This chart explains it very clearly. First of all, this is an example of internal medicine, general surgery, and OB/GYN. I will focus on the OB/GYNs to keep it simple because they are affected directly by this legislation.

L.A., Denver, New York, Las Vegas, Chicago, and Miami are listed on this chart. The population shares are relatively similar. This shows the medical liability premiums in the various cities. This is a 2002 survey. Mind you, the cities with the problems are in much worse shape in 2004 than they were in 2002.

An OB/GYN pays about $55,000 a year in L.A., and around $31,000 a year in Denver. California and Colorado are two States that have had good medical liability reforms passed at the State level, and these reforms have been in place for several years. If we go to New York, Las Vegas, Chicago, or Miami—take your pick—none of these States have good medical liability reform passed. In New York, they are paying $90,000; $108,000 in Las Vegas. That number is way low. At a minimum it is $140,000. Chicago, $102,000, and Miami is over $200,000 a year. That is why doctors are leaving their practices.

One can say doctors make so much money that they can afford this. The average OB/GYN in Las Vegas makes around $200,000 a year. When $108,000 is going for medical liability coverage, you can see there is not very much left for the provider. You raise this up to $140,000, $150,000, $160,000, as many are now experiencing in my state, and there is not a lot of room left. I would also mention that with the way these doctors are getting paid at fixed rates, through managed care, Medicaid, and the like, there is not a lot of room left to afford rising premium rates. The fact is they are leaving the practice or they are limiting the amount of babies they deliver simply because they cannot afford to deliver babies. In the fastest growing cities and metro areas, that is unacceptable.

This chart shows California versus U.S. premiums from 1976 to 2000. California has the model legislation we all look at. These are the premiums. This is California, the blue line, which is very stable. There has been an increase of about 167 percent over that time, a little more than inflation, but pretty close. Look at it for the rest of the country: 505 percent.

Is medical liability reform working in California? I think the answer is pretty obvious that it is. We need a national solution. We need to say to the trial lawyers: Listen, we respect the fact you went to law school and you want to make a lot of money, but I think the system has been abused enough. It is time to put the patients first.

Let's vote for cloture today. Let's get the 60 votes needed to at least go to debate on the bill. And if my colleagues do not like the provisions of the bill, let's amend it. Let's have up-or-down votes on amendments. Let's get to final passage where we can actually correct what is wrong with the health care system in the United States by eliminating abusive lawsuits, outrageous and unwarranted jury awards, and out-of-control medical liability premiums.

I yield the floor and reserve the remainder of our time.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent that the 10 minutes already allocated to me be increased to 20 minutes and include the time previously allocated to Senator DAYTON of Minnesota.

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

Mr. DURBIN. Mr. President, I thank the Senator from Minnesota for yielding me the 10 minutes so I might speak to this important issue this morning. I thank the Senator from Nevada for illustrating to us a serious challenge that faces America. There is no doubt in my mind, nor in the minds of those who studied this issue nationwide, that we need to do something as a nation to deal with medical malpractice liability.

It is clear that in many parts of our country, in many parts of my State, the cost of medical malpractice insurance has gone up dramatically, to the point that some doctors are moving to other States and some are retiring. That is a reality. It is a reality in Illinois. It is a reality in other States. I believe we need to do what is necessary on a bipartisan basis to grapple with this issue.

Although it will be the first time in history the Federal Government would take on the question of civil procedure and medical malpractice cases in States, frankly, it may be the only way to approach it. So I agree with my colleagues on the other side of the aisle that inaction on our part will only make this problem worse. We need to move forward. But I come today to tell you the bill before us, S. 2207, is not the right approach.

I encourage my colleagues on both sides of the aisle to look at this bill carefully. I hope they will view, as I do, this bill as an honest attempt to identify a problem but a very inadequate attempt to solve it.

Let me say at the outset that a lot has been said about emergency rooms, which are covered by this bill. Some has been said about OB/GYNs delivering babies, and that is covered by this bill. But the sponsors of this bill have not mentioned the fact that it also exempts from full liability drug companies, medical product manufacturers, insurance companies, those who make vaccines that cause problems for children. They are also included in this bill.

So much has been argued about the doctors in the emergency rooms, but the full scope of the bill has not been described, at least as long as I have been on the floor.

Let me tell you what I think is wrong with this bill. Here is what the bill says: The bill says in cities and communities across America where we rely on a jury of your neighbors and friends to come together and decide what is fair and what is just, when it comes to those lawsuits involving injuries, coming out of, for example, an emergency room treatment, no longer will a local jury decide. The case will be decided on the floor of the Senate. One hundred Senators will decide today with this bill that regardless of what happens to you or your child when you go to an emergency room for treatment, regardless of the possibility that you brought your child in as an innocent victim seeking medical care at an emergency room, and that child, the love of your life, became the victim of medical malpractice, regardless of the circumstances, we will decide on the floor of the Senate, if that child is facing a lifetime of disability, a lifetime of disfigurement, a lifetime of pain and suffering, we, the jury of the Senate, will decide it will never be worth more than $250,000 for the pain and suffering, for the disfigurement, for the incapacity they will face. That is what the bill says.

When you look at it you think, why? Why would we decide that regardless of the lawsuit, someone could never receive more than $250,000 for pain and suffering, for noneconomic losses? The argument is, unless we put a cap on the possible recovery in a lawsuit, malpractice premiums will continue to rise and doctors will not be able to afford them. That is the premise. That is the argument of this bill.

So the first thing I would like to do is question that premise. Let's look at the facts.

Here we have OB/GYN insurance premiums in States with caps, with limitations on the amount a jury can award, and without caps. In California, with caps of $250,000, called for in this bill, we see a 54-percent increase in the year 2003 in medical malpractice premiums; Oregon, with no caps, 0 percent increase; California, a 15-percent increase versus the State of Washington, 0 percent; Colorado, a 29-percent increase where they have caps and limitations on jury verdicts, and in Georgia with no caps, a 10-percent increase; New Mexico, with caps on how much the jury can award, a 52-percent increase in malpractice premiums; Arizona, right next door with no caps, no limitations, only a 14-percent increase.

So the argument that caps will bring down premiums is illustrated here to just be wrong. The premise is wrong. The argument is wrong.

Take a look at the premiums and what has happened in States without caps between 1991 and 2002 and those with limitations on jury verdicts.

Arizona in this period of time of 10 or 11 years, 3-percent increase; New York,

6 percent; Georgia, 8 percent; Washington, 27 percent. These are States without caps. Then take a look at the States with caps, with limitations on jury awards, 50-percent increase in California; 60 percent in Kansas; 82 percent in Utah; 84 percent in Louisiana. The argument is made—and I heard it on the floor this morning—that it is because so much is being paid out in terms of verdicts, and that is why premiums have gone up.

There is little or no correlation between the amounts that are paid out in verdicts and settlements and what happens to premiums. One would think there would be a direct correlation, but look at this situation. The State of Hawaii, a 527-percent increase in 10 years in the amount paid out in medical malpractice suits, a 10-percent increase in premiums; Iowa, a 87-percent increase in payouts, a 12-percent decline in the premiums charged. The case is illustrated and goes on.

The point I wish to make is if the premise of this law is establishing caps will bring down malpractice premiums these two things we can be sure of: There is no evidence to support it in many of the States with the strictest caps and, secondly, if there is any benefit to be realized by establishing caps it will be years before it is realized. That just reflects the fact that lawsuits filed for malpractice are filed years after the event occurred. Frankly, if there is any benefit to be realized, doctors and hospitals today will not see it for a long time.

The second thing that I think cries out to be said when it comes to capping what a jury can award in a case involving medical malpractice is the fundamental injustice involved in this. Here we have to go beyond the theoretical, beyond the statistical, to the real world of what happens when people show up at emergency rooms for treatment.

