive. It is a curvy road and in the winter it is a difficult drive. Even though people are comfortable driving in the winter in New England and in New Hampshire, we can get some serious snow and ice and it can be very testy and sometimes one cannot even get through because the snow cannot get removed in time or it is too heavy. So that woman is at risk, and it is not just in New Hampshire.

This is a photograph of a woman from Arizona named Melinda Sallard. She was forced to drive about 45 miles in order to deliver her child. In the first 2 blocks, they drove by the hospital that was next door to their house,

but there was no OB/GYN doctor there because they had given up the practice, so she had to drive 45 miles to the hospital. On the way, she had the baby in Arizona. The baby's heartbeat had actually stopped while she delivered it in the car, and while her husband kept driving to the hospital, she was able to start the baby's heartbeat again and the baby survived. Now we see the photograph, but it was risky and it was traumatic. She should have had a doctor in the hospital that was almost next door to her house, but she did not. She did not because the doctors in that hospital had to give up the practice.

We have Dr. Schmitt, one of the best doctors in North Carolina, according to the patients who saw him deliver babies, who loved the practice, but because the cost of his insurance went up so much as a result of the potential of a suit, of which I understand he had never had any, he had to give up the practice. This is a picture of the doctor and I think just about the last child he delivered. The child is not very happy about being the last child he delivered. He does not have a smile on his face. He wanted the doctor to deliver other children. Dr. Schmitt had to give up the practice. He actually moved because he could not maintain the premiums that were driving up costs so extraordinarily.

What is causing this? Essentially, it is being caused by lawsuits, many of them frivolous. In fact, there is a statistic that says only 4 percent of the lawsuits against OB/GYNs have a recovery. The rest are frivolous—not all frivolous, maybe, but the majority are. The rest don't lead to any recovery at all. But as a result of those 4 percent of lawsuits getting astronomical recoveries, the whole pool of coverage costs for all baby doctors has increased so dramatically that they have been driven out of the business or they have been put in a position where they can no longer deliver children in a manner which is either fair or accessible for many women.

We are at serious risk of having this discipline so contracted that we will end up rationing care in this area, which could be very serious and unfortunate for women. It is a function of the fact that our legal system has run amok relative to baby doctors and the women who need to see those baby doctors. I have heard our candidates from the other side of the aisle, both of whom are Members of this body—I have heard Senator KERRY say: I have spent my career fighting against special interests. I think he has said that almost every day, but that is a direct quote from the newspaper where he said it in Boston. "I spent my career fighting against special interests."

Where is he fighting for these women? Where is he when these women want to see a OB/GYN and they can't? I suggest maybe he is fighting for the special interests on the other side of the coin, those who are the trial lawyers. For some reason the trial lawyers

appear to have the ear of the majority—not the majority but of enough so we cannot even hear about this bill on the floor much less vote on it. We should at least be able to take up the bill. But, no, no, the trial lawyers aren't going to let us take up this bill. We are not even going to be allowed to debate it on the floor and have votes on amendments.

Maybe some who spent their career fighting special interests could come down to this floor and explain that one to me. Explain to me why Dr. Schmitt isn't practicing medicine anymore. There is somebody who needs someone to fight for him. Explain to me why Mrs. Sallard had to drive 45 miles and have her baby in the car. Explain to me why we don't have a doctor in Colebrook, NH, who will deliver babies or see people when they want to have babies. Explain that to me if you want to talk about fighting special interests or maybe come down and explain to me why trial lawyers are right. Then you say you fight against special interests. There is an irony there.

I have heard Senator EDWARDS say: "I want to make health care a birth-right for every single child born in this country." That is Senator EDWARDS in the Des Moines Register—"every single child born in this country." Senator, come down and explain to us how children are going to be born if their mother cannot see a doctor. What type of risk is that child going to be at when they are born if the mother cannot see a doctor in Colebrook?

This bill is being held up because there are interests out there that do not want to bring this issue to the floor of the Senate even for debate. They just want to stiff-arm it on behalf of an interest in this country which believes that it should have the right to bring these suits but has, as I said, 96 percent of them thrown out of court and in the same manner throws out of the delivery room the doctors, throws out the women to be on their own to look for a doctor miles away, at great inconvenience.

This is a battle of special interests. My special interest in this one happens to be babies and mothers. Somebody else's special interest happens to be the trial bar. I am happy to defend this special interest, babies and mothers, on the Senate floor today. I would like to know why the other side is not willing to let us have this bill come forward.

Let's get into some specifics about the size of the problem. The next chart we have shows the cover of Newsweek, which ran a very good piece on "Lawsuit Hell, How Fear of Litigation is Paralyzing Our Professionals." Right in the middle is a doctor. It could be a midwife. Remember, midwives are as much affected by this as doctors. But essentially it is those people you see when you most need them, and especially if you are a woman and you want to have children. That person's career is paralyzed, and as a result of their career being paralyzed, our ability to get

adequate health care is paralyzed. It is a good story. I recommend it to everybody.

I want to make the point this is about women and it is about women's right to access decent health care. So speaking on behalf of that special interest—I know Senator KERRY is fighting against special interests, and he is probably fighting against this special interest, but I want to put something on the record. I don't want to put it in the RECORD because we will ruin the RECORD, but I want to mention that we have 85,000 petitions. Eighty-five thousand women have signed petitions asking that we at least consider this bill, where we at least get a vote on whether or not their doctors can have some protection. Eighty-five thousand women want to see a doctor, want to be safe when they get into those child-bearing years. They want to have the opportunity to have safe medical care.

So we have brought those petitions here today. I am obviously not going to put them in the RECORD. I don't want the American taxpayer to have the expense of printing this. But I want to make it clear this is about real people, women who need health care, and especially need it when they are about to have children.

The extent of this crisis is significant. It is not limited to New Hampshire, although New Hampshire has a very definite problem. The American Medical Association has developed this chart which basically color-codes States on the effect of the medical liability crisis on the availability of doctors. There are a number of States in this country where it is getting to be critical, where you are in a crisis mode if you want to see a doctor because you may not be able to see one. Those are the States in red.

If you recall, in West Virginia the doctors actually weren't available for some time because of that issue. In Pennsylvania the same problem arose. It arose in State after State, large States with large populations: Florida, Texas, Pennsylvania, Ohio, Missouri, and smaller States, too, such as Wyoming. Every one of those red States is in crisis. That means there is a real problem, that you may not be able to see a doctor when you want to have a child or getting to see that doctor will be difficult.

The yellow States are the ones moving toward crisis. This is not an abating problem; it is a growing problem. Only the white States, and there are very few of them, have been able to get their acts together, and we will find out why in a few minutes when we start talking about what States have passed limitations on liability insurance, and that being the issue.

I want to take a specific look at a specific State which is in crisis: New York. New York State—I just picked New York out arbitrarily—is in crisis. This is for baby doctors. There are seven counties in New York where there are no obstetricians, where, if

you are an expectant mother and you want to go see a doctor, you cannot stay in the county you are in. Some of those counties have a fairly high delivery rate: 200 in this county, 289, 215, 322 children. This is on an annual basis.

Then there are a number of other counties which only have one obstetrician, and some of those counties have even larger numbers of delivery rates. So you are dealing with some people who are having to drive a heck of a long way in order to see a doctor. And New York State can get pretty cold and snowy, especially around Buffalo and Syracuse, where, as far as I can tell, it always snows except for in June and July. In any event, it can be hard to drive if you are an expectant mother. You can be under a lot of pressure to get to those doctors.

It is not that they can't practice in those counties; it is that they cannot afford to practice in those counties. Why can't they? This problem is a uniquely rural problem in some ways. In order to pay that insurance premium, which is so high and has gotten so extraordinarily high over the last few years—in order to pay that premium you basically have to deliver a lot of babies.

If a doctor has a practice in a rural area, not generating a huge amount of births, then you cannot work hard enough or deliver enough births to pay your premium. The doctor I mentioned from Laconia, NH—by our standards a fairly populous area of our State; not overly populated but a fairly decent community—has to work 5 months to pay just his insurance premium. If he were working in Colebrook, obviously, he would have had to work all year to pay the insurance premium and then he would not have earned enough to pay the premium. That is why we have no OB/GYN in Colebrook, NH. There are not enough babies being delivered. The premiums have gone up so radically they cannot afford to continue to practice.

I am sure there are a lot of places in the Presiding Officer's State of Kansas which have the exact problem. I know parts of Kansas are reasonably rural. Those folks probably have to drive a long way to see a doctor. Kansas is a big State compared to New Hampshire. It is flat, so it is an easy drive, but still it is a long drive.

Let's talk about some of the statistics so this is not just anecdotal: 72 percent of the OB/GYN doctors in Pennsylvania surveyed have changed their practice to reduce their liability—that means they have stopped delivering babies; 75 percent of the OB/GYN doctors in West Virginia, as well; 71 percent in Kentucky. There are dramatic drops in doctors willing to deliver babies or do any high-risk procedures at all.

OB/GYN doctors in New Hampshire experienced a 100-percent increase in premiums within 3 years. That is a staggering number. As I mentioned earlier, only 4 percent of the lawsuits

brought relative to OB/GYN practices actually lead to recovery. That is staggering because it shows there are a lot of frivolous lawsuits.

What is the way to resolve this? There are a lot of moving parts in the health care question. I am not saying the only issue that affects costs that the OB/GYN doctor incurs during their practice is the liability issue, the insurance issue, the issue driven by lawsuits which have no relationship to a doctor's practice because the doctor has never been sued. There are other factors. There is technology, hospital associations, all sorts of factors. Obviously, the insurance industry has gone through some significant adjustments, especially in the rate of return on investments as a result. But we know the single most significant factor by far is the increase in costs of the insurance policy. That is the item that is most affecting the ability of the doctors to continue to practice.

We also know those States which have taken action in this area have actually been able to control the costs so the doctors are no longer feeling pressure at that level. The best example is California. Liability reform occurred in California, with caps, in 1977. As a result, in the California cost increase experience, premiums have gone up 182 percent compared with the rest of the United States, which has gone up 573 percent. The chart shows the difference. It reflects the fact that if you put in a responsible approach to premiums to liability insurance, you can control the rate of growth of the cost and, as a result, you can create more availability of doctors and more affordable health care.

This chart shows that reform works. The bottom line reflects obstetrics. The first two areas, Los Angeles and Denver, have in place laws which limit recovery in the area of pain and suffering. Their basic premium for a policy of \$1 million/\$3 million is \$54,000 and \$33,000. The next four jurisdictions do not have those laws: New York, Las Vegas, Chicago, and Miami. Premiums in Miami are almost four times higher than Los Angeles, which would be a comparable city, and about seven times higher than Colorado; Chicago, two times higher; Las Vegas, two times higher; New York, 1½ times higher than Los Angeles; two times higher than Denver. That reflects the fact that if you put in responsible reform in the area of liability insurance you can control those premium costs.

What is responsible reform? It is reform that addresses the primary concerns of a person who is injured but also addresses the fact that we have a large number of frivolous lawsuits being brought and a large number of lawsuits leading to extraordinary recoveries, which costs are being passed on to all the OB/GYN baby doctors in this country. As a result, baby doctors who have absolutely no history of malpractice are forced out of practice and mothers are not able to see their doctors and are being limited in access.

This bill tries to address that. First, it says right off the top that a State has the right to make a decision on what the cap will be. We have essentially addressed this issue of States rights. We put in a cap that if a State wants to go above it they can go above it; if they want to go below it, they can go below. We also say there is no limitation on recovery for medical costs.

There was a recent decision where, unfortunately, there was a severe injury and the child would need medical care for years. The bill came to something like \$18 million. That would be an award that could occur if that was the child's medical costs; that could be recovered—whether \$18 million, \$10 million, \$5 million, even more, \$20 million. Hopefully, that will not happen too often but if it does the parents have a right to that recovery.

As to lost compensation, if the mother is injured and there is a loss of compensation, if she has a job that she can no longer go back to or is limited in her ability to get a job, there is absolutely no limit as to what the recovery is relative to her compensation. If she is going to have a lifetime expectancy earning of \$10 million, discounted to whatever that is, she gets that recovery.

What we do not have in this bill, or what we try to cap because this is where the costs have gone out of control, this is what is driving the premium rates, is a limit on pain and suffering, which is basically the money that is thrown on top. Pain and suffering is what a jury feels when they hear a sad story that they think deserves an extra bonus award. That is limited to \$250,000 under this bill. That is a reasonable limit. Most States are at that number that have acted in this area. But if a State wants to go above that area, it can step out of that and pass a higher amount.

The practical effect of this bill, should it pass, is that the 85,000 women who have written to us, the literally hundreds of thousands of women who are worried whether they will have a good doctor to see or even whether they will be able to see a doctor or whether they will have to drive many, many miles to see a doctor, putting themselves at risk, those women's concerns will be addressed to some degree because we will make practicing medicine in the area of delivering babies affordable again. We can get a doctor back in Colebrook. A doctor will not have to work 4 or 5 months of the year just to pay his or her premium. Doctors who love to deliver babies in Dover, NH, will be able to get back into the business of delivering babies because they will be able to afford the premium.

That is what this is all about. It is about giving women the opportunity to have access to good doctors who can deliver babies and have those babies be healthy. Why we are not even going to be allowed to vote on going to this bill is beyond me, but that, I understand, is

a position the Democratic leadership has taken. It seems ironic in the face of Senator EDWARDS' statement, which I will read again, as the potential standard bearer of his party: "I want to make health care a birthright for every single child born in the country."

It is going to be hard for children to be born if they cannot see baby doctors. I do not understand why we cannot at least debate this issue on the Senate floor and have a vote on it. Senator KERRY would appear to want to do this because he wants to fight special interests. Well, I want to promote this special interest—which is children, mothers, expectant mothers, and doctors who deliver babies. So if the other side wishes to oppose those three constituencies, that is their choice. But I think they need to explain to us why it is good for a mother, good for a baby, or good for a baby doctor that the practice of medicine is being curtailed in this country in the very critical discipline of obstetrics.

Mr. President, I understand the Senator from Vermont wants the floor so I yield.

The PRESIDING OFFICER. The distinguished Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Kansas, the Presiding Officer. And I thank my friend from New Hampshire for his usual courtesy in allowing me to have the floor. I will talk about the same issue.

I am really disappointed there seems to be politics being played in this medical malpractice insurance debate. I feel a little bit like Claude Rains in "Casablanca." I feel like saying: I am shocked—shocked—in an election year we may find politics being played on what we all acknowledge is a serious matter.

What we have before us is a one-size-fits-all bill. It is a one-size-fits-all bill for a problem that varies greatly from State to State. This bill would actually encroach on the rights of every State—my State of Vermont, the distinguished Presiding Officer's State of Kansas, the State of New Hampshire, all others. It would yank away from our States legal rights and legal responsibilities they now have. And if history is any kind of a predictor, they would take those rights away forever. I think we have to show great care in the Senate when we want to so trample the rights of our individual States.

The American public assumes the 100 Members of the U.S. Senate—if they are going to do something to drastically change the lives of people in all 50 States, if they are going to drastically step in and set aside the legislatures of the 50 States—would do it only after careful consideration. But instead we have short-circuited our own procedure. Usually, when we have a bill, as everybody knows from civics 101, it is introduced, it is sent to the appropriate committees, hearings are held, debate is held in the committees,

amendments are voted on, and then it is sent to the floor—but people have had a chance, both for and against the bill, to come in and testify.

Certainly, the Governors of the various States would have a chance to come in and say either we want you to just trample our rights and trample our legislature, trample our own authority or we do not. In this case, that did not happen. In this case, the bill was just written up in a couple lobbying shops down on K Street and brought up here for people willing to introduce it at the request of those lobbyists. And instead of letting States find solutions that are best for their citizens, the Republican majority prefers this attempt to tally points on some election year political scoreboard for what are powerful special interests, but they are going to do it at the public's expense.

Instead of looking at the big picture, the overly broad antitrust immunity that the insurance companies get, or the fact that a lot of insurance companies made a lot of poor calls in the stock market and lost a lot of money and are now saying, well, the doctors can pay higher premiums to pay it back—instead of looking at ways to reduce medical errors so there would be less suits—what they have said is that we have to help these big insurance companies—not help the individual States, not help the people involved. We will help the insurance companies.

No matter they are unwilling to clamp down and ask for higher medical standards, no matter they have lost billions playing the roulette wheels in the stock market, no matter they do not want to debate, it is an election year and their lobbyists came up and said we really want this bill, so here it is.

Here is a bill that would take a chain saw to the legal rights of the American people and to the prerogatives of each of the 50 States that we take an oath to represent in the Senate. It has been tried before. It did not work. This time the bill is limited to obstetrical and gynecological care. Actually, it is not just making sure the insurance companies are helped out. But what the majority says and what the lobbyists say is they want to limit the legal rights of the most vulnerable patients: mothers and infants. It is unfortunate because we do have a health care system that is in crisis. We hear that so often that the force of it tends to diminish, but that truth is one we have to confront. The crisis is one that has to be tackled and solved.

Dramatically rising medical malpractice insurance rates are forcing some doctors to abandon their practices or to cross State lines where it might cost less. So many times, of course, these insurance rates have gone up even though there have been no cases that would indicate why they have.

Patients who need care in high-risk specialties, such as obstetrics, and pa-

tients in areas that are already underserved, such as many rural communities in my State and the Presiding Officer's State, are too often left without adequate care.

What I find amazing is that here we are, the richest and most powerful Nation on Earth, and instead of simply being able to do what most Democratic nations do—that we would assure access to quality health care for all our citizens—we are saying: No, we will allow our doctors and our providers to be driven from their calling by the manipulations of some of the insurance companies.

That is why I was hoping we would have a real debate, we would have real hearings, to find out what is happening, that we would find out what happens when you give antitrust immunity to the insurance companies to set rates however they might want.

Different States, though, have different experiences with medical malpractice insurance. Many of these States are not seeing rates skyrocket, but the State's insurance remains largely a State-regulated industry. Are we going to say that even for those States that have much lower insurance rates, we are going to say, tough, no matter what you have been doing, no matter what you did to make things work right, tough, because we are going to throw that all out. We are just going to wipe you off the books. We are going to wipe off your State control because we, the 100 Members of the Senate, understand it so much better than you possibly could. We know so much better than your 50 Governors, your 50 legislatures, and we know it so well we are able to do this without any hearings, without any discussions, without any work from the outside?

We are able to do it because we are U.S. Senators. And we know that what was handed to us by the lobbyists when they drafted this bill must be right because, after all, they come to our fund-raisers.

I don't think it should be that way. I don't think that my own State of Vermont should be set aside when our Governor and our legislature are working to try to find the best solution for our small State.

I think of the one time we did have a hearing on this in the Senate Judiciary Committee—not this bill but a predecessor bill—when Linda McDougall came here. It was pretty tragic. She told us that she had had a double mastectomy because they made a mistake. She wasn't supposed to have had any mastectomy, but somebody read the papers wrong and that is what happened.

If the Senate is able to pass this bill and get it signed into law, she would still be allowed to recover, for what was gross negligence, a total of \$250,000. That is about what Senators make in around a year and a half. Which do you think she would rather have? Would she rather have her body back intact or the \$250,000? Please.

Arbitrarily limiting injured patients' remedies under the law without addressing systemwide medical errors that result in patient harm and death is a recipe for failure. We should be asking what were the things that went wrong; how did these things happen that such a terrible mistake was made?

We are fortunate in this Nation to have many highly qualified medical professionals. I think in my own little State of Vermont how fortunate we are to have extremely good physicians. Unfortunately, sometimes even good doctors make errors. If there is no pressure on the insurance companies, no pressure on the medical societies to keep the standards up, why should they go up? If the Senate, in its infinite wisdom, can take a lobbyist bill and just pass it and stop them from having to worry, why should they worry?

We must do all we can to support the men and women who commit their professional lives to caring for others, but we must also ensure that patients have access to adequate remedies if they receive inadequate care.

Let's understand, notwithstanding what the insurance companies' lobbyists tell us, high malpractice insurance premiums are not the direct result of malpractice lawsuit verdicts. They are the result of investment decisions by the insurance companies and business models geared toward ever increasing profits, as well as the cyclical hardening of the liability insurance market. In cases where insurers made a bad investment and experienced the same disappointment from Wall Street that many other Americans have, it should not be able to recoup its losses from the doctors it ensures. The insurance company should bear the burden of its own business model, just as every other business in this country ought to do.

A nationwide arbitrary capping—with no hearings—of awards available to victims, as the Republican majority has proposed, should not be the first and only solution turned to in a tough medical malpractice insurance market.

I might ask my friends, does anybody think if we pass this bill, if we override the legislatures of Texas or New Hampshire, Ohio, Vermont, or anywhere else, if we override all those legislatures and pass what the lobbyists and the fund-raisers have asked us to pass here—this bill, with no hearings, no committee work, just came from the pens of K Street, I suppose—does anybody think if we pass this pig in a poke that these medical malpractice rates are going to come down? Come on. I have a bridge in Brooklyn to sell you if you believe that.

We can pass this. We can help the insurance companies out of their bad investments. We can make sure that people who have been severely injured through medical malpractice are unable to recover for it. We can do all those things. But I guarantee you, the rates will not come down. We have seen enough other times when we passed special interest legislation supposedly

to help consumers and it has helped businesses. It has not helped the consumers.

What we ought to be doing is conducting thoughtful and collaborative consideration in committee that might achieve a sensible solution that is fair to patients, that supports our medical professionals and their ability to practice. I suggest one thing we might do is take away the blanket exemption from Federal antitrust laws that the insurance industry has. Insurers have for years had this novel exemption that nobody else has enjoyed. The McCarran-Ferguson Act permits insurance companies to operate without being subject to most of the Federal antitrust laws. Do you think our Nation's physicians, our doctors and their patients, have benefited by allowing the insurance companies to operate without being subject to most of our antitrust laws? Of course, they have not. They have not used this exemption from antitrust laws to benefit the patients. They have not used it to benefit the doctors they insure. They have used it to benefit themselves.

With this antitrust exemption, they can collude to set rates, resulting in higher premiums, certainly higher than real competition would achieve. And because of the exemption, law enforcement officials can't even investigate the collusion.

If we want to do something, let's get rid of the antitrust exemption that let's them set doctors' premiums anywhere they want. Let's get rid of the antitrust exemption that allows them to recoup their losses in the stock market—not losses for malpractice cases—by just charging ever higher premiums.

More than a year ago, I introduced the Medical Malpractice Insurance Antitrust Act, S. 352. Senators REID, KENNEDY, DURBIN, EDWARDS, ROCKEFELLER, FEINGOLD, BOXER, and CORZINE cosponsored the legislation. It would modify McCarran-Ferguson with respect to medical malpractice insurance and then only for the most pernicious antitrust offenses: price fixing, bid rigging, and market allocation. These are the anticompetitive things that affect premiums.

I can't imagine how anybody could object to a prohibition on insurance carriers fixing prices or dividing territories. After all, all the other industries in our Nation have to abide by these laws or they pay the consequences. So we will find out who really carries sway here. Is it the insurance companies and their lobbyists or is there some indication that the American people may still have a voice in the Senate?

Let's find out what happens when we bring up an amendment to remove the antitrust exemption these insurance companies now have. This legislation languished for a long time. We actually had hearings on this. But the one that is written downtown comes straight to the floor.

If we are really serious about controlling rising medical malpractice in-

surance premiums, we have to limit the broad exemption to Federal antitrust law and promote real competition in the insurance industry, and work at reducing medical errors across the health care system. This partisan bill doesn't do that.

This partisan bill is designed to be a talking point for fundraisers. It is not designed to help doctors in rural, underserved areas to be able to pay their medical malpractice insurance. It doesn't help the women and children in this country who need these medical specialties. It may help insurance companies and fundraisers, but it doesn't help anybody. If we are going to pass something, let's pass something real.

I see my good friend from Texas and my friend from Ohio on the floor. When I started speaking, there was nobody else seeking recognition. My good friend, Senator GREGG, was kind enough to yield when I came here. I will be speaking more on this, but I will yield to whichever Senator wants the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent to be added as a cosponsor of the Healthy Mothers and Healthy Babies Access to Care Act of 2003.

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

Mr. CORNYN. Mr. President, I am happy the majority leader has seen fit to bring this important issue to the floor. I will have some specific comments about the bill in just a moment.

I believe our civil justice system is badly broken insofar as it serves the interests of the few at the expense of the many. What I mean by that is our system of resolving civil disputes, whether they be medical malpractice lawsuits, or automobile accident cases, or any other kind of ordinary bread-and-butter lawsuit you see decided in courthouses across this country, in which citizens volunteer to give up a substantial amount of their time, that this process takes too long and it is too expensive to serve the interests of justice. It discourages those who have meritorious claims from even bringing those claims because they don't want to endure the time or expense. It too often benefits the very few at the expense of the rest of the public.

Particularly, the benefit is to a handful of lawyers. I must say, I am proud to be a lawyer. I practiced law a long time before I was a judge presiding over a trial court in San Antonio, TX, for 6 years and serving on the Texas Supreme Court for 7 years. I am proud to be a lawyer.

The problem is we have a handful of lawyers who are literally the tail wagging the dog on this and other reform issues that are so important to restoring public confidence in our civil justice system and making sure that rather than serving the interests of the few, the interests of the general public are

served by the way in which we handle disputes like medical liability cases and other tort litigation.

We have in this country what some have called the "sporting theory" of justice. We have an adversary system, where each side retains a champion and we go in and we have a clash between these adversaries in court, and the theory is—and in many respects it works well—the impartial jury decides the facts and the judge applies the law, and then we have a judgment in the dispute. It is a way of resolving our disputes without violence, in a way that seems to satisfy the public generally. But the problem is in modern-day litigation—and nowhere is this more prevalent than in the area of medical liability litigation—the interest of the person who is harmed is not truly paramount in consideration in terms of the way the system works. In fact, many times, it is the patient who may be injured or harmed who receives actually less money than the lawyer who brings the lawsuit.

As you know, many of these lawsuits are handled on a contingency fee basis. In other words, the lawyer who brings the lawsuit will represent a client in court—a patient in this instance—and say, well, if I represent you, then I will take 50 percent of everything you recover. It won't cost you a penny if I don't recover anything, but if I do, I will recover 50 cents off the top of every dollar you recover. Of course, there are other expenses associated with this kind of lawsuit, such as the hiring of expert witnesses, court costs, and the like.

Too often, what happens in these cases is the lawyer ends up the one walking out of the courtroom with the most money, not the injured party, not the person for whose benefit a lawsuit is brought. To me, that simply turns our civil justice system on its ear. It calls into question whether this is a system of resolving disputes in a way that serves the interests of the public; or does it, as it appears too often, serve the interests of a handful of personal injury lawyers who make their living bringing this kind of lawsuit.

There is another aspect of this as well. In our civil justice system, we know almost anybody can file a lawsuit for virtually anything. If you can get a lawyer to file a lawsuit, then you can sue someone for a small fee, whereby the clerk will serve the papers on the defendant, and typically the defendant will have to hire a lawyer to represent them. At this point, there is no determination made that there is any merit to that lawsuit. Well, what happens too often is the very nature of being able to file that lawsuit without any determination if there is any merit at all leads to a form of legalized extortion, because the person who has been sued has no recourse but to hire someone to defend them. Even if they end up winning the lawsuit, even if the lawsuit filed is dismissed ultimately, there is no recourse for that defendant who

has been wrongfully sued or sued in a frivolous lawsuit.

This, too, adds to the expense of ordinary litigation and makes very little sense to me or, I think, to a lot of people. I think the more the public understands who it is who benefits from the current state of our civil justice system, our tort system, our medical liability system, the more the people will understand it is not them, not the injured patients, not those whom the system is designed to benefit; it is for those who filed the lawsuits, the lawyers who represent those folks. Unfortunately, because of the costs associated with just the expense of litigation, we know too often those persons who are sued will make what is known in the profession as a nuisance settlement. In other words, they will say, well, it is going to cost me tens of thousands of dollars just to defend myself against a frivolous lawsuit. Rather than defend myself and win the lawsuit, but end up \$100,000 out of pocket, or whatever the cost may be, I will pay you \$5,000 or \$10,000 to simply have it go away.

Unfortunately, you can see why the financial incentives tend to favor nuisance settlements of lawsuits which, unfortunately, have the unintended impact of encouraging further litigation and other lawsuits even when they are frivolous. We need to do something about it. I join the senior Senator from New Hampshire who said we need some meaningful medical liability reform. We need to make sure that it is not the lawyers who bring these lawsuits who benefit but, indeed, the public. Nowhere is this a greater concern than when it comes to access to health care and medical liability lawsuits.

Last fall, I spoke in this Chamber, along with others, in support of broad-based medical liability reform. Today I rise to speak in favor of this narrow, but very important, bill that deals with women's access to physicians who will deliver their babies, access which has been damaged terribly by the current dysfunctional way in which we resolve disputes about medical liability.

The change we argued for last fall and this change as well would drastically reduce the cost of health care by reducing frivolous claims and eliminating the need to pay extraordinary amounts of money for medical liability insurance.

Unfortunately, we failed to pass meaningful reform. We have heard—I heard the Senator from Vermont mention this a moment ago—that the real culprit in all this is the insurance companies; it is not the lawyers who benefit disproportionately from the status quo; we know it is not the patients who do not benefit very often; and we know people who seek access to health care are denied access to that health care because of this dysfunctional system. The Senator said it is the insurance companies.

I take second chair to no one in saying that if, in fact, he can point to

abuses perpetrated by insurance companies or anyone else, we certainly ought to take up that issue. But I believe the motivation is really one to create a diversionary tactic, a smoke-screen, if you will, to say it is not the lawyers, it is not us, Heaven forbid, it is not the women who want their babies delivered, it is the insurance companies. We have heard this time and time again when, in fact, I believe the empirical evidence that has been produced in my State and other States shows that, in the end, insurance companies, which are typically subject to strict State regulations, are having to play a lottery game, a sort of game of roulette. They don't know what the rules are because they change with every million-dollar, multimillion-dollar, tens-of-million-dollar judgments in lawsuits. So they charge an insurance premium, just like we pay for homeowners insurance or renter's insurance or any other kind of insurance, and ultimately that cost is passed on to the consumer. In this case, the consumer of that insurance, the one who pays that premium, is the physician who wants to practice medicine, who wants to dedicate their life to the interests of people who are sick and who need their help—in this case, mothers who need access to good baby doctors so they know the baby they have carried for all these months will be delivered safely and will be healthy.

The good news I guess, if we can find any good news in this sordid situation in which we find ourselves, where these lawyers who benefit from the status quo are the ones who are calling out the tune and having others dance to the tune they have called out, is that some of the States are stepping up; they are not waiting on a solution from Washington, DC, and that is a good thing.

As someone who believes that local government and State government tends to be more responsive because it is closer to the people they serve, than for the Federal Government, I think it is good that the States are stepping up, but this is not strictly a State problem.

When we consider how much money we appropriate each year—we just passed a \$400 billion Medicare bill which is now estimated to cost more than \$100 billion more than that over 10 years—when you think about Medicare, when you think about Medicaid, when you think about S-CHIPS, the Federal taxpayer—in other words, everyone who earns a wage in the United States—subsidizes this broken medical liability system because much of the costs associated with health care today are due to either counting in what this rapidly increasing cost is in terms of determining what a fee for a service is or otherwise having to suffer the consequences when doctors simply pull up stakes and move out of their State, leaving mothers, in this case, who want a doctor to deliver their baby in the lurch.

In my own State, out of 254 counties, there are 154 counties in which a pregnant woman cannot find a specialist to deliver her baby. A large part of that cause is because of the cost of medical liability insurance which is simply priced out of the market, and physicians say I am going to retire early rather than subject my family and myself to putting at risk everything I have worked a lifetime to save and achieve or people who just simply have gotten tired of being in the crosshairs their whole life by a system that serves the interests of the few at the expense of the many. I think Senator GREGG had a chart that showed what I mentioned a moment ago behind, that out of the 254 counties in Texas, 154 have no obstetrician/gynecologist, no specialist in delivering babies. The yellow depicts those pregnant woman would have to drive to one of the white counties simply to find someone who will deliver her baby, and sometimes they don't make it. Sometimes the baby is damaged because complications ensue because there is no doctor close by who is qualified to deliver that baby because of this broken medical liability system.

I think it was Senator FRIST or perhaps Senator GREGG had a chart that showed a chart of 19 States where there is a medical liability crisis because of this civil justice system, a system that is supposed to be a just system but is truly an unjust system. It is simply broken.

Each of these red States, including, we can see, the State of Texas, is listed as a State in crisis. Nineteen of them are where patients are losing access to baby doctors due to skyrocketing medical liability insurance premiums and where pregnant women are forced to drive long distances just to find a physician to deliver their baby.

As I mentioned a moment ago, the good news, if there is any good news in all this, is that the States are not necessarily waiting on the Federal Government. In my own State, just this last year, the voters passed a constitutional amendment, proposition 12, which would provide some of the relief that is sought to be delivered to the entire Nation in this particular bill. We have already seen some very beneficial effects of this constitutional amendment and the legislation that implements it because we have seen medical liability insurance companies offer to reduce their premiums by 12 percent or 19 percent in another case.

So we are beginning to see some real impact of the predictability and the commonsense reforms that I believe are designed into this important bill. Because the American taxpayer pays to support the Medicaid system, pays to provide indigent health care, pays to provide other types of medical care, this is truly not just a State problem. This is a national problem, and I know many of my colleagues, myself included, are concerned when we hear those dreaded words from the Federal

Government: We are from the Federal Government and we are here to help. Those are some of the most dreaded words in the English language because, indeed, the States and local government, I believe, tend to be much more responsive. This is truly not just a statewide problem in my State or any State. This is a national crisis that calls out for a national solution.

This is not something that affects only obstetricians or baby doctors. Indeed, this affects the ability of hospitals to do business in rural parts of our country, rural parts of my State. Emergency departments lose staff and scale back critical services such as trauma units. From 2002 to 2003, we saw a 56.2 percent average premium increase faced by emergency room physicians and the hospitals in which they practice. One-third of the Nation's hospitals saw 100 percent or more increases in liability insurance premiums in 2002. We may think this does not really concern me, this is the hospital owned by a corporation, or this is a doctor's problem, somebody who drives a big shiny car, who makes a lot of money. But this is not about helping doctors or helping the corporations that own hospitals. Many of them are owned by nonprofit associations and are charitable organizations that keep their doors open because they believe in their mission. This is ultimately about access to health care.

I have heard some of my colleagues on the other side suggest that because of the booming number of uninsured in this country, estimated to be at any snapshot in time as many as 43 million people, we need universal, federally funded health care in this country. We know, because the Joint Economic Committee has told us so, that 3.9 million uninsured Americans would be able to receive health insurance if Congress were to pass commonsense medical liability reforms. Almost 4 million currently uninsured individuals would be able to receive health insurance if Congress were to pass commonsense medical liability reforms.

This is not just an isolated matter. This does not just affect doctors who are fortunate by virtue of their training and that expertise to earn significant incomes. This is not just about big hospitals with shiny buildings owned by corporations. This ultimately comes down to the individual who wants what we all want, and that is access to good quality health care, but who simply cannot find it because they either cannot afford the health insurance or their employer has been priced out of the market because of booming health insurance premiums, in large part caused by this liability crisis or, as we have seen, simply the doctors who, rather than live in the crosshairs of this broken system, decide to retire or to move away to some other location.

I know there are others, such as Senator DEWINE, who want to speak after me, so I will conclude my remarks. But

I plead to my colleagues to allow this matter to be debated. That is all we are talking about at this point. All we are looking for is 60 Senators who will have the courage to stand up to the trial bar, the personal injury trial lawyers, who insist that this matter not be debated on the Senate floor. When so many pay the costs of that intransigence, I suggest that is just not fair and it is not just.

I encourage our colleagues to reexamine their conscience and ask whether they are serving the best interests of their constituents, and in this specific instance so many women who need a doctor to deliver their baby. This country's future depends on those healthy babies being delivered and becoming productive citizens, not harmed by an avoidable medical complication because the mother, during her hour of need, and the baby during its hour of need could not get the medical care they so richly deserve and upon which America depends.

We must end the liability lottery where only a few patients and even more trial lawyers receive astronomical awards. Even when there is no award in a frivolous lawsuit the costs simply run up what we all pay for health insurance, those of us who can get it, and render many more even unable to get access to health insurance and thus access to health care at all. We must pass meaningful medical liability reform that includes real and lasting change and brings the lessons of Texas and other States that have been successful in passing statewide reform to the entire Nation because, indeed, this is no longer just a State-by-State crisis, as we have seen with 19 States in an emergency situation. This is a crisis that affects our entire Nation. It affects the quality of life that we enjoy and the promise that I believe we all wish to see delivered to every American, and that is the ability to live out our dreams. Part of that means access to decent, good quality health care, something that is being impaired by our failure to act in this instance.

I yield the floor.

(Mr. COCHRAN assumed the Chair.)

POLITICAL CRISIS IN HAITI

Mr. DEWINE. Mr. President, at this very minute, there is an urgent crisis in America's own backyard, a crisis on the island nation of Haiti. I have come this afternoon to talk about that. I have been on the Senate floor many times in the past to talk about Haiti. I think I have traveled to Haiti 13 times since I have been in the Senate. I have talked before about the AIDS crisis there. I have talked about the horrible dehumanizing poverty. I have talked about the lack of clean water. I have talked about the food shortages. I have talked before about the children who are sick with AIDS and other diseases such as malaria and tuberculosis, children who have been orphaned when their parents die from AIDS, children who have little hope for a better future

unless significant reforms are implemented and changes are made.

Today, I come to the Senate floor to talk about what everyone has seen in the news in the last several weeks, and that is something that is now dwarfing the poverty, the AIDS, and all the other problems, and that is the current crisis, the violence that has erupted across this island nation.

The chaotic and dangerous situation in Haiti right now is anything but a surprise. The fact is that a crisis has been looming there since at least before Christmas. In January, in an opinion piece that I wrote for the Miami Herald, I urged Haitian President Aristide to reach an agreement with the legitimate opposition groups, the political groups, to reach wholesale political change and reform. In that opinion piece, I urged him to pull back his own gangs of thugs and to tell them to stop their violence. I suggested then that President Aristide had within his own power the ability to avert further chaos and inevitable disaster at the hands of insurgent groups by ending the political impasse with the opposition and by creating a government that the international community could, in fact, support.

I am pleased that just this weekend President Aristide agreed to the proposal of the U.S. administration, our administration's proposal to end the political stalemate. It is imperative that the legitimate political opposition groups in Haiti now accept the terms of this agreement. As I speak this afternoon, these groups are considering this proposal. But I must say, time is of the essence. I believe our administration's proposal, based on other Caribbean nations' earlier proposal, is a reasonable offer and one that has the greatest chance of bringing about an immediate end to the bloodshed.

Members of the Senate need to understand that, really, there are three forces at play here. There is the Aristide government; there is the legitimate political opposition in the country; and then there are the thugs, and we can use no other term to describe them but the thugs who are trying to overthrow the Government.

Let there be no mistake about it. These are not democrats, with a small "d." They care not for democracy. When we talk about the political opposition we mean just that, the political opposition, the legitimate political opposition in Haiti. It is not associated with these thugs.

So we call upon them today, the political opposition, to agree to the proposal made by the U.S. Government. President Aristide has agreed to this. We ask, and believe it is clearly in the best interests of Haiti, for the political opposition to agree to it as well.

This agreement includes the setting up of a broad-based advisory council to Aristide's government. It also includes the appointment of a new Prime Minister. That is very significant. Further, it includes the disarming of gangs

aligned with Aristide's Lavalas Family Party.

I urge the opposition groups to accept this because, quite candidly, this proposal is the best hope for creating a coalition government that can stop the violence and a coalition government that can be accepted by the international community and can be respected on the world stage.

The fact is, unless agreement is reached and unless the violence stops, there will be serious consequences for our hemisphere, for Haiti, and, yes, for the United States. We do not know what is going to happen in Haiti, but as we think about what our response might be if in fact settlement cannot be reached or if in fact a settlement is reached and the violence continues, we need to keep in mind a few basic facts.

First, Haiti is in our neighborhood and what happens in our neighborhood affects the United States. Haiti is a nation that lies only about 800 miles from our shores and is, therefore, less than a 1½ hour flight from Miami.

Second, amazingly there are at least 20,000 U.S. citizens living in Haiti today. Let me repeat that. The official estimate is that there are at least 20,000 U.S. citizens living in Haiti today. These are missionaries; these are doctors; these are nurses and other U.S. citizens. No one knows for sure how many U.S. citizens are actually down there. They are, so to speak, embedded all throughout the country.

The reality is that an awful lot of humanitarian workers are simply not going to flee. They are not going to leave this Nation no matter what our advisories say. They are there simply to help the people of Haiti and they are going to stay. They are going to stay to help the children. They are going to stay to help the elderly. They are going to stay to help the sick. They are not going to abandon the people. Therefore, we have an obligation as a country to protect them and we need to be concerned about them.

Furthermore, if the violence does not end, then we in the United States will once again be seeing boats swollen with Haitians, risking their lives for the chance of a better life. Our Coast Guard will be out there having to stop them and we will be seeing them floating toward Miami and the Florida shores.

No one knows what the future will hold. We have watched on the news. We have read in the newspapers as these thugs, these rebels have taken over most of the main cities of Haiti—all of the main cities of Haiti, except Port-au-Prince. No one knows what will happen next. I said the hope is there will be agreement reached between the opposition, legitimate political opposition and the Aristide government. But if we assume the violence will continue, if we assume these thugs, these insurgents do what they say they are going to do and they move toward Port-au-Prince, no one can predict what will happen. But it is certainly

not out of the realm of possibility that there will be a bloodbath in Port-au-Prince.

There is no army. President Aristide, tragically—we have seen the police corrupted. There is no real police force of which to speak. So what Aristide has done is he has armed the gangs of Port-au-Prince. So there are arms everywhere in Port-au-Prince. They are the ones who would be there to “defend” Port-au-Prince.

So you would have certainly the potential of the gangs of Port-au-Prince with their guns versus the insurgents coming in, and the people who would be the victims would be the children, the women, and the elderly would be caught in that tragic crossfire. That very well could be the scene that we will see unfold in front of us on CNN, on the network news.

Those are things we need to contemplate in the days ahead as we think about what our reaction might have to be. I believe our administration has taken the right steps. Mr. Roger Noriega, representing the administration, went to Haiti and made this proposal. It was the right thing to do. It was a good proposal.

Haiti is out of time. I, again, urge the opposition leaders, the legitimate political opposition leaders to accept the administration's proposal. It is clearly in Haiti's national interest. If the opposition doesn't accept the proposal without question, the situation will spiral out of control very quickly. It may, in fact, spiral out of control anyway, but clearly it will spiral out of control if it is not accepted. If it does spiral out of control, the United States needs to be prepared to act in our own national self-interest.

I yield the floor.

THE PRESIDING OFFICER (Mrs. DOLE). The Senator from Wyoming.

Mr. ENZI. Madam President, our Nation's medical litigation system is broken and we need to start working to fix it. I urge my colleagues to vote for cloture on the Gregg-Ensign bill. It is time to stop filibustering and to start working.

I just got back from Wyoming. They are having this same debate there. They don't trust us to finish it here. They are trying to finish it on a local basis. They are having a debate on a constitutional amendment to be able to do medical tort reform.

I tell you, that is a very difficult thing. Litigation reform requires a constitutional amendment in Wyoming. That means there may be a vote of the people, but that can't happen until at least November and we are in a crisis in Wyoming right now. We are not the only State in a crisis.

Last year, we brought a medical litigation reform bill to the Senate. The legislation would have placed reasonable limits on the amount of money attorneys can take from a verdict or a settlement in an injured patient's favor. The bill also would have limited awards for punitive damages and non-

economic damages. In other words, the pain and suffering awards.

The bill would not have limited awards to compensate patients for economic losses. This is an important point for everyone to keep in mind. If a judge and jury were to decide a person suffered an injury due to a doctor's mistake or a hospital's negligence, that person would be entitled to receive full compensation for their economic loss, including everything from rehabilitation to lost wages resulting from their injury. I cannot stress this point enough. The bill would not have limited awards for any part of economic losses.

What the bill would have done is place a ceiling on noneconomic damages. The bill would have limited the maximum award for noneconomic damages to \$250,000 in States that do not have their own limits on such awards.

In Wyoming, we do not currently have limits on noneconomic damage awards. We do not have limits despite evidence which shows limits on noneconomic damage awards have helped control the cost of medical liability insurance premiums in other States.

As a result, people in Wyoming are losing access to affordable health care in their communities. The rising cost of medical liability insurance in my State of Wyoming is forcing doctors to curtail their practices or close them entirely. We have a shortage of doctors in Wyoming as it is and the cost of medical liability insurance is making a bad problem even worse.

To address this problem, I cosponsored the medical litigation reform bill we offered for debate last year. We needed 60 Members in this body to vote in favor of working on the bill to get past a filibuster, but only 49 voted in favor. So it was back to the drawing board.

Here we are again, 9 months later, with a new bill. It is ironic we are here 9 months later because this bill focuses on mothers and babies.

Medical liability crisis affects many patients and doctors. Those it affects most are the expectant mothers and their obstetricians.

Doctors who deliver babies have a dubious honor when it comes to medical liability insurance. The typical obstetrician pays more in annual premiums for professional liability insurance than almost any other type of doctor. Part of the reason is that in some states the child has the right to sue when they get to adulthood. That is a pretty long tail on the liability. If the parent fails to sue, the child can sue.

Some of my colleagues have pointed out the statistics and numbers on this crisis, so instead I will tell a short story about an obstetrician in Wyoming. I told this story in July so I apologize if you have heard it before, but it is worth retelling.

There was an article in the Washington Post about a year ago about the medical liability crisis. The reporter for the Post had gone to Wyoming to

see how the crisis affected a State already struggling to keep enough doctors as it is.

According to the article in the *Washington Post*, the doctor in Wheatland, WY, went to a high school basketball game between the Wheatland Bulldogs and the nearby Douglas Bearcats.

Here is Wheatland on a map; here is Douglas. Wyoming is a pretty big State. This map shows about a quarter of the State. Each of the counties on this map is bigger than Delaware, and the distance between Wheatland and Cheyenne is pretty close to the length of Delaware. We are talking about a lot of distance, but not many people. One of these counties the size of Delaware has 2,500 people living in it total, so we have a lot of land, few people, and consequently not many doctors. Wheatland and Douglas are 60 miles apart. That qualifies as nearby in my State.

Now the doctor had just announced he would not be delivering any more babies in Wheatland or Douglas because of the cost of liability insurance. The irony is he delivered just about every player on both teams at that basketball game.

I would like to read a section of this story. The name of the doctor is Willard Woods:

The national malpractice insurance crisis . . . hit home for Wheatland this winter when Woods' insurance company joined a number of national malpractice carriers in declaring bankruptcy.

I emphasize that last part. Malpractice carriers are declaring bankruptcy. Some people say these companies are making out like bandits on medical liability insurance. If they are, they would not be declaring bankruptcy. These insurance companies are in crisis. They are raising their rates to cover the costs from legal cases and settlements.

Back to the quote.

That left only two firms selling malpractice insurance in Wyoming, and neither one was willing to take on a new obstetrical coverage. Woods did get insurance for his gynecological practice—a branch of medicine that spawns far fewer lawsuits than delivering babies—but the annual premium cost him \$116,000, three times what he paid the year before.

In this wheat-growing region of eastern Wyoming, where medical services are sparse and scattered, the impact is acute. Platte County, with a population of less than 9,000, has five doctors, equal to the number of veterinarians.

Women with normal pregnancies can still have their babies delivered in the hospital; Woods's two partners, both general practitioners, share the delivery duties.

"But if you have any kind of problem like I did," said Wheatland mother Kori Wilhelm, who has a genetic blood mutation that makes pregnancy dangerous, "you have to go to Cheyenne now"—and that's a 140-mile round trip—"to get the specialized treatment we used to get right down the street at Dr. Woods's clinic."

Put yourself in that woman's shoes. Until the cost of medical liability insurance drove Dr. Woods out of obstetrics, a woman experiencing a difficult

pregnancy in Wheatland could get specialized care in her own community. Now that woman has to drive 140 miles round trip for proper prenatal care and to have a specialist deliver her baby.

Madam President, 140 miles is a long way for anyone to travel to see a doctor. It is even a longer 140 miles for a pregnant woman. And it is truly a long 140 miles for a pregnant woman in the middle of winter when high winds and blowing snow often force the highway department to close the interstate between Wheatland and Cheyenne.

I wish this were the only story I could tell about the crisis in Wyoming, but it is not.

I could talk about Dr. Jack Richard, an OB/GYN who reluctantly retired last year due to his high cost of medical liability insurance. Dr. Richard served the people of Casper, WY, for more than 30 years, but he was not ready to retire at the age of 61. Dr. Richard had already stopped providing routine obstetrical care in 2000, but even as a part-time physician, his premiums had doubled since then.

I could talk about Lisa Minge, an OB/GYN who left my hometown of Gillette in November and moved her practice to Boise, Idaho. She cited the high cost of liability insurance as one of the factors in her move to Idaho, which has a \$250,000 limit on noneconomic damage awards.

I could talk about Dr. Bert Wagner, an OB/GYN in Cheyenne who stopped delivering babies this year to avoid the high cost of insurance for the obstetrical side of his practice.

Or I could talk about a group of family practice doctors in Cheyenne who are trying to decide whether they can keep delivering babies. The four doctors in this group saw their premiums go from \$65,000 in 2003 to \$110,000 in 2004. This is despite the fact they had already limited the number of babies they would deliver to 30 per doctor per year to avoid having to pay the full obstetrical rate. I don't know what you do if you are the mom who needs the 31st baby delivered.

I have more stories I could tell, but I am not sure what good it would do. I am an optimist by nature, but I am afraid I am pessimistic about the outcome of this vote.

Nevertheless, I commend Senators GREGG and ENSIGN and our majority leader, Dr. FRIST, for trying again. They have developed a bill that is focused on one of the most critical parts of this nationwide crisis—the plight of expectant mothers who depend on obstetricians to provide a safe and healthy delivery for their babies.

What Senators GREGG and ENSIGN have proposed is a modest approach that will provide some measure of relief to doctors who are squeezed by the high cost of medical liability insurance. The bill puts reasonable limits in place on the amount of money attorneys can take from settlements and verdicts awarded to injured mothers and babies.

The bill does not limit the amount of money juries and judges can award to cover lost wages, rehabilitation, special services, and other economic losses an injured mother or child might face. It simply puts a reasonable limit on what judges and juries can award for punitive and noneconomic damages, which are the types of unpredictable awards that are contributing to this health care access crisis.

I have noticed something interesting during our debates on this issue. While we have been debating the pros and cons of reform, no one is standing up to defend our current system of medical litigation. No one is standing up to defend our current system. We are talking about limits on noneconomic damages, or the role of the insurance industry, and Senators are saying: Yes, there is a problem, but the bill before us doesn't solve it.

One thing I have not heard is a rousing defense of our medical litigation system. Even some of the lawyers in this body have agreed frivolous lawsuits are a problem and our medical litigation system needs reform.

Why aren't we hearing anyone defend the merits of our current medical litigation system? It is because it is indefensible. Our system does not work. It simply does not work for the patients or for the health care providers.

The bill we are debating today is a good bill for mothers and babies and the doctors who serve them. But even the sponsors would probably admit it is a short-term measure that does not address the fundamental problems with our medical litigation system. This is an important bill, but it is just a tourniquet to stop the bleeding. It is not going to heal our broken system.

I would like to share with my colleagues a brief analysis of our medical litigation system. It comes from this book, "Fostering Rapid Advances in Health Care, Learning From System Demonstrations," published by the Institute of Medicine of the National Academy of Sciences.

Let me quote a section of this book:

There is widespread agreement that the current system of tort liability is a poor way to prevent and redress injury resulting from medical error.

Most instances of negligence do not give rise to lawsuits, and most legal claims do not relate to negligent care. Many injured patients do not know they have suffered an injury resulting from error, and those who go through the legal process often do not even recover the cost of their continued health care.

A few plaintiffs and their attorneys, however, win large sums that may be disproportionate to their injuries or unrelated to the defendant's conduct. Prolonged, adversarial haggling over claims by plaintiffs' attorneys and liability insurers alienates both providers and patients, and generates legal fees and administrative expenses that consume more than half the cost of liability insurance premiums.

The apparent randomness and delay associated with this pattern of accountability not only prevent severely injured patients from receiving prompt, fair compensation, but destabilize liability insurance markets and attenuate the signal that liability is supposed

to send health care providers regarding the need for quality improvement. Fear and distrust breed inefficient "defensive medicine," and lead to missed opportunities for information exchange and apology that might avoid lawsuits in the first place.

The shortcomings of the current malpractice system therefore come from three directions, all of which have contributed to the present crisis: inefficient and inequitable legal processes for resolving disputes, problematic responses by clinicians to the threat and cost of liability, and volatile markets for liability insurance. Although some states face greater insurance instability than others as the result of different legal standards, public expectations, and professional cultures, no state is immune to the threat of service interruptions affecting physicians, hospitals, and other health care providers.

These are not my words. They are not the words of personal injury lawyers. They are not the words of tort reform advocates either. As I pointed out earlier, these words are from the National Academy of Sciences, specifically the Institute of Medicine. This organization was created by the Federal Government and chartered by Congress to provide unbiased and evidence-based advice on health policy.

This congressionally chartered body issued a report in 2002 that called upon the Federal Government to support demonstration projects in the States to evaluate alternatives to current medical tort litigation. In response, I have introduced a bill in the spirit of this report.

This bill, the Reliable Medical Justice Act, would authorize funding for States to create alternatives to current tort litigation. The funding would cover the costs of planning and initiating proposals based on models outlined in the bill or other innovative ideas.

My bill would require participating States and the Federal Government to work together in evaluating the results of the alternatives as compared to traditional tort litigation. This way, all States and the Federal Government could learn from new approaches.

As I speak, some States are already looking into alternatives to medical litigation as we know it. My home State of Wyoming is one of them. Another is Massachusetts, where Governor Romney is working with Harvard University on an innovative project. Another is Florida, where the Governor's task force recommended the implementation of projects along the lines of those suggested in my bill. We should encourage and support these States and others that are considering similar ideas.

Believe it or not, both Newt Gingrich and the editors of the New York Times have endorsed the idea of creating and evaluating alternatives to medical litigation. If Newt Gingrich and the New York Times are in the same tent on an issue, maybe there is room in that tent for most of my fellow Senators to support it as well.

I support the Gregg-Ensign bill. It provides some short-term relief for mothers and babies and their doctors.

A lot of my colleagues will be voting with me, and a lot will probably vote against me. Regardless of how we vote on this legislation before us, we must acknowledge there is a medical liability crisis, and we must work together to find a solution.

Our medical litigation system is failing us. Medical lawsuits are supposed to compensate people fairly and deter future errors. But most patients do not get fair and timely compensation, and there is nothing to show the lawsuits are deterring medical errors or making patients safer.

I hope my colleagues will vote in favor of providing mothers, babies, and their doctors with some immediate relief through the Gregg-Ensign bill. I also hope they will look seriously at my legislation, S. 1518, which would put us on the road to replacing medical lawsuits with better and fairer systems for compensating and protecting patients. We need to pass both of these bills before we can say we have begun to solve this medical liability crisis.

I thank the Chair and yield the floor.
The PRESIDING OFFICER (Mr. THOMAS). The Senator from North Carolina.

Mrs. DOLE. Mr. President, for years America has enjoyed world class health care. We have led the way in cures and treatments. We have developed the latest and the best technologies, and we have ensured our doctors are trained in groundbreaking procedures. Indeed, our Nation has accomplished much in the area of health care.

But today, the future of our world-renowned health care system is at risk. Some trial lawyers have nearly crippled the system by filing hundreds of frivolous lawsuits each year and defeating efforts to place limits on these lawsuits and the big-money fees lawyers earn off of them.

Nineteen of our States are in a full-blown medical liability crisis, according to the American Medical Association. North Carolina is among the hardest hit, particularly our OB/GYNs, who face constantly rising, astronomical premiums just to stay in business. Many have been forced to move or quit their practices. This problem is particularly evident in our rural areas where some women have had to drive for miles just to find someone to deliver their baby. This is unacceptable.

It is understandable why doctors are leaving their practices, when the State's top five jury awards in 2001 ranged from \$4.5 million to \$15 million. The annual number of settlements greater than \$1 million for medical liability cases has more than tripled between 1993 and 2002.

Meanwhile, women in our States are struggling.

Consider these facts: Obstetricians in western North Carolina are seeing their insurance premiums increase from 50 to 100 percent. Women's Care, P.A., the largest OB/GYN physician group in North Carolina saw its premiums increase 30 percent last year—

for 3 times less coverage. One of its obstetricians will soon stop delivering babies. Others may join him.

And there are more stories. Dr. Mary-Emma Beres of Sparta, NC, a small town in the northwestern part of the State with a population just under 2,000, had to stop delivering babies after facing a 300 percent increase in her malpractice premiums. Her departure left only one obstetrician to handle high-risk cases. And it meant some women who needed C-sections had to endure a 40-minute ambulance ride to another hospital to deliver their baby.

Then there is Dr. John Schmitt. He is an OB/GYN who left his practice in Raleigh after seeing his insurance premiums triple from \$17,000 to \$46,000. He decided instead to join the medical school faculty at the University of Virginia. One of his patients, Laurie Peel, highlighted this dilemma best when she said, "When you are a woman, you try to find a gynecologist who will take you through lots of things in life. You develop a relationship with your doctor. To lose someone like that is very hard."

It is time to stop this deplorable situation that leaves the most vulnerable and sickest among us as the real victims. No one in this country should have to struggle like this for health care. The America I know is better than that.

Doctors who do remain in business are forced to practice defensive medicine and order an excessive amount of tests and procedures to protect themselves from lawsuits. Dr. Steve Turner of Garner estimates that internists like him prescribe close to \$5,000 a day in defensive medical practices or \$1.2 million a year per doctor.

The legislation before us offers a solution that works. It is modeled after California's law which has been in place since 1975 and has kept premiums down in that State. This legislation does not cap damages. As you know, there are cases where compensation is absolutely justified and deserved. Under S. 2061, victims who suffer from a doctor's malpractice will be able to recover every penny of their actual economic damages. It does limit non-economic damages, like pain and suffering. Punitive damages would be limited. But the legislation allows patients to collect for medical bills, funeral expenses and other costs. And States would still have the option of setting higher or lower caps than these in the bill.

Each week in North Carolina, nearly 2,200 babies are born and 300 of those babies are born early.

This legislation deals with the immediate crisis facing OB/GYNs, so that at the very least women can have the best health care available to them when they deliver their babies.

Today we have a choice. We can vote with those trial lawyers who file endless lawsuits and watch our health care system spiral into decay. Or we can put an end to this debate, and protect our

health care system, by casting a vote for our patients and the medical professionals who so tirelessly care for them. I urge my colleagues to vote in favor of cloture. Let's pass this bill for our patients who need it most.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

Mr. THOMAS. Madam President, I join my partner from Wyoming in supporting what is one of most important bills we will have before us; that is, medical liability, the opportunity for us to do something about the cost of health care.

As I go about town meetings in my State of Wyoming, the topic I hear the most about is the cost of health insurance. Obviously, health insurance costs are driven by the cost of health care; in this case, of course, some directly as a matter of the kinds of payments that have to be made for protection under medical malpractice liability insurance.

I am very pleased to join my colleagues to talk a little about an issue that has had a severe impact on health care. It is not the total answer, but it is a step in the right direction. We are finding ourselves in a situation where we have very good health care, excellent health care, which we all want. We all know it is going to be expensive, but we find ourselves in a position where we are almost cutting off access to health care because of the cost.

We have 43 million people who do not carry insurance because of the cost. Obviously, we help take care of those people when they have something without the ability to pay, and the insurance goes up for those who do pay. The insurance goes up for the hospitals and the doctors who don't get paid for all their patients. So it is a broad problem but one we can handle. And one of the issues that is right before us is the idea of doing something on comprehensive medical liability which, by the way, our friends on the other side of the aisle filibustered last year. I hope they will not do it again this year.

I come from a small State which also has some impact. We have fewer insurance carriers in our State because there isn't the kind of market to bring people in. We have many communities where there are only one or two practitioners and some where there are none. When we lose a practitioner, it makes it very difficult for that community.

Wyoming is one of the 19 crisis States for medical liability designated by the American Medical Association. A recent op-ed by Wendy Curran, executive director of our Wyoming Medical Society, I think described some of the

issues regarding the need for liability relief in our State. I think she laid it out quite well:

Wyoming is losing OB/GYNs, emergency trauma surgeons and general practitioners because of high malpractice insurance premiums.

It is interesting because Cheyenne, WY, is in the corner of our State next to the front range in Colorado and we have physicians living in Cheyenne and practicing in Colorado because they have this kind of protection and this kind of limitation on malpractice suits.

Wyoming physicians pay higher malpractice premiums than any of the surrounding States, which have all enacted liability reform.

It is kind of interesting that in our small State we are in the process of talking about that now. Whether it will be done in our legislature, which is meeting now, I don't know. The fact is, it is a budget session of 20 days and it takes two-thirds votes to get it in. It is going to be difficult to do.

Because of the fear of being sued, money is unnecessarily spent on defensive medicine each year, which we all pay for—\$70 billion to \$126 billion a year.

I had the real opportunity a while back in one of our rural areas to talk to a physician, who I think was pretty much retired but had been in Africa and had written books, and he had an interesting observation. We think about the lawsuits or the settlements that are very costly. He mentioned another aspect of this that is costly. In years past, when you hurt your arm, you could go in to your family practitioner and he or she would look at it, fix it, and send you home or put a cast on if he had to. Now, because of the possibilities of being sued, they have to send you to a specialist first and take a few more tests. So medical care is much more expensive notwithstanding the idea of the suits.

A recent survey indicates that 71 percent of Wyoming voters support liability reforms.

So I think most people do believe it is not the full answer to the cost of health care, but it is a movement we can make, a step we can take that will indeed make a difference. So I support, as my friend from Wyoming and the Senator from North Carolina do, the approach taken by Senators GREGG and ENSIGN in this bill.

OB/GYNs have probably been affected the most, and it is impacting access to the care for pregnant women. We have had bills before that went clear across the medical spectrum, and I think that is probably the appropriate way. But this singles out those issues that are so prevalent and difficult. Rural areas are disproportionately impacted, as there is often no other provider available, or where an OB/GYN is forced to close up shop. We have had that very thing happen in small towns, where there is only one OB/GYN. On the other hand, in some towns there are none and the general practitioners are concerned about delivering the babies.

We had one physician leave a little town called Wheatland, WY. He delivered babies in three counties. His malpractice premiums rose to over \$100,000 a year in a little community, in addition to what he had paid before. Pregnant women in Newcastle and Weston County have to travel 80 miles for babies because high medical malpractice premiums have forced three local physicians to abandon their practices.

Dr. Hugh DePalo, a practicing OB/GYN in Casper, WY, indicates that his premiums have increased by 300 percent in the past year. It is amazing.

According to the Wyoming Health Care Commission, for every dollar malpractice insurance companies make in premiums in Wyoming, they must pay \$1.25 on suits and settlements. Also according to the Wyoming Health Care Commission, some of our hospitals are paying medical malpractice premiums of \$1,000 to \$3,000 per birth, which makes delivering babies very unprofitable. Of course, they still do it, but somebody else has to pick up the tab.

It is interesting that these practitioners in Wyoming pay \$20,000 to \$30,000 more a year in malpractice insurance than those in Colorado, which has a cap of \$250,000.

Since all the States around us have passed liability reforms, we have a tough time recruiting all types of practitioners. We have underserved areas. I am chairman of the caucus here on rural health care, and we have been pleased with some of our accomplishments, but rural health care is different. For a long time, we had different fees paid to rural than to urban hospitals. The fact is, because of low volume, it could well be that the cost per case for rural hospitals is even higher.

One of the big costs of health care, of course, is the new equipment. We all want to have "Cadillac" health service, but when you have small volumes, you cannot do that. In our State, we have to have a system because you are not going to have all practitioners, specialists in every community. Something has to be set up so that it is available. So it is a difficult thing. We make it much more difficult by having these very high premiums. So we need to do something to protect, in this instance, our OB/GYN service for women and their babies and to set a reasonable limit on noneconomic damages. Keep in mind that if somebody has damages that are economic—this is not a limit on that; this is noneconomic damages. We have to provide for a quicker review of liability claims so they don't go on for years. We need to assure that claims are filed within a reasonable time. We need to educate people that frivolous lawsuits only add to the overall costs of health care for everyone.

Sometimes we say there haven't been many lawsuits. The fact is there may not be a lawsuit but there is a settlement, which also, because of the predicted outcome of the lawsuit, is a very high settlement and the costs are still there.

So I think the Senate should act on this important legislation that contains provisions that allow injured patients to recover economic damages—that is fair and legal—such as future medical expenses and loss of future earnings. Punitive damages are reasonably limited to the greater of two times the amount of the economic damages or \$250,000. It authorizes periodic payments to injured parties rather than one lump payment. It preempts State law unless such law imposes greater protections for the health care providers and organizations.

So I believe it does allow doctors to practice responsibility without the excessive testing, in reference to specialists, which is part of the growing costs of health care. I think this is a step in the right direction. But we have spent a great deal of time talking about Medicare and Medicaid, and we always talk about VA. We are going to have to look at the broad view of health care now.

Again, we all want great health care. That ought to be what we go for. But it becomes so expensive that it precludes lots of families from participating. That is something we don't want to have happen. I urge my colleagues to vote for cloture on S. 2061. I think it could be one of the most important votes in this legislative year.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FLAWED INTELLIGENCE ASSESSMENTS

Mr. LEVIN. Madam President, there is now confirmation from the administration's own leading weapons inspector that the intelligence community produced greatly flawed assessments about Iraq's weapons of mass destruction in the months leading up to the invasion of Iraq. It is my opinion that flawed intelligence and the administration's exaggerations concerning Iraq's weapons of mass destruction resulted from an effort to make the threat appear more imminent and the case for military action against Iraq appear more urgent than they were.

However, regardless of whether one thought the threat was imminent or not to proceed as unilaterally as we did, our intelligence was so far off the mark and the descriptions of that intelligence by the administration were even further off the mark that for the sake of the future security of this Nation, there needs to be an independent assessment not just of the intelligence but also the characterization by the administration of that intelligence.

Today, I want to raise a related issue: how the Director of Central Intelligence, George Tenet, misled the American people before the war about

the status of our sharing of U.S. intelligence information with the United Nations inspectors.

Director Tenet, after 12 months of indefensible stonewalling, recently re-lented and declassified the material that I requested, which makes clear that his public testimony before the Congress on the extent to which the United States shared intelligence with the United Nations on Iraq's weapons of mass destruction programs was false.

Prior to the war, the CIA identified 550 sites in Iraq as possibly having weapons of mass destruction or prohibited WMD materials or equipment. They were called "suspect sites." Madam President, 150 of those sites were so-called "top suspect" sites where the CIA believed it would be more likely to find such items. The 150 top suspect sites were, in turn, divided into three categories: High priority, medium priority, and low priority.

At two public hearings shortly before the war on February 11 and February 12, 2003, I pressed Director Tenet on the issue of how many suspect WMD sites were shared with the United Nations. On February 12, Director Tenet said the following:

When the inspections began, we drew up a list of suspect sites which we believe may have a continuing association with Iraq's WMD programs. The list is dynamic. It changes according to available intelligence or other information that we receive.

Of this set number of suspect sites, we identified a specific number as being highest interest, highest value, or moderate value because of recent activities suggesting ongoing WMD association or other intelligence information that we received.

And here is his bottom line:

As I said yesterday, we have briefed all of these high value and moderate value sites to UNMOVIC and the IAEA.

Mr. Tenet did not say "some;" he did not say "most;" he said "all." We have briefed "all" of these high value and moderate value sites to the U.N.

I told Director Tenet at the time in two public hearings that he was wrong and that classified numbers told a different story. On March 6, 2003, Director Tenet again stated in writing that:

We have now provided detailed information on all of the high value and moderate value sites to UNMOVIC and the IAEA.

National Security Adviser Condoleezza Rice made the same representation in a letter to me on March 6, 2003, in which she said:

United Nations inspectors have been briefed on every high or medium priority weapons of mass destruction, missile, and UAV-related site the U.S. intelligence community has identified.

On January 20, 2004, the CIA, after a year of resistance, finally declassified the number of "high and medium priority 'top suspect' WMD sites" where the CIA shared information with the U.N. inspectors prior to the war in Iraq.

In doing so, they finally acknowledged that 21 of the 105 high and medium priority top suspect sites on the

CIA list were not shared with the United Nations before the war. So the record is now clear that Director Tenet twice gave false information on this matter to the public and to the Congress shortly before the war.

The January 20, 2004, letter from the CIA states their position. The position of the CIA is that it provided the United Nations "with the intelligence that we judged would be fruitful in their search." History will, and a thorough investigation would, determine the accuracy of that statement. But the public can now judge the accuracy of Director Tenet's public statements before the war that all high and medium priority top suspect sites were shared with the United Nations. All such sites were not shared and Mr. Tenet's repeated statements were false.

Last February, Director Tenet could have answered honestly and said: We have not given the U.N. inspectors all the high and medium priority top suspect sites and this is why, Senator.

Instead, he chose a different path, one of misstating the facts. I can only speculate as to Director Tenet's motive. If he had answered honestly and said that there were 21 high and medium priority top suspect sites that we had not yet shared with the United Nations, it would have put an obstacle in the path of the administration's move to end U.N. inspections and proceed to war. It would have been more difficult for the administration to proceed to war without first having shared with the U.N. our intelligence on all high and medium priority top suspect WMD sites and it would have reinforced widely held public and international sentiment that we should allow the U.N. to complete their inspections before going to war.

In other words, honest answers by Director Tenet might have undermined the false sense of urgency for proceeding to war and could have contributed to delay, neither of which fit the administration's policy goals. For the last year, I have attempted to have declassified the number of high and medium priority top suspect sites that the U.S. did not share with the United Nations. The CIA stonewalled doing that for no reason that I can think of except that the facts are embarrassing to them. Surely, that is no reason to withhold information from the American people and to give inaccurate information repeatedly to Congress in public testimony. We rely on our intelligence agencies to give us the facts, not to give us the spin on the facts.

The accuracy and objectivity of intelligence should never be tainted or slanted to support a particular policy. What is badly needed and what is lacking so far is candor about how we were so far off in the assessments of Iraq's possession of WMD. The lack of candor is one of the many reasons an independent commission should be appointed by Congress, not just by the President, to look at not just how the intelligence came to be so flawed but

how that flawed intelligence came to be further exaggerated by the administration in order to support its decision to initiate military action.

One small part of this picture is this recent letter from the CIA that finally makes clear the truth. The CIA did not share all of the top suspect WMD sites in Iraq that Director Tenet said twice publicly before the war that it had shared with U.N. inspectors. It is more evidence of the shaping of intelligence to fit the administration's policy objectives.

I ask unanimous consent that the letter from the CIA that I have referred to on this matter be printed in the RECORD.

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

CENTRAL INTELLIGENCE AGENCY,
Washington, DC, January 20, 2004.

Hon. CARL LEVIN,
Committee on Armed Services,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: I am responding to your letters of 23 October 2003 and 8 January 2004 regarding declassification of specific information concerning the Intelligence Community's (IC's) sharing of information on Iraqi suspect weapons of mass destruction (WMD) sites with the United Nations (UN) inspectors.

I want to begin by ensuring that there is a mutual understanding of what has been declassified thus far with respect to Iraqi suspect WMD site numbers and the sharing of this information with the UN inspectors.

In our 23 May 2003 letter, we provided the number of approximate Iraqi suspect WMD sites identified by Central Intelligence Agency, 550; and, the number of suspect sites where inspectors were more likely to find something than at other sites, 150.

In our 11 July 2003 letter, we provided the number of suspect WMD site packages provided to the UN inspectors, 67.

In our 9 and 13 May briefings to the SSCI staff, we explained that this number represented the number of site packages shared with the UN inspectors at the IC initiative. The 67 number does not include site packages provided pursuant to UN inspectors' requests.

Your most recent letters concern three specific requests:

The number of high and medium priority sites on the IC's 150-site top suspect site list. Answer: High: 37; Medium: 68.

The number of high and medium priority sites where the IC shared information with the UN, including briefing packages. Answer: High: 33; Medium: 51.

The number of high and medium priority sites where the IC shared briefing packages with the UN. Answer: High: 21; Medium: 30.

The 21 high and 30 medium site packages provided to the UN inspectors represent site packages provided at the IC's initiative and pursuant to UN inspectors' requests. The number of high and medium site packages provided to the UN inspectors solely at the IC's initiative are 20 and 25, respectively.

These numbers have been declassified. However, in order to ensure that the numbers are accurately characterized, it is important to reiterate what has been previously provided in earlier correspondence to you regarding the suspect WMD site information shared with the UN inspectors. I specifically call your attention to the Director of Central Intelligence's 11 July 2003 letter, signed by the Deputy Director of Central Intelligence, which states:

"... CIA provided UNMOVIC with the intelligence that we judged would be fruitful in their search for prohibited material and activities in Iraq. We did not have and we never claimed to have, smoking-gun information that would lead the inspectors to a quick find. We selected the best sites we had that we judged would have the best chance of finding something. It is important to remember that we had given the UN a vast amount of data in the 10-plus years we cooperated with them on inspections, including data on many of the sites long suspected of containing illicit activity. Thus, when inspections resumed last year, we wanted to focus our effort on giving the UN new data that we had not told them previously. We started by considering about 150 sites that seemed promising—we further refined that list because many of these sites were already known to the UN inspectors, had been the subject of previous discussions by CIA and those organizations, and on which we had no new information. By the time inspections stopped, we had developed site packages for 67 sites. These included the sites on which we had the best intelligence—on which we had pertinent and possible 'actionable' information. We would not have helped the UN inspectors by giving them large volumes of data they already had. The UN relied on us to prioritize the information rather than simply to give them everything we had on every possible site in Iraq."

We ask that the numbers and text be used in tandem when discussing Iraqi WMD suspect sites and site packages provided to the UN inspectors.

I believe that with this response all your requests for declassification of Iraqi suspect site numbers have been addressed.

Sincerely,

STANLEY M. MOSKOWITZ,
Director of Congressional Affairs.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BUNNING. Madam President, today I rise to spend a few minutes talking about the need for medical malpractice reform in my State, along with the bill before us, S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act.

First, I commend the Senate leadership for bringing up this bill for consideration this week. It sends a signal to the American people that this is a high health care priority this year and that we have not given up the fight for real reform. As a father of 9 and a grandfather of 35, I believe there are very few things more important than providing mothers with the safest and healthiest environment to deliver their children.

Unfortunately, because of the medical liability crisis in Kentucky, the health and safety of both mothers and their babies are being jeopardized. Personally, I believe the most effective approach to medical liability insurance reform is a comprehensive approach covering all health care providers.

I hear all the time from doctors and hospitals across Kentucky about how

they struggle to pay their skyrocketing premiums. Last May, the Joint Economic Committee found that total premiums for medical liability insurance doubled from 1992 to 2001, to reach \$21 billion. I know hospitals and doctors are struggling under these increases. Last year, we had an opportunity to pass a comprehensive reform bill. Unfortunately, our opponents did not even give us a chance to fully consider the bill or have an up-or-down vote on it. Today we are attempting to fix the problem for just one of the specialties that has been the most severely affected by the increase in malpractice insurance premiums. Those are the OB/GYN doctors.

Specifically, this bill would improve access to care for pregnant women by placing some reasonable limits on lawsuits against their health care provider. The bill provides unlimited awards for economic damages and places a \$250,000 cap on damages for pain and suffering.

The bill also ensures that health care providers will only be liable for their share of any damages in a lawsuit brought against an OB/GYN doctor, along with limited attorney's fees.

All of these are steps in the right direction and the right thing to do. I urge my colleagues to vote for cloture tomorrow. The liability system we have now is badly flawed and broken and must be fixed. It encourages lawsuits and defensive medicine and forces doctors to become more worried about going to court than properly caring for their patients. This, in turn, leads to higher insurance premiums and gaps in care. Under our current liability system everyone loses, doctors and patients—everyone, that is, except the personal injury lawyers.

It is obvious people are beginning to understand the impact that soaring medical malpractice premiums are having on their communities. In fact, a recent poll showed that 68 percent of Kentuckians support putting limits on medical malpractice awards. That is right, 68 percent of Kentuckians. That is an overwhelming number of Kentuckians supporting reform.

I hear all of the time about how premiums rise, squeezing physicians financially, and affecting Kentuckians' access to quality health care. Last year, the American Medical Association added Kentucky to its list of crisis States. This means the current liability system is seriously eroding patient care. In Kentucky, physicians are choosing to close their offices or retire early. Others are packing up and moving to other States with more sensible insurance regulations.

A study conducted by the Kentucky Medical Association shows that over a 3-year period, Kentucky had a net loss of 819 physicians. According to the study, over 1,200 physicians moved out of the State to more friendly communities, and 281 retired. Even worse, we are losing young doctors. In that time, 500 residents packed their bags and left

Kentucky. That means 58 percent of the residents who trained in the State moved elsewhere to practice. My State cannot continue to bleed physicians like this. It takes a toll on our communities and our patients.

The American College of Obstetricians and Gynecologists also conducted a survey back in 2002 and found that 71 percent of the Kentucky physicians who responded to their survey have actually changed their practice—changed their practice from what they did because of the medical liability reform crisis that we are having. In my book that is completely unacceptable.

They also estimate that 3,240 pregnant women in Kentucky are without OB/GYN care. If that is not a crisis, I don't know what is.

The medical liability crisis not only affects physicians in private practice, it affects our hospitals as well. Last year, two hospitals in eastern Kentucky—Our Lady of Bellfonte Hospital in Russell and the Knox County Hospital in Barbourville—both completely stopped delivering babies. This puts mothers in rural areas at a much greater risk of complications. No expectant mother should have to drive past the hospital she has trusted for years to find one that will deliver her child. It doesn't make any sense. It just is not common sense.

While the liability crisis clearly must be addressed for the entire country, individual States are trying to pass legislation to help the doctors within their own borders. I commend them for this effort. In Kentucky, the State senate recently passed a bill by a vote of 23 to 14 that would allow Kentuckians to vote whether they want to amend the State constitution to allow for medical malpractice reform. Now it is up to the Kentucky House of Representatives to pass similar legislation. I believe the general assembly should pass a constitutional referendum and let Kentuckians vote on this issue since the crisis is threatening their access to care and ultimately costing them more in health care costs.

I have consistently supported medical malpractice reform since I came to this Congress in 1986, and I will support S. 2061 this week. It is the right thing to do, and it is the right thing to do for my State.

It is important that my colleagues take a stand and decide if they are with the mothers and children or if they are with the personal injury lawyers. Personally, I will be supporting the mothers and children in my State. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

JOBS IN AMERICA

Mr. KENNEDY. Madam President, I would like to take a few moments of the time of the Senate to review one of the compelling issues facing the Nation, all across our country, and that is the state of our economy translated in ways that working families understand it—the state of jobs in America. How

are people doing with the jobs they have? Are they working longer? Are they working harder? What has happened to the millions of Americans who are on the unemployment lines? What about the millions of Americans who have lost any hope?

It seems to me, as I have said on many other occasions, that we have an administration that looks at the state of our economy from the position of Wall Street but not Main Street. The reason I say that is because I look at the remarks of the President of the United States that he made today. I will include the relevant parts of the speech. I am now quoting.

At home, obviously, the economy and jobs are on my mind. I know they're on yours, as well. I am pleased that the economy is growing. . . . My view of Government is to create an environment that is good for the entrepreneur. . . . And that we ought to keep on with the tax cuts.

That is his recommendation in terms of his statement that he made at the National Governors Association.

The rhetoric fails to match the realities of most Americans' lives. I know the President and his economic advisers have been touring the country claiming that the tax cuts for the wealthy have led to an economic recovery. A closer look at the States they have been visiting makes it clear this President and this White House are out of touch with the real needs and everyday concerns of average American families.

The President told small businesses in Tampa, FL, last week that tax relief was a vital part of the economic recovery and failed to mention 52,000 jobs have been lost in Tampa, FL, since he took office and that the jobs being created in the State pay 15 percent less than the jobs that have been lost. He did not mention Tropical Sportswear, an apparel maker in Tampa which shipped more than half of its cutting room jobs overseas.

And in a minute I will talk about the new Time magazine just out on the market and its cover story about too many jobs going abroad. I fail to see much in the President's comments to the Governors and to the American people showing the sensitivity that families are feeling all across this country about outsourcing.

Two weeks ago the President touted his economic policies in Harrisburg, PA, where 14,000 jobs have been lost since January 2001. The jobs being created in Pennsylvania pay 23 percent less than the jobs that were lost. In the same week, the President told businesses in Springfield, MO, the growth is good and jobs are being created. Yet 5,300 jobs have been lost in Springfield, MO, since President Bush took office, and the jobs being created in Missouri pay 25 percent less than the jobs that have been lost.

Every day it is becoming more and more clear the current Bush economic policy is in disarray. Last week, President Bush and his economic team

backed away from the promise to create an average of 2.6 million new jobs this year. The President made the promise in his economic report just the week before last and now no one in the White House or the Cabinet will endorse the 2.6 million number. It is just broken promise after broken promise.

President Bush promised his first tax bill would create 800,000 additional jobs by the end of 2002, but we lost 1.9 million jobs instead. His 2002 economic report promised 3 million more jobs in 2003; instead, more than 300,000 were lost. His economic report last year projected 1.7 million new jobs for 2003, and we suffered a loss of 400,000 jobs. He promised the latest round of tax breaks would create 510,000 additional jobs by the end of 2003, but we lost 53,000 jobs last year. President Bush says it is a good idea to send jobs overseas, as if we had not lost enough jobs already.

This chart is a pretty clear indication about what has been happening to the American economy in terms of jobs and the impact the economic policies of this administration are having regarding employment. This shows 5.2 million jobs short of the administration promises for 2002. In 2002, we are 2.5 million jobs short of the promises of 2003. The reality is nearly 2 million jobs have been lost in the first 2 years under President Bush.

The administration talks about how the economy is growing and how well the economy is doing. In his speech to the National Governors Association today, we can see words that are similar to what the President used in the State of the Union Address. In the State of the Union Address the President talks about the pace of economic growth in the third quarter being the fastest in nearly 20 years. Productivity is high and jobs are on the rise. He continued along in that speech, talking about his support for the elimination of overtime in an effort to help small business. That is the regulation the administration referred to as "the needless Federal regulation," a regulation that has been in effect since we adopted the 40-hour week that provides overtime protections for millions of Americans. This administration is committed to overturning that regulation. That would affect 8 million Americans who work more than 40 hours a week.

This is the projection of this administration in terms of the jobs created and the actual record of the administration over recent years. Whether it is a speech to the National Governors Association or the State of the Union, when we hear from the President the state of the economy is getting stronger and stronger, it is important to understand what the facts are.

We can ask ourselves whether this is the responsibility of workers in this country. This chart shows Americans work more hours than workers in other industrialized nations. This chart, from the Organization for Economic Development and Cooperation, shows Americans work 100 hours each year more

than any other industrial nation and considerably more than most of the other European nations. A few hundred hours more than France, Italy, and Germany. American workers are working longer. They are working harder just to try to stay in place.

If we look at the job market in terms of women in our society, what is happening to middle-income mothers who work 55 percent more hours today than 20 years ago? In 1979, it was 895 hours annually. Look at this figure: 1,388 hours now, almost double the amount in 2000.

So American workers are working longer and harder than any other industrial society. Not only that, we have also seen that the families are working longer and harder. Both men and women, husbands and wives are working longer and harder than any other country in the world. So families are working almost longer and harder, and the jobs gained do not pay as much as jobs lost.

The administration talks about the creation of new jobs, they talk about the unemployment figures, but it is important to understand what those jobs are and what they are in terms of pay. In 48 of the 50 States, the new jobs are paying less than the old jobs. There are only two States where they pay more. They average 23 percent less. Workers are working longer and harder. The jobs are paying less.

We will look at what is happening to the national average wage. For workers in 2001, the average wage was \$44,000. The average wage now is \$35,410, a 21-percent reduction in the average wage for workers today.

We read the statement of the President today talking about the state of our economy, that everything is good and getting better, and when we read the State of the Union talking about how positive all the economy is, we ought to be able to look at what is happening out there on Main Street. Workers are working longer and harder. Both men and women are working longer and harder, and their total income is going down. That is what is happening on Main Street across this country.

This chart demonstrates these points. In 48 States the Bush "recovery" has replaced high-paying jobs with low-paying jobs, with the exception of Nebraska and Nevada. That is a national phenomenon in States across this country, and the outsourcing issue is one of the principal contributors. That is why there is national attention given in this magazine today talking about the challenges we are facing with outsourcing.

I will read a couple parts of the article about outsourcing, and I will include the relevant paragraphs so they will be in complete context.

That's why outsourcing to India has exploded during the recovery.

I will come back to the "recovery" in just a minute.

That is why outsourcing to India has exploded during the recovery. It jumped 60% in 2003—

That is 60 percent in 2003—

compared with the year before, according to the research magazine Dataquest, as corporations used some of their profits (not to mention [their] tax breaks)—

Not to mention their tax breaks—do you want to know where a great chunk of those tax breaks are going? It has been used to organize and shift American jobs overseas. This is the conclusion in this magazine today. It goes on:

That translates to 140,000 jobs outsourced to India last year. And what is the human aspect? Here is one of the individuals who has been affected. His name is:

Vince Kosmac of Orlando, Fla., has lived both sad chapters of outsourcing—the blue-collar and white-collar versions. He was a trucker in the 1970s and '80s, delivering steel to plants in Johnstown, Pa. When steel melted down to lower-cost competitors in Brazil and China, he used the G.I. Bill to get a degree in computer science. "The conventional wisdom was 'Nobody can take your education away from you,'" he said bitterly. "Guess what? They took my education away." For nearly 20 years, he worked as a programmer and saved enough for a comfortable life. But programming jobs went missing two years ago, and he is impatient with anyone who suggests that he "retrain" again.

"Retrain" again—remember that picture with the President out there talking about new training programs that were tied into the community colleges? The principal problem with that is he said he was going to request I guess \$250 million, but of course they cut over \$600 million in the last 3 years out of the training programs.

But this is what is happening here—the fact that this individual got the training and programming jobs went missing 2 years ago.

... he is impatient with anyone who suggests that he "retrain" again. "Here I am, 47 years old. I've got a house. I've got a child with cerebral palsy. I've got two cars. What do I do—push the pause button on my life? I'm not a statistic."

That is it. These families are not statistics. They are real people who are working hard, working longer, and making less. That is one of the prime concerns many of us have; that is, if we have a problem, the first thing we have to do is understand it. The first thing the President of the United States has to say is: We have a problem. Let's deal with it. If he just keeps on going as he did with the State of the Union and as he has today to the Governors, that everything is hunky-dory, everything is getting better, that there is no problem, then you are failing to understand what is happening on the main streets across this country.

This next item is from the Lou Dobbs show on CNN last Friday night. These are all publications from today, the speech made by the President today, the impact on the wages today. All of this has been in the last few days. We are not going back a year or 2 years ago as to what is happening; we are

talking about what is happening across this country today and what the President of the United States said today and how out of touch he is on these issues.

This is from last Friday night. I think these two comments said it all on the Lou Dobbs show last Friday night. This is Glenn of Oxford, MI:

If General Motors, Ford and DaimlerChrysler can take supplier parts and send them to China to be mass produced at a third of the cost, then why doesn't the cost of the vehicle ever go down? Labor is cheaper, parts are cheaper, but CEO pay increases.

There it is. That is what is happening. That is the real economy. That is what is happening. When you are talking about outsourcing, you are not only talking about families who have worked hard, played by the rules, and are being outsourced; a decision is being made over which they have no control. But you would think at the end of the day, if the parts are cheaper, if everything is cheaper, then at least the vehicle or some other part would be cheaper; but, no, the same cost, but the profits go to the CEOs.

That was Glenn of Oxford, MI, last Friday night on the CNN show.

Here is Walter, of Gary, IL:

When did the American dream become buying goods and services as cheap as possible?

That is a pretty good question: "When did the American dream become buying goods and services as cheap as possible?"

It used to be to have a good job, buy an affordable home, raise our children and hope that our children will be able to do the same if not better in the future.

That is the definition of the American dream. That is the dream that is being trampled on every single day, and we need to have national leadership that understands what is happening out across this country.

It is stunning to me—absolutely stunning to me—that we cannot have a recognition about what is happening in terms of the current situation. These are the facts.

In the Bush economy, corporate profits ballooned compared to workers' wages. On this chart is shown the change in the share of corporate-sector income, profits, and workers' wages, which is in the dark tan. And what is shown on the chart is for the early 1990s recovery—the early 1990s recovery—compared to today's recovery that this President is talking about. He talked about it today. He talked about it in the State of the Union. He said everything is hunky-dory. Yet we have spelled out what is happening to real working families. This chart tells the story. And they must have this chart down at the Council of Economic Advisers. They must have this chart down in the White House. Someone ought to put this one on the desk of the President. Here it is.

In the early 1990s, the share of the recovery was 60.29 percent for workers' wages, and for corporate profits it was 39 percent.

What about today? Well, here it is. Eighty-six percent of today's "recovery" goes to corporate profits and 13 percent is going to the wages of workers.

This tells it all as to what is happening in terms of the American economy. The workers are getting short shrift across this country. You can take all of the statistics, and the President can make all the speeches—as he did in the State of the Union and as he did today—but it is not telling the full story. This tells the full story. This tells what is happening to workers in this country. It is told in the lost hopes and dreams of workers who have seen their jobs go overseas, but it is also told in these other facts.

I will just show you this chart about the Bush economy creating low-paying jobs. Let's take the late 1990s—1998 to 2000—the fourth quarter. This is the quarter of the growth period out of the recession. And here are comparable periods of time out of the recession between the 1990s and the year 2000 and the current recovery and what has happened with low-paying wages.

This is what we were talking about before, the loss of income, jobs being lost and the new jobs paying less and less and less, both men and women working harder, working longer, corporate profits booming, workers working harder and making a good deal less, with the average income for those working families going down.

Here is a chart that shows the recovery is the worst for workers since the Great Depression. This is the comparison for the month the recession ended about what happened to workers' salaries. In 1961, when we had a period of economic growth and price stability, the longest period of economic growth and price stability with the exception of President Clinton, until the time of the ballooning of the spending in the Vietnam war. But the wages went up 10.7 percent. In the 1970s, it came in at 12 percent; in 1975, 9 percent; November of 1982, 11 percent; March of 1991, 3.6 percent—not very much. This is the period of time President Clinton turned this country around, creating 21 million jobs. And then the first increase was 3.6 percent. Now it is four-tenths of 1 percent.

How many more indicators do we need?

The fact is, we are facing a serious economic crisis in workplaces across the Nation. This administration appears not to understand it. In a statement of the President to the National Governors Association, he talked again about how well the economy is doing, how pleased he is with the progress we are making.

That is not what is happening on Main Street, USA. All across this Nation, in 48 out of the 50 States, too many jobs are going abroad. We hear about it in our States and all across the Nation. Everyone appears to know about it except the administration. Their only answer to any of our prob-

lems is providing additional tax breaks for wealthy individuals.

Mr. REID. Will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. REID. Madam President, is the Senator from Massachusetts aware of what happened last week regarding one of the President's chief economic advisors, N. Gregory Mankiw, Chairman of the President's Council of Economic Advisors? Recognizing that the country has lost 2.8 million manufacturing jobs during the time he has been President, is the Senator aware that this man recommends that in an effort to bolster manufacturing jobs, he wants to have people who work at McDonald's reclassified as manufacturers? Is the Senator aware of that?

I will read exactly what the man said, in case the Senator missed that. The plan is to simply reclassify existing jobs in the fast food industry and declare they are now manufacturing jobs. He said:

When a fast-food restaurant sells a hamburger, for example, is it providing a "service" or is it combining inputs to "manufacture" a product?

Is the Senator aware of this statement which I would consider ridiculous?

Mr. KENNEDY. I am. We want to reference it because it is so startling. It is in chapter 2, page 73—what is manufacturing. The Senator has read it correctly. It is startling to me. We just read the papers in the last few days, if we look at what the Secretary of Health and Human Services has to do now in terms of correcting a record with regard to the disparities on health care because people over in the Department were cooking the books to give it more favorable statements and comments and facts with regard to the problems we are facing with minorities.

Then, of course, in the last day or so we read the comments of our friend and colleague Senator LEVIN where he said the CIA had not been frank and candid and honest with him in terms of providing information about what sites had actually been given to the inspectors and whether they had been given the most accurate sites in terms of the weapons of mass destruction. There was representation that they had, and we find out in the newspapers that they had not.

Then we are troubled today by the statement of the Secretary of Education—who is my friend, although I differ with him—when he said the NEA organization that represents the teachers is a terrorist organization. I was absolutely baffled by that comment. I will read the AP wire:

Education Secretary Rod Paige called the nation's largest teachers union a "terrorist organization" during a private White House meeting with governors on Monday. Democratic and Republican governors confirmed the education secretary's remarks about the [NEA]. "Those were the words, 'the NEA is a terrorist organization,'" said Democratic Gov. Jim Doyle of Wisconsin. Several Demo-

cratic governors called the remarks inappropriate.

I ask unanimous consent to print the AP wire in its entirety in the RECORD.

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

[From the Associated Press]

PAIGE TELLS GOVERNORS EDUCATION UNION IS "TERRORIST ORGANIZATION"

(By Robert Tanner)

WASHINGTON.—Education Secretary Rod Paige called the nation's largest teachers union a "terrorist organization" during a private White House meeting with governors on Monday.

Democratic and Republican governors confirmed the education's secretary's remarks about the National Education Association.

"These were the words, 'The NEA is a terrorist organization,'" said Democratic Gov. Jim Doyle of Wisconsin.

Several Democratic governors called the remarks inappropriate.

"He was making a joke, probably not a very good one," said Gov. Ed Rendell of Pennsylvania. "Of course he immediately divorced the NEA from ordinary teachers, who he said he supports."

"I don't think the NEA is a terrorist organization," said Rendell, who has butted heads with the group as well. "They're not a terrorist organization any more than the National Business Organization is a terrorist organization."

Neither the Education Department nor NEA had an immediate comment on Paige's comments. Both indicated the statements were forthcoming.

Mr. REID. Will the Senator yield for another question?

Mr. KENNEDY. Yes.

Mr. REID. I am stunned by the statement of Secretary Paige. I have the greatest respect for Governor Doyle. I know if he said he said it, he said it. But with regard to the NEA, for example, someone I went to high school with spent much of his adult life working for the NEA, organizing all over the West. That is a terrible thing to say about my friend Rinaldo Martinez, that he is part of a terrorist organization. That is stunning.

Back to the loss of 2.8 million manufacturing jobs.

Mr. KENNEDY. If I may make a quick comment, since we are on that subject, on the statement by the Secretary, whether it was said seriously or in jest, this illustrates in crystal-clear terms the misplaced values of the administration when they roll out the red carpet for the big drug companies, the HMOs, the insurance companies in recent Medicare legislation, and then slap our Nation's teachers in the face with unacceptable language. I say they are wrong. I believe Secretary Paige owes the Nation's teachers and the people an explanation and a full apology.

Mr. REID. The President's people want to reclassify people who work at McDonald's, Burger King, and Wendy's as manufacturing so that the loss of manufacturing jobs appears less. But would the Senator comment on the fact that it seems it may be better for the President's folks to dwell on people who work in those places not having a

raise in the minimum wage for as long as they have? People are working two and three jobs to make ends meet just barely. We don't hear a word from the administration, not a single word on increasing the minimum wage for these people who work in these places that they want to reclassify as manufacturing jobs, where they now make \$5.15 an hour. And we have been stymied procedurally from raising even an up-or-down vote on the minimum wage that will allow us to do that. Yet they want to reclassify people who work in those places as manufacturers. Is this the height of nonsense?

Mr. KENNEDY. The Senator is absolutely correct. Here we have the administration effectively misleading the country in terms of where we are going in terms of the economy and the numbers of jobs and the types of jobs. But at the same time, as the Senator correctly points out, we have not seen an increase in the minimum wage for 7 years. The purchasing power of the minimum wage now is close to the lowest it has ever been.

We know there is a majority in the Senate that is for an increase in the minimum wage, but we are being blocked in this body and in the House of Representatives by the fact that the President and this administration are opposed to an increase in the minimum wage, as they are opposed to an extension of unemployment compensation so that we have some 90,000 workers a week, men and women who have contributed into the unemployment compensation fund that is in a surplus of \$17 billion, and we find that the administration has opposed the request of our friend and colleague from Washington, Senator CANTWELL, who along with others, has a dozen times requested that we take up a temporary extension of the unemployment compensation for workers.

Not only that, as the Senator well knows, we have an administration that is opposed to overtime for 8 million workers in this country, of whom many are policemen, firefighters, and nurses, who are the backbone of our homeland security.

People say, what could you do right away? They ask Senator KERRY, what can you do now? Well, you could do something today if you had different leadership that would make a significant and important impact on the lives of 7 million Americans with regard to the minimum wage, hundreds of thousands of workers regarding unemployment, and 8 million Americans with regard to overtime. That is what you can do today with different leadership, let alone what you could do if you had a President who was prepared to help eliminate the tax loopholes that send our jobs overseas; or they can try to bring in American companies and try to work with them to find ways of stabilizing this whole issue about the export of jobs and find ways of keeping them. There are many ways this can be done, but you will not get it done when

you have a President who at noontime today said to the Governors: Everything is fine, the economy is growing, don't worry, we are just doing fine; everything is going along in a very positive way.

I am troubled the message is not getting through.

Mr. REID. We have heard a lot about the loss of manufacturing jobs in our country.

There are traditionally very good jobs, the kind that can really support a family—decent hourly wages, good health care coverage, and paid vacations. They provide an honest day's pay for an honest day's work because these jobs aren't easy.

It takes concentration, skill and stamina to stand on an assembly line making automobiles, or aircraft, or televisions, or dungarees. And most important of all, it requires pride in a job well done.

When I grew up, you saw the "made in the USA label" on almost everything you bought. It was an assurance that a product was of the highest quality because it had been manufactured by American workers.

Today it's hard to find that label on many products because fewer and fewer things are being "made in the USA."

Over the last 42 months, our Nation has lost manufacturing jobs every single month—a total of 2.8 million jobs.

These are the statistics, and behind these statistics are 2.8 million grim stories.

Every time a job is lost, a family's world is torn apart.

A worker loses the self-esteem of supporting a family, and also loses the sense of pride in a job well done. The family will probably lose their health coverage. Maybe they'll have to give up their dream of owning a home, or their children will have to forget about attending college.

This is why the loss of manufacturing jobs is such a crisis in our country.

For months now, we have wondered whether the administration has a plan to revive our manufacturing sector, and help create new manufacturing jobs.

Mr. President, I believe in giving credit where credit is due. It now appears that the administration might in fact have a plan to create manufacturing jobs.

Unfortunately, that plan is simply to reclassify existing jobs in the fast food industry and declare that they are now "manufacturing" jobs!

This idea was suggested in the Economic Report of the President which was sent to Congress last week, and by N. Gregory Mankiw, the chairman of the President's Council of Economic Advisers.

To reiterate, in a speech to economists, Mr. Mankiw said that reclassifying fast food jobs as manufacturing was "an important consideration" in setting economic policy. And the White House drew a box around this part of the Economic Report:

When a fast-food restaurant sells a hamburger, for example, is it providing a "service" or is it combining inputs to "manufacture" a product?

Sometimes, seemingly subtle differences can determine whether an industry is classified as manufacturing. For example, mixing water and concentrate to produce soft drinks is classified as manufacturing. However, if that activity is performed at a snack bar, it is considered a service.

According to an article in last Friday's New York Times, some economists in the administration want to count flipping hamburgers as manufacturing so they can claim more jobs in that sector of the economy.

Mr. President, if this idea wasn't such a cruel mockery of American workers and their families, it would be funny.

I have nothing against people who work in the food service industry. Here in the Senate I have fought to protect these workers. I have tried to get a vote on increasing the minimum wage. And I have fought to protect overtime pay.

But it is a fact that very few food service jobs can compete with good manufacturing jobs in terms of supporting a family.

I suppose the food service workers could organize themselves into unions, as many factory workers have done. Maybe they could call themselves the Amalgamated Hamburger Assembly Workers or the Brotherhood of French Fry Baggers.

They could call themselves that, but they would still be food service workers, not factory workers. And their jobs would still be service jobs, not manufacturing jobs.

You can change all the terminology you want, but you can't change the fact that our country desperately needs a real plan to boost our manufacturing sector.

We need to look at tax credits for businesses to create manufacturing jobs; we need to cut health care costs; and we need to enforce our trade agreements so they will be fair to American workers.

We need a plan that recognizes what the loss of manufacturing jobs has meant to almost three million American families.

This is a serious problem. But this suggestion by the administration can't be taken seriously.

Mr. KENNEDY. Madam President, this is an insult to Lucille Rocket of Durfee High School in Fall River. She works hard to bring smaller learning communities to school to help kids learn. She mentors teachers. She is an enormously constructive and positive person in the high school system as a member of the NEA in my State.

Cathy Moriarty teaches at-risk second grade children in Springfield's gymnasium because they don't have enough classrooms. She believes the No Child Left Behind Act doesn't fund the needed support for smaller class size and better trained teachers. She is a member of an organization that speaks

to that issue. She is proud of it. I am proud of her.

Amanda Pellerin-Duck, who is in Springfield's Commerce High School, brought new curriculum on global issues to school. She cares about the quality of education and she has spoken out about the importance of making sure we are going to get it right with the No Child Left Behind.

Ellen Peterson is a first grade teacher who helped new teachers on her own time. These teachers give of themselves every day. They are devoted to the children and they care deeply about the quality of education, and they are members of an organization that was insulted.

Cindy Douglas teaches kindergarten in Franklin with limited supplies and does an extraordinary job. She believes this administration and this Nation should put funding of education at a higher priority.

Those are real people who are members of this organization. We have not always agreed, the NEA and myself, on education issues. But I admire their work in my own State, and I admire the work they have done historically on education. I have been a member of that committee for 42 years. It is absolutely startling, Madam President. Probably for the time I have been on the committee, for 20 years, we never voted on any issue. Everything was bipartisan—all the education issues. We had it under a Republican, Senator Stafford, who is still alive, a wonderful elderly Senator from Vermont, and Senator Pell, a dear and valued friend of mine and my family, who is from Rhode Island. We never voted on education issues. They were bipartisan for 20-odd years. Most of us—at least I did—thought we had a bipartisan effort with this administration on the No Child Left Behind. We had extraordinary overwhelming support in this body and in the House of Representatives trying to get this job done. We were going to have reform, but with that, we have to have investment. We got the reform, but not the investment. We have left children, I believe, hanging high and dry.

It is not just the Senator from Massachusetts saying it. It is also education leadership in the State of Utah, in Republican States alike that are talking about this. That is why, as we are trying to deal with an issue of such high importance and priority, we should be beyond and far away from the inappropriate use of terms in characterizing an organization that has worked so long and hard to improve the quality of education for the children in this country.

This legislation, S. 2061, is not a serious attempt to address a significant problem being faced by physicians in some States. It is the product of a party caucus rather than the bipartisan deliberations of a Senate committee. It was designed to score political points, not to achieve the bipartisan consensus which is needed to enact major legislation.

This bill contains most of the same arbitrary and unreasonable provisions which were decisively rejected by a bipartisan majority of the Senate last year. The only difference is that last year's bill took basic rights away from all patients, while this bill takes those rights away only from women and newborn babies who are the victims of negligent obstetric and gynecological care. That change does not make the legislation more acceptable. On the contrary, it adds a new element of unfairness.

The proponents argue that they are somehow doing these women and their babies a favor by depriving them of the right to fair compensation when they are seriously injured. It is an Alice in Wonderland argument which they are making. Under their proposal, a woman whose gynecologist negligently failed to diagnose her cervical cancer until it had spread and become incurable would be denied the same legal rights as a man whose doctor negligently failed to diagnose his prostate cancer until it was too late. Is that fair? By what convoluted logic would that woman be better off? Both the woman and the man were condemned to suffer a painful and premature death as a result of their doctors' malpractice, but her compensation would be severely limited while his would not. She would be denied the right to introduce the same evidence of medical negligence which he could. She would be denied the same freedom to select the lawyer of her choice which he had. She would be denied the right to have her case tried under the same judicial rules which he could. That hardly sounds like equal protection of the law to me. Yet, that is what the advocates of this legislation are proposing.

Of course, this bill does not only take rights away from women. It takes them away from newborn babies who sustain devastating prenatal or delivery injuries as well. These children face a lifetime with severe mental and physical impairments all because of an obstetrician's malpractice or a defective drug or medical device. This legislation would limit the compensation they can receive for lost quality of life to \$250,000—\$250,000 for an entire lifetime! What could be more unjust?

This is not a better bill because it applies only to patients injured by obstetrical and gynecological malpractice. That just makes it even more arbitrary.

We must reject the simplistic and ineffective responses proposed by those who contend that the only way to help doctors is to further hurt seriously injured patients. Unfortunately, as we saw in the Patients' Bill of Rights debate, the Bush administration and Congressional Republicans are again advocating a policy which will benefit neither doctors nor patients, only insurance companies. Caps on compensatory damages and other extreme "tort reforms" are not only unfair to the victims of malpractice, they do not result in a reduction of malpractice insurance premiums.

While those across the aisle like to talk about doctors, the real beneficiaries will be insurance companies and large health care corporations. This legislation would enrich them at the expense of the most seriously injured patients; women and children whose entire lives have been devastated by medical neglect and corporate abuse.

This proposal would shield HMOs that refuse to provide needed care, drug companies whose medicine has toxic side effects, and manufacturers of defective medical devices. This legislation is attempting to use the sympathetic family doctor as a Trojan horse concealing an enormous array of special legal privileges for every corporation which makes a health care product, provides a health care service, or insures the payment of a medical bill. Every provision of this bill is carefully designed to take existing rights away from those who have been harmed by medical neglect and corporate greed.

It would drastically limit the financial responsibility of the entire health care industry to compensate injured patients for the harm they have suffered. When will the Republican party start worrying about injured patients and stop trying to shield big business from the consequences of its wrongdoing?

This legislation would deprive seriously injured patients of the right to recover fair compensation for their injuries by placing arbitrary caps on compensation for non-economic loss in all obstetrical and gynecological cases. These caps only serve to hurt those patients who have suffered the most severe, life-altering injuries and who have proven their cases in court.

They are the children who suffered serious brain injuries at birth and will never be able to lead normal lives. They are the women who lost organs, reproductive capacity, and in some cases even years of life. These are life-altering conditions. It would be terribly wrong to take their rights away. The Bush administration talks about deterring frivolous cases, but caps by their nature apply only to the most serious cases which have been proven in court. These badly injured patients are the last ones we should be depriving of fair compensation.

In addition to imposing caps, this legislation would place other major restrictions on seriously injured patients seeking to recover fair compensation. At every stage of the judicial process, it would change long-established judicial rules to disadvantage patients and shield defendants from the consequences of their actions.

If we were to arbitrarily restrict the rights of seriously injured patients as the sponsors of this legislation propose, what benefits would result? Certainly less accountability for health care providers will never improve the quality of health care. It will not even result in less costly care. The cost of medical malpractice premiums constitutes less

than two-thirds of 1 percent—0.66 percent—of the Nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation.

Over the last 15 years, medical costs increased by 113 percent. The total amount spent on medical malpractice insurance rose just 52 percent over that period, less than half the rate of inflation for health care services.

Data from the National Practitioners Data Bank shows the number of payouts by Ob/Gyns in medical malpractice cases is not increasing. It has been relatively stable over the last twelve years. In fact, there were 13 percent fewer payouts in 2002 than in 1991. Similarly, the total amount paid to settle malpractice claims against Ob/Gyns has remained flat over the past twelve years when adjusted for medical inflation. The evidence shows that contrary to the claims of those promoting this legislation, malpractice payouts are not causing the cost of health care to rise.

The White House and other supporters of caps have argued that restricting an injured patient's right to recover fair compensation will reduce malpractice premiums. But, there is scant evidence to support their claim. In fact, there is substantial evidence to refute it. In the past few years, there have been dramatic increases in the cost of medical malpractice insurance in States that already have damage caps and other restrictive tort reforms on the statute books, as well as in states that do not.

Caps are not only unfair to patients, they are also an ineffective way to control medical malpractice premiums. Comprehensive national studies show that medical malpractice premiums are not significantly lower on average in States that have enacted damage caps and other restrictions on patient rights than in States without these restrictions. Insurance companies are merely pocketing the dollars which patients no longer receive when "tort reform" is enacted.

If a Federal cap on non-economic compensatory damages were to pass, it would sacrifice fair compensation for injured patients in a vain attempt to reduce medical malpractice premiums. Doctors will not get the relief they are seeking. Only the insurance companies, which created the recent market instability, will benefit.

Doctors, especially those in high risk specialties, whose malpractice premiums have increased dramatically over the past few years do deserve premium relief. That relief will only come as the result of tougher regulation of the insurance industry. When insurance companies lose money on their investments, they should not be able to recover those losses from the doctors they insure. Unfortunately, that is what is happening now.

Doctors and patients are both victims of the insurance industry. Excess profits from the boom years should be

used to keep premiums stable when investment earnings drop. However, the insurance industry will never do that voluntarily. Only by recognizing the real problem can we begin to structure an effective solution that will bring an end to unreasonably high medical malpractice premiums.

Finally, I understand we will be voting on cloture tomorrow. We just had this legislation offered. We are here on a Monday. We are prepared for action and discussion, but we are being required to vote tomorrow. I intend to vote no on the cloture motion. This is an important issue affecting the quality of health and fairness and justice for millions of women and babies. It does not deserve to be rushed through the Senate.

I yield the floor and 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. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

OUTSOURCING JOBS

Mr. DORGAN. Madam President, last week the Senate was not in session and most of us in the Senate were in our home States. I spent most of the week in North Dakota visiting with people about the economy, jobs, health care, and a wide range of issues. I had meetings on the issue of No Child Left Behind, on the significant problem in rural States with methamphetamine and the scourge this deadly new drug poses to young people and to law enforcement. A lot of us were doing a lot of activities last week. I wish to talk about a couple of issues that happened since we left town.

Last week, there was a lot of discussion about the Economic Report of the President that was sent to the Congress just prior to our leaving town.

This week's BusinessWeek, March 1, 2004, says:

Will Outsourcing Hurt America's Supremacy?

That is similar to the front cover of BusinessWeek a year ago:

Is your job next? A new round of globalization is sending upscale jobs offshore. They include chip design, engineering, basic research—even financial analysis. Can America lose these jobs and still prosper?

So BusinessWeek, in front covers, now and exactly 1 year ago from now, asks the same questions: Will outsourcing hurt America's supremacy?

The issue of outsourcing of jobs has been raised in the President's Economic Report, and there has been a lot of discussion about it. I thought it would be helpful perhaps to read it because it gets back to the question of international trade and its impact on our economy.

On page 25 of the Economic Report of the President, it says: Outsourcing of professional services is a prominent ex-

ample of the new type of trade. The gains from trade that take place over the Internet or telephone lines are no different than the gains from trade in physical goods transported by ship or by plane. When a good or service is produced at a lower cost in another country, it makes sense to import it rather than to produce it domestically.

Let me read that last sentence again. When a good or service is produced at a lower cost in another country, it makes sense to import it rather than produce it domestically.

So that created a significant debate. This is a booklet, the Economic Report of the President, that is extolling the virtues of outsourcing of American jobs. It is safe to say, perhaps, that no economist who worked on this booklet has ever had their job outsourced. In fact, I know of no American economist who has lost his or her job because of outsourcing. I also know of no politician in this country who has lost his or her job because the job was outsourced to Sri Lanka, Bangladesh, China, or Indonesia.

So it is easy then for politicians and economists to thumb their suspenders, smoke their cigars, ruminate, cogitate about these things, and come up with this goofy idea that somehow when a good or service is produced at a lower cost in another country, it makes sense to import it rather than produce it domestically.

I will take this point just for a moment and see if I can dissect it by talking about bicycles. I know I have spoken about this before, but repetition is the hallmark of good policy, so let me do it again. When it can be produced less expensively overseas, the President's economic advisers and the President's report say do it. Well, Huffey bicycles are a good example. The company that made Huffey bicycles had 20 percent of the domestic market. People can buy these bicycles from Sears, Wal-Mart, and Kmart. Most people know about Huffey bicycles. They used to be made in this country. They were made in Ohio by American workers. Those American workers made \$11 an hour making bicycles.

I did not know one of the workers but I am sure they were proud of their jobs and proud of their product. They made Huffey bicycles. In fact, on Huffey bicycles the decal on the front between the front fender and the handlebars was an American flag decal made by American workers. So Huffey bicycles moved to China. Why? Because it costs \$11 to hire an American to work to make a Huffey bicycle and a Chinese worker can be hired for 33 cents an hour.

Huffey left Ohio and went to China. The last job that was done by the workers in Ohio was to replace the little flag decal with a decal of the globe. They removed the flag and put a globe on the front of Huffey bicycles.

The last bicycle that was boxed up and left the plant in Celina, OH, was at 10:15 in the morning when a red 20-inch

Huffy model was put in a box for shipment, and then Huffy changed its nationality. Huffy bikes are now Chinese.

Now, bicycles do not speak, so there was no visible sign of this change of nationality when the Huffy showed up at Wal-Mart or Kmart or Sears. They are now for sale as a Chinese bicycle rather than an American bicycle.

Question: Does anybody think that when Huffy decided to send its bicycle production to China, those bicycles ended up on the showroom floor of Wal-Mart or Kmart at a much lower price because instead of paying \$11 an hour for workers constructing these bicycles, they were now paying 33 cents an hour?

Instead of having safe workplaces, there are none of those OSHA problems in China. Instead of having a manufacturing plant where they cannot put chemicals in the water and put chemicals into the air, there are none of those restrictions in China. Instead of having child labor laws where 12-year-olds cannot be hired to work 14 hours a day, there are none of those restrictions in China.

So is it less expensive to produce Huffy bicycles in China? Darn right it is. Does the consumer benefit from that? Do my colleagues think Huffy bicycles that showed up on the showroom floor of Kmart and Wal-Mart are less expensive bicycles after they cut manufacturing costs of workers from \$11 an hour to 33 cents an hour? The answer is no, of course they aren't.

This has nothing to do with advantaging consumers. It has to do with corporate profits. It has to do with laying off Americans and fattening profits.

So going to page 25 of the Economic Report of the President, his economic advisers say: When a good or service is produced at lower cost in another country, it makes sense to import it rather than produce it domestically. The keyword here is cost. They know the cost of everything and the value of nothing, as the old saying goes.

I will tell my colleagues where things can be produced at less cost: Mexico, Indonesia, Bangladesh, China. I can name a dozen countries. But is that the only criterion? Is that the judgment we are going to make in this country: If it costs less somewhere, then there is an advantage to producing it there and shipping it back here and there is some sort of inherent advantage to our consumers? It is simply not true.

I do not understand whether it is being hard headed or soft headed to fail to understand the basic truths about international trade. I am not someone who believes we should build a fence around our country but I do believe there ought to be some fairness with respect to the rules of this globalization.

I will describe for a moment something I did just before the break. I came to the Senate floor and I listed—which, incidentally, is on my Web site as well at <http://Dorgan.Senate.gov> for

those who might be interested—the top 100 companies that basically moved jobs to Mexico after the North American Free Trade Agreement.

Now these 100 companies—this is not conjecture from me—these are companies that certified to the Department of Labor that these jobs were no longer going to exist because of the North American Free Trade Agreement. Why did they certify it? Because they wanted to make eligible the workers who were being laid off for this transitional trade adjustment assistance. What a wonderful, remarkable term: Transitional trade adjustment assistance. That means, for somebody out there who is losing their job, they are going to be transitioned and they are going to get some assistance in the short term. Guess what. One loses their job, they get transitioned, we give them some money, and then go away, please.

So in order to get that transitional assistance, one had to have a certification from their company. So here is a certification. Levi Strauss, 15,676 jobs, mostly moved to Mexico; they certified that. I am not accusing them of it. I am just saying they certified that to the Department of Labor. Levi's, now that is all American; right? Everybody wears Levi's, but Levi's are not American anymore. They are made elsewhere. Fruit of the Loom used to be in Texas. They certified 5,352 jobs gone, T-shirts, shorts, underwear; Fruit of the Loom, not American, gone.

Do my colleagues want to order some Mexican food? Well, they do not have to say: Give me a chalupa, give me an enchilada. What they can say is: Give me some Fig Newtons, because Fig Newtons left America and went to Mexico. They are gone. Do my colleagues think Fig Newtons are made at home? No, they are not. Fig Newtons are on this list, certified as leaving America. Why? Because they can make them less expensively elsewhere.

How many Americans know that Fig Newtons now come from Mexico? So we lose our Fruit of the Loom, we lose our Levi's, we lose our Fig Newtons.

I am mentioning some things that are not high tech. I should mention some high tech—Motorola telephones. Let me give an interesting statistic that most people would not believe.

Do you know that after NAFTA, when we were told that what would be shipped to this country from Mexico would largely be the result of low-skilled, low-wage labor, they said that is what this is going to be. We are accessing the Mexican marketplace for low-skilled, low-wage labor which will ship jobs into this country and it will not displace those in this manufacturing sector who have good jobs, making good money, because they have high-skilled, high-wage jobs. Wrong. The three largest categories of manufactured items coming into the United States from Mexico are automobiles, electronics, and automobile parts.

Did you know in a recent year we imported more automobiles into the

United States from the country of Mexico than we exported to all the rest of the world? I am going to say that again. The United States imported more automobiles from Mexico than we exported to all of the rest of the world. That describes to you what happened with NAFTA—a substantial flight of U.S. jobs, good manufacturing jobs, good-paying jobs to Mexico.

It is all about wages. I understand that. So you go to page 25 and the issue here is not about values. It is not about the American economy. It is not about caring whether this world-class economy of ours retains a strong manufacturing base—which I think is essential to be a country with a strong world-class economy. It is not about that. It is about cost.

When a good or service is produced at a lower cost in another country it makes sense to import it.

So you say, "So long to American jobs." There are no tears shed for that with these economists.

Of course they sit there without worrying about their jobs because no economists I know have lost their jobs. No economists lost their jobs to NAFTA. No politician lost his or her job. Despite the fact that everybody was wrong.

This describes what happened. This happens to be the 100 top companies that certify job loss: Only with respect to Mexico; only with respect to NAFTA.

We were told. The best economists said: Pass this North American Free-Trade Agreement because if you do we will produce substantial new jobs. Guess what. We had a small trade surplus with Mexico. We passed NAFTA, the North American Free-Trade Agreement, and that small surplus turned into a giant deficit. Ross Perot called it a giant sucking sound, and those jobs have gone to Mexico wholesale.

We had a modest deficit, a relatively modest deficit with Canada, which is the other country that is the participant in the North American Free-Trade Agreement, and that has become a very large deficit.

In both cases with Mexico and Canada, all the experts were wrong and we have dramatically increased the Federal trade deficit with respect to both countries.

Let me also say in the Economic Report of the President there has been a discussion in recent days about what is manufacturing, because they pose the question on page 73. They ask a question.

The definition of a manufactured product, however, is not straightforward. When a fast food restaurant sells a hamburger, for example, is it providing a service? Or is it combining inputs to manufacture a product?

I don't know exactly which economist might have written page 73, but when a fast food restaurant sells a hamburger, is it providing a service or is it combining inputs to manufacture a product? This rather serious economist poses one of the questions of our

era: Should a hamburger be considered part of our manufacturing base? Should the making of a hamburger be considered part of our manufacturing base?

How about the person who hangs out the window and says, Do you want fries with that? Is that a key part of the manufacturing base? Where does this go?

What would your mom, or my late mother, think if you came home and said what you had been doing and you told her you had been manufacturing chocolate pie? I don't think so.

Sometimes in this town language becomes such a barrier to understanding. This is so fundamentally absurd on its face. Is making a hamburger part of America's manufacturing base? The answer is of course not. Of course not.

We have lost a massive number of manufacturing jobs in this country in recent years. I suppose some of the same economists who have sold us on this economic strategy may want to make it appear as if we have lost fewer jobs by counting those who construct a hamburger—two all-beef patties, special sauce, lettuce, whatever it is—as part of our manufacturing sector. But of course on its face that is nuts and this ought not be part of any significant or serious discussion.

There are a lot of questions being raised these days about jobs. Let me say I don't think, with all the discussion we have about social programs in the Congress, there is not a social program in this country that is as important as a good job that pays well. Because that is what helps provide the security for America's families.

We are going through a time when we face the loss of a lot of jobs. We face the restructuring of an economy. We did have a recession, relatively short. We are now a year and a half past that recession and the fact is we are still not producing any significant number of new jobs. So the question for all of us is, Is this economic strategy a strategy that produces new growth without new jobs?

Paul Craig Roberts, who was one of the top economists for the Reagan administration, recently wrote a piece suggesting that perhaps this is an economic recovery without new jobs. If that is the case, we have some serious problems ahead of us. He says maybe this new economy, this new growth, does create jobs but not in the United States; jobs in China, jobs elsewhere, just not jobs here. If that is the case, we face significant challenges.

We are going to have an agenda in this Senate that will move very quickly between now and the first Tuesday of November, which is election day. I understand all that. We are going to be working on a lot of extraneous issues, some because one side or the other wants to have a political wedge issue someplace. We on our side don't schedule this place. The majority schedules it at this point so they will determine what is on the floor of the Senate.

But for me, I believe there is not a more important issue that we need to deal with than the question, are we going to have an economic engine that creates jobs so the American families, as they talk about their lot in life, have a chance to visit about progress? How will American families answer the questions: Do I have a good job? Does it pay well? Do I have job security? Am I going to be outsourced?

And then answering the other questions that come from the ability to have a decent job, Do we send our kids to schools we are proud of? Do Grandpa and Grandma have access to good health care? Do we live in a safe neighborhood? Do we keep this country safe from terrorist attacks?

There are so many issues that confront us, but I think the issue of jobs is critically important and we spend far too little time working on it in the Senate.

I want to say this: Those who think it is a good thing to send America's jobs overseas, those who think this is a new economic approach that is good for America, don't understand. Because they have not been in that place. They have never been a part of a family where they know about secondhand things, second jobs, second shifts, and second mortgages. They have never been a part of that. They think it is just fine to construct some economic theory, some model that says if we can produce Huffy bicycles less expensively in China, good for us, let's do it. Except the consumer doesn't benefit from that, it is just the American workers who lose their jobs.

The questions these economists need to answer—and the politicians, incidentally, who support this, and there are plenty—is: Who will be the purchasers and consumers in an economy in which you diminish and then finally ship good jobs overseas? Who is going to purchase all of these things you are producing overseas?

I have given a number of trade speeches. I come to the floor of the Senate and talk about this repeatedly and nobody seems to care very much. That is lamenting. I should not say it quite that way. It does not result in dramatic change in public policy.

We can talk about the most recent trade agreement with China. We have roughly a \$130 billion trade deficit with China right now. It has been growing leaps and bounds. Our negotiators negotiate an agreement with China and say on the bilateral trade with respect to automobiles: We will agree with this, China; you can ship any Chinese automobile you may wish to manufacture to the United States, and we will charge a tariff of only 2½ percent. And we agree any U.S. cars we try to ship to China are charged a tariff 10 times higher of 25 percent.

Stupid? Sure. On its face it is a stupid provision. We say to China, which has a \$130 billion trade surplus with us, by the way, we will make a deal. We want to have bilateral automobile

trade, and we will let you charge a tariff 10 times higher than we will.

I would love to find the negotiator who did that and see if we could not find a way to prevent them from ever having a public sector job once again. That makes no sense. Yet we see this time after time after time.

As I speak today, every single pound of American beef that is sent to Japan has a 50-percent tariff on it. We have a huge trade deficit with Japan. Every pound of American beef sent to Japan has a 50-percent tariff. That is 15 years after our trade negotiators reached a beef agreement with Japan.

This country needs to get a backbone and stand up for its economic interest. Yes, I am talking about ranchers. I am talking about manufacturers. I am talking about business owners who do business in this country and have to compete. We need a spine, backbone, some willingness to stand up for the economic interests of this country, not being protectionists but just saying there needs to be some basic rules.

If, in fact, we are a global economy—and, indeed, we are—then the rules with respect to that global economy need to keep pace with globalization.

We had people killed in the streets of this country in the last century. They gave their life fighting for some basic rights: The right to organize, basic rights for workers to organize. We had people fight on the issue of child labor to prohibit the sending of 12-year-old children down into the coal mines and into manufacturing plants. We waged fights over the issue of minimum wage and safe workplaces and the environmental laws that prohibit a plant from dumping its chemicals into the air and water.

Now we are told forget all that because if you are a global company, you pole-vault over that and go someplace where you do not have to worry about environmental or labor rules. That is a nuisance. Child labor, minimum wage, the right to organize, that is a nuisance.

This is what we have dealt with for 100 years in order to create a more perfect opportunity for business and labor. There is something fundamentally wrong.

I hope we can have a discussion about jobs in the Senate. I intend to offer a series of amendments at the next opportunity dealing with the issue of jobs and dealing with the issue of trade. The President has just finished a Central American Free-Trade Agreement. I believe we ought to have that debate in the Senate. He has just completed the Australian Free-Trade Agreement. We ought to have that debate in the Senate. I intend to be in the Senate opposing both. I will describe why later. Neither, in my judgment, represents the best interests of this country. I want trade pacts to be mutually beneficial. That means they need to benefit this country, as well.

What prompted me to speak were a couple things: One, this discussion

about outsourcing. The economists who wrote this—this is the President's book, actually signed by the President, but the fact is, I understand it is written by the President's economic advisers. He, in some ways, began to do a U-turn and lost the steering wheel and turned back again. My hope is the President certainly does not believe this nonsense. Outsourcing of good jobs in this country, outsourcing of manufacturing jobs, outsourcing of service jobs is not in this country's best interest. They say in the long run it will even out because the other countries will raise themselves up.

John Maynard Keynes said in the long run, we are all dead. I am interested in the next year, the next 5 years, the next 20 years. I am relatively uninterested in the realignment of the economies 100 years from now.

I want very much for this country to succeed. I want this country to remain a world economic power. It will not be a world economic power if it is deep in debt, up to its neck in fiscal policy deficits and up to its neck in trade deficits. We have fiscal policy deficits this year alone of about \$660 billion. I know the numbers that are advertised are \$530 billion, but that is if you take the Social Security revenue, which is a dishonest thing to do. So \$660 billion in Federal budget deficits, and add to that the highest trade deficits in human history, very close to \$480 billion, and it is appropriate to look at this country's fiscal policy and trade policy and ask: Where is the leadership? Where does the leadership come from to address these issues?

My hope is that I and others who care a great deal about this can provide some of that leadership. We invite the President and people from both political parties to join us. This President needs to speak forcefully in response to this "Economic Report of the President." He needs to say: This is not what I mean. The economists may have written it, but I don't believe outsourcing strengthens our country. I don't believe moving American jobs overseas strengthens the United States of America.

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

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

The legislative clerk proceeded to call the roll.

Mr. ENSIGN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ENSIGN. Mr. President, I rise today to speak on the issue of medical liability reform and the bill pending before the Senate. This legislation is a narrowed-down version of what myself and Senator GREGG introduced last year, which in contrast was a broad-based medical liability reform bill. Today we pared it down to limit it just to OB/GYNs, nurse midwives, and any other provider involved in the delivery of babies.

The reason we have done this is fairly typified in my State and in many other States around the country by this picture. It is a real life picture taken only days ago: the building moniker reads "OB/GYN," and next to it, a sign now hangs that reads "For Lease," and call a particular number. This sign indicates how OB/GYNs are leaving practice in my State and in other States across the country because they can no longer afford their medical liability premiums.

This is a problem that some describe as not that big a deal. But if you talk to the women who cannot get obstetrical and gynecological services, it is a crisis to them.

Southern Nevada is the fastest growing population center in the country. We have 6,000 new people moving in a month and are we not getting as many new OB/GYNs as we need. We need a lot of new doctors coming to our State. But instead of new doctors arriving to practice in Nevada, we have doctors limiting their practices and stopping either the practice of obstetrics or leaving our State altogether.

The American Medical Association has identified 19 States that are in crisis, and all but 5 States are showing signs the crisis is building in their State.

Some people have said: Well, this is about rich doctors versus rich lawyers. This is not about doctors versus lawyers. This is about access to care. This is about a woman who is thinking: "I want to have the best possible care for my baby," and she cannot find a doctor.

I have a good friend who lives in Las Vegas. He delivers high-risk pregnancies. These are the people you want to have as your best doctors. However, because of the huge increases in rates, his insurance company has limited him on the number of deliveries he can make during the year.

That is not what we want to be doing. We want to have the best people delivering babies, especially for high-risk pregnancies which require the most skill.

It is our legal system that is out of control. Unfortunately, we have trial lawyers out there who are taking advantage of our broken civil justice system. They are even advertising on TV. I am sure many people, when they watch TV, have seen these 1-800 numbers you can call to find somebody to sue. It is basically: Bring your Rolodex and we will figure out who you are going to sue. That goes for almost anything today, but it is especially prevalent in the field of medicine.

Across America the crisis is happening not just with OB/GYNs. As a result, in this bill, we have decided to focus also on nurse-midwives, the overall practice of delivering babies, and providing gynecological care because it is the most acute problem we are seeing across the country.

In my State, we did pass a medical liability reform bill in August of 2002,

but the only reason that it was able to pass was because our trauma center closed. It was the only level I trauma center for a region of 10,000 square miles, and it closed because of the medical liability crisis. The only way that trauma center was able to open again was because the State decided to step in and put its liability cap on anybody who provided care through the level I trauma center. People have been arguing that \$250,000 is not enough. Well, the State of Nevada's cap on damages is \$50,000 for anyone who chooses to sue a healthcare professional that provided care at the trauma center. That alone allowed the level I trauma center to open.

This is the same level I trauma center where Roy Horn, the famous person from the duo of Siegfried and Roy, was treated when he was attacked by a tiger. If it was not for the State of Nevada applying its \$50,000 damage cap, that trauma center would not have been available for Roy. He certainly would be in much worse shape today if that had not been the case, and maybe he would not have made it at all if that kind of care was not available. This example indicates the politics of what can happen when a crisis gets so great that the trial lawyers cannot stand up and keep their stranglehold on our legislatures around the country.

Today, we need to have the same thing happen in the Senate where people around the country call their Senators and say the crisis is too severe. We need to have special interests, especially trial lawyers' special interests, put aside, and we need to put the practice of medicine first. We need to put first access to quality care for women and those new babies coming into the world. We need to put their care above all else.

Last year, the University of Nevada School of Medicine had the lowest number of students entering obstetrics and gynecology it has had since 1999. And, equally disturbing, each year since 2000, that number has continued to go down and down and down.

This chart shows the very clear contrast of what has happened in my State and other States versus California. Why do I put California up versus the rest of the States in the country? The reason is because California enacted what is known as MICRA. MICRA is their medical liability reform law which they enacted in 1975. After withstanding eleven years of court challenges, it has now been in effect for about eighteen years and we know it is working.

By the way, the people in lawsuits are getting plenty of compensation in California. But the difference in premium increases—California compared to the rest of the country—is stark. In California, from 1976 to today, there has been a 167-percent increase. For the rest of the country, however, it is over 500 percent. Moreover, these percentages do not reflect the last couple of years. If the last couple years were

shown, this red line showing the 500 percent would almost be spiking because it is going up so rapidly.

To put this in real dollar terms, so you can get a comparison between different States, here are some really good examples. This is 2002 premium survey data for selected specialties. We are comparing the cities of Los Angeles—once again, California has the MICRA law it enacted—and Denver, which is in another State that has enacted very similar legislation. The laws in California and Colorado are the ones Senator GREGG and I based our legislation on. These two States have strong medical liability reform in their States. These other States shown on the chart do not. Let's see the difference. Let's go down on the lower portion of the chart because we are talking about OB/GYNs. Let's talk about the difference in the States. For Los Angeles, \$54,000 a year—still a lot of money, but \$54,000. In Denver, it is around \$31,000. In New York, it is \$90,000. In Las Vegas, where I live, it was \$108,000 in 2002, and you cannot get it for \$108,000 anymore. Currently, it is closer to \$140,000 or \$170,000 in my State, and even higher. In Chicago, it is \$102,000. In Miami, it is over \$200,000 a year.

Is there any doubt in anybody's mind these laws are working when you look at the comparisons? Like I said, this is data from 2002. If you had 2003 data, the numbers would be even more stark. Consequently, I think we need to call on our Senate colleagues to at least allow us to debate this bill.

We are going to have what is called a cloture vote on the motion to proceed tomorrow. All that is is a parliamentary term here in the Senate as to whether we can proceed to the bill. The other side of the aisle is blocking us from even proceeding to the bill, blocking us from having a reasonable debate on whether we are going to allow women to have access to their OB/GYNs and to their nurse-midwife practitioners.

I have talked to so many people in my State, including patients, doctors, nurses and other people throughout the healthcare system, healthcare industry, and they know it is a crisis. But I have also visited with people from around the country. My State is not the only one that is in this type of a crisis. We are seeing severe problems from Pennsylvania to Mississippi to West Virginia to Washington State to Oregon, and all across the country. State after State after State has a serious problem today. When debating whether to debate this bill—that is all we are doing today, debating whether to debate this bill—we need people to step up to do the right thing. We have a Presidential election coming up this year. I think the candidates need to explain where they are on this bill. Some of them are going to be out running for office and may not be able to vote on this, but they ought to at least take a position on this bill to let people know

where they stand. Do they stand with the trial lawyers? Or do they stand with pregnant mothers and unborn babies who need to come into this world?

I think it is clear where we should stand as a body. This body should, in no uncertain terms, stand with protecting the patients of America, with making sure when a woman needs care, whether it is obstetrics or gynecology, that the healthcare provider will be there. Too many of these providers are leaving practice today because of the high cost of liability premiums.

I want to respond to a couple points the other side always brings up. They say the reason is not because of jury verdicts; rather, the reason for these premium differences is because of investments in the stock market the insurance companies made and then they went bad.

The stock market went crazy last year. It went way back up. So if the insurance companies were investing in the stock market, they would be doing fine, and we would not see these types of increases. The insurance companies in California and Colorado were invested in the stock market, just as the insurance companies in New York and Nevada and Illinois and in Florida. Yet there is this difference.

The only thing you can point to for the difference—and these are cities with similar population bases—is the reform laws that have been passed. They all invested in the same stock market. It was not the stock market that caused the premium increases. It was and is runaway jury awards. Our country, unfortunately, has become too litigious. It is not about personal responsibility anymore. Jury awards are just out of control.

People say: Injured patients deserve their just compensation. Well, they get just compensation in Colorado and California. I don't think one could look at California and ask: Do they discriminate against women? That is one of the arguments you hear: Because women don't make as much money, that they are being discriminated against. Are we saying the whole State of California discriminates against women? It is a ludicrous argument.

We have to have reasonable reform. That is what we have put forward today, reasonable reform, so that access to care is there. If access to care is not there, that is when discrimination against women will happen. The OB/GYNs, which is what this bill addresses, are the part of the medical profession that is in crisis the most. Of all of the various specialties, this is the one that is in the most severe crisis. Obviously, it affects women more than it affects men. So in effect, if we are not allowing women to have access to the OB/GYN care, not passing this bill will discriminate against women. People not voting for this will be discriminating against women. That is why we need to pass this legislation.

If you are opposed to the final version of the bill, at least let us go to

the bill, debate it, and amend it. But it seems the other side of the aisle, the Democrats in the Senate, don't want to have any part of this debate. The American people need to stand up to that. They need to stand up and make their voices heard, because this debate is too critical. We are having, and we will continue to have, babies not delivered with the kind of care they need. High-risk pregnancies need the absolute finest modern medicine can bring them. If those people are limiting their practices, and OB/GYNs are having to limit the number of deliveries they make, then those high-risk pregnancies will not have the kind of highly qualified medical care they need and deserve.

I could go into a lot of other statistics. I could talk about various anecdotes of people I have met. I would rather just sum up with this: In a day and age where America has the finest health care system in the world, where we have the finest quality, the best doctors, the best research institutions, the best hospitals, and where people from all over the world who can afford it come to America because of the high quality of care, if we want to keep the highest quality of care, we must enact medical liability reform. This bill that is limited down to just affecting the practice of obstetrics and gynecology, we at least must start here. I want to go much further than this, but let's at least start here so American mothers who are having babies or American women who are seeking gynecological care can have access to that type of care.

One last point has to do with the uninsured. I have heard in the Democratic debates talk about the 43 million uninsured. They want to do something about it. The main thing they could do to make healthcare insurance more affordable would be to enact reasonable medical liability reform. That is what we have before us today. So for those who are trying to make this a political issue, let's make it an issue that we actually do something about instead of just talking about it on the campaign trail.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

BLACK HISTORY MONTH

Mrs. DOLE. Mr. President, a short time ago Congress debated legislation to make the birthday of Dr. Martin Luther King, Jr., a national holiday. The floor leader for that legislation was a fellow name Bob Dole. And during the final debate, I had the privilege of sitting in the gallery with Coretta Scott