Focusing on premiums paid by OB/GYN physicians, the evidence is the same. Data from the Medical Liability Monitor shows that the average liability premium for OB/GYNs in 2003 was actually slightly higher in States with caps of damages—$63,278—than in States without caps—$59,224. It also showed that the rate of increase last year was higher in States with caps—17.1 percent—than it was in States without caps—16.6 percent.

This evidence clearly demonstrates that capping malpractice damages does not benefit the doctors it purports to help. Their rates remain virtually the same. It only helps the insurance companies earn even bigger profits. As Business Week Magazine concluded after reviewing the data, ''the statistical case for caps is flimsy.'' That was in the March 3, 2003 issue.

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.

Insurance industry practices are responsible for the sudden dramatic premium increases which have occurred in some States in the past 2 years. The explanation for these premium spikes can be found not in legislative halls or in courtrooms, but in the boardrooms of the insurance companies themselves.

Insurers make much of their money from investment income. Interest earned on premium dollars is particularly important in medical malpractice insurance because there is a much longer period of time between receipt of the premium and payment of the claim than in most lines of casualty insurance. The industry creates a ''malpractice crisis'' whenever its investments do poorly. The combination of a sharp decline in the equity markets and record low interest rates in recent years is the reason for the sharp increase in medical malpractice insurance premiums. What we are witnessing is not new. The industry has engaged in this pattern of behavior repeatedly over the last 30 years.

Last year, Weiss Ratings, Inc., a nationally recognized financial analyst conducted an in-depth examination of the impact of capping damages in medical malpractice cases. Their conclusions sharply contradict the assumptions on which this legislation is based. Weiss found that capping damages does reduce the amount of money that malpractice insurance companies pay out to injured patients. However, those savings are not passed on to doctors in lower premiums.

Between 1991 and 2002, the Weiss analysis shows that premiums rose by substantially more in the States with damage caps than in the States without caps. The 12-year increase in the annual malpractice premium was 48.2 percent in the States that had caps, and only 35.9 percent in the States that had no caps. In the words of the report:

> On average, doctors in States with caps actually suffered a significantly larger increase than doctors in States without caps . . . . In short, the results clearly invalidate the expectations of cap proponents.

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.

There are specific changes in the law which should be made to address the abusive manner in which medical malpractice insurers operate. The first and most important would be to subject the insurance industry to the Nation's anti-trust laws. It is the only major industry in America where corporations are free to conspire to fix prices, withhold and restrict coverage, and engage in a myriad of other anticompetitive actions. A medical malpractice ''crisis'' does not just happen. It is the result of insurance industry schemes to raise premiums and to increase profits by forcing anti-patient changes in the tort law. I have introduced with Senator LEAHY, legislation which will at long last require the insurance industry to abide by the same rules of fair competition as other businesses. Secondly, we need stronger insurance regulations which will require malpractice insurers to set aside a portion of the windfall profits they earn from their investment of premium dollars in the boom years to cover part of the cost of paying claims in lean years. This would smooth out the extremes in the insurance cycle which have been so brutal for doctors. Thirdly, to address the immediate crisis that some doctors in high risk specialties are currently facing, we should provide temporary premium relief. This is particularly important for doctors who are providing care to underserved populations in rural and inner city areas.

Unlike the harsh and ineffective proposals in S. 2061, these are real solutions which will help physicians without further harming seriously injured patients. Unfortunately, the Republican leadership continues to protect their allies in the insurance industry and refuses to consider real solutions to the malpractice premium crisis.

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. For that reason, it does not deserve to be taken seriously by the Senate.

I withhold whatever time I have and suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold on suggesting the absence of a quorum?

Mr. KENNEDY. I withhold suggesting the absence of the quorum.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

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

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, what is the state of business?

The PRESIDING OFFICER. The time until 4:50 is evenly divided.

Mr. HATCH. Thank you, Mr. President.

I rise to speak in support of S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act.

This bill addresses the medical liability and litigation crisis in our country, a crisis that is preventing patients from receiving high quality health care—or, in some cases, any care at all because doctors are being driven out of practice. This crisis is limiting or denying access to vital medical care and needlessly increasing the cost of care for every American.

As you will recall, we have previously tried to remedy this crisis in access to care. Most recently, we debated S. 11 which failed to receive the 60 votes necessary to invoke cloture last July. You have to have a supermajority now on these types of issues because of the opponents of this bill—and some others.

The time to act is now. The health care crisis is jeopardizing access to health care for many Americans. The medical liability crisis is also inhibiting efforts to improve patient safety and is stifling medical innovation. Excessive litigation is adding billions of dollars in increased costs and reduced access to high quality health care.

Defensive medicine is way out of whack. We are spending billions of dollars on unnecessary defensive medicine because doctors are terrified they are going to be sued in these frivolous lawsuits—called medical liability suits—by personal injury lawyers.

I am deeply concerned that we are needlessly compromising patient safety and quality health care. We know about 4 percent of hospitalizations involve an adverse event, and 1 percent of hospitalizations involve an injury that would be considered negligent in court.

These numbers have been consistent in large studies done in New York, California, Colorado, and in my home State of Utah. However, the equally troubling statistic is only 2 percent of cases with actual negligent injuries result in claims, and less than one-fifth—17 percent—of claims filed actually involve a negligent injury.

This situation has been likened to a traffic cop who regularly gives out more tickets to drivers who go through green lights than those who run red lights. Clearly, nobody would defend that method of ensuring traffic safety, and we should not accept such an insufficient and inequitable method of ensuring patient safety. Numbers are a searing indictment of the current medical liability system. I personally believe we can do better for the American people, and the Healthy Mothers and Babies Act is an important step in that path.

The problem is particularly acute for women who need obstetrical and gynecologic care because OB/GYN is among the top three specialties with the highest professional liability insurance premiums. This has led to many doctors leaving practice and to a shortage of doctors in many States, including my home State of Utah.

Studies by both the Utah Medical Association and the Utah Chapter of the American College of Obstetricians and Gynecologists underscore the problem in my State. Over half—50.5 percent—of family practitioners in Utah have already given up obstetrical services or never practice obstetrics. Of the remaining 49.5 percent who still deliver babies, 32.7 percent say they plan to stop providing OB services within the next decade. Most plan to stop within the next 5 years.

An ACOG survey from August 2002 revealed that over half—53.16 percent—of OB/GYNs in Utah have changed their practice, such as retiring, relocating, or dropping obstetrics because of the medical liability reform crisis. This change in practice leaves 1,458 pregnant Utahns without OB/GYN care.

The medical liability crisis, while affecting all medical specialties and practices, hits OB/GYN practices especially hard, and I suspect this is true of every State in the Union. Astonishingly, over three-fourths, 76.5 percent, of obstetricians/gynecologists report being sued at least once in their career. Indeed, over one-fourth of OB/GYN doctors will be sued for care given during their residency. These numbers have discouraged Americans finishing medical school from choosing this vital specialty. Currently, one-third of OB/GYN residency slots are filled by foreign medical graduates compared to only 14 percent one decade ago. OB/GYN doctors are particularly vulnerable to unjustified lawsuits because of the tendency to blame the doctor for brain-injured infants, although research has proven that physician error is responsible for less than 4 percent of all neurologically impaired babies.

Ensuring the availability of high-quality prenatal and delivery care for pregnant women and their babies, the most vulnerable members of our society, is imperative. We simply must pass this bill.

In August 2003, a GAO report concluded that actions taken by health providers as a result of skyrocketing malpractice premiums have contributed to health care access problems. These problems include reduced access to hospital-based services for deliveries, especially in rural areas. In addition, the report indicated that States that have enacted tort reform laws with caps on noneconomic damages have slower growth rates in medical malpractice premiums and claims payments. From 2001 to 2002, the average premiums for medical malpractice insurance increased about 10 percent in States with caps on noneconomic damages. In comparison, States with more limited reforms experienced an increase of 29 percent in medical malpractice premiums.

Medical liability litigation directly and dramatically increases health care costs for all Americans. Unfortunately, a high percentage of those cases are brought in order to get the defense costs by, in many respects, lawyers who are not true to their profession, who are personal injury lawyers seeking to make a buck.

In addition, skyrocketing medical litigation costs indirectly increase health care costs by changing the way doctors practice medicine. Defensive medicine is defined as medical care that is primarily or solely motivated by fear of malpractice claims and not by the patient's medical condition. According to a survey of 1,800 doctors published in the Journal of Medical Economics, more than three-fourths of doctors believed they must practice defensive medicine. A 1998 study of defensive medicine by Mark McClellan, our current head of the FDA who has been nominated now to be head of CMS, used national health expenditure data that showed medical liability reform has the potential to reduce defensive medicine expenditures by $69 billion to $124 billion in 2001, an amount that is between 3.2 and 5.8 times the amount of malpractice premiums.

The financial toll of defensive medicine is great and especially significant for reform purposes as it does not produce any positive health results nor benefits. Not only does defensive medicine increase health care costs, it also puts Americans at avoidable risk. Nearly every test and every treatment has possible side effects. Thus every unnecessary test, procedure, and treatment potentially puts a patient in harm's way.

Seventy-six percent of physicians are concerned that malpractice litigation has hurt their ability to provide quality care to patients. What can we do to address this crisis? The answer is plenty. There are excellent examples of what works.

Last March, the Department of Health and Human Services released a report describing how reasonable reforms in some States have reduced health care costs and improved access to quality health care. More specifically, over the last 2 years in States with limits of $250,000 to $350,000 on noneconomic damages, premiums have increased an average of just 18 percent, compared to 45 percent in States without such limits.

California enacted the Medical Injury Compensation Reform Act, also known as MICRA, more than a quarter century ago. MICRA slowed the rate of increase in medical liability premiums dramatically without affecting negatively the quality of health care received by the State's residents. As a result, doctors are not leaving California. Furthermore, between 1976 and 2000, premiums increased by 167 percent in California, while they increased three times as much, 505 percent, in the rest of the country. Consequently, Californians were saved billions of dollars in health care costs, and Federal taxpayers were saved billions of dollars in the Medicare and Medicaid programs.

No one in this body, perhaps with the exception of our colleague from Tennessee, Dr. Bill Frist, our majority leader, is more keenly aware of the defects in this system than I. Before coming to Congress, I litigated several medical liability cases. I defended health care providers. I have seen the heart-wrenching cases in which mistakes were made and where judgments should have been brought. But more often I have seen heart-wrenching cases in which mistakes were not made and doctors were forced to expend valuable time and resources defending themselves against frivolous lawsuits.

I have seen a lot of cases where there was no injury at all that were brought by unscrupulous personal injury lawyers, running up the cost to all the doctors, to the whole system. A high percentage of these cases are brought merely for defense costs because it cost so much to defend these cases that even the defense costs mean a pretty good fee if you are charging 30 to 40 percent.

The recent Institute of Medicine report, ''To Err is Human,'' concluded that ''the majority of medical errors do not result from individual recklessness or the actions of a particular group. This is not a bad apple problem. More commonly, errors are caused by faulty systems, processes, and conditions that lead people to make mistakes or fail to prevent them''. We need reform to improve the health care systems and processes that allow errors to occur and to identify better when malpractice has not occurred.

The reform I envision would address litigation abuses in order to provide swift and appropriate compensation for malpractice victims, redress for serious problems, and ensure that medical liability costs do not prevent patients from accessing the care they need. We need to move ahead with legislation to improve patient safety and reduce medical errors, and we need urgently to address the medical liability crisis so that more women are not denied access to quality medical care because it has become too expensive for their OB/GYN doctors to continue their practice.

The Healthy Mothers and Healthy Babies Access to Care Act will allow us to begin ensuring women and babies get the medical care they need and deserve. Without tort reform, juries are awarding astounding and unreasonable sums for pain and suffering. A sizable portion of those awards goes to the attorney rather than to the patient. The result is that doctors cannot get insurance and patients cannot get the care they need and deserve.

All Americans deserve the access to care, the cost savings, and the legal protections that States such as California provide their residents. Today's bill will allow us to begin to address this crisis in our health care system, gives women and their babies access to their OB/GYN doctors, and enables doctors to provide high-quality, cost-effective medical care.

I strongly support this legislation and urge my colleagues to support cloture.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that during the debate this afternoon with respect to the cloture vote, any Democratic speakers be limited to 10 minutes each. The reason I propound this request is that we have less than an hour left on our side. We have a number of speakers who have a desire to speak. If we have a limited time, they will not be able to do that. I ask unanimous consent that be the order.

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

Mr. CRAIG. Mr. President, I do not object to that. I appreciate the time consideration. The Senator from California is kind enough to allow me to proceed. I ask unanimous consent that she immediately follow me.

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

Mr. CRAIG. Mr. President, first, I am here to speak on S. 2061 and ask our colleagues to support it. Many of my colleagues have already spoken of the pressing need for this legislation, so I will not repeat their words now. What I will speak about is how the medical liability crisis has played out in my region of the country, the Pacific Northwest. I believe the situation as it exists there provides clear evidence of the need for national reform.

My story is the tale of two States, my home State of Idaho and our neighbor to the west, Oregon. Idaho enacted its original tort reform legislation in 1987. This legislation limited the award of noneconomic damages in personal injury cases to $400,000. This limit was indexed to inflation. Oregon also enacted tort reform legislation in 1987. Like the Idaho law, the Oregon law limited the award of noneconomic damages in personal injury cases. Oregon's law placed this limit at $500,000.

Unlike Idaho however, where the tort reform measure withstood judicial scrutiny, and has since been strengthened by the Idaho State Legislature in 2003, Oregon's law was struck down by the State supreme court in 1999. Since the cap was removed, there have been 20 settlements and jury awards of more than $1 million.

As expected, the costs of these awards have been passed on to medical professionals in the form of higher medical malpractice insurance premiums. The Eugene Oregon Register Guard reported on March 19, 2003, that obstetricians who have base coverage ($1 million per claim, $3 million aggregate per year) through Northwest Physicians Mutual, a doctor-owned insurance company, have seen their premiums increase nearly threefold, from $21,895 in 1999 to $61,203 in 2003. The same article referred to a statewide survey conducted by researchers at Oregon Health and Science University which found that since 1999, 125 doctors have quit delivering babies in Oregon—representing about 25 percent of doctors providing obstetric care. Nearly half of these physicians, 48 percent, cited insurance costs and 41 percent said they feared lawsuits.

The article goes on to tell the story of an Oregon physician who is abandoning his practice in Eugene, in order to establish a new practice in Coeur d'Alene, ID. The physician stated that he was attracted to Idaho because the State has safeguards in place for doctors. These safeguards have helped keep malpractice premiums down in Idaho. Indeed, the Idaho Medical association reports that physicians in Idaho for some high-risk specialities, such as obstetrics and gynecology, pay about half of what their counterparts in Oregon pay.

While I welcome any healthcare providers who wish to practice in Idaho, I do not wish to see women of a neighboring State, or any State, suffer from lack of available health care because medical providers cannot afford to purchase malpractice insurance in their home State.