This is a beautiful young girl, Shay Maurin, from Hartford, WI. She was the victim of medical malpractice. On March 5, 1997, her mother took her 5-year-old daughter Shay to a local clinic because she thought something was wrong. She was not sure what it was. The physician's assistants at the clinic thought Shay might have diabetes but did not perform any tests.

The mother then took her daughter to the emergency room, where she told the emergency room doctor that the clinic thought this little girl might have diabetes and maybe that was why she was sick. She was 5 years old.

Although her daughter was exhibiting signs and symptoms of diabetes, the emergency room did not administer the standard finger-stick test, the basic test that people suffering from diabetes go through regularly to monitor their blood insulin. Instead, this little girl and her mother were sent home from the emergency room.

This little girl died of diabetic ketoacidosis the following afternoon. That occurs when a person who has diabetes is not treated with insulin. The body's blood sugar builds up to extremely high levels. The body cannot metabolize what the person eats. The body becomes severely dehydrated. Acid buildup occurs, leading to swelling of the brain and death.

The emergency room which failed to administer the most basic test, after being told by the mother that they suspected she was suffering from diabetes, was found 88-percent responsible for her death and the clinic 12-percent responsible. If we pass this bill, we have decided that the jury of the Senate would say to this little girl's family: The maximum you can recover for the losses and pain and suffering for this little girl is $250,000.

Let me tell my colleagues a story of another young girl. This beautiful little girl is Lauren Meza. On January 2, 2000, Jennifer Meza took her 2½-year-old daughter Lauren to the emergency room at the recommendation of her pediatrician.

The baby's symptoms indicated that she may have had pneumonia. The child's father was being hospitalized for pneumonia at the time she developed the symptoms. The emergency room doctor refused to perform any tests, insisting to Ms. Meza that her daughter would be fine and she should go back home.

Two days later, Ms. Meza brought Lauren back to the pediatrician, who was alarmed at her deteriorating condition. The doctor determined she needed immediate emergency care and she was airlifted to another hospital where she was treated for a condition that left her body unable to expel toxic agents and waste products, forcing them into her bloodstream. As a result of the emergency room doctor's denial of care, she is facing dialysis and a kidney transplant before she turns 10 years of age.

What this bill says is that this little girl, Lauren Maza, facing a lifetime of dialysis and ultimately a kidney transplant, would never be allowed more than $250,000 for any pain and suffering which she sustained because of the clear negligence of the emergency room doctor.

Let me tell my colleagues about a case that involves a person who is somewhat older but illustrates this point again. On January 22, 2000, Barbara Jackson complained of chest pains. Her coworkers thought she might have had a heart attack. They called an ambulance. She is from Melrose Park, IL. The ambulance driver suspected a heart attack, but the emergency room personnel waited nearly an hour to do an EKG. More egregiously, they gave her drugs that actually precipitated the heart attack. The attack was so serious this woman lapsed into a coma. She is now in a vegetative state living with her sister who cares for her every single minute of every day.

Her family believes she is capable of feeling pain. Proper medical treatment, nursing treatment, and rehabilitation will cost more than $20 million if she lives to full life expectancy, which her doctors expect.

A mistake made in an emergency room, a woman in a vegetative state for the rest of her time on Earth, and the jury of the U.S. Senate has reached a verdict. For pain and suffering, in Barbara Jackson's case, no more than $250,000.

Not only do caps not work to bring down malpractice premiums in case after case, they are fundamentally unjust and unfair. There has to be a better way. We have to deal with a standard that will bring down malpractice premiums but not at the cost of fairness and justice.

It is a simple fact of life, and one which I wish were not the case, that more and more medical errors are being committed. We cannot expect doctors and hospitals to be perfect. They are human. There are times, unfortunately, when they are negligent, when they do not meet the standard of care which we can expect of every physician and every medical provider. In those instances, they should be held accountable, as all of us are held accountable for our wrongdoing.

That accountability means they should be held responsible for the real problems they create, the damages that are created by their misconduct.

We have had so many surveys of hospitals. A study recently found that injuries in U.S. hospitals in the year 2000 resulted in 32,600 deaths. Some have estimated some 98,000 people die each year from malpractice. Only a small percentage of these cases ever end up in a lawsuit, ever end up in a trial.

We need to address this issue at three levels. First, let us make the practice of medicine safer, and we can do that. Secondly, let us deal with tort reform. I have told my friends who are trial lawyers—and I practiced law myself before I came to the Senate—we have to step up to and accept responsibility for change that will reduce the number of frivolous lawsuits and give those truly deserving their day in court. Third, insurance companies have to be held accountable for their misconduct. If they are gouging, if they are overpricing, then we, as a government, need to stand up to that industry as well.

Three parts: Reducing medical errors, tort reform, and insurance reform are the way to approach it. I say to my colleagues on the other side of the aisle, join me in a bipartisan effort now to go beyond this issue of caps, which will not solve the problem, caps that are fundamentally unfair, and let us talk about real solutions.

Think about this bill that is before us for a moment. This bill says that if one is brought to an emergency room because they were in serious trouble and medical conditions are such that warrant it, they will be limited in how much money one can recover if they are an innocent victim of medical malpractice. However, if one is admitted to

the hospital, through the front door and not the emergency room, these limitations would not apply.

Think of it as well from the OB/GYN point of view. It is true that OB/GYN premiums have gone up astronomically in some areas, and we have to zero in on that, but we are saying someone who is a victim of malpractice by an obstetrician gynecologist will have a limitation on how much they can recover while someone else in the same hospital being operated on by a doctor with a different specialty will not be subject to these limitations. That is just fundamentally unfair.

I think what we need to do is open the door for conversation, but first we need to close the door on this concept. This is not the right approach.

I have met over the last several months with scores of doctors and hospital administrators in my State, and I say to them in all seriousness and sincerity that we have a problem in Illinois, as well as a national problem.

I have invited Members to come to the table after this legislation is defeated today and sit down in an honest, bipartisan fashion to look for solutions that will solve this problem. I believe we can find it.

The Senator from South Carolina who is presiding has joined me in bipartisan legislation that really tries to approach this from a new innovative, creative, and positive point of view that does work. I think we can achieve that goal. But to achieve it we need to bring the medical professionals into the room along with those who are representing the victims of medical malpractice. Once that conversation takes place, if it takes place in good faith, I am confident we can come up with solutions.

I urge my colleagues to vote against the motion for cloture on proceeding to this bill. It has not been subjected to hearings. It includes things which were not talked about on the floor—protection for insurance companies, protection for pharmaceutical companies and medical device manufacturers. Let us get down to the business of trying to solve this problem and doing it in a fashion that is reasonable and effective and bipartisan.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I think we are actually making progress. I am delighted to hear the Senator from Illinois agree with what it sounded like the minority leader stated earlier, that they have some problems with this bill as written, and they acknowledge the problem of medical liability crisis exists and suggest we ought to try to find some way to address that crisis which they concede is very real.

Senator DURBIN said it is not the right approach. My question would be, Well, what is the right approach? Senator DASCHLE said there is no reason to differentiate between those who walk in the front door of a hospital and those who get emergency care. I will concede the good faith of that question. The problem is we offered that bill earlier and were unsuccessful in getting cloture so we could actually get to the merits of the bill and debate it. Of course, not until we get to that 60-vote hurdle where we can actually move the bill on to the floor can the bill be amended. Indeed, that is how the Senate does its work. But I wonder whether it is the intention of our friends on the other side of the aisle to have a good-faith debate about how to solve this problem.

For example, rather than take what I consider to be the constructive approach the Senator from Illinois and the Senate minority leader have taken to criticize the content of the bill but to acknowledge we have a problem so perhaps we can then get to a solution of that problem, the the ranking member of the Senate Judiciary Committee called it a partisan approach and then criticized the Senate leadership. He said, In my 29 years here in the Senate I have never seen so little accomplished.

I think the reason why we are not accomplishing any reform or any real solution to what is a very real problem is because our colleagues on the other side of the aisle simply won't let us call the bill up, have a debate, consider amendments, and try to solve what is a very real crisis in this country.

Even though we are calling this a medical liability reform bill, this is not something we are doing out of the goodness of our hearts for the medical profession. While I respect members of the medical profession who dedicate their lives to curing illness and addressing medical needs, as well as health care providers who run hospitals and a whole host of other allied health care facilities, that is not what drives me to see the need for this bill. The reason I think this bill needs to be passed, or some version of it after amendment if the Senate reaches consensus on a solution to the problem, is because I know everyone within the sound of my voice and literally everyone across the country who is alive today will at some point in their lives be a patient. They will need access to good quality health care.

What is happening today in this country because of this medical liability crisis is denying patients—that is the American people—access to health care they need in order to lead a good quality of life and in order to enjoy life for themselves and their children and their other loved ones.

I want to comment briefly on a suggestion I have heard from our colleagues on the other side of the aisle. They said that with this particular solution—that is a cap of $250,000 on noneconomic damages—people walk away with nothing when they go to court. The truth is, in California, which has a medical liability reform law very similar to what we are proposing here today, economic damages, including medical expenses, are compensated completely. Indeed, in December of 2002, in Alameda County, there was an $84 million award to a 5-year-old boy who has cerebral palsy and is a quadriplegic because of delayed treatment of jaundice after birth. That would only be possible because what is actually being compensated there is the very real economic loss suffered as a result of that horrendous injury, something we all regret.

The suggestion we are going to turn people out of court with nothing to show for it and we are not going to compensate people for their injuries received in the medical context caused by the fault of another is not true. I wonder how anyone can stand up and suggest we are somehow trying to deny people a remedy. That is certainly not the case.

We know this kind of law will have a positive impact. Even in the State of Texas, which I represent, where we passed not a $250,000 cap but indeed a higher cap on non-economic damages last September, we have seen one medical liability insurance company reduce its rates by 12 percent across the board, sort of a start. Another medical liability insurance carrier has cancelled an anticipated 19-percent increase. Obviously, we will see how this all plays out, but we already know it has a very real and positive impact as demonstrated by the evidence.

I see the Senator from Virginia and I want to make sure he has all the time he needs to speak. But I want to also comment on the effect of high medical liability insurance rates on the cost of health care and on the pressure being put on employers and others who provide health insurance to their employees to drop their employees from any sort of health coverage, exacerbating the crisis we have in this country of too many people who do not have access to health insurance and the fact we have many emergency rooms put on divert status with patients being redirected elsewhere in true emergencies because people who do not have health insurance have nowhere else to turn if they don't have money. They know they can be treated in an emergency room. They know they can't be turned away. But the fact is about 80 percent of the people who go to emergency rooms are being treated for medical conditions that could be treated in a clinic or a doctor's office much more cheaply, more humanely, and in a way that would help us address this crisis in access to good quality health care.

Finally, I know we have heard a lot of discussion on the floor of the Senate, as we should, about the concern of every person in this country who wants to work to find a good job so they can provide for themselves and their family. But the cost of health care in this country is killing our recovery. It is doing so from the standpoint of putting increased financial burdens on employers who want to provide health insurance to their employees but simply are

not able to add new positions in their company because they know that in addition to salary they are going to have to pay benefits, including health care costs in many instances, and they are simply priced out of the market.

If our colleagues on the floor of the Senate want to do something about improving access to good quality health care, if they want to do something about the fact many people don't have health insurance and need health care coverage, if they want to do something about America's competitiveness in this global economy, and make sure we keep more jobs in this country rather than see them go to China, India, or anywhere else, they should vote to let this bill come forward and have a debate about what this bill ought to look like to address the medical liability crisis that even the Senator from Illinois and the minority leader admit we have in this country today.

I implore Members to reconsider their obstruction. By obstructing progress on this vote we are not solving any problems. People are maybe making political points, but it is hard to see what kind of political point you make by obstructing good, commonsense legislation like this. I implore them to reconsider their obstruction and ask that they vote for cloture so we can move on and begin to solve this very real problem on behalf of the American people.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Virginia.

Mr. WARNER. Madam President, I commend our distinguished colleague from Texas. He spoke from the heart on this measure. It is a matter of utmost seriousness.

I ask unanimous consent I be made a cosponsor on this pending legislation.

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

Mr. WARNER. Madam President, I rise again to join the Senator from Texas and many other Members on this side of the aisle in strong support of health care liability reform.

My father was a medical doctor. He was an obstetrician. I am grateful to so many doctors from whom I am hearing all across America about this crisis. My father had no great interest in politics. He voted regularly; I remember that. I think most physicians find little time to involve themselves in politics. But this is a political question. We have to look at it fair and square and call it as it is.

America is crying out from every corner of our land, from all 50 States, for relief from the oppressive number of lawsuits brought against the medical profession, a profession that is not interested in politics. They are only interested in caring for the citizens of this Nation.

I am proud to stand with the distinguished majority leader, Mr. FRIST, the distinguished Senator from New Hampshire, the Senator from Texas, the Senator from Nevada, and others, time and time again in this Senate to urge this body to rise above politics and extend a helping hand to the medical profession.

Early this year, I was pleased to offer my own amendment on health care liability reform. My amendment was called the Protect the Practice of Medicine Act, amendment No. 2624, but procedural impediments—I have to recognize we follow the rules around here—prevented the Senate from addressing that bill. My amendment was supported by the American Medical Association, the American College of Surgeons, and a number of other associations representing the men and women in our medical profession. Unfortunately, a procedural move by the opponents precluded the Senate from voting on this amendment.

I stand today in hopes there will be a vote on this measure. This measure is very much like the measure I put forth; indeed, the goals are common.

Opponents of health care liability reform have been using procedural tactics in the Senate to prevent an up-and-down vote on these issues for many years. The consequences are grave. Men and women continue to leave the practice of medicine due to the high cost of malpractice insurance, and patients continue to lose access to medical health care.

We have all heard the real stories from doctors about the rapidly increasing costs of medical malpractice insurance. In some States, malpractice insurance premiums have increased as much as 75 percent in 1 single year.

As have others in this body, I have received numerous letters from medical professionals from the Commonwealth of Virginia and across the Nation that share with me the very real difficulties they encounter with malpractice insurance and the consequences of this problem.

Let me read one of those letters sent to me by a doctor in Virginia. The doctor writes:

> I am writing you to elicit your support and advice for the acute malpractice crisis going on in Virginia. . . . I am a 48-year-old single parent of a 14 and 17 year old. After all the time and money spent training to practice OB/GYN—

That is obstetrics, my father's profession, or specialty—

> I find myself on the verge of almost certain unemployment and unemployability because of the malpractice crisis. I have been employed by a small OB/GYN group of doctors for the last 7 years. . . . Our malpractice premiums were increased by 60 percent in May of 2003. . . . The prediction from our malpractice insurance carrier is that our rates will probably double at our next renewal date in May 2004. The reality is we will not be able to keep the practice open and cover the malpractice insurance along with other expenses of medical practice.

Another letter writer from the Midwest:

> Due to the rapid increase of premiums, the crisis is one of affordability and availability of insurance for physicians. . . . The result of this is premature retirement, physicians moving to more favorable areas—

Moving from one State to another State—

> discontinuing high-risk procedures or finding other ways to make a living out of medicine. All of this, of course, affects the patients, who have increasing difficulty finding medical care.

Letter after letter are stories of the effect this crisis is having across America.

Time magazine and Newsweek have thoroughly detailed the crisis doctors are facing. I have the two recent issues entitled ''Lawsuit Hell,'' and the second, ''The Doctor is Out.''

It is being discussed all across America. That is why it is so imperative this institution, the Senate, be given the opportunity to vote on this issue.

In June of 2003, Time magazine had a cover story on the effects of rising malpractice insurance rates. The story entitled ''The Doctor is Out'' discusses several doctors all across America who have had to either stop practicing medicine or had to take other action due to increased insurance premiums. One example cited in the Times article is the case of Dr. Mary-Emma Beres. Time reports:

> Dr. Mary-Emma Beres, a family practitioner in Sparta, N.C., has always loved delivering babies. But last year, Dr. Beres, 35, concluded that she couldn't afford the tripling of her $17,000 malpractice premium and had to stop. With just one obstetrician left in town for high-risk cases, some women who need C-sections now must take a 40-minute ambulance ride.

Dr. Beres' case makes clear that not only doctors are being affected by the medical malpractice crisis but patients, as well. With increased frequency due to rising malpractice rates, more and more patients are not able to find the medical specialists they need in their community or in a neighboring community and have to travel long distances or even go out of State, to other States, where there has been closer control on the types of lawsuits that generate these exorbitant fees.

Newsweek magazine had a cover story on the medical liability crisis. That cover story was entitled ''Lawsuit Hell.'' I was struck by the feature in this magazine about a doctor from Ohio who saw his malpractice premiums rise in 1 year from $12,000 to $57,000. As a result, this doctor ''decided to lower his bill by cutting out higher risk procedures like vasectomies, setting broken bones, and delivering babies''—even though obstetrics was his favorite part of practice. Now he glances wistfully at the cluster of baby photos still tacked to a wall in his office. 'I miss that terribly,' he says.''

While these stories are compelling on their own, the consequence of this malpractice crisis can even be greater.

On February 11, 2003, a woman by the name of Ms. Leanne Dyess of Gulfport, MS, shared with both the HELP Committee—of which the distinguished chairman is present managing this bill—and the Judiciary Committee her very personal story about how this crisis has affected her.

She told us how, on July 5, 2002, her husband Tony was involved in a single-

car accident. He was rushed to the hospital in Gulfport where he had head injuries and received medical attention. Tony could not be treated at the Gulfport hospital because they did not have the specialist necessary to take care of him. After a 6-hour wait, he was airlifted to the University Medical Center. Today, Tony is permanently brain damaged.

According to Mrs. Dyess, no specialist was on staff that night in Gulfport because rising medical liability costs had forced almost all of the brain specialists in that community to abandon their practices. As a result, Tony had to wait 6 hours before the only specialist left in Gulfport could treat Tony to reduce the swelling in his brain.

As you can see, without a doubt, the astronomical increases in medical malpractice insurance premiums are having wide-ranging effects. It is a national problem, and it is time for a national solution.

President Bush has indicated that the medical liability system in America is largely responsible for the rising costs of malpractice insurance. The American Medical Association and the American College of Surgeons agree with him, as does almost every doctor in Virginia with whom I have discussed the issue.

The President of the AMA, Dr. John Nelson, has publicly stated:

> We cannot afford the luxury of waiting until the liability crisis gets worse to take action. Too many patients will be hurt.

The American College of Surgeons concurs by stating:

> More and more Americans aren't getting the care they need when they need it. . . . The ''disappearing doctor'' phenomenon is getting progressively and rapidly worse. It is an increasingly serious threat to everyone's ability to get the care they need.

Let me state unequivocally that I agree with our President, with the AMA, with the American College of Surgeons, and with the vast majority of doctors all across Virginia.

While the amendment I offered earlier this year is somewhat different from the measure before us today—the goals are the same: to ensure that patients have access to quality health care and to protect the practice of medicine from frivolous lawsuits and runaway jury verdicts.

The legislation before us today is a commonsense solution to a serious problem, and it is time for us to vote up or down on this legislation.

Over the past several weeks, I have listened closely to my colleagues speak on the floor of the U.S. Senate about the importance of having an up-or-down vote on particular legislation. And, in response, I ask, how is this bill any different?

I, for one, intend to vote to end the filibuster on health care liability reform legislation. The consequences of continued dilatory tactics are too profound to patients and doctors in this country. I urge my colleagues to do the same.

Madam President, I hope this institution can live up to its responsibility as duly elected representatives of the people of this country and respond to the cries of the people of this country to address this situation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Madam President, I congratulate the senior Senator from Virginia for his excellent statement, especially for reflecting on some of the specific personal events which this bill tries to address: People who have been actually impacted by the fact they have not had a doctor available because the doctor can no longer afford to practice the type of medicine which this bill addresses, the delivering of children and emergency room medicine.

Madam President, I ask unanimous consent that Senator HAGEL be added as a cosponsor of S. 2207.

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

Mr. GREGG. Madam President, I wish to, once again, recite what this bill is about because there has been some diversion, I am afraid, coming from the other side in the representations that were made.

Basically, what we are dealing with is a bill that is going to try to make medicine more readily available to women who are having children.

In rural parts of this country today, for example, in northern New Hampshire, if a woman is having a child, she has to drive a long way to see a doctor because there is nobody practicing obstetrics in northern New Hampshire. The baby doctors in that part of the State have found their liability premiums so exceed what they can earn that they can no longer afford to practice medicine. So women are put at risk because they have to get in their car and drive a long way on snowy roads, and it is very difficult, especially as they move into the later terms of their pregnancy.

Secondly, this deals with people who walk into an emergency room, have an emergency and need to receive care. As was pointed out by the Senator from Tennessee, the majority leader, who is a doctor, there is a window of opportunity to care for people who have experienced trauma. If there isn't a doctor in that emergency room to take care of that individual, then you have a serious problem. This bill tries to address that by making affordable the practice of medicine in an emergency room.

Today, we have a problem. Doctors who practice in emergency rooms do not make a lot of money. They are not making enough money to cover the premiums for the liability insurance they have because of the massive amounts of lawsuits which are filed.

This bill will redress that issue. It will still give recovery to people. It will allow them to recover all the medical costs they have. It will allow them to recover all their compensation costs, and it will allow them to recover something for what is known as pain and suffering. But it will also allow doctors to practice their disciplines because it will make it possible for baby doctors and emergency room doctors to be able to afford the cost of the premium of their liability insurance—something many cannot do today, so they are getting out of the practice. It will, therefore, give women better care and people who experience trauma better care in this country.

Madam President, it is my understanding, at this time, the Senator from West Virginia is to be recognized. Is that correct?

The PRESIDING OFFICER. The Senator has 40 minutes under his control.

The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

IRAQ

Madam President, I have watched with heavy heart and mounting dread as the ever precarious battle to bring security to postwar Iraq has taken a desperate turn for the worse in recent days and hours. Along with so many Americans, I have been shaken by the hellish carnage in Fallujah and the violent uprisings in Baghdad and elsewhere. The pictures have been the stuff of nightmares, with bodies charred beyond recognition and dragged through the streets of cheering citizens. And in the face of such daunting images and ominous developments, I have wondered anew at President Bush's stubborn refusal to admit mistakes or express any misgivings over America's unwarranted intervention in Iraq.

During the past weekend, the death toll among America's military personnel in Iraq topped 600—including as many as 20 American soldiers killed in one 3-day period of fierce fighting. Think of it. Many of the dead, most, perhaps, were mere youngsters—mere youngsters—just starting out on the great adventure of life. But before they could realize their dreams, they were called into battle by their Commander in Chief, a battle that we now know was predicated on faulty intelligence and wildly exaggerated claims.

As I watch events unfold in Iraq, I cannot help but be reminded of another battle, at another place and another time, that hurtled more than 600 soldiers into the maws of death because of a foolish decision on the part of their commander. The occasion was the Battle of Balaclava on October 25, 1864, during the Crimean war, a battle that was immortalized by Alfred Lord Tennyson in his poem ''The Charge of the Light Brigade.''

> ''Forward, the Light Brigade!''
> Was there a man dismay'd?
> Not tho' the soldier knew
> Someone had blunder'd:
> Their's not to make reply,
> Their's not to reason why,
> Their's but to do and die:
> Into the valley of Death
> Rode the six hundred.

Tennyson got it right—someone had blundered. It is time we faced up to the

fact this President and his administration blundered as well when they took the Nation into war with Iraq without compelling reason, without broad international or even regional support, and without a plan for dealing with enormous postwar security and reconstruction challenges posed by Iraq. And it is our soldiers, our men and women, our own 600 and more who are paying the awful price for this administration's blunder.

In the runup to the war, this President and his advisors assured the American people we would be greeted as liberators in Iraq. Yes, this Vice President, Vice President CHENEY, assured the American people we would be greeted as liberators in Iraq. For a brief moment, that outcome seemed possible. One year ago this week, on April 9, 2003, the mood in many corners of the Nation was euphoric as Americans witnessed the fall of Baghdad and the jubilant toppling of a massive statue of Saddam Hussein. Less than 4 weeks later, President Bush jetted out to an aircraft carrier parked off the coast of California to cockily declare to the world the end of major combat operations in Iraq. For those with tunnel vision, the view from Iraq looked rosy. Then Baghdad had fallen, Saddam Hussein was on the run, and U.S. military deaths had been kept to a relatively modest number, a total of 138 from the beginning of combat operations through May 1, 2003.

But the war in Iraq was not destined to follow the script of some idealized cowboy movie of President Bush's youth, where the good guys ride off into a rose-tinted sunset, all strife settled and all wrongdoing avenged. The war in Iraq is real. And as any soldier can tell you, reality is messy and bloody and scary.

Nobody rides off into the sunset for fear the setting sun will blind them to the presence of the enemies around them. So the fighting continues in Iraq. It is going on right now, right this minute, long past the end of major combat operations, and the casualties have continued to mount even now, even this hour, even this minute. As of today, more than 600 military personnel have been killed in Iraq and more than 3,000 wounded.

Now after a year of continued strife in Iraq comes word that the commander of forces in the region is seeking options to increase the number of U.S. troops on the ground, if necessary. Surely I am not the only one who hears echoes of Vietnam in this development. I was here in this Chamber when the word went out in those days to send more, send more men. We will be out by Christmas, yes.

Surely this administration recognizes that increasing the U.S. troop presence in Iraq will only suck us deeper and deeper and deeper into the maelstrom, into the quicksand of violence that has become the hallmark of that unfortunate, miserable country. Starkly put, at this juncture, more U.S. forces in Iraq equates more U.S. targets in Iraq.

Again, Tennyson's words bespeak a cautionary tale for the present:

Cannons to the right of them,
Cannons to the left of them,
Cannons in front of them
Volley'd and thunder'd;
Storm'd at with shot and shell,
Boldly they rode and well,
Into the jaws of Death,
Into the mouth of Hell
Rode the six hundred.

Like Tennyson's Light Brigade, American military personnel have proved their valor, have proved their mettle, have proved their bravery in Iraq. In the face of a relentless and seemingly ubiquitous insurgency, they have performed with great courage and great resolve. They have followed the orders of their Commander in Chief, regardless of the cost. But surely some must wonder why it is American forces that are still shouldering the vast majority, the overwhelming majority of the burden in Iraq, 1 year after the liberation of the country.

Where are the Iraqis? Where are they? What has happened to our much-vaunted plans to train and equip the Iraqi police and Iraqi military to relieve the burden on U.S. military personnel? Could it be that our expectations exceeded our ability to develop these forces? Could it be that, once again, the United States underestimated the difficulty of winning the peace in Iraq?

Since this war began, America has poured $121 billion into Iraq for the military and for reconstruction. But this money cannot buy security; this money cannot buy peace; and $121 billion later, only 2,324 of the 78,224 Iraqi police are ''fully qualified,'' according to the Pentagon. Nearly 60,000 of those same police officers have had no formal training—none. It is no wonder security has proved to be so elusive. The time has come for a new approach in Iraq.

The harsh reality is this: One year after the fall of Baghdad, the United States should not be casting about for a formula to bring additional U.S. troops to Iraq. The United States should instead be working toward an exit strategy. The fact that the President has alienated friend and foe alike by his arrogance in ''going it alone'' in Iraq and has made the task of internationalizing postwar Iraq an enormously difficult burden should not deter our resolve.

Pouring more U.S. troops into Iraq is not the path to extricate ourselves from that miserable and unfortunate country. We need the support and endorsement of both the United Nations and Iraq's neighbors to truly internationalize the Iraq occupation and take U.S. soldiers out of the crosshairs of angry Iraqis.

From the flood of disturbing dispatches from Iraq, it is clear that many Iraqis, both Sunni and Shiite, are seething under the yoke of the American occupation. The recent violent uprising by followers of a radical Shiite cleric is by far the most troubling development in months and could signal America's worst nightmare—a civil war in Iraq that pits moderate Shiites against radical Shiites. Layered over the persistent insurgency being waged by disgruntled Iraqi Sunnis and radical Islamic operatives, a Shiite civil war could be the event that topples Iraq from instability into utter chaos.

As worrisome as these developments are in and of themselves, the fact that they are occurring as the United States hurtles toward a June 30 deadline to turn Iraq over to an interim Iraqi government—a government that has yet to be identified, established, or vetted—adds an element of desperation to the situation.

Where should we look for leadership? To this Congress? To this Senate? Should we look here?

This Senate, the foundation of the Republic, has been unwilling to take a hard look at the chaos in Iraq. Senators have once again been cowed into silence. Where are Senators on this issue? Where are they? They are of many different opinions, I am sure. Why are they not here to express them? Senators have once again been cowed into silence and support, not because the policy is right, but because the blood of our soldiers and thousands of innocents is on our hands.

Questions that ought to be stated loudly in this Chamber are instead whispered in the halls. Those few Senators with courage to stand up and speak out are challenged as unpatriotic and charged with sowing seeds of terrorism. It has been suggested that any who dare to question the President are no better than the terrorists themselves. Such are the suggestions of those who would rather not face the truth.

This Republic was founded in part because of the arrogance of a king who expected his subjects to do as they were told, without question, without hesitation. Our forefathers overthrew that tyrant and adopted a system of government where dissent is not only important, it is also mandatory. Questioning flawed leadership is a requirement of this Government. Failing to question, failing to speak out, is failing the legacy of the Founding Fathers.

When speaking of Iraq, the President maintains that his resolve is firm, and indeed the stakes for him are enormous. But the stakes are also enormous for the men and women who are serving in Iraq and who are waiting and praying for the day they will be able to return home to their families, their ranks painfully diminished but their mission fulfilled with honor and dignity.

The President sent these men and women into Iraq, and it is his responsibility to develop a strategy to extricate them from that troubled country before their losses become intolerable.

It is staggeringly clear that the administration did not understand the

consequences of invading Iraq a year ago, and it is staggeringly clear that this administration has no effective plan to cope with the aftermath of the war and the functional collapse of Iraq. It is time—past time—for the President to remedy that omission and to level with the American people about the magnitude of mistakes made and lessons learned. America needs a roadmap out of Iraq, one that is orderly and astute, else more of our men and women in uniform will follow the fate of Tennyson's doomed Light Brigade.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I came to speak on medical malpractice. How much time is remaining on this side?

The PRESIDING OFFICER. There are 9 minutes remaining.

Mr. BOND. Madam President, I wish to save 3 minutes, if you will advise me. I believe another colleague is coming.

I do have to make one or two quick remarks about this subject of Iraq. When we went into Iraq, 77 Members of this body believed the intelligence, that there was a deadly force, a radical tyrant there who needed to be removed.

One may argue about the intelligence. The intelligence was not as good as it should have been, and that is why we on the Intelligence Committee have been looking into the evidence. But there is no question, what David Kay said afterward when he did the work of the Iraqi Survey Group, Iraq was a far more dangerous place than we even imagined it.

We heard from soldiers. I talked with soldiers who have been there. They know what we are doing. They know the atrocities that went on. They know Iraq was a place of weapons of mass destruction, that biological and chemical weapons had been manufactured before, with wide-open opportunities for terrorists in Iraq to get those weapons and to use them. This was a clear-cut danger, not only to the people of Iraq who were suffering every day—literally hundreds of thousands murdered, neighbors murdered—but also a harbor for terrorists in that country and around the world.

What we did in Iraq was dismember the Saddam Hussein regime and wipe out the terrorist holding pattern of government, wipe out the protective elements Afghanistan's Taliban government and Iraq's Saddam Hussein have given the terrorists.

Yes, there is deadly fighting going on. There are tragedies every day, and it was laid out by al-Zarqawi, the terrorist leader in northern Iraq who has been working there for years to attack not only American soldiers but Iraqi civilians. They are attacking those civilians, but they are aiming at the American public opinion. They are aiming at this body. They want to get this body to say we are going to cut and run so they can have the opportunity to run that country one more time.

I believe we cannot forsake and disregard the sacrifices made by the brave men and women who have deposed and captured Saddam Hussein and opened up the opportunity for a free and vibrant Iraq to flourish in the Middle East. I hope we will stay the course, and I think my colleagues will want to talk about it.

I wanted to address today the problem of medical malpractice insurance rates and how trial lawyers have driven them through the top of the roof.

Nineteen States are in a full-blown crisis, including my home State of Missouri. Premium increases in 2002 were 61 percent, on top of increases in the previous year of 22 percent.

Almost a third of the physicians in Missouri say they are considering leaving their practice altogether. It is happening in Missouri and across the country. But this is not only a problem for doctors. They are well educated. They can move elsewhere and resume their practice, as difficult and as unfair as that is. The real damage, the real pain, is being felt by their patients.

The headlines and the horror stories continue to accumulate, and patients continue to suffer in Missouri and across the country. The bill before us on which we are going to vote today is a narrow, targeted, short-term solution to a growing national crisis. This bill protects patient access to emergency and trauma care services, as well as access to care for women and babies.

I have come to this floor many times to talk about protecting access to care for pregnant women. It is a real problem in Missouri. Last year, Missouri lost a total of 33 obstetricians. Let me give a few examples of the compromised care in Missouri.

A St. Joseph, MO, practice, the only practice in northwest 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 had been in private practice for 3 years experienced a 400-percent increase in liability premiums for the past 3 years. He got a quote of $108,000 for the current year. The OB/GYN is considering quitting obstetrics to find more affordable insurance to do something else.

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

On the eastern side of the State in St. Ann, MO, an OB/GYN was forced to close his practice last year because of medical liability costs that rose 100 percent. Previously, that 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 the rising medical liability insurance rates in Missouri, the clinic could not find a single company that would offer them a medical malpractice insurance policy they needed in their office in Missouri.

As a result, at the end of 2002, they closed their doors to Missouri patients. There were over 6,000 visits a year in their Missouri office. Now they have to go to Kansas to see an OB/GYN or someplace else.

Access to OB/GYN services is not the only care in jeopardy. This crisis threatens access to emergency and trauma services as well. To secure affordable medical liability insurance or to minimize their risk of lawsuits, many physicians, including neurosurgeons, orthopedic surgeons, cardiothoracic surgeons, obstetricians, and cardiologists are forced to stop serving ''on call'' to hospital emergency departments.

Today, in many hospitals there are no neurosurgeons available to treat patients with major head trauma or no orthopedic surgeon to care for patients with open fractures.

Patients suffering from head and spinal injuries, broken bones, gunshot wounds, or other major trauma are airlifted to other medical facilities. Critical lifesaving facilities are no longer available, and in many extreme cases trauma centers have been forced to shut down completely. This is a danger that speaks in volumes.

As my colleagues know, there is a ''golden hour'' that trauma patients have from the time they are injured to the time they get trauma care. Closing trauma centers increases the odds that patients won't get the care they need in that hour.

In Missouri the numbers speak volumes: 20 percent of all the neurosurgeons in Kansas City, MO have quit or moved out of the area in the past 12 months; 5 out of 25 neurosurgeons in private practice in St. Louis quit last year; 21 out of 79 neurosurgeons surveyed in Missouri are considering leaving the State; 2 trauma centers in Kansas City have closed in the past 12 months due to lack of physician coverage.

According to Dr. Steve Reintjes, a practicing physician at the KC Neurosurgery Group in Kansas City, ''Patients are dying before they get to us because the trauma center's closed.''

Patients 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 and across the country.

The bill before us today provides a sensible, short-term solution to a growing national crisis, and I urge my colleagues to support it.

Madam President, I see my colleague from Arizona has joined us. I yield the remainder of my time to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I thank my colleague from Missouri. I also paid close attention to his statement. I think it is a very important one.

Madam President, how much time is remaining?

The PRESIDING OFFICER. There are 2 minutes 45 seconds remaining.

Mr. MCCAIN. I ask unanimous consent that I be allowed an additional 10 minutes.

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

Mr. MCCAIN. I thank the Chair.

IRAQ

Mr. MCCAIN. Madam President, I take the floor to respond to comments made by Senator BYRD, but also to general comments that have been made over the last 48 hours as we all recognize this is a very difficult time for us in Iraq.

I do not have to review with any of my colleagues the events of the last few days and the tragedies in the loss of these brave young Americans who are fighting and sacrificing for someone else's freedom.

I have also heard a number of observers, including some Senators, who have compared events in Iraq to what we went through in Vietnam. I happen to know something about Vietnam, and I know we do not face another Vietnam. I need not go into the long history of our involvement in that nation, the reasons for our failure, but the realities on the ground in Iraq are clear.

There is no superpower that is backing these minority of Shias and Sunnis who are seeking to gain political power through the use of a gun, and there is no comparison as far as the sanctuary which this enemy has. We grant them no sanctuary.

Some have stated we are on the defensive. I would argue that, as we speak, in Fallajuh and other places, our Marines and Army are on the offensive, dedicated to the proposition that no group, no matter what their ethnic or religious beliefs are, will take control of Iraq.

Control of Iraq will be the result of a democratic process and a representative one, part of which is the turning over of power to the Iraqi people on June 30.

We have had this argument back and forth: Should we turn over power of the government to the Iraqis on June 30? I say yes, and I say yes recognizing two realities. One is that it will be a difficult process, and we have a lot more planning to do between now and June 30 for that transition to take place. The other reality, as far as the security situation is concerned, is that America's military will be there in force for a significant period of time, and the American people need to be told that.

This is a long, tough, hard struggle. It is hard for countries to adopt democracies. It is incredibly difficult when they have never known democracy and freedom in the past. A little later, I want to talk a little bit more about what happens if we fail, as well as what happens if we succeed in Iraq.

Again, in Vietnam there was superpower support. There were arms and political support. We did not have a clear plan for victory, and dare I mention that in Vietnam many times we had more casualties in a week, sometimes less than a week, than we have had in a year in Iraq.

To make these comparisons with the Tet offensive or the entire Vietnam conflict is not only uninformed but I think a bit dangerous because, of course, the specifics of our involvement in that conflict fade, as they should, in the memories of the American people.

What is happening in Iraq today is we have a Sunni insurgency that consists of ex-Baathists and Saddam loyalists. They obviously are the only people who were better off during Saddam Hussein's regime because they were the favored minority that were of the same religion as Saddam. They realize they will never run Iraq again because they are in the minority. Because they are in the majority, the Shia will probably dominate that government, but we also have a constitution in Iraq that guarantees the rights of minorities. We are there and a new government will be there to guarantee those same rights.

The realities are the Sunni minority will never control Iraq again. We have a small minority of Shias who are trying to grab some political power before the July 1 transition. There is very little doubt that Sadr's followers are in a distinct minority and the majority of Shias still owe allegiance and have allegiance to the Ayatollah Sistani, who has argued, perhaps not forcefully enough, that we do not have the kind of armed conflict that we are seeing today.

Is this a difficult political problem? Yes. Is it the time to panic, to cut and run? Absolutely not. The vast majority of Iraqi people are glad we are there and they state unequivocally that they are better off than they were under the regime of Saddam Hussein. Lest time dim our memory, let us remember the mass graves that we discovered, the 8- and 9-year-old boys coming out of prison in Baghdad, the despotic, incredibly cruel practices of his two sons. The people of Iraq and America and the world are better off with Saddam Hussein gone.

Now, we can argue about intelligence; we can argue about weapons of mass destruction. That is why we have commissions. That is why tomorrow, in an almost unprecedented fashion, the National Security Adviser to the President will testify before the 9/11 Commission. I am confident she will perform admirably because she is an incredibly intelligent and capable individual.

The fact is, to argue that we should have left Iraq under the rule of this incredibly cruel person who used weapons of mass destruction, who had weapons of mass destruction in 1991, was continuing to attempt to acquire weapons of mass destruction, and if in power would continue to try to acquire those weapons, certainly flies in the face of the facts about Saddam Hussein's regime.

Senator BYRD says we should not have gone into Iraq in the first place and that we should not be there now. I respect the view. I strongly disagree with it, and I think the facts indicate that is not the case. We could argue for days about it, but right now at this moment we need to send a message not only to the Sunnis in Iraq and the minority of Shias in Iraq who are taking up arms and killing Americans that we are there to stay. We are there to stay and we will see it through. If we fail, if we cut and run, the results can be disastrous. Those results would be the fragmentation of Iraq, to start with, on ethnic and religious lines. The second result would be an unchecked hotbed of training ground and birthing of individuals who are committed to the destruction of the United States of America.

We will never solve the war on terror as long as there are millions of young men standing on street corners all over the Middle East with no hope, no job, no opportunities, no future. They are the breeding ground. They are the ones who are taken off the streets and taken into the madrasahs—funded by the Saudis, by the way—and taught to hate and kill, and who want to destroy America, the West, and all we believe in. Their hatred is not confined to the United States of America, as the citizens of Spain have found out, much to their dismay and tragedy.

What happens if we win? What happens if we see this thing through? It will be hard and it will be difficult and perhaps we need more troops. I have said for a long time that we needed more troops of certain types, but we have to see this thing through. And what will happen? What will happen is that we will affirm the profound and fundamental belief upon which this Nation was founded, that all men and women are created equal and endowed by their Creator with certain unalienable rights, and they are not just in the Western Hemisphere; they are not just in the United States of America; they are not just in Europe. The people in the Middle East have the same hopes, beliefs, and yearnings for freedom and democracy, and they have a right to determine their own future just as have our own citizens and citizens throughout the world.

When they achieve that—and it will be long and hard and difficult—it will send a message to every despotic regime, every religious extremist throughout the Middle East, their day is done because in a democratic, free, and open society the people want to live in peace with their neighbors and with the world.

So there is a lot at stake. I grieve every moment, as every American does, for the loss of these brave young

Americans' lives. They have made a supreme sacrifice, and we will honor their memory, but at least their grieving families will know they sacrificed in the cause of freedom.

At this particular moment of crisis—and it is a crisis—I urge all of my colleagues and all Americans to join together in this noble cause. Yes, we are free to criticize; yes, we are free to make recommendations and suggestions; but the awesome responsibility lies with all of us, led by the President of the United States, as we attempt to carry out what is the most noble act that no country in the world has ever done besides the United States of America, and that is to shed our most precious blood and expend our treasure in defense of someone else's freedom in the hope that they may enjoy the fruits of a free and open society in a democracy that is guaranteed to all men and women by our Creator.

I yield the floor.

Mr. DOMENICI. Mr. President, I strongly support the Pregnancy and Trauma Care Access Protection Act of 2004.

I thank Majority Leader FRIST for proactively addressing this crisis. Across America, health care providers, especially health care providers that work in high-risk services such as obstetricians, gynecologists, and emergency personnel, have faced difficulty obtaining affordable medical liability coverage. Doctors are being hit with dramatic increases in the premiums they pay for liability insurance—if insurance is even available in their area.

These soaring costs are depriving patient's access to crucial medical care, especially in rural areas, where some services are already in short supply. In a number of instances, doctors are forced to relocate their practice as hospitals and physicians find it increasingly difficult to continue offering certain services. Without real reform, more and more Americans will find that health care services are simply going to disappear from their communities. And, in my opinion, this is unacceptable, especially when a reasonable solution is at hand.

There is a map I have seen in this chamber. This map is of the United States, and each of the States is color-coded: red if the State is in crisis, yellow if the State is showing problems, and white if the State is currently OK.

I am very proud that my State, New Mexico, is one of the six states that is white. New Mexico is OK because in 1976, the State legislature recognized there was a problem with medical malpractice, and they passed reform. Part of this reform included caps on noneconomic damages. And, as the map shows, it has worked. States with realistic limits on noneconomic damages are faring better. Physicians in most states with caps on non-economic damages in medical malpractice cases pay lower insurance premiums. Reasonable caps keep premiums from rising quickly.

Unquestionably, truly injured parties must have access to our courts to adjudicate their claims. And injured patients must be compensated for their economic damages such as cost of future medical care and lost wages. However, trial lawyers have taken advantage of our civil justice system to further their own interests. The explosion of malpractice lawsuits and subsequent growth of astronomical jury awards have tremendously increased the costs of medical malpractice insurance. Premium increases have jumped as much as 81 percent over the last 2 years, according to some insurers. Frivolous lawsuits combined with excessive judgments are destroying the doctor-patient relationship and driving professionals out of medical practice all together. This reality has terrible consequences for all Americans.

The bill we are debating today is real reform. It provides an unlimited amount of damages for actual economic loss. It caps noneconomic damages, it has more reasonable punitive damages awards, a uniform statute of limitations, and it provides flexibility to States by allowing State laws to supercede Federal limits on damages.

This bill creates directives for a malpractice system that currently is unpredictable and largely random. The rising cost of medical malpractice insurance is a serious threat to the well being of American citizens and our Nation's healthcare system. It is time for Congress to pass meaningful legislation that will address our Nation's health care crisis.

Mr. BYRD. Mr. President, the Senate today is considering a procedural vote on a motion to recommit the Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) legislation. This is an effort to bring to the Senate a remodeled bill—one containing popular energy tax incentives—that will make a vote against it less politically palatable. This is much less about enacting good national policies than it is about producing campaign ads. This is less about creating jobs than it is about playing partisan politics. It is certainly less about the very important business of formulating a comprehensive national energy policy than it is about scoring points for the majority's campaign contributors. As the Members of this body know well, bipartisan energy legislation, including a very similar package of energy tax incentives, passed this body twice already—once in April 2002, in the 107th Congress, and again in July 2003, in the first session of this Congress.

I support, and have strongly advocated, many of these targeted energy tax provisions. In their totality, these incentives can be a helpful stimulus to get our Nation's energy policy back on track, and the Senate's proposal has had support in numerous industry sectors as well as among consumers. However, it is a rotten carrot that is dangling before us. This is yet another perverse, backdoor attempt to buy off Democratic votes by adding popular provisions to a Senate bill, while simultaneously preventing Democratic Senators from offering their own amendments on the floor and preventing them from protecting their interests during conferences.

The majority is preventing Democrats from getting votes on other very important policy matters. There are many things that this Senate must address, including passing these energy tax incentives, but the majority needs to stop playing games with its Democratic colleagues. The Senate deserves better.

The Senate finds itself handcuffed by the same authoritarian dictates from the Bush administration that have led to some of the fiercest partisan passions that this body has seen in decades. Gone is the traditional spirit of cooperation. Gone is the belief that the needs of the Nation stand above the ambitions of political party. It is a disheartening turn for this historic Chamber.

Despite its campaign-driven rhetoric, this lipservice and corporate coddling have been the sum total of this administration's economic, health care, energy, and so many other policies. From the beginning, the administration's tax cuts have primarily benefited the wealthy. Hope for a bipartisan Medicare prescription drug benefit was high, but all that was left was a prescription for protecting the pharmaceutical industry and a drug benefit that is a sham for America's seniors. Progress on an energy strategy for the country began cooperatively, but quickly dissolved as Democrats were locked out of conference negotiations, their seats filled by special interest lobbyists.

If the Republican majority wants to get something done in a closely divided Senate, it can, but it has to work with the other side of the aisle at all stages of the legislative process. That means respecting the committee process, respecting the rights of Senators to offer—and get votes on—amendments on the floor. It means truly including Democrats in conference deliberations, and defending the position of the Senate in conference negotiations—not buckling under pressure from the White House. I believe that, if the majority would do this, we would follow a better, more productive legislative path instead of voting on—and failing to invoke—cloture so often.

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. This is a serious issue and it deserves close examination. But we haven't yet explored the issue in the Senate at all. Nor have we examined the issue of how malpractice cases may

be affecting the practice of emergency medicine. No committee has held hearings or marked up a bill on these topics.

In fact, no work has apparently been done behind the scenes since the Senate refused to invoke cloture on S. 2061. Instead, once again, an extreme and unbalanced proposal has been brought directly to the floor and Senators are expected to vote for it without any committee having looked into the facts or considered alternatives. That is not how the legislative process should work.

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 only 6 weeks after a nearly identical bill failed to achieve the necessary vote, the majority shows that it is not serious about addressing the problem. It appears that what is going on here is a cynical exercise, designed only to fail and to provide fodder for political attacks. This issue deserves better and I hope that there will be some effort to address it in a serious, bipartisan manner.

I will vote nay on cloture.

Mr. KENNEDY. Mr. President, today's vote on S. 2207 is a test of the Senate's character. In the past, this body has had the courage to reject the simplistic and ineffective responses proposed by those who contend that the only way to help doctors is to further hurt seriously injured patients. Unfortunately, as we saw in the Patients' Bill of Rights debate, the Bush administration and congressional Republicans are again advocating a policy which will benefit neither doctors nor patients, only insurance companies. Caps on compensatory damages and other extreme tort reforms are not only unfair to the victims of malpractice, they do not result in a reduction of malpractice insurance premiums.

Once more, we must stand resolute.

We must not sacrifice the fundamental legal rights of seriously injured patients on the altar of insurance company profits. We must not surrender our most vulnerable citizens to the avarice of these companies.

This bill contains the same arbitrary and unreasonable provisions which were decisively rejected by a bipartisan majority of the Senate twice within the past year. The only difference is that the bill rejected in February took basic rights away only from women and newborn babies who are the victims of negligent obstetric and gynecological care, while this bill includes victims of negligent emergency trauma care as well. Broadening the bill does not make it more acceptable. On the contrary, it only expands the unfairness to an additional category of malpractice victims.

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

They are babies who suffered serious brain injuries at birth and will never be able to lead normal lives. They are the women who lost organs, reproductive capacity, and in some cases even years of life. They are the children who are permanently injured when emergency room doctors fail to provide proper medical treatment after an accident. These are life-altering conditions. It would be terribly wrong to take their rights away. The Republicans talk about deterring frivolous cases, but caps by their nature apply only to the most serious cases which have been proven in court. These badly injured patients are the last ones we should be depriving of fair compensation.

A person with a severe injury is not made whole merely by receiving reimbursement for medical bills and lost wages. Noneconomic damages compensate victims for the very real, though not easily quantifiable, loss in quality of life that results from a serious, permanent injury. It is absurd to suggest that $250,000 is fair compensation for a child who is severely brain injured at birth and, as a result, can never participate in the normal activities of day to day living; or for a woman who lost her reproductive capacity because of an OB/GYN's malpractice; or for a patient who suffered a devastating heart attack because a negligent emergency room doctor ignored his severe chest pains and sent him home.

This is not a better bill because it applies only to patients injured by malpractice in three medical categories. That just makes it even more arbitrary.

The entire premise of this bill is both false and offensive. Our Republican colleagues claim that women and their babies must sacrifice their fundamental legal rights in order to preserve access to OB/GYN care, and that those seeking care in a hospital emergency room must leave their rights at the door. The very idea is outrageous. For those locales—mostly in sparsely populated areas—where the availability of specialists is a problem, there are far less drastic ways to solve it.

This bill is based on the false premise that the availability of OB/GYN and trauma care physicians depends on the enactment of draconian tort reforms. If that were accurate, States that have already enacted damage caps would have a higher number of OB/GYNs providing care. However, there is in fact no correlation. States without caps actually have 28.4 OB/GYNs per 100,000 women, while States with caps have 25.2 OB/GYNs per 100,000 women.

Nor is there any correlation between access to emergency trauma care and whether a State has enacted restrictions on the compensation that malpractice victims can receive. In fact, 7 of the top 10 States identified in the Journal of the American Medical Association, March 26, 2003, as having the highest number of level I and II trauma centers per million residents do not cap damages in malpractice cases. Five of the States with the best availability of trauma centers have actually been listed as malpractice ''crisis'' States by the AMA. That is worth repeating; 7 of the 10 States whose residents have the greatest access to emergency care do not limit damages. In contrast, four States that the AMA identifies as ''doing OK,'' having satisfactory tort laws, fail to have an adequate number of trauma centers to serve their residents.

And that is only one of many fallacies in this bill. If the issue is truly access to OB/GYN and emergency care doctors, why has this bill been written to shield from accountability HMOs that deny needed medical care to a woman suffering serious complications with her pregnancy or to a child in need of emergency care after a serious accident, a pharmaceutical company that fails to warn of the dangerous side effects caused by its new drug, and a manufacturer that markets a medical device which can seriously injure the user. Who are the authors of this legislation really trying to protect?

In reality, this legislation is designed to shield the entire health care industry from basic accountability for the care it provides to women and their infant children and to patients in need of emergency treatment. It is the first step toward broader legislation which would shield the industry from accountability in all health care decisions involving all patients. While those across the aisle like to talk about doctors, the real beneficiaries will be insurance companies and large health care corporations. This legislation would enrich them at the expense of the most seriously injured patients; whose entire lives have been devastated by medical neglect and corporate abuse.

This legislation