Now as a firm proponent of our Federal system, I have always believed that it is preferable to solve problems at the level of government closest to the people. And my preference here would have been for State governments to address this issue, as indeed many have. However, many other States have either not enacted reform legislation, or as in the case of Oregon, have found their efforts at reform sidetracked by overzealous judges. And, as the medical liability crisis in the 19 States identified by the AMA now threatens to overwhelm the entire Nation's medical liability system, I feel that now is the time to address this issue at the national level.

A Federal law is required to ensure that reforms will be effected in all States. Furthermore, the language of S. 2061 will protect States with existing caps. At the same time it will protect health care providers by establishing a Federal standard for noneconomic damages limits, even if such caps are barred by a State constitution, such as in Oregon. By allowing State autonomy in the setting of liability limits, this bill respects our tradition of federalism.

Since this body refused to vote for cloture on a related bill last July, the general accounting Office has issued a report assessing the effects that rising malpractice insurance premiums have had on the public's access to health care. This report, released in August of last year, confirmed instances in the five ''crisis'' States studied where actions taken by physicians in response to malpractice pressures have reduced access to services affecting emergency surgery and newborn deliveries. No instances of reduced access to heath care were identified in the four ''non-crisis'' States studied.

The August report follows an earlier GAO report that examined the causes of the dramatic increase in malpractice insurance rates. That earlier report found that ''losses on medical malpractice claims—which make up the largest part of insurer's costs—appear to be the primary driver of rate increased in the long run.''

Together these two studies provide strong evidence that: (1) Rising claims costs are driving up the cost of malpractice insurance; (2) the rising cost of insurance is causing medical service providers to take actions which have limited access to health care; and (3) the imposition of noneconomic damages caps, as well as the other reform measures included in this bill, are effective in constraining the rise of insurance premiums.

From the Pacific Northwest to the Florida Keys, the problem is clear and the solution is clear. The only question awaiting clarification is whether this body possesses the resolve to pass this much-needed legislation.

Mr. President, to reiterate, I want to tell the story of two States as it relates to this issue and the bill, Healthy Mothers and Healthy Babies Access to Care Act, addressing that problem. The States are Idaho and Oregon. In 1987, Idaho and Oregon passed identical laws—or relatively identical laws. In the State of Idaho, we capped our personal injury cases at $400,000. Oregon capped them at $500,000. Unlike Idaho, the Oregon Supreme Court, in a period of time immediately following that, struck down the Oregon action. Idaho did not.

Idaho not only held its law but then strengthened that law in 2003. Here is the rest of the story. Idaho strengthened its law in 2003. Oregon struck down its law in 1999. But they both started in the same place. Since the cap was removed in Oregon, there have been 20 settlements for injury awards of well over a million dollars.

As expected, the cost of these awards has been passed on to the medical professional in the form of higher medical malpractice insurance premiums. The Eugene, Oregon Register Guard reported on March 19, 2003, that obstetricians who have base coverage—that is, $1 million per claim, $3 million per aggregate per year—through Northwest Physician Mutual, a doctor-owned insurance company, have seen their premiums increase nearly threefold, from $21,895 in 1999, to 61,203 in 2003. The same article referred to a statewide survey conducted by researchers at Oregon Health and Science University, which found that since 1999, 125 doctors have quit delivering babies in Oregon—representing about 25 percent of the doctors providing obstetric care. Nearly half of these physicians, 48 percent, cited insurance costs, and 41 percent said they feared lawsuits.

The article went on to talk about one Eugene, OR, physician who moved to Coeur d'Alene, ID. The reason he moved to Idaho is because in our State of Idaho, their insurance premiums are substantially less because the cap we placed in the law has held the test of the courts.

The reality is that we are trying to set the stage nationwide. We are all aware—and many colleagues have come to the floor of the Senate to talk about it—of the studies done, the GAO report, the high-cost States, and the OB/GYN doctors fleeing from those States, and as a result making it very difficult in some instances for pregnant women to receive the kind of health services they need and, in fact, upon time of delivery, to know they have a doctor waiting at their side to help them.

As medical liability crises in these 19 identified States loom, it is time we speak with uniformity across the Nation. That is exactly what this bill does. I hope that our colleagues can support cloture and we can move to a final vote on this bill. Clearly, the American people are now expecting us to speak out.

Last week, I held a health care conference in Boise. One of the primary concerns was the rapidly rising cost of health care. One of the components of that escalation in cost is the very thing we are attempting to address today. So I hope the Senate can stand with reasonable unity. Myself and others understand the politics of the trial bar. When is enough enough?

If we don't, by this action, deny access to the courts by those who are truly injured—and we don't—then why are we allowing a certain segment of our society, in the litigious manner they have chosen, to line their pockets. Who is the beneficiary? The patient? In many instances, they are not. Yet costs go up simply because of the risk involved.

We ought to be protecting the patient and, in this case, the average citizen of this country on both sides of that equation by making sure they can gain true access to the courts when true injury results and, at the same time, making sure we are wise enough to hold down the increasing costs of health care, assisted by the dramatic increase in premium costs to our physician. This is a step toward that kind of a solution.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from Idaho for his courtesy. I cannot support this bill. I don't believe it reflects compromise. I don't think it is materially changed from the bill that failed to get 50 votes last July. The major difference, as I see it, in this bill is that the liability restrictions apply to only one medical specialty group, obstetricians and gynecologists.

This bill sets a national cap of $250,000 for noneconomic damages. The cap applies not only to suits against doctors but to suits against HMOs and to manufacturers of gynecological or obstetric products as well.

So, under this bill, the Dalkon Shield contraceptive device would be shielded by this $250,000 cap regardless of the harm caused.

Moreover, this bill severely limits the availability of punitive damages against OB/GYNs and manufacturers of related products. The bill would also immunize manufacturers or sellers of gynecological products approved by the FDA from punitive damages.

The FDA exemption sets, in a way, a downward course. If a company has an FDA-approved product on the market and then learns of dangerous complications, the company must remove the product from the marketplace immediately. To provide an exemption for products with FDA approval may well be a disincentive to prompt removal from the shelf.

I am one who believes there needs to be a solution to rising malpractice insurance premiums. I want to talk to that solution in just a moment. But, it is correct that obstetricians and gynecologists are reeling under exorbitant medical malpractice premiums.

Obstetricians and gynecologists had more claims against them and paid out more money to plaintiffs than any other medical specialty between 1985 and 2000.

Prior to the State of Florida passing medical liability caps last year, OB/GYNs in Florida paid over $200,000 annually for malpractice insurance.

OB/GYNS in California, a State with liability caps, pay an average in malpractice insurance of $57,000, which is about a quarter of what it is in Florida.

According to the American College of Obstetricians and Gynecologists, 20 percent of obstetricians and gynecologists in Nevada are leaving their practice due to rising malpractice insurance costs. Twenty percent of OB/GYNs in West Virginia and Georgia have been forced out of their practice. I could go on and on and on.

I want to talk for a moment about California, and then I want to talk about what I think is a logical solution to this. But up to this point, the AMA and my own medical association, the California Medical Association, won't buy it. Congress can and should provide some legislative relief.

MICRA, the Medical Injury Compensation Reform Act, took place 29 years ago in California. MICRA set a precedent in the ensuing years for reform measures in several States. The MICRA law provides a model.

Last year, I spent several months reviewing MICRA to see what could be transferred to the national level.

I have come to believe it is possible that reasonable caps on liability can lead to affordable premiums.

When MICRA was enacted in 1975, the cost of health insurance in California was higher than in any market except New York City. In the 6 years before 1975, the number of malpractice suits filed per hundred physicians in California had more than doubled.

MICRA has kept costs down. In 1975, California's doctors paid 20 percent of the gross costs of all malpractice insurance premiums in the country. Today, it is 11 percent.

California's premiums grew 167 percent over the past 25 years compared to 505 percent in other States. So the growth in California is just about less than a third of what it is in the rest of the United States.

In California, patients get their money faster. Cases in California settle 23 percent faster than in States without caps on noneconomic damages.

MICRA allows patients to obtain health care costs, recover for loss of income, and receive the funds they need to be rehabilitated. And California's malpractice premiums are now one-third to one-half lower on average than those in Florida and New York.

The proposal I would put out for people to study today takes those parts of MICRA which I thought could serve as a national model. For example, a schedule of attorney's fees; a strict statute of limitations requiring that medical negligence claims be brought within 1 year from the discovery of an injury or within 3 years of the injury's occurrence; the requirement that a claimant give a defendant 90 days' notice of his or her intent to file a lawsuit before a claim can actually be filed; allowing defendants to pay damage awards in periodic installments; and allowing defendants to introduce evidence at trial to show that claimants have already been compensated for their injuries through workers' compensation benefits, disability benefits, health insurance, or other payments; and permitting the recovery of

unlimited economic damages. All of these points are now in play in California. I believe they are applicable nationally.

The differences from the California MICRA that I would propose would be in two key areas. The first is noneconomic damages, and the second would be punitive damages. The California MICRA law has a $250,000 cap on noneconomic damages. That is what is proposed in the pending bill. In contrast, I would propose a national $500,000 flex cap, a general cap on noneconomic damages. This cap would allow a State to impose a lower or a higher limit, but it would be pivotal for those States where the State laws do not currently allow a State to set a cap. This would allow in those States for the cap to be $500,000.

In catastrophic cases where a victim of malpractice was subject to severe disfigurement, severe disability, or death, the cap would be the greater of $2 million or $50,000 times the number of years of life expectancy of the victim. This handles the situation of a very young victim who was really the victim of egregious malpractice.

In addition, my proposal would have less onerous punitive damages standards than California law. California law would require a plaintiff to prove punitive damages under the very high standard of fraud, oppression, or malice. Under this standard, I am not aware of a single case where a plaintiff has obtained punitive damages in California over the past 10 years. However, if the State wanted to keep that—any State—they could under my proposal. But I would offer a four-part test where a plaintiff would have to show by clear and convincing evidence that the defendant (1) intended to injure the claimant unrelated to the provision of health care; (2) understood the claimant was substantially certain to suffer unnecessary injury, and in providing or failing to provide health care services, the defendant deliberately failed to avoid such injury; (3), acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury which the defendant failed to avoid; or, (4), acted with a conscious, flagrant disregard of acceptable medical practices in such circumstances.

I firmly believe a variant of this type could lead to a compromise in the Senate, but the AMA and my own medical association, the California Medical Association, both flatly rejected this proposal last year. They refused any cap for noneconomic damages above $250,000 even in catastrophic cases. To me this makes little sense because a $250,000 cap in 1975, which was when the cap was put in play in California, adjusted for inflation, was worth $839,000 in 2002. If $250,000 was adequate in 1975, why wouldn't a figure of a half a million dollars—$500,000—which is lower than the cap adjusted for inflation, be acceptable in 2004? If a victim receives $250,000 today, it is the equivalent of $40,000 in 1975 dollars.

There are many specific instances of why a $250,000 noneconomic damage, especially today, remains too low. Let me just give you one case. I happened to meet this woman, and it is a case that I think makes my argument irrevocably. It is the case of Linda McDougal. She is 46. She is a Navy veteran, an accountant, and a mother. She was diagnosed with an aggressive form of cancer and underwent a double mastectomy. Two days later, she was told that a mistake was made. She didn't have cancer, and the amputation of her breasts was not necessary. A pathologist had mistakenly switched her test results with another woman who had cancer.

A cap on noneconomic damages must take into account severe morbidity produced by a physician's mistake, such as amputating the wrong limb or transfusing a patient with the wrong type of blood.

I remain a supporter of malpractice insurance reform. If at any time there would be physician support, I believe then the necessary 60 votes in this body could be generated for a plan such as I have just enumerated.

In conclusion, I will vote against this bill but stand ready to participate in a solution along the lines I have mentioned.

I thank the Chair, and I thank the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, before Senator FEINSTEIN leaves the Chamber, she has laid out what may well be a very reasonable alternative for this body and our colleagues in the House to consider with respect to medical malpractice. She has played a vital role as we have worked over the last several years to craft a compromise on class action reform and offered maybe the critical amendment to the bill.

What I would like to do in the 10 minutes I am going to speak is compare and contrast, if I can, the approach in bringing this medical malpractice bill to the Senate today with the approach that has been followed as we have tried to bring class action reform legislation to the Senate floor.

Let me step back for a moment. For those who may be listening to this discussion, class action reform seeks to address the issue of when a class of people are harmed what kind of redress do they have to seek compensation? I think most of us would agree that if a person were harmed by a product, good, or service that they had come in contact with or acquired that that person should be made whole. I think we would also agree if a whole class of people were somehow damaged by a product, good, or service that they came in contact with that the class of people should be made whole.

The question is, In what forum should those damaged persons, the damaged class, the plaintiff class—where do they turn to for redress to gain compensation for their injury or for their harm?

In my view, and I think it is a view probably shared by a majority of my colleagues, we believe that if the plaintiff class happens to be in a State different from the State that the defendant is from, our Constitution would suggest that maybe in those cases that rather than the case being litigated in the State where all of the plaintiffs are located, if the defendant is from another State, that the fair thing to do to both the defendant and the plaintiff is to litigate that matter in Federal court. That has been a subject of some debate.

It is not an issue that involves limits on punitive damages, economic, noneconomic damages, pain and suffering. The debate does not lie there. Rather, the debate lies in the area of in what court, in what jurisdiction should those kinds of questions be resolved.

I have been in the Senate for a bit more than 3 years. During that course of time, there have been any number of hearings in the Senate Judiciary Committee and in the House Judiciary Committee to bring before the respective panels in both bodies those who believe that we need to change the status quo with respect to class action litigation and those who think that what we have is just fine.

Proponents and advocates have had the opportunity to speak their points of view and to testify repeatedly in the Senate and in the House. In fact, over the last couple of years, this is what has happened in the Senate: Legislation has been developed in committee, it has been debated in committee, it has been amended in committee, and it has been brought to the floor in an effort to try to have it debated, amended, and voted on.

Last fall, we were able to get 59 votes to proceed to the bill, to take it up and offer amendments on the floor, but on class action we fell just short of the 60 that we needed to invoke cloture. So we went back and we did some more work. Those of us who think changes are necessary worked with some of our Democrat colleagues, three of them especially, and others as well, to come up with changes that would make the bill better, fairer, and more defensible. Hopefully, within the next several weeks we will have the opportunity to debate that on the floor and to offer further amendments to class action reform legislation.

It has been a long process, some would say too long. What happens is we start off with a reasonable proposal, debate it in committee, improve it in committee, report it out of committee, and then we are going to have the opportunity to bring the bill to the floor and it will be altered, I think improved, when that same bill comes to the floor.

Once the bill is on the floor, we will have the opportunity for full and open debate to consider what people like about it and do not like about it. They can offer their changes and we will have an up-or-down vote at the end of

the day when we have amended the bill. That is what we call regular order. That is the way an issue of this nature should be decided.

To my knowledge, maybe in the last 3 years there has been one hearing in one committee in the Senate on the issue of medical malpractice. If there have been others, I am not aware of them. A year ago, there was one hearing in one committee on this issue. I do not believe the bill has been marked up in that committee.

They did not vote on that bill in that committee. They did not seek to amend this medical malpractice bill in that committee. Instead, we simply find a related bill appearing on the Senate agenda with no opportunity to offer amendments, to improve it as maybe Senator FEINSTEIN, Senator DURBIN, or others would like to do but, rather, to have to kind of take it or leave it. That is not regular order and that is not the way to build consensus, particularly on an issue as difficult and as contentious as this one.

Another issue we have been dealing with, which involves litigation reform, is the subject of asbestosis. We all know that for many years people used asbestos. It was used in all kinds of projects, construction, automobiles, brakes, ship construction. Asbestos was commonly used. We later found out that it kills people. It causes asbestosis, mesothelioma, and other diseases. We now have been working for years to try to figure out how do we compensate the victims of asbestos exposure to make them whole. That process is one that has gone on for any number of years, too. The process we followed there is the opportunity to fully debate the issue in committees, to hold hearings in committees, where people who are for and against it have a chance to express their views. There are a lot of interested parties such as insurance companies, manufacturers, labor unions, the trial bar, and others that have had the opportunity to add their input. I hope what we now have coming to the Senate floor sometime later this spring is legislation that says maybe the way we handle asbestos litigation in this country can be improved on so we make sure people who are sick and dying of asbestos exposure get the help they need, and make sure people who are not sick will not ever be sick and do not siphon off money from those who truly need it. We need to come up with a fair system and one, frankly, that will stem the loss of companies, corporations, and businesses that are going bankrupt by the scores of asbestos exposure.

If we compare the way this body has approached class action reform legislation, in a very deliberate and thoughtful fashion, with plenty of opportunity for debate and changes, and compare that with what is before us today, it is night and day. There is really very little similarity.

I suggest to our friends on the other side of the aisle that on this particular issue if they are interested in finding a fair and reasonable solution, there are a number of us on this side of the aisle who would be willing to engage with them to find that. In the meantime, I would suggest they take a look at what States are doing.

Senator FEINSTEIN talked about her own State. In Delaware, the Governor put together a group, not a partisan group but a group that includes the trial bar, health providers, hospital representatives, folks within government and outside of government, to try to figure out if we needed to make any changes in our own State with respect to medical malpractice.

In the end, they said: We do not think we have a problem in Delaware with physicians being unable to get the coverage at a reasonable price. We do not have out of control jury awards. This is not a huge Delaware problem. Rather, they did suggest one change which I think is instructive. What they did was said why do we not provide for the certification of medical malpractice litigation to certify that it is not a frivolous lawsuit. If someone wants to bring a suit before it ends up in court, there will be a panel of knowledgeable people within that area of health care who will look at the assertion of the plaintiff and decide whether or not this is a frivolous lawsuit. If it is, the litigation does not go forward. That is what one State is doing, as a temporary measure.

I close by saying this: Unlike asbestos litigation reform, which needs a national solution, unlike class action litigation reform, which I believe needs a national solution, for the most part States can deal with on a case-by-case, State-by-State basis issues revolving around medical malpractice. I think for the most part we are better off pursuing that. Not everybody will agree with me on that point, but I think most people in this body will agree on this point, and that is the right way to legislate on these contentious issues is the approach we have taken with respect to class action reform and the approach we are taking with respect to asbestos litigation reform, where all sides have the opportunity to be heard, Members get to offer their amendments in committee and on the floor and then we go forward. That is the way to do business, and if we do business on those bases and in that accord, on a more consistent basis, we will be able to not only talk about doing something that needs to be done but actually accomplish it.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). The Senator from New Jersey.

CHICKEN HAWKS

Mr. LAUTENBERG. Mr. President, I rise to discuss a troubling issue that has plagued our political debate for many years and now has come to a head. I cannot stay silent any longer.

We so much admire the eagle, the bird of strength, the bird that portrays the courage of America, the willingness to support our country no matter what the cost. That is what the eagle says to me. At times it has been an endangered species. But there is another bird I want to talk about today. That bird is called, in my view, the chicken hawk. There is such a bird, but usually it is the hawk chasing the chicken. But now I want to talk about the chicken that really chases the hawk.

Those of us who answered our Nation's call for military service at wartime have not grandstanded on that issue. We served our country and, frankly, many of my colleagues who answered the call are not always willing to talk about their experiences.

But now I see a disturbing trend from the other side of the political aisle. More and more, Senators in this body are tagged as lax on national security or homeland security or support for the military because of votes they took against problematic defense bills over the years. For years the charge coming from across the aisle is that Democrats are somehow or other less patriotic, less supportive of defense, and it is a shameful and grotesque charge. In my view these charges typically come from people I would simply call chicken hawks.

My definition of a chicken hawk is someone who talks tough on national defense and military issues, casts aspersions on others who might disagree on the vote, but when they had a chance to serve, they were not there. Now they are attacking the Senator from Massachusetts for opposing bloated or poorly designed defense bills. Is it known how much courage it takes to vote against a bad Defense authorization or appropriations bill? We all know it takes a lot of political courage, because even if the bill contains wasteful and damaging provisions, the vote can be twisted by your opponents. But when faced with a bad defense bill, what do the chicken hawks do? They take the easy road. They fly the easy route. They always vote for it, no matter what it says. How much courage does it take to vote for a bad defense bill? None. Zero. It is the easy thing to do.

Our colleague, the distinguished junior Senator from Massachusetts, is being attacked this week by the other side of the aisle as being weak on support for the military and compromising the defense of our country. I say shame on those who impugn the patriotism of those who supported their country's call for duty and paid for it with injuries resulting from their obedience to that call.

In my view, that is the cry of the chicken hawk who has no idea what it means to have the courage to put your life at risk to defend your country and its ideals. But the Senator from Massachusetts knows it all too well. When our country went to war in southeast Asia, the Senator from Massachusetts enlisted in the Navy. He requested to be sent to Vietnam to fight for his country, and he did that. For his heroic

service in Vietnam, the Senator from Massachusetts won the Silver Star, the Bronze Star, three Purple Hearts—that means he was wounded three times; it is a miracle he is still alive—the Combat Action Ribbon, the Navy Presidential Unit Citation, the Navy Unit Commendation Ribbon, the National Defense Service Medal, the Vietnam Service Medal, and the Vietnam Campaign Medal. How dare they challenge his commitment to our defense? His patriotism?

The Senator's action took courage. It is the same courage the Senator showed when he refused to vote for defense bills merely because they were defense bills. As a man who has seen a battlefield, he has a keen understanding of military needs and military policy and he voted accordingly. He actually did what his constituents sent him here to do: evaluate legislation on its merits and vote with your conscience and your obligation to our citizens.

Did it take courage? Of course. Integrity? Of course. Was it an easy thing to do? Absolutely not. The easy thing to do would be to simply vote for all the defense bills, no matter what they say, and pretend these votes are the real measure of patriotism. That is what the chicken hawks do. That is the easy road.

It is the same easy road we see when someone files for five student deferments and then claims an old football injury should prevent him from fighting for his country. Only a chicken hawk would attack a political rival who lost three limbs in Vietnam as being soft on defense.

So I say to my colleagues on the other side of the aisle, we are not going to put up with these insinuations that attack our patriotism, our support for our troops, anymore. Because real patriotism and real support for our Nation's defense should not be judged on whether we ignore our constitutional duty and rubberstamp legislation. Real patriotism and support for the defense of this country has to do with answering the call. In my view, as a fellow veteran, the Senator from Massachusetts not only answered the call to fight for his country, but also to perform his duty and judge legislation on its merits.

I served in the Army. It doesn't mean I should approve $1,500 toilet seats or poorly designed military equipment that is being procured simply because of political influence. In fact, I believe because I served, I have the duty to the men and women who are now in the military to make sure our military is strong and is as free from waste and corruption as possible, and our military men and women are protected to the fullest extent possible during their service and, when they are veterans, to provide for their health care needs and other services without question.

Our job is to think as Senators and not to bow to everything defense contractors or Pentagon officials want. The Senator from Massachusetts has voted for plenty of defense spending increases, but he has also voted to prevent bad programs from moving forward. He does his duty to his country and to his constituents.

The way I see it, the President and his proxies are attempting to bring American politics back to the days of dirty tricks. We saw it in 2000, not against just Al Gore but also against the most serious Republican challenger, the Senator from Arizona. The Bush campaign coordinated attacks on the Senator from Arizona that questioned his commitment to our troops. Outrageous. An attack on a man who not only fought for this Nation but spent years as a prisoner of war. They didn't stop there. They even attacked the Senator's family. It was a new low in modern American campaigning.

I want the administration and its allies in Congress to know we are not going to put up with these despicable insinuations and dirty campaigning. From now on, they question our commitment to our troops and the defense of this Nation at their own peril.

We saw it just the other day, I think it was yesterday. In a speech that was publicly televised, those members of the NEA, the National Education Association, who stick up for the quality of our teachers, for their ability to earn a living, for the ability to take the courses they need—to talk about them as terrorists? That is no different than the chicken hawk line I just talked about.

With that, I will yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding we are considering S. 2061, with 10-minute allocations of time for each Senator who is recognized?

The PRESIDING OFFICER. The Senate is debating the motion to proceed to that measure. An order has been entered limiting Democratic Senators to 10 minutes each.

Mr. DURBIN. Mr. President, I rise pursuant to that order to speak for 10 minutes about S. 2061. This bill which is pending before the Senate addresses a very serious national issue of medical malpractice. Medical malpractice insurance premiums have increased in my State of Illinois and across the Nation. Because of those increases, a lot of good doctors have been forced to a position where they have to retire or relocate their practices. I have met with those doctors. I understand the problems and dilemmas they face. I think we need to address that here in the Congress. This point is dramatized by the fact that the bill before us is unfortunately not a bill which has been the product of any effort to find compromise or common ground or bipartisan answer to this national challenge.

This bill without referral to committee was sent to the floor of the Senate. It is a bill which, frankly, was introduced by Senator GREGG of New Hampshire, a bill which ordinarily would have been referred to the Senate Judiciary Committee. The bill did not go to that committee. Senator GREGG does not serve on that committee. The bill was sent to the floor. I am afraid what this bill is all about is trying to make certain we make a record rollcall on this issue so that those who are supporting this bill will go back to some members of the medical committee and say all Senators who voted against it don't want to help you with increasing medical practice premiums. That couldn't be further from the truth for this Senator.

I have strong feelings about what we need to do. I believe we need to be doing something. We need to address the issue in a comprehensive way. We shouldn't be afraid to look at all aspects of this challenge.

The first aspect of this challenge is that there are too many medical errors today in hospitals and doctors' offices across America. Don't take my word for it. The Journal of the American Medical Association reached that conclusion and said medical errors are of epidemic proportions across America. The Institute of Medicine estimated that in any given year, 24,000 to 98,000 Americans lose their lives because of medical negligence. This bill doesn't even address that issue. It addresses medical malpractice in a courtroom. It doesn't address it in a doctor's office or in a hospital.

The first thing we should do is see how can we work with the medical community and the hospitals to reduce errors, reduce negligence, and reduce the incidence of these grievous injuries and death that occur as a result.

Currently, when you look at the universe of possible medical negligence and the lawsuits filed as a result of it, a tiny fraction—some 2 percent or less—end up in court. It means that 98 percent or more of the medical negligence that is committed in America does not result in a lawsuit.

If we want to make certain we have fewer cases going to court, let us start at the beginning. Let us make the practice of medicine safer. This bill does not even address that issue.

Second, if you are worried about the cost of medical malpractice premiums, isn't it reasonable to ask whether the insurance companies are treating doctors and hospitals fairly? This bill doesn't have a word in it about insurance companies and their responsibilities. Why are we afraid to even ask? Why wouldn't we have all the books open to find out whether what is happening to doctors' medical malpractice insurance is a result of some insurance practices which should be changed?

The third element is tort reform. I used to practice law. I was a trial lawyer. I defended doctors for many years and hospitals—and I sued them. I have been on both sides of the table. I understand those lawsuits, or at least how they were conducted in Illinois 20 years ago. So I have at least a passing experience with this issue. I think in my

practice I would never have considered taking a so-called frivolous lawsuit forward. It costs too much money. It takes too much time. You wouldn't want to put your plaintiff client through it, you wouldn't want to waste your time and money, and you would not want to run the risk at the end of the day that you would lose—or worse, be sanctioned by the court for raising a frivolous lawsuit. I think there are ways to stop it. A small percentage of lawsuits shouldn't be filed against doctors. This bill doesn't deal with frivolous lawsuits, and it should.

The last element it should address in tort reform is one that I think is essential; that is, to make certain, while we try to reduce the likelihood of frivolous lawsuits, we don't close the courthouse door for those innocent patients who are the victims of medical negligence. That is what this bill does. This bill says that instead of a jury in your hometown deciding what your injury is worth, instead of your peers in the community, your neighbors sitting in the jury box considering the evidence and the law and deciding what the value of your child's life is, or your child's health, we instead will make that decision here on the floor of the Senate. We will say that no matter what lawsuit you have filed for medical malpractice relating to OB/GYN, you cannot recover under any circumstances, regardless of what happened to you or the baby, any more than $250,000—$250,000 for pain, suffering, and disfigurement.

Two-hundred and fifty-thousand dollars may sound to some like a lot of money. Let me give you a few specific examples of cases I know of, and you decide whether $250,000 is a lot of money.

A settlement was reached last Friday in Chicago—a city I am honored to represent—in the case of Evelyn Arkebauer who gave girth to a quadriplegic son, Andrew ''A.J.'' Arkebauer, on October 4, 1998. Evelyn went into labor at 5:30 in the morning with her second child. She had her first child by Cesarean section, so there was a risk for uterine rupture. Early in the afternoon, the doctor began to administer Pitocin to speed up labor.

At 6:15 p.m.—more than 12 hours later—the doctor cut off the Pitocin and told Evelyn to start pushing. Evelyn pushed for more than an hour and a half and was rolled from her back to her side as the baby's heart rate fluctuated during this labor.

At 7:53 p.m.—more than 12 hours into labor—the doctor decided an emergency C section was necessary and paged the anesthesiologist to come to the delivery room. The anesthesiologist failed to return the page and numerous pages after that.

Finally, an hour after the doctor had decided on an emergency C section, the anesthesiologist showed up and the procedure began. The doctor discovered that the uterus had already ruptured. The baby had been without oxygen for 10 to 15 minutes. This baby is quadriplegic and spastic. He cannot walk, talk, or feed himself and will require full-time care for the rest of his life on Earth. This baby had no injury to his cerebrum, so he has normal cognitive thought, meaning he thinks like a normal child but is trapped in a body he cannot use.

During the trial, a nurse working the night of Andrew's birth testified that the anesthesiologist was with her in a private room on the hospital's fourth floor and that he ignored three different pages to respond to this emergency C section before going to the fifth floor delivery room where Evelyn was. This baby—quadriplegic and spastic for the rest of his life with a mind that is functioning—has a body that cannot be used.

This bill, S. 2061, says the jury of the Senate will decide the cases exactly like this—that that baby and that baby's family can recover no more than $250,000 for a lifetime of pain and suffering. That is not fair. It is not just. It is not reasonable. It may reduce medical practice premiums but at the cost of justice.

Gina Santoro-Cotton was 29 years old and pregnant with her first child. Her prenatal course was normal. She was admitted to the hospital 1 week after her due date to induce labor. The drug Pitocin was used. Within a few hours of starting Pitocin, deceleration of the baby's heart rate was noted. The Pitocin was not stopped, which is normally done when there are signs that the baby is in distress.

By early afternoon, the fetal monitor strips showed signs of oxygen deprivation to the baby—a clear warning sign. The Pitocin was still not stopped. At 2:45 p.m., the baby had a prolonged drop in his heart rate. The Pitocin was finally stopped and the baby was resuscitated in its mother's womb.

Within hours, the Pitocin was restarted, and decelerations and other signs of poor oxygenation to the baby appeared. Rather than stopping the Pitocin, the dose was increased.

At 7:30 p.m., there were still severe decelerations on the fetal monitor strips. Pitocin was increased.

At approximately 9:45 p.m., Pitocin was finally stopped and the baby was delivered. The baby was near death at the time of delivery.

Today, that baby is 6 years old and permanently disabled. He has severe cognitive dysfunction and is partially paralyzed in all four of his extremities. He has motor problems, and he can't walk. His speech is not understandable. He is fed through a tube in his stomach because he cannot feed himself. He has paralysis of the vocal cords. He requires care 24 hours a day and extensive therapy.

There are Senators who come to the floor and talk about cases just like this and call it jackpot justice, arguing, I guess, that the parents of that little baby, who will be functionally impaired for his entire life, will never be able to express himself, will never be able to feed himself or walk—that the parents of that baby, if they recover a verdict in court, have somehow won a jackpot. How many of us would want to buy a ticket for that jackpot? How many of us would sacrifice the health of any child, let alone our own children, with the prospect of recovering a verdict?

This bill before the Senate has said that in cases just like this, no matter how serious, no matter how long that baby lives, no matter what conditions that baby faces, the rest of its natural life, the sum total and value of the pain and suffering of that baby and its family can never, ever, be worth more than $250,000. And if that baby, who is now 6, lives 20 years, is it worth $10,000, $12,000, $1,000 a month for what that family will go through? I don't think so.

Let me discuss one last case. Terri Sadowski was pregnant with her second child. At 34 weeks, she went into preterm labor and had a rupture of her membranes. Medication was not successful in stopping her labor so she was transferred from a community hospital to a high-risk referral center, to the care of a perinatologist, a specialist in high-risk pregnancies.

The perinatologist decided to let Terri proceed with labor and deliver normally even though the baby was in a breech position. The doctor also decided to administer Pitocin, a medication to bring on contractions. Within 3 hours of starting the Pitocin, the fetal heart rate began to show signs that the baby was in distress. A normal heart rate for a baby in the mother's womb is 120 to 160 beats per minute. This baby's heart rate was dropping in the 70s. By the time Terri was ready to start pushing, the fetal monitor strips showed significant fetal heart rate decelerations with a consistent heart rate in the 60s and 70s. Despite the overwhelming evidence that the baby was in severe distress, a decision to perform a C section was not made for 40 minutes.

An emergency C section was done but the baby had no movement and was unresponsive. She developed seizures shortly after birth. She sustained severe brain damage due to lack of oxygen in labor in delivery. Had the perinatologist performed a C section, the baby could have been a normal, healthy baby.

The baby lived for 1 year in a vegetative state. During her short life, she had multiple hospital admissions for pneumonia, bowel obstructions, unable to suck, and she required tube feedings and constant suctioning to keep her airways clear. At the time of death, she had frequent seizures.

Think about this for a moment. Think about the happiness each of us has been lucky enough to experience in life from a family and children. And think about something going wrong in that delivery room, something that results in a baby facing a lifetime—long or short—in a terrible situation.

The parents were not at fault. They were not at fault in any of these cases. Eventually they went to court and asked for compensation for what they would face for medical bills, what they would face for pain and suffering, and a jury from their community decided what it was worth.

This bill says it really should not be a decision of a jury, it should be a decision of the Senate, a one-size-fits-all, one solution for every problem, $250,000, take it or leave it. That is not right.

I say to my friends in the medical profession, I know you are not perfect, you are humans; you do make mistakes. Quite honestly, those who have dealt with doctors and have great respect for them know that the overwhelming majority of doctors are good men and women, well trained, dedicated to their profession, who make sacrifices every single day way beyond those called on by Members of the Senate.

Having said that, doctors I have spoken to understand that even giving it their best, occasionally they make a mistake in judgment—they do not know enough, they did not do the right thing—and terrible things occur. And most of them, under those circumstances, say yes, in those cases, people who are the victims of that kind of a circumstance should be compensated. I certainly believe that. It is not fair to establish an artificial limit and say that no matter what happens to that baby or that mother, there will never be another nickel beyond $250,000; a lifetime of pain and suffering limited to $250,000 in recovery.

To my friends in the medical profession who have a genuine concern, as they should, about the increase in medical malpractice premium rates, let me say you are not going to get any favor with this bill. This bill is being offered for reasons I cannot explain. It is being offered in the name of OB/GYNs across America who certainly do need help and need it now. But it is a bill that also includes immunity and relief from liability for pharmaceutical companies and medical device companies. I am sorry, but I have not heard anyone with a hue and cry about a crisis when it comes to these companies dealing with medical malpractice claims. But, naturally, they are included here because most bills that come through have to have a provision to help drug companies. They are the poster kids when it comes to this Congress. We are always going to find ways to help them.

For once, why don't we try to help the families who are the victims? And why don't we try to help the good doctors who need a helping hand?

I will make this statement in closing before I yield the floor: I want to work with those Members of the Senate on both sides of the aisle who in good faith want to address this issue. We can do things to deal with this. We must do them. We should do them now. This bill is not the way. This bill is a bad start. It is better to come together, off the Senate floor, try to find common ground and compromises on a bipartisan basis to protect the medical profession, on whom we all rely so much. We want to give the men and women in that profession, who have given their lives to serving us, a chance to practice medicine without skyrocketing premiums, but to also say to the families and patients who come to these doctors and these hospitals, we will not abandon you in the process.

There is reason to believe we can find this common ground. This bill is a bad start. It is likely to be defeated today. Once defeated, I hope Senators who believe, as I do, that we should address this issue will come together to try to find that common ground.

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

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

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate goes into a quorum call, the time for the quorum call be equally divided between both sides.

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

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

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

THE BIRTH OF SENATOR BYRD'S FOURTH AND FIFTH GREAT-GRANDCHILDREN

Mr. DASCHLE. Mr. President, later this afternoon, many of us will have an opportunity to see one another after the recess. I will make a prediction that we will notice a special twinkle in Senator BYRD's eye as we visit with him this afternoon. There is good reason. Actually, there are two very good reasons.

In the last month, Senator BYRD became a great-grandfather for the fourth and fifth times. Hannah Byrd Clarkson was born 4 weeks ago today, on January 27, weighing 10 pounds 3 ounces.

Hannah is the second child of another member of our Senate family, Mary Anne Clarkson, of the Bill Clerk's Office, and her husband James Clarkson. She joins her older sister Emma.

Hannah's cousin, Michael Yew Fatemi, was born on February 11. Michael is Senator BYRD's fifth great-grandchild, and his first great-grandson. He is named in honor of his uncle John Michael Moore, Senator BYRD's beloved grandson, who died in a car accident. Michael is the first child of Senator BYRD's grandson Fredrik Fatemi, and his wife Jinny.

Few people live long enough to see and hold even one of their great-grandchildren. To be able to welcome five of them into the world is a rare blessing, indeed.

I was deeply touched by Senator BYRD's kind words to me and my family on the births of my grandchildren, Henry and Ava.

I am sure I speak for the entire Senate family—and people throughout America—in wishing Senator BYRD and his wife Erma many happy hours with Hannah, Michael, and all of their family members.

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

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

Mr. BOND. Mr. President, going to the doctor for a checkup is hard enough these days between juggling family and work schedules. Few of us get all the checkups and screenings we need. Making matters worse, more and more doctors are closing their practices or limiting the services they offer.

They are doing so because they cannot afford the increasing costs of medical malpractice insurance which they are required to carry.

According to the American Medical Association, 19 States are in a full-blown medical liability crisis, including the home State of the occupant of the chair and mine.

In Missouri, physicians' average premium increases for 2002 was 61 percent on top of increases the previous year of 22 percent. What happens? Well, 31 percent of the physicians surveyed by the Missouri State Medical Association said they were thinking about leaving their practice altogether.

Almost one in three physicians in Missouri considered leaving their practice because they cannot afford the exorbitant medical malpractice insurance cost caused by the lawsuits brought—some frivolously, and many of them, I assume, against doctors. Doctors who have practiced for years in Missouri are closing their doors.

But this is not just a problem for doctors. They are well educated. They can move elsewhere and resume their practice, as difficult and unfair as that is. The real damage and pain is being felt by the patients.

Last summer we considered a comprehensive bill, S. 11, the Patients First Act. Unfortunately, the motion to proceed was not successful. Because this issue is so critical to the health care of all Americans and because the crisis continues to grow, inaction

should not be an option because the outcome of considering the same comprehensive reform bill again is clear.

Today we have narrowed our focus on the health care needs of women and babies.

The American College of Obstetricians and Gynecologists last year said:

> An ailing civil justice system is severely jeopardizing patient care for women and their newborns. Across the country, liability insurance for OB/GYNs 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 ensuring 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.

It is a real problem in Missouri. A survey conducted by the American College of Obstetricians and Gynecologists in August of 2002 said 55 percent of their members from Missouri have been forced to change their practice, retire, relocate, decrease surgery, stop practicing obstetrics, decrease the number of deliveries, and decrease the number of high-risk obstetric care.

Last year, Missouri lost a total of 33 obstetricians. I want to share with you a few examples.

A St. Joseph, MO, practice, the only practice in Northeast Missouri to accept Medicaid, lost one-third of its doctors after the insurance company would no longer offer insurance to OB/GYNs. St. Joseph now has only seven OB/GYNs serving its population.

A Missouri doctor who has been in private practice for 3 years experienced a 400 percent increase in his liability premiums over the past 3 years and received a quote for $108,000 in 2004. This OB/GYN is considering quitting obstetrics in order to find affordable insurance.

A gynecological oncologist in Missouri left a group practice and eliminated a rural outreach clinic because of rising professional medical liability premiums. ''Women with gynecologic cancers in Ste. Genevieve, Carbondale, and Chester now have to drive over 100 miles to see a gynecologic oncologist and receive the care they deserve,'' said the doctor.

An OB/GYN in St. Ann, MO, was forced to close his practice last year because of medical liability costs that rose 100 percent. The practice had delivered about 400 babies a year.

Twelve doctors at the Kansas City Women's Clinic used to serve women in both Missouri and Kansas. But, because of rising medical liability insurance rates, the clinic could not find a single company that would offer them a medical malpractice insurance policy they need for their office in Missouri.

I should say parenthetically, I have been approached by some lawyers who practice medical malpractice plaintiff cases, and they said: The problem is the insurance companies are making too much money. It is not the lawyers. That is strange when the insurance companies can't even stay in business. They can't stay in business because of the lawyers.

As a result at the end of 2002 they closed their doors to their Missouri patients. There were over 6,600 visits a year in their Missouri office. Now, these women must either travel to Kansas to see their OB/GYN or find a new doctor elsewhere in Missouri.

Two Kansas City, inner city OB/GYNs who serve low-income, high-risk patients had to sell their practices to their hospital in order to continue to see patients in Missouri. Excessive litigation has created an environment that forced two doctors—committed to serving some of the most vulnerable women in Kansas City—out of business. They are no longer in independent practice.

One OB/GYN practice in Missouri had to take a $1.5 million loan to pay the malpractice insurance for this year. That does not even include the cost of the tail coverage.

Other doctors in Missouri are considering going without insurance for their tail coverage because they simply can't afford the premiums.

Women are having a hard time getting the care they need and communities are losing their trusted doctors. We have a health care system that is in crisis in Missouri.

The bill before us today, the Healthy Mothers and Healthy Babies Access to Care Act is narrowly crafted to protect access to prenatal, delivery, and postnatal care for women and babies by reducing the excessive burden the liability system places on the delivery of OB/GYN services.

This bill will protect the right of an injured patient to recover fair compensation while at the same time prevent clear lawsuit abuse.

The bill protects the right of injured patients to receive full economic damages that cover the out-of-pocket expenses that a victim might incur due to a doctor's negligence, such as hospital costs, doctor bills, long-term care, other medical expenses, and lost wages. This bill also includes a $250,000 cap on noneconomic damages, with deference to existing and future State caps.

This bill maximizes the amount of awards received by injured patients by limiting attorney's contingency fee to a reasonable, sliding scale.

Too often large percentages of an injured patient's award go to attorneys, leaving the patient with less money for their medical care and other needs. Injured patients are entitled to an overwhelming amount of their award after settling or winning a lawsuit.

Currently, lawyers in many States can take up to 40 percent of all awards and settlements, robbing the injured patients of their award. We think by protecting injured patients by limiting lawyers to 15 percent of any payment over $600,000 makes good sense.

These are just a few of the many vital reforms contained in this bill.

I urge my colleagues to protect access to quality health care for women and babies and support the Healthy Babies, Healthy Mothers Access to Care Act.

We cannot afford to have OB/GYNs to continue closing their practices, reducing the number of babies they deliver or eliminating care for high-risk patients, the uninsured, and the underinsured because of excessive frivolous lawsuits brought by plaintiff attorneys.

Ms. MIKULSKI. Mr. President, I oppose S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act. It should be called the ''Insurance Companies First Act.'' This is extreme legislation that puts the interests of the insurance industry ahead of the interests of women, their families and their doctors. It applies only to women seeking obstetrics and gynecological services—that's it. Every other patient can recover full damages. But under this bill only women will be limited in what they can recover for a doctor's medical error. This bill penalizes patients, while doing nothing to prevent doctors from being gouged by insurance companies.

This bill is legislative malpractice. First of all, the procedure for considering this bill is seriously flawed. The bill was brought to the full Senate without hearings, without consideration by the Judiciary Committee. There was no chance for patients, doctors or others affected by this bill to testify. There was no Committee Report to analyze the effects of the extremely complex and controversial legislation.

The result is a bill that targets some of the most serious cases of medical error, restricts the rights of women and infants, while doing too little to protect doctors from the high cost of insurance. It is the same broad brush legislation that we defeated in July, only this time they limit it to obstetrical and gynecological services and by design only restrict the rights of women patients. Proponents of the bill say they wanted to streamline the bill, to address the area of medicine with one of the highest premium rates and they claim that the beneficiaries will be women who will have improved access to health care. But since when has limiting one's rights improved anything? And how does restricting a woman's right to full recovery and only her rights provide her a benefit?

The real beneficiaries of this bill are the insurance companies. They get to see their profits soar while mothers who take care of infants who suffer because of medical error will face unfair caps in the remedies they receive. These are often stay at home mothers who need resources to care for their families and their infants who may need constant care, but the cap on noneconomic damages will prevent them from getting those resources. It's unfair to penalize these women because

they can't recover economic damages. I think the Senate can do better.

I oppose this legislation for three reasons:

As a Senator from Maryland, I cannot support legislation that gives Marylanders a worse deal. This legislation would override the Maryland law and place a $250,000 cap on non-economic damages. Maryland law strikes an important balance, providing a much higher cap on non-economic damages. The cap increases each year to offset inflation. It started at $500,000 and is now $635,000. It also has no caps on punitive damages. The Maryland law is supported by both physicians and patient advocates.

Yet the Republican bill would preempt Maryland law. It would put women and infants in Maryland at a disadvantage. It would severely limit their ability to get relief for the death, physical impairment or disfigurement that they suffer as a result of serious medical error.

This legislation shuts the court house door. It denies justice to women and women only. It denies justice to those who must care for a mentally disabled child for his or her whole life because of a doctor's mistake during prenatal or post-natal care. It denies justice to women who needlessly lost a child during delivery because of a serious medical error. It does this by imposing arbitrary caps instead of enabling juries to determine damages. I have faith in juries made up of members of the community to reach a fair verdict.

Who would be hurt by this legislation?

Someone like the mother from Baltimore whose newborn baby suffered brain damage because an emergency c-section was not performed in time. His mother had gone to the hospital reporting that there was decreased fetal movement. She knew something was wrong. Tests were performed. Yet the doctor misdiagnosed the problem. After several days, an emergency c-section was performed. It was too late. The baby suffered severe brain damage. He died 13 months later.

It is impossible to put a price on the loss of a child. Imagine if that death is the result of carelessness. Parents who suffer the unbearable pain of losing a child deserve the right to use the courts to seek full accountability.

Instead of penalizing patients, we need legislation to help doctors who are facing skyrocketing insurance costs. A doctor's number one priority is the care of his or her patients. We should make sure that it is easy for them to do so, knocking down the roadblocks to practice that excessive insurance premiums create. S. 2061 won't do that. It won't provide doctors with real relief today.

That's why the Senate should consider alternatives such as that proposed by Senator DURBIN, which focuses on solving the problems where they start. Senator DURBIN addresses the root of the problem, creating greater accountability for doctors through a voluntary error reporting database, economic help for those who face growing premiums, punishment for frivolous lawsuits, grants to provide physicians in areas where malpractice insurance has led to a shortage of doctors, and critically, an end to the immunity that insurance companies face from anti-trust regulations.

Yet instead of helping patients and doctors, the Senate is again caught up in a political game. It doesn't have to be this way. We have worked together in the past to pass legislation that helps victims and lowers insurance costs. The terrorism insurance legislation is a prime example. We passed it because there was a national will and the urgency to do something that provided real solutions.

Today, we are faced with the same national will. And I urge my colleagues to work toward a sensible compromise. One that does not unfairly target women and their infants. One that addresses all forms of medical error, not just those affecting women and puts the rights of all patients first. The public is demanding that we do something, as more Americans are suffering from serious medical mistakes and more doctors are unable to treat patients because of rising premiums. We now need the political will to help doctors without harming patients.

I urge my colleagues to vote no on cloture. We need to send this bill back to the Judiciary Committee for full consideration of the issue of medical liability as well as the impact of limiting women's rights to recovery on their health and well-being and that of their new born infants.

Mr. LAUTENBERG. Mr. President, I rise to talk about the bill that is the subject of today's cloture vote on the motion to proceed.

We must not be fooled by the seemingly friendly title of this bill. The Healthy Mothers and Healthy Babies Access to Care Act of 2003 does nothing to promote the health of mothers or babies. This bill will devastate the rights of parents and children, but it will help neither patients nor doctors. The real beneficiaries will be insurance companies, HMOs and large medical corporations. Sponsors of this bill insult us by calling it a Healthy Mothers and Healthy Babies Act. How can shielding from accountability an entire medical specialty area result in healthy babies? Less accountability will never lead to better health care.

This bill discriminates against women and infants by restricting their right to hold physicians, hospitals, insurance companies, HMOs, and even drug and medical device manufacturers fully accountable for injuries resulting from the provision of obstetrical and gynecological care. Although proponents of the legislation say the bill is necessary to increase access to women's health care, nowhere does the bill make liability insurance for doctors more available or affordable. And nowhere does it provide access to health care for women who are uninsured. What it does do is greatly limit the ability of women and children with the most devastating injuries to hold the wrongdoer accountable.

It is another example of what I call the ''maleogarchy'' that prevails around here placing a higher value on a man's worth than a woman's. The bill cynically devalues the worth of pregnant women injured by medical negligence. Men's injuries are given full value. For example, if a woman is inappropriately prescribed blood pressure medication during pregnancy that causes blood clots, her recovery is limited under the bill's provisions. If a man is prescribed the same defective blood pressure medication by his internist, he may recover against the drug manufacturer in accordance with available State law remedies.

The legislation unfairly reduces the amount of time that an injured woman has to file a lawsuit. Under the bill, a suit would have to be filed no later than 1 year from the date the injury was discovered or should have been discovered, but not later than 3 years after the ''manifestation'' of injury. Thus, a pregnant woman who contracted HIV through a transfusion but only learned of the disease 4 years after the transfusion would be barred from filing a claim. In addition, the bill limits the rights of injured newborns by requiring that actions on their behalf be brought within three years from the date of the manifestation of injury. This is in direct contradiction to the laws of many States, which preserve the rights of minors to seek legal redress upon the age of majority.

The bill limits non-economic damages to $250,000 in the aggregate, regardless of the number of parties against whom an action is brought. Noneconomic damages compensate patients for very real injuries such as the loss of fertility, excruciating pain, and permanent and severe disfigurement. They also compensate for the loss of a child or a spouse. These are very real damages, and juries are able to calculate them fairly. How do you calculate the economic damages to infants who sustain life-long injuries during childbirth or stay-at-home mothers who lose their fertility due to a defective drug taken during the course of pregnancy? Their injuries may be almost completely non-economic and this bill would have a devastating impact.

This bill is an appallingly cynical attack on the rights of mothers and their babies. In many ways, it is even more insidious than the bill that failed in the Senate last July. It is almost as if the proponents of that bill, having failed to eliminate the rights of all patients injured by negligence, decided they would simply target the rights of the most vulnerable: pregnant mothers and their babies.

Mrs. MURRAY. Mr. President, today the Senate is voting on a political gimmick that will punish women and children and do nothing to address the real medical malpractice crisis that is crippling healthcare throughout our State.

Doctors are facing escalating costs that are unsustainable, but instead of addressing this problem with a common-sense and immediate fix, the majority is engaging in a blame game. We don't have time for the blame game. Instead, we should be debating the bipartisan bill I support to provide immediate relief to doctors, stop frivolous lawsuits, and fix the broken insurance market.

But this bill doesn't just fail to address the real crisis in malpractice insurance; it actually undermines the rights of women and children in the name of helping them.

As a woman, a mother, and a Senator who has fought for the safety and welfare of mothers and infants, I am disturbed that the U.S. Senate would single out women and babies for different treatment than everyone else in America if they are injured through no fault of their own. This bill tells women that if we are injured, we don't deserve the same legal protections as men.

The sponsors of this bill have spoken about the health and well-being of women and babies in hypothetical terms. But I have to tell you, the injuries and crimes that continue to plague female patients are all too real.

Currently, in my State of Washington, we are following a high-profile case in which an OB/GYN has been accused of raping or molesting dozens of female patients under his care. This doctor is also accused of providing substandard care, ranging from performing unnecessary medical procedures to failing to prescribe prenatal vitamins to a pregnant patient with low iron levels.

In one case, this doctor even performed a surgery despite the fact that his office was not licensed for surgery and did not have a supply of blood available in case of complications.

I ask my colleagues to consider this case. If your wife or daughter or sister had been hurt, molested or worse by this doctor, would a $250,000 cap seem like a reasonable solution?

These cases are not hypothetical. They are not frivolous. And this bill will not protect the health or increase the wellbeing of any of these patients.

I find some sad irony in being told by this bill's sponsors that if I want to help women and babies, I should strip away their rights. I take a backseat to no one when it comes to standing up for women and children.

I wish that the people who are pushing this bill today had shown the same interest when I was fighting to ensure women could get direct access to an OB/GYN during the Patients Bill of Rights debate, but instead, they killed that effort. I wish they had shown the same interest in 1999 when I offered an amendment to end drive-through mastectomies, but they killed that effort as well. I wish this bill's sponsors had showed the same concern when I was fighting to improve drug labeling for pregnant women, but instead, they killed that proposal as well. They weren't on the side of women during all those fights, but here they are today, using the real shortage of OB/GYNs and the real malpractice crisis as an excuse for punishing women and babies without giving doctors or patients the help they desperately need.

If the sponsors of this bill are now serious about helping ensure healthy women and babies, I say ''Come on over!'' I've got a long list of legislation that they can sign onto today to really help women—like extending Family and Medical Leave, boosting the federal Medicaid match for OB/GYNs, and expanding Medicaid and the Children's Health Insurance Program, CHIP, for low-income pregnant women. The single most important step to ensure a healthy pregnancy and a healthy baby is prenatal care. Fully-funding and expanding CHIP would provide this care to low-income women who would otherwise go without.

The saddest part of this exercise is that we should be spending this time discussing a real solution, like the bipartisan bill I am cosponsoring with Senators GRAHAM and DURBIN, the Better HEALTH Act, S. 1374. If the Senate leadership really wants to help doctors and patients, they will bring up the widely-supported Graham-Durbin bill for a vote and stop playing games at the expense of women and babies. Every day they deny a vote on this bipartisan bill speaks volumes about their interest in a real solution.

The Graham-Durbin bill would give doctors an immediate 20 percent tax rebate on their malpractice premiums, provide federal help for a broken insurance market, and block frivolous lawsuits. That's the type of comprehensive, immediate and effective solution our doctors, patients and communities deserve.

My action plan to fix the malpractice crisis has four steps. The first thing we have to do is get doctors and hospitals some immediate relief—because the clock is ticking. Even if proposals to cap non-economic and punitive damages were passed this year, it is impossible to predict when—if ever—doctors and hospitals would see relief. That is not good enough for me, and it is not good enough for the doctors in my community. I want doctors and hospitals to get immediate relief.

Under the Graham-Durbin bill, doctors in high-risk specialties would be eligible for a tax credit that's 20 percent of their malpractice premium. Doctors in lower-risk specialties would get a 10 percent tax-credit. For-profit hospitals would get a 15 percent tax credit, and non-profit hospitals would get new grants. Immediate financial relief directly to doctors and hospitals must be part of any solution to the malpractice crisis.

Second, we have to cut down on frivolous lawsuits. Under the Graham-Durbin bill, every plaintiff attorney that files a medical malpractice case would be required to include an affidavit by a qualified health care professional verifying that malpractice has occurred. No more launching lawsuits that don't have merit. And anyone who violates this affidavit is going to be punished with strict, and increasingly harsh, civil penalties. We are not going to tolerate frivolous lawsuits, and that's the second part of the Graham-Durbin bill.

Third, we need to provide additional protections for doctors who are doing the right thing and serving patients through Medicare, Medicaid and S–CHIP. Doctors with a 25 percent caseload of Medicare, Medicaid, and State Children's Health Insurance Program, SCHIP, patients would be protected from punitive damages under the Graham-Durbin bill. Exemptions would only be allowed for cases involving sexual abuse, assault and battery, and falsification of records. Other than that there will be no punitive damages for doctors who are doing the right thing and serving Medicare, Medicaid and SCHIP patients.

Finally, the Graham-Durbin bill says the Federal Government should underwrite some of the risk in malpractice insurance—just as we have with terrorism and flood insurance. Doctors and hospitals should not have to shoulder the burden of a broken insurance market.

If the Senate leadership is serious about helping doctors and patients, it will bring up the bipartisan Graham-Durbin bill. It provides immediate and direct financial relief to doctors and hospitals. It cuts down on frivolous lawsuits. It limits liability for doctors with high Medicaid caseloads, and it provides Federal help for a broken insurance system.

As I have done for the past 10 years, I will continue to advocate for the policies that truly help women and infants and I will continue to stand up for my doctors, patients and communities who deserve an immediate, comprehensive solution to the malpractice insurance crisis. I welcome the support of any Senator who wishes to sign onto the legislation I have outlined today.

Mr. ALEXANDER. Mr. President, I express my concern once again with the rising cost of medical liability insurance. Last July we debated this issue in the Senate, and unfortunately did not reach cloture on this important issue. Today we are limiting our debate on the issue to care for mothers and babies. We must protect a woman's access to obstetric and gynecological care to ensure healthy mothers and babies. The increasing cost of medical liability insurance is creating a patient access crisis because doctors are leaving the practice of medicine.

At Hardin County General Hospital in Savannah, TN, the OB/GYN left the hospital to go practice in another state because the insurance premium was

too high. High medical liability insurance is one more reason it is difficult to recruit specialists to rural areas.

In 2002, the average net medical liability premium for an OB/GYN in Tennessee was $33,600. In 2003, the premium increased to $41,980, and in 2004, it increased again to $49,408. This is a 47 percent increase over the past 3 years. This sort of increased cost is not sustainable. I continue to be worried about who will deliver babies in my state.

I believe that S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act of 2004, will help protect access to care for mothers and babies in Tennessee. This bill will still allow unlimited economic damages, but it places a sensible cap on non-economic damages. I hope we reach cloture on the motion to proceed so that we can consider this very important legislation.

Mr. BYRD. Mr. President, I am concerned about the increasing costs of malpractice insurance and a lack of access to medical providers in West Virginia and other States. The current challenges facing the medical malpractice system are complex and require a multifaceted solution.

Unfortunately, this issue has become highly politicized with powerful interests pitted against each other. Patients and their doctors are being squeezed in the middle. It is long past time to give some peace of mind to patients and doctors alike who are caught in this political tug of war. We ought to have a wide-ranging debate in the Senate on how to best reform the medical liability and insurance system and also prevent medical errors.

I am disappointed that the administration and the Senate leadership have adopted a take-it-or-leave-it and one-size-fits-all approach to this issue.

Especially in more rural areas of this country, there is a serious shortage of doctors and a lack of access to quality medical care close to home. Too often, families must travel long distances to see a physician, and even farther if specialized care is required. I hope that, by proceeding to the medical malpractice bill, the Senate can have a constructive debate and reach a commonsense concensus on this important issue.

Mr. CHAFEE. Mr. President, today I will vote in favor of invoking cloture on the motion to proceed to S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act. My vote is not an endorsement of S. 2061 as it was introduced in the Senate. In fact, I have concerns about various aspects of the bill including the $250,000 cap on noneconomic damages and I anticipate supporting amendments to S. 2061 if the Senate has an opportunity to fully debate this legislation.

However, I do believe that reform of the medical liability system should be considered as part of a comprehensive response to surging medical malpractice premiums that endanger Americans' access to quality medical care by causing doctors to leave certain communities or cease offering critical services, such as obstetrical care. For this reason, I will vote for cloture on S. 2061 in an effort to move the debate forward.

Mr. FEINGOLD. Mr. President, once again we are faced with an ill-advised medical malpractice bill coming to the Senate floor without any committee consideration. Some argue that we have a malpractice insurance ''crisis'' that is driving doctors from the practice of medicine, particularly in the field of obstetrics and gynecology, or OB/GYN. But we have not yet explored that issue in the Senate at all. No committee has held hearings or marked up a bill on this topic. Instead, an extreme proposal has been brought directly to the floor and Senators are expected to vote for it because there is a crisis. That is not how the legislative process should work on an issue of importance to so many people.

I would like very much for Congress to address the problem of malpractice insurance premiums once we understand the seriousness of the problem and the effectiveness of the proposed solutions. But by bringing this bill directly to the floor, the majority shows that it is not serious about addressing the problem. It just wants to play a political card. To the extent that there really is a malpractice insurance problem, what is going on here is a cynical exercise, designed only to fail and to provide fodder for political attacks. I will vote ''no'' on cloture.

Ms. CANTWELL. Mr. President, I will not be voting for S. 2061, a bill that imposes very low damage caps on noneconomic damages in cases involving obstetrical services. I cannot support the bill before us today because I do not believe it would be effective in reducing the very serious problem that we have with rising medical malpractice premiums for doctors and hospitals in my State of Washington.

The fundamental premise of the bill is that by placing a very low cap on the amount persons injured in obstetrics cases could receive for noneconomic damages, insurers would respond by reducing premiums for physicians and hospitals. However, multiple studies have now shown that premiums for physicians in States that have already imposed limits on damages continue to increase. According to the Medical Liability Monitor, overall, premiums are 6.8 percent higher for OB/GYNs in States with caps than States without caps, and premium increases last year were slightly higher in States with caps on damages, than in States without them. That is why the Seattle Times, the Seattle Post Intelligencer, The Tacoma News Tribune, The Everett Herald and the Bellingham Herald have all come out in opposition to $250,000 caps in the last 2 weeks. As the editorial board of the Spokane Spokesman wrote last June 4 about proposals to cap damages, ''No doctor would prescribe radical surgery based on anecdotes or conflicting data.''

In the process of educating myself about this issue over the past year, including meeting with hundreds of Washington State physicians and hospital administrators, touring 29 rural hospitals, and reviewing the claims history of Physicians Insurance, Washington State's leading provider of malpractice insurance, I have asked many of these individuals what they believed the cap on damages should be. The fact that I have received answers ranging from zero to $5 million illustrates the difficulty in determining what a damage limit should be without reference to specific facts. I believe that juries made up of Washington State residents are better positioned to make a determination of appropriate compensation after hearing the facts of an individual case, than are Senators trying to find a one-size-fits-all solution. Washington State has the third best tort system in the country according to the Chamber of Commerce. Our State has long banned punitive damages, and as a result, capping noneconomic damages, without the knowledge of the jury, could lead to very unfair results for Washington State residents.

Imposing a $250,000 cap on noneconomic damages is radical. The $250,000 cap is based on a California law that was enacted in 1975 and has never been adjusted for inflation. While I wish that it were not true, Washington residents are sometimes harmed by negligent care in the course of obstetrics cases, and they suffer genuine damages. Despite efforts to create an exception for the most serious and egregious cases, there is no exception in the bill before the Senate for even the worst cases. Noneconomic damages compensate patients for real injuries including the loss of fertility, loss of a child, or loss of a spouse, as well as for excruciating pain and permanent and severe disfigurement. Caps on noneconomic damages disproportionately affect women and children because they lack the work history to make economic damages very meaningful.

That is not to say that we do not have a very serious problem in our State. Individual physicians have experienced premium increases of up to 75 percent and hospitals have suffered even greater increases. Increases have hit specialists, including obstetricians, particularly hard. This adds to pressure already being felt by physicians and hospitals in our State as a result of our abysmal Medicare reimbursement rate. Washington currently ranks 41st in the Nation and receives only $4,303 per beneficiary. Physician practices are small businesses, and many of our hospitals are nonprofit entities. They cannot be expected to absorb these huge increases without help.

That is why I support many measures that would actually help deal with the problem of rising insurance costs. I believe that we should be exploring the creation of best practices for physicians, which, if followed, would protect

physicians from law suits. I also believe that specialized malpractice courts could be a useful tool in curbing abuses of the system.

I also support legislation introduced by Senators LINDSEY GRAHAM and DICK DURBIN. Unlike S. 2061, which relies on damage caps to reduce future premiums, the Graham-Durbin bill provides tax credits to physicians and hospitals to help offset the increases in malpractice insurance. It would also create a medical mistake database, repeal the current law that prevents Federal regulators from examining whether the insurance industry is engaging in anticompetitive behavior and price manipulation to artificially inflate premiums, and impose stricter standards to demonstrate that a malpractice case has merit before it proceeds.

I am committed to finding solutions to these problems to ensure that Washingtonians continue to have access to quality affordable care throughout every city and county in our State. The bill on the floor unfortunately is not part of that solution. Hopefully, the debate doesn't stop today and these other alternatives will be considered.

Mr. FRIST. Mr. President, today we will be voting on a cloture motion to allow the Senate to proceed to debate S. 2061, the Healthy Mothers and Healthy Babies Access to Care Act. I strongly urge my colleagues to vote for the cloture motion on the motion to proceed.

We have had a good discussion over the last few days, and it is clear that our medical litigation system is failing the American people. It is failing our communities, our hospitals, our doctors, our families and, most importantly, our patients. OB/GYNs and the women and babies they serve have been uniquely affected. Reform of this broken system is desperately needed, and we must act.

The upcoming vote will allow us to fully debate this critical issue. If action is delayed, we know what will happen: patients will suffer, women will suffer, and babies will suffer. OB/GYNs will continue to flee their practices and drop obstetrical services, and more States will be added to the AMA crisis list, a list that already has 19 States.

I have received letters from doctors all over America, including from my home State of Tennessee, demonstrating the devastating effect of the crisis. Premiums in Tennessee have gone up 68 percent over the last 4 years, and Tennessee is not even considered a crisis State by the AMA—yet.

One doctor from Paris, TN, writes:

> As a reproductive health physician I have provided a wide range of obstetrical and gynecologic services to west Tennessee for 13 years. I am one of only two physicians practicing in this area and do a significant amount of high risk procedures. My malpractice insurance premiums have increased from $30,000 to $60,000 in just two years. This is without a claim being filed against me. . . . I am strongly considering terminating my obstetrical practice to leave this area markedly undeserved.

Another doctor from Athens, TN, writes:

> As an obstetrician in East Tennessee whose liability insurance premiums increased 23 percent in the year 2003, it is becoming progressively difficult and risky for me to continue to deliver babies. Many of my colleagues have either retired or quit doing obstetrics. This is going to severely limit what is already excellent care in this country for the obstetrical patients especially in this part of the State.

As these real life stories show, this health care crisis is real, spreading and uniquely affects OB/GYNs. The current medical liability system is costly, inefficient and hurts all Americans. In addition to damaging access to medical services, the current medical litigation system creates problems throughout the entire health care system:

It indirectly costs the country billions of dollars every year in defensive medicine. The fear of lawsuits forces doctors to practice defensive medicine by ordering extra tests and procedures. Though the numbers are hard to calculate, well researched reports predict savings from reform at tens of billions of dollars per year.

It directly costs the tax payers billions. The CBO has estimated that reasonable broad reform will save the Federal Government $14.9 billion over 10 years through savings in Medicare and Medicaid.

It impedes efforts to improve patient safety. The threat of excessive litigation discourages doctors from discussing medical errors in ways that could dramatically improve health care and save hundreds or thousands of lives. I am a strong supporter of patient safety legislation which I hope we will pass this year. But in addition to patient safety legislation, we need to address the underlying problem—our liability system.

We must reform this broken liability system. That is why I strongly support the Health Mothers and Healthy Babies Access to Care Act. I thank my colleague, Senator GREGG, who skillfully led this debate, and I thank Senator ENSIGN, a leading proponent of reform, who has seen the current crisis close up in his own State of Nevada.

This legislation will protect women's access to care and ensure that those who are negligently injured are fairly compensated. Again, I encourage my colleagues to move this legislation forward. We cannot afford further delay.

Mr. President, I ask unanimous consent that a list of groups that support S. 2061 be printed in the RECORD.

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

GROUPS THAT SUPPORT S. 2061—HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT

American Medical Association
American College of Obstetricians and Gynecologists
American College of Emergency Physicians
American College of Cardiology
American Association of Neurological Surgeons
American Academy of Dermatology Association
American Association of Orthopaedic Surgeons
American College of Cardiology
American College of Surgeons
American College of Radiology
American Gastroenterological Association
American Society of Cataract and Refractive Surgery
American Urological Association
Congress of Neurological Surgeons
National Association of Spine Specialists
Society of Thoracic Surgeons
American Academy of Family Physicians
American Society of Anesthesiologists

I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant bill clerk (Ms. Stacy Sullivan) proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I support legislation which would address the serious problems faced today by doctors, hospitals and other medical professionals who provide obstetrical and gynecological services and at the same time provide balance to treat fairly people who are injured in the course of medical treatment.

While most of the attention has been directed to OB/GYN malpractice verdicts, the issues are much broader, involving medical errors, insurance company investments and administrative practices.

I support caps on noneconomic damages so long as they do not apply to situations such as the paperwork mix-up leading to the double mastectomy of a woman or the death of a 17-year-old woman on a North Carolina transplant case where there was a faulty blood type match or comparable cases in the OB/GYN services area.

An appropriate standard for cases not covered could be analogous provisions in Pennsylvania law which limit actions against governmental entities or in the limited tort context which exclude death, serious impairment of bodily function, and permanent disfigurement or dismemberment.

Beyond the issue of caps, I believe there could be savings on the cost of OB/GYN malpractice insurance by eliminating frivolous cases by requiring plaintiffs to file with the court a certification by a doctor in the field that it is an appropriate case to bring to court. This proposal, which is now part of Pennsylvania State procedure, would be expanded federally, thus reducing claims and saving costs. While most malpractice cases are won by defendants, the high cost of litigation drives up OB/GYN malpractice premiums. The proposed certification would reduce plaintiff's joinder of peripheral defendants and cut defense costs.

Further savings could be accomplished through patient safety initiatives identified in the report of the Institute of Medicine.

On November 29, 1999, the Institute of Medicine, IOM, issued a report entitled: To Err is Human: Building a Safer Health System. The IOM report estimated that anywhere between 44,000 and 98,000 hospitalized Americans die each year due to avoidable medical mistakes. However, only a fraction of these deaths and injuries are due to negligence; most errors are caused by system failures. The IOM issued a comprehensive set of recommendations, including the establishment of a nationwide mandatory reporting system; incorporation of patient safety standards in regulatory and accreditation programs; and the development of a nonpunitive culture of safety in health care organizations. The report called for a 50 percent reduction in medical errors over 5 years.

The Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, held three hearings to discuss the IOM's findings and explore ways to implement the recommendations outlined in the IOM report. The fiscal year 2001 Labor-HHS appropriations bill contained $50 million for a patient safety initiative and directed the Agency for Healthcare Research and Quality, AHRQ, to develop guidelines on the collection of uniform error data; establish a competitive demonstration program to test best practices; and research ways to improve provider training. In fiscal year 2002 and fiscal year 2003, $55 million was included to continue these initiatives. We are awaiting a report, which has been delayed after being scheduled for issuance in September, 2003, by the Department of Health and Human Services, which will detail the results of the patient safety initiative.

There is evidence that increases in OB/GYN insurance premiums have been caused, at least in part, by insurance company losses, the declining stock market of the past several years, and the general rate-setting practices of the industry. As a matter of insurance company calculations, premiums are collected and invested to build up an insurance reserve where there is considerable lag time between the payment of the premium and litigation which results in a verdict or settlement. When the stock market has gone down, for example, that has resulted in insufficient funding to pay claims and the attendant increase in OB/GYN insurance premiums. A similar result occurred in Texas on homeowners insurance where cost and availability of insurance became an issue because companies lost money in the market and could not cover the insured losses on hurricanes.

In structuring legislation to put caps on jury verdicts in OB/GYN cases, due regard should be given to the history and development of trial by jury under the common law where reliance is placed on average men and women who comprise a jury to reach a just result reflecting the values and views of the community.

Jury trials in modern tort cases descend from the common law jury in trespass, which was drawn from and intended to be representative of the average members of the community in which the alleged trespass occurred. This coincides with the incorporation of negligence standards of liability into trespass actions.

This ''representative'' jury right in civil actions was protected by consensus among the state drafters of the U.S. Constitution's Bill of Rights. The explicit trial by jury safeguards in the seventh amendment to the Constitution were adaptations of these common law concepts harmonized with the sixth amendment's clause that local juries be used in criminal trials. Thus, from its inception at common law through its inclusion in the Bill of Rights and today, the jury in tort/negligence cases is meant to be representative of the judgment of average members of the community, not of elected representatives.

The right to have a jury decide one's damages has been greatly circumscribed in recent decisions of the United States Supreme Court. An example is the analysis that the court has recently applied to limit punitive damage awards.

In recent cases, the Court has shifted its Seventh Amendment focus away from two centuries of precedent in deciding that federal appellate review of punitive damage awards will be decided on a de novo basis and that a jury's determination of punitive damages is not a finding of fact for purposes of the reexamination clause of the Seventh Amendment—''no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law''. Then, in 2003, the Court reasoned that any ratio of punitive damages to compensatory damages greater than 9:1 will likely be considered unreasonable and disproportionate, and thus constitute an unconstitutional deprivation of property in non-personal injury cases. Plaintiffs will inevitably face a vastly increased burden to justify a greater ratio, and appellate courts have far greater latitude to disallow or reduce such an award.

These decisions may have already, in effect, placed caps on some jury verdicts in malpractice cases which may involve punitive damages.

Consideration of the many complex issues on the Senate floor on the pending legislation will obviously be very difficult in the absence of a markup in committee or the submission of a committee report and a committee bill.

The pending bill is the starting point for analysis, discussion, debate and amendment. I am prepared to proceed with the caveat that there is much work to be done before the Senate would be ready, in my opinion, for consideration of final passage.

Mr. President, I yield the floor.

Mr. ENSIGN. Mr. President, we had a debate today—sort of a debate, because we are only debating whether to proceed to a debate on the issue of whether we are going to continue to allow obstetricians and gynecologists and nurse-midwives to be able to practice in this country because of the runaway cost of medical liability insurance. The Democrats are not even allowing us to proceed to the bill, just like last year, when we tried to pass a more comprehensive reform. If they don't like the bill, let's amend the bill. But to have no debate on the bill, it seems to me, they are completely turning their backs on the women and children of this country, and those babies yet to be born.

I had a discussion this afternoon with the President of the American College of Obstetricians and Gynecologists. I was talking to her about the numbers of students going into the field of obstetrics and gynecology. At the Nevada School of Medicine, the lowest number ever of students have applied to go into obstetrics and gynecology. She pointed out a statistic in the State right next door, Utah. That number actually was zero. Zero have decided to go into obstetrics and gynecology. Let me repeat—in Utah, there are no new physicians this year who decided to go into obstetrics and gynecology. That is an alarming figure for the future.

For those people who are saying it is a problem but it is not that bad—the problem is bad today and it is going to get much worse in the future.

There have been statistics bantered about as to why this happened and why that happened. However, the bottom line is shown pretty well in this picture. This building is located in a very busy thoroughfare in Las Vegas. This is a picture taken last week . The sign says, ''OB/GYN—For Lease.'' The represents what is going on in many places in Nevada and other parts of the country—OB/GYN practices are shutting down.

There are obstetricians and gynecologists leaving my State. It is the fastest growing State in the country by far, yet we have OB/GYNs leaving. They are stopping their practices. Some of them are retiring early. Some of them are limiting their practices to only the practice of gynecology. For others to get coverage from the insurance companies, they have to limit the number of babies that they deliver each month.

My wife and I have had three wonderful children. Three of the most remarkable experiences of my life were the births of our three children. I know a husband and wife team, Joe and Kirsten Rojas, both of them OB/GYNs. They are passionate about what they do. They love to deliver babies. We have been out to dinner with them and often they get interrupted, and they have to go off and deliver a baby. Some of the hardest working people are OB/GYNs. Yet now they cannot afford to

keep practicing. They have to limit the number of deliveries.

The Rojases are our friends. We talk with them, and they have actually talked about leaving Nevada to go to California to practice their passion of delivering babies. They love Las Vegas. As a matter of fact, Dr. Joe Rojas, his father, was my mom's gynecologist. Actually, he did surgery on my wife when she had a medical condition. I graduated high school with Dr. Joe Rojas. He was born and raised in southern Nevada, and his wife now is in practice in Nevada, and they may have to leave their beloved home because they cannot afford the high costs of medical liability insurance.

I want to put up another chart that shows the comparison of the rates in States around the country compared with California. Some people are saying the insurance rates are rising or falling because of the stock market, or insurance companies are just raising the rates arbitrarily or because of some kind of actuarial tables. The bottom line is on this chart. This puts it into context.

The one State where we have had medical liability reform for any length of time, and it has been since the mid 1980s after surviving multiple court challenges, is the State of California. They enacted what is called MICRA. It is a strong medical liability reform law that, frankly, you could not get passed in the State of California today because the trial lawyers are so powerful. Over the years the trial lawyers have made so much money off of lawsuits that they are, I would argue, the most powerful political lobby in the United States today.

But in California they were able to enact a medical liability reform bill. Their rates are down here shown by the blue line. You see very little increase over the years all the way through 1999. The rest of the country is shown by this red dashed line. You can see the rates going up. This only goes through about 1999. If we took it out to the year 2004, to today, you would see another spike going up right now.

Actually the biggest increases in medical liability insurance we have seen have been in the last few years. This crisis is growing and getting worse year by year.

Let us just compare a few cities in two States that have enacted good medical liability reform versus cities in four States that have not.

Los Angeles in California: They have their MICRA law which is an effective medical liability reform law. Denver, CO: Once again, they have had a law on the books for about 10 years. They have an excellent law there.

Let us look here at OB/GYNs. There are some other specialties and the comparison is very fair, but us stay with OB/GYNs:

Los Angeles, a little over $54,000 a year; Denver, their premiums are about $31,000 a year; New York City, $89,000; Los Angeles, $108,000. By the way, this number, because this is 2002 data, is very low. In Las Vegas, it is somewhere between $140,000 and $200,000 a year, depending on how many babies they are delivering and whether they are dealing with difficult pregnancies. Looking on: Chicago, $102,000; and Miami, $201,000 per year in medical liability premiums.

Some people say these are rich doctors. Has anybody talked to an OB/GYN and asked them how much money they make these days? In Maryland, they get paid $1,400 for a delivery—not just a delivery but all the precare, the delivery, and the aftercare—$1,400 for all of those visits, including the hospital time. In the State of Nevada, Medicaid pays $1,200. That is about what managed care pays in the State of Nevada as well. These are not rich doctors.

By the way, we are not just talking about doctors; we are talking about nurse-midwives as well. When was the last time you talked to a rich nurse-midwife? They are in a crisis as well. A lot of them are having to leave their practices. In 2 States, legislators they have enacted excellent reforms, in too few states, nothing has been done.

That is the simplest evidence we can give as to why it is so desperately needed to enact the bill we have on the floor today. It will protect people involved in the delivery of babies and those involved in the practice of gynecology.

We have heard anecdotal stories about women delivering babies literally on the side of the road because they had to drive too far because their obstetrician left town. This is happening in my State, in Arizona, in Mississippi, in West Virginia—there are 19 States currently in crisis. Of the States that are left, all but five are showing signs of heading into crisis. The one thing we know, unless this problem is fixed, is that all of those States showing signs of crisis will head into the crisis as well.

How bad does the situation have to get before this body and those who defend the trial lawyers finally say enough is enough? How bad does it have to get? How many women have to be denied the care they need?

In the State of Nevada, sometimes politics drives this argument. Sometimes it drives many pieces of legislation around here. In the State of Nevada, our level I trauma center closed a few years ago. Just prior to its closing, the Democrat leaders in our State said there was no way they would pass medical liability reform—no way—it would never see the light of day. Our level I trauma center closed. What happened? Because of that closing, 3 weeks later a medical liability reform bill was passed in the State of Nevada. That medical liability reform bill is not a good one—it does have some good components, but it certainly does not go far enough. In the State of Nevada, we are trying to close the loopholes that were left open by that bill.

The politics that can be generated out of debating the bill and going forward can be a positive thing for actually getting this bill passed. The level I trauma center that closed in my State is the same level I trauma center where Roy Horn—the famous entertainer from Siegfried and Roy who was attacked by the tiger this last year—was treated. Had that level I trauma center not been reopened, Roy Horn would probably not be with us today.

The reason it is so apparent that this legislation would work is because we have the numbers here to show that in the States who have strong medical liability laws, much of the costs have been constrained. Case in point, the reason our level 1 trauma center was allowed to reopen was that our Governor stepped in and said: We will cover the level I trauma center under the State's liability protection.

What does the State of Nevada have for liability protection? It has a $50,000 cap for total damages, which is much more severe than we have in this bill. We have only a $250,000 cap on noneconomic damages. You can get as much as you want out of economic damages, and you can get as much as a jury says. Whatever your medical costs, you can get all of those. But on pain and suffering, with some of the most outrageous runaway jury awards, we limit it to $250,000.

Some say you are limiting the access to courts when you do that. In the State of California, once again, there have been tens of millions of dollars awarded in loss of income. For instance, a child was injured, and in one case $84 million was awarded by a jury. We are not limiting the access. We are trying to get rid of the frivolous lawsuits that are plaguing this Nation and leading to this crisis. There is a direct correlation.

Senator DASCHLE stood on the floor earlier today and said this bill would not help doctors. I question that statement because the doctors are supporting this bill. Virtually every medical association in this country is supporting this bill today. If it is not providing relief to the doctors, why are they supporting this bill? The answer is obvious. The answer is, it will help. It will help our entire system, and it will help those women and children who are being denied access to care right now. Unfortunately, if we don't do something, this situation in the future is only going to get worse and worse and worse.

The bill we have before us today, Senator GREGG and I introduced. I appreciate all of the great work he has done on this bill, which is a narrowed down version of what we tried to pass last year. What we tried to pass last year was a comprehensive bill. If we are not able to move to this bill today, we are going to try to do emergency room and trauma care and a good samaritan bill packaged together. If we can't get that done, we are going to do inner-city and rural health care areas—underserved areas.

We are trying to drive this issue home to the American people. They realize where their representatives stand.

Some have said you are trying to get a rollcall vote. You are darned right we are. We are trying to let people know who stands with patients and who stands with women and children with this bill and who stands with the trial lawyers.

Mr. ENSIGN. Another friend of mine in southern Nevada, whom I was talking to about 6 months ago, is one of the best OB/GYNs we have in southern Nevada. He focused his practice on difficult pregnancies, on the high-risk pregnancies, pregnancies with complicating factors. Maybe there is diabetes involved. That is a very common problem. One of my goddaughters who babysits our children has gestational diabetes. It is not an uncommon problem among women. During that time, there can be complications develop because of diabetes. It can be a very serious problem, but if handled by highly trained physicians, usually you do not end up with any problems.

Because my friend is in the high-risk category—by the way, he has never had a lawsuit against him—his insurance company this past year said he had to severely limit the number of babies he could deliver. This is his passion, and now he has to limit the number of high-risk deliveries. That means some other OB/GYN who is not as highly trained is going to have to deliver those babies.

If you are getting ready to deliver and you have a high-risk pregnancy, you would want the best possible medical care you could get. You would want the most highly trained physician. If you were told that because of our medical liability crisis in this country—I am sorry, you cannot go see your doctor—the one you have come to trust, because they had to limit the number of babies they could deliver in this month, imagine how that whole family would feel—the father, the mother, the grandparents. It puts an unnecessary risk on that delivery we should not be facing.

While no one wants to have medical malpractice cases, there are mistakes that occur in medicine. I am a veterinarian by profession. There are human mistakes. There is gross negligence. Those people should have the right to access a courtroom. They should have the ability of a remedy. I argue that our legislation actually gets them the remedy faster. It limits the attorney's fees so more of the money goes to the victim. It also gets the money to the victim faster. Right now it can take 6, 7, 8, 9, 10 years. A lot of times the patient may have already died. Our bill gets them the compensation they need much more quickly and in a fair manner.

I have heard it described that this bill discriminates against women. That would be like saying the whole State of California and the whole State of Colorado discriminates against women. That is ridiculous. California and Colorado are the two best examples of medical liability reform having been enacted and have been enacted for enough time to see it work. The patients who are injured actually get the compensation they deserve and we do not have the proliferation of frivolous lawsuits we see in the rest of the country in the healthcare field. There are many areas of tort reform we need to address. This happens to be one of them.

Anyone who has delivered or seen their child's birth knows the anxiety that builds up; it is a tense time. Every time one of our babies comes out of the birth canal, we are hoping and praying everything is going to be all right. The biggest fear of any parent is for something to go wrong. We want to know the best possible health care and the best possible health care provider is going to be there. That is not happening in too many cases. That is not happening because, I believe, the trial lawyers have been too powerful in the United States. We have to break that power base if we really want to care about the mothers who are expecting or about the level of gynecological care they have come to expect and deserve in this country.

This legislation is critical to the future quality of life in the United States. It is critical that we put special interests aside and the interests of patients at the forefront. That is what we are debating today. Are we going to put expectant mothers, midwives, OB/GYNs first? Or are we going to put the trial bar first?

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. With the attention of my friend from Nevada, I ask unanimous consent I be allowed to speak as in morning business for 6 or 7 minutes. I think there are a couple of other speakers on the majority side who want to be here. When they come over, I will wrap up my remarks to give them time to be heard on the matter.

Mr. ENSIGN. I agree to the unanimous consent request with the caveat that if a Member of the majority comes over and seeks recognition, they will be recognized.

Mr. DODD. I am happy to do that and I thank my friend from Nevada.

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

GROWING ANARCHY IN HAITI

Mr. DODD. Madam President, I come this afternoon to express my deep concern over the growing anarchy and lawlessness in Haiti. This ominous situation, only miles off our own shores, threatens to overwhelm the elected government of Haiti in a number of days, and unless our country, the United States, along with other members of the international community, acts to stop it, it will get worse and pose far many more serious problems for us.

In my view, 3 years of neglected, mixed signals and inertia by the present administration—and the international community, for that matter—have brought a country already steeped in misery and poverty to the brink of uncontrollable violence and chaos. With respect to our own administration, which has sought to remake the political landscape of the Middle East, it is profoundly disturbing and unsettling that it seems incapable or unwilling to act to fortify a struggling democracy in our hemisphere.

I will not defend every action of the Aristide government in Haiti. There have been major problems there. I accept that and understand that. But no one denies this government was duly elected by the people of Haiti and it is being threatened today by a group of thugs and rebels, many of them who come from the previous death squads and ousted armed forces members which ruled that country with a brutal hand, who make up the majority of the people holding the second and fourth largest cities in Haiti today.

I am not standing here as some political defense of a specific administration, but I do stand here as someone who believes that if we are going to defend democracy, we have to be willing to stand up when fragile democracies, such as this desperately poor country, are being threatened by a group of people who do not have the interests of democracy at heart and have no right to be threatening this democratically elected government.

While I cannot discuss the administration's classified briefing of this morning, I can say that I was stunned by the lack of any coherent administration strategy for addressing the violence that may unseat the elected government. It is no secret that Haiti's long history of authoritarian governments as well as political and social upheaval have made it ripe to destabilize. The Haitian people continue to be the principal victims of this instability. The statistics are devastating.

Eighty percent of Haitians live in abject poverty; that is, 8 out of 10 people. By 1998, the World Bank reported that the per capita income in Haiti was $250 a year, less than one-tenth of the average in all of Latin America. In addition, only half of Haitian children attend school. Only 45 percent of the Haitian population can read or write and only marginally so. That is less than the people of Iraq.

The scarcity of resources have contributed to a public health crisis in that nation. Fifteen percent of children don't live past the age of 5. The average life expectancy is under 50 years of age. Haitians suffer from the highest rate of HIV/AIDS in the Western Hemisphere, roughly 6 percent of the population.

I note the presence of the Presiding Officer who, in a former life and occupation, knew these numbers and statistics as well as anybody. I appreciate her listening to this because she understands better than many what goes on in these impoverished nations.

Equally important are the intangible effects of this instability in this little country. Chief among them is the growing chaos in civil society. Indeed, the very fabric of Haitian society is at risk as pro and antigovernment factions armed with every imaginable weapon are increasingly clashing in the streets. Just in the last 2 weeks, more than 50 people have been killed in politically charged street protests. This violence took a new and disturbing turn when a group of armed gangs seized the towns of Cap Haitien and Gonaives, Haiti's second and fourth largest cities. They burned police stations and homes of supporters of Haitian President Jean Bertrand Aristide.

The year 2004 was to be a year of rejoicing and celebration for the people of Haiti as they were expected to proudly celebrate 200 years of independence. Instead they are forced to flee from their communities to escape seemingly indiscriminate violence. There is no mystery, in my view, who is behind these armed attacks. They have audaciously identified themselves to local and international journalists. They are former members of the Haitian armed forces and former members of the so-called FRAPH, the paramilitary organizations that terrorized Haitians in the early 1990s. They were responsible for the deaths of thousands of Haitians and the flight of tens of thousands more who were prepared to risk their lives at sea coming to this country rather than bear the repression and violence that was a daily occurrence in that country. They are back in Haiti, and they are within an eyelash of taking control of Haiti again. We are going to see the effects of it here in a matter of days.

These armed thugs have publicly announced that they intend to march on Port-au-Prince within hours. In fact, within 15 minutes of my address today, a decision will be made by the so-called political opposition in Haiti on whether to accept the recommended political solution that would bring about a new Prime Minister, sort of a copresidency with the present elected government. That is the offer to be made. It has been rejected in the last several days by these gangs and the opposition.

At 5 o'clock they are going to announce whether they are willing to try it again. I hope they will try. I hope they will accept what has been offered to them by CARICOM, our Government, and others. If they don't, I am fearful that we will see a continued rise in this violence, the cost of human life, of innocent life unnecessarily.

The administration up to now has offered only words. I commend Colin Powell. He has said that we respect this elected government and we don't believe it ought to be overthrown, that we will not support any removal of this democratically elected government. But those are words. They are important words coming from an important individual, but it doesn't diffuse the growing crisis. A rejection of the political solution does not portend well for the people of this country. A violent coup that unseats the duly elected government is not an auspicious foundation for further stability in that country as the painful aftermath of the 1991 coups should remind us.

It is too late for diplomacy alone to turn the tide. The political opposition's rebuff of last weekend's diplomatic mission makes that painfully clear. The international community must act with strength and resolve to thwart these criminal elements and prevent the impending humanitarian refugee crisis that is about to explode before our very eyes. It is time for the administration to take the lead in this matter.

I am not suggesting that we send some massive force. We are talking about 200, 300, 400 gang members, thugs. It is not a large operation. It wouldn't take much of an international force to send a message that we are not going to allow this government, this crowd to overthrow the elected government.

Our position as of right now is that we won't do anything. We are not going to step up until there is some political context in which to operate.

There will be a political context when we let these thugs know that we are not going to tolerate the overthrow of this government by asking others to join us. I hope the administration would be prepared to act, particularly in light of what I anticipate to be the rejection of the offer of a political solution.

While I commend CARICOM, the Caribbean community's organization, for ongoing efforts to find a temporary solution to the political crisis, these efforts have so far been fruitless because the political opposition hopes they will be able to watch an overthrow of this elected government and then count on the U.S. Government to come in and sanction them, as if somehow they have arrived in power legitimately.

Let me say to them today: If you think for a single second you are going to get any support out of this Congress by overthrowing an elected government, you are fooling yourselves. It is not going to happen.

This government of ours needs to speak loudly and clearly to these people that this is not what the United States stands for. This is not an endorsement of every action by the Aristide government any more than we endorse every action of other governments around this hemisphere or elsewhere. But to sit back and sort of wink, in a sense, that it is OK for these gangs and thugs and literally drug dealers, some of the worst elements that that country has ever seen, come back into power and be able to overthrow this government is a huge mistake.

It is occurring on this administration's watch. To allow it to happen will be tragic. Let there be no doubt the United States will suffer, along with the Haitian people, if we permit this to go on. Haiti is located only miles from our doorstep. Lawlessness in Haiti only ripens conditions for narcotrafficking and illegal migration.

Haiti is already a major transition site for drugs coming into this country. We know that already. If we think we are going to get a better deal from these gangs that are about to overthrow this country, we are making a mistake. Engagement with the Haitian people is clearly in the best interests of both our peoples.

Not only is the lack of real leadership on the part of our own country disgraceful and disappointing, it is dangerous. Without that leadership, there will be worse violence and greater chaos.

Once security has been restored, the administration has at its disposal the tools to move both sides toward a political compromise, should it choose to utilize them. With respect to the Government of Haiti, that includes providing direct assistance to the Haitian police, assistance in the form of training and equipment in return for compliance with the CARICOM initiative.

With respect to political parties and civil society, the United States should revoke U.S. visas to any of these organization members who are unwilling to participate wholeheartedly with the diplomatic efforts to find compromise or who support or condone violence. If it takes legislation banning these people from getting visas, I will do it. These people travel to the United States all the time and then turn around and provide support to these thugs and then anticipate coming here when it gets a little dangerous. They have no right to come to America, if they participate in this action going on in Haiti as we speak.

The Dominican Republic and other Caribbean countries must take action to stop these territories from being used as a transit point for illegal arms shipments to Haiti or as staging areas for armed Haitian opposition groups. Equally important, the United States and the international community must stop ignoring the negative impact that our economic policy of withholding assistance to the Haitian people is having on Haiti's stability.

Corruption aside, the Haitian government's lack of resources would preclude anybody from effectively ruling that country. It is disingenuous of the Bush administration and the international community to cut off hundreds of millions of dollars in aid to these desperately poor people, some of the poorest people in the world. They needed just a small amount of help, and we were unwilling to give them any over the last 3 or 4 years. It is no wonder that chaos is running wild in that country today.

I hope the administration will take far more concrete steps to respond to this crisis than they have presently. My hope is that within a matter of minutes the political opposition and

others will agree to the political solution offered to them. If not, the United States and the international community need to step up and offer to send in armed forces, if necessary, to protect the overthrow of this legitimately elected government.

Mr. ENSIGN. Madam President, what is the situation regarding time?

The PRESIDING OFFICER. The time has expired.

Mr. ENSIGN. Of the 10 minutes remaining, 5 minutes is for the minority and 5 is for the majority leader, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ENSIGN. The majority leader has the last 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Madam President, the distinguished Senator from Nevada, my colleague, Senator ENSIGN, has been waiting for the minority leader to come. The time is here for the majority to use. If the minority leader decides to use 5 minutes, I ask unanimous consent that the majority be given the final 5 minutes to speak on this matter.

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

The junior Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I want to sum up this debate telling one story and making a few other points. Some on the other side of the aisle claim ''they want to make health care a birthright for every single child born in this country.'' Yet they are driving the very doctors who bring America's babies into the world out of their medical practices.

Let me remind you of Melinda Sellard's story. She is the unfortunate woman who went through a horrifying experience of delivering a baby on the side of the road in the middle of the night because her doctor had quit obstetrics altogether due to exorbitant insurance premiums. En route, she and her husband had to drive right past the Copper Queen Community Hospital, which closed its maternity ward 2 months earlier because of the medical liability crisis. Instead, the Sellards were forced out onto the highway to try to get to the only hospital within 6,000 square miles with obstetricians who could afford malpractice insurance.

After enduring the excruciating pains of labor without anesthesia, Melinda was forced to give her newborn infant CPR, since the baby was not breathing immediately after delivery. She finally got her newborn breathing, wrapped him in a sweater she was wearing, and drove the rest of the way to the hospital where the emergency staff cut the umbilical cord in the parking lot.

I urge my colleagues to think of Melinda and the other mothers in this country who have lost their doctors and to stand up to the trial lawyers and support cloture on this bill. The ''objects in your rear view mirror that are closer than you think'' should never be a woman and her newborn child on the side of the road.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Madam President, I know that time is close to having the vote. I will use my leader time. I want to make a couple of additional remarks about the bill.

We have had a great deal of discussion today and comments made by some of our Republican colleagues about the hardships malpractice insurance premiums place on doctors. There is no difference of opinion in that regard. Both Republicans and Democrats agree this is a real challenge and it certainly demands our attention. But I think we have to reject cloture this afternoon for the simple reason this bill does nothing to solve it. As we have heard most of the day, every piece of available evidence shows capping damages has no impact on the cost of malpractice insurance.

Reports from the General Accounting Office, the Congressional Budget Office, Weiss Ratings, and the Medical Liability Monitor all confirm malpractice awards are not the primary factor driving the cost of malpractice insurance higher. Even the insurance industry admits caps won't protect doctors from higher insurance premiums. Just last year, Bob White, president of the largest medical malpractice insurer in Florida, stated, ''No responsible insurer can cut its rates after a [medical malpractice tort reform] bill passes.''

Doctors deserve our help. They need our help. They certainly want it. But no doctor should expect lower insurance rates as a result of this bill. It is wrong to take away the women's right in the courtroom merely to protect the profits of the insurance companies.

This bill would create, for the first time, an unjust two-tiered legal system, actually restricting the rights of women and infants who are hurt by the negligence of a doctor, HMO, drug company, or even a medical device manufacturer.

If a man is prescribed defective blood pressure medication by an internist, he can recover full damages under the bill. If a woman is prescribed blood pressure medication during pregnancy that causes blood clots, her damages will be arbitrarily capped. There may even be a constitutional question involved in this disparity between men and women.

The idea that men and women should have unequal access to the legal system offends, if not the Constitution, certainly our sense of justice. But the real problem with this bill isn't merely that it values the injuries of men and women differently, as troubling as that is. The real problem is that it presumes that somehow those of us in this Chamber are better able to determine how to compensate injured patients in a preemptive way, knowing ahead of time all of the circumstances. Knowing exactly how these people are going to be affected by the decisions we make today is something I don't think anyone could acknowledge they have the ability to do.

This morning, I spoke with Colin Gourely of Valley, NE. At his birth, he suffered complications due to his doctor's negligence. Today he has cerebral palsy and is confined to a wheelchair. He has had five surgeries to correct his bone problems that have occurred as a result of this serious misjudgment in medical care.

Politicians in Washington can't decide what is just compensation for Colin's pain or the pain of any injured patient. We shouldn't apply the one-size-fits-all remedy for the tens of thousands of women and infants who are injured each year.

The fact is, no amount of money can ever compensate a parent for their child's pain, but malpractice awards are not simply about money. They are about offering victims a sense of justice, a way of holding accountable those responsible for their injuries or the death of their loved ones.

Malpractice awards are decided by juries and approved by judges. This is the same system we rely on to decide life or death issues in capital cases. Why wouldn't we trust our citizens to fairly evaluate how to deliver justice for the victims of medical malpractice?

There are real solutions that can bring down the cost of malpractice insurance, and Democrats are eager to work with our Republican colleagues to implement them. We have talked about tax credits to offset the high cost of premiums, prohibitions against commercial insurers engaging in activities that violate Federal antitrust laws, sensible ways to reduce medical errors, direct assistance to geographic areas that have a shortage of health care providers, due especially to malpractice insurance premiums.

So if our colleagues are as concerned about the plight of doctors as they have indicated again today, I hope they will work with us to devise a real solution. Let's drop the maneuvers that protect only the profits of insurers and HMOs and pharmaceutical companies, and let's have a serious discussion about how we solve the problem for our Nation. I think we have an obligation to have that conversation and ultimately come to some solution. Doctors and patients deserve it. They deserve an answer. This bill is not it.

As a result, once again I urge my colleagues to reject cloture. I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 429, S. 2061, a bill to improve women's access to health care services and provides improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services:

Bill Frist, Judd Gregg, Kay Bailey Hutchison, Lisa Murkowski, Susan Collins, Elizabeth Dole, Michael B. Enzi, James M. Inhofe, John Ensign, Craig Thomas, John Cornyn, Pat Roberts, Sam Brownback, Orrin G. Hatch, Charles Grassley, Mitch McConnell, Jon Kyl.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2061, a bill to improve women's access to health care services and provides improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from New Jersey (Mr. CORZINE), the Senator from North Carolina (Mr. EDWARDS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. JOHNSON) and the Senator from Massachusetts (Mr. KERRY) would each vote ''nay''.

The yeas and nays resulted—yeas 48, nays 45, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—48

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bond	Ensign	Nickles
Brownback	Enzi	Roberts
Bunning	Fitzgerald	Santorum
Burns	Frist	Sessions
Byrd	Grassley	Smith
Campbell	Gregg	Snowe
Chafee	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner

NAYS—45

Akaka	Durbin	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham (FL)	Murray
Bingaman	Graham (SC)	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Cantwell	Hollings	Pryor
Carper	Inouye	Reed
Clinton	Jeffords	Reid
Conrad	Kennedy	Rockefeller
Crapo	Kohl	Sarbanes
Daschle	Landrieu	Schumer
Dayton	Lautenberg	Shelby
Dodd	Leahy	Stabenow
Dorgan	Levin	Wyden

NOT VOTING—7

Bennett	Edwards	Miller
Boxer	Johnson	
Corzine	Kerry	

The PRESIDING OFFICER (Mr. ALEXANDER). On this vote, the yeas are 48, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

MORNING BUSINESS

Mr. FRIST. Mr. President, I now withdraw my motion and ask that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

The Senator from Texas is recognized.

TRADITIONAL MARRIAGE

Mr. CORNYN. Mr. President, in 1996, the Congress voted overwhelmingly to pass the Defense of Marriage Act. This is a bipartisan bill, where Members of both parties in both Houses voted overwhelmingly to define marriage as an institution in traditional terms, between a man and a woman. This, as you may recall, was in part a response at the time to the Vermont decision implementing civil unions. This body, just like approximately 38 States, has now passed defense of marriage acts defining marriage in traditional terms.

Last September, the Senate Judiciary Committee's subcommittee on the Constitution held a hearing at which we elicited testimony on this issue: Is the Defense of Marriage Act in jeopardy?

The reason we had that hearing is because the U.S. Supreme Court, last year, made some pretty significant decisions, one of which was Lawrence v. Texas, which, if the rationale was going to be followed through, would seem to place the Defense of Marriage Act in jeopardy, saying that that somehow violated the Constitution, thus opening the way to marriage between same-sex couples.

At the time we had people, as you might imagine, as in every hearing, some of whom said, oh, no, the Defense of Marriage Act will stand as long as it is the will of Congress and the will of the American people. Others said more presciently, as it turns out, that if there are judges who want to use the decision of the U.S. Supreme Court in Lawrence v. Texas, and to extend that, indeed, yes, the Defense of Marriage Act could be in jeopardy—indeed, the very definition of marriage between a man and a woman that is part of the Federal law and, as I said, I believe some 38 States.

Well, of course, the day that many thought would come only remotely in the future came much more quickly, when the Massachusetts Supreme Court decided that, indeed, traditional marriage violated the Massachusetts Constitution. Now, some might say, well, since it was a matter of State constitution law, it is limited only to the State of Massachusetts. But a closer reading of that decision reveals that one of the bases upon which the Massachusetts Supreme Court decided that traditional marriage violated the Massachusetts Constitution was a U.S. Supreme Court decision in Lawrence v. Texas, interpreting the U.S. Constitution.

So as it turns out, there is a much closer relationship between the State court constitutional decision and a decision under the Federal Constitution.

Well, once the Massachusetts Supreme Court did, indeed, hold that marriage was no longer limited to men and women in Massachusetts, some said this was just a State matter and there was no reason for the Federal Government to get involved, and there was no reason for other States to be concerned. Yet over the last week or so, we have seen that individuals have moved—I saw one report in the Washington Post of people leaving Maryland and going to San Francisco and getting married—in defiance of State law, I might add—where the city of San Francisco, the mayor, and others, would issue marriage licenses, and then people would return to places such as Maryland. Or people would show up in San Francisco and, because of an act of civil disobedience by the mayor and municipal officials there, seek to get married, even though California law is consistent with Federal law and the law of other States defining marriage in traditional terms.

Indeed, we see in New Mexico and in Chicago, where the mayor said if same-sex couples sought to get married, he saw no reason not to issue them marriage licenses. Indeed, in Nebraska, a lawsuit in Federal Court is being defended by the attorney general of Nebraska under the Federal Constitution seeking to define marriage in not untraditional terms, to allow it not to be limited to just traditional marriage.

So this is not an issue that has been raised by Members of Congress initially. This is a matter that has been injected into the public arena by activist judges who have decided to radically redefine the institution of marriage in Massachusetts but the reverberations of which have resounded all across this Nation.

It is in that light I believe we in this body have a responsibility to ask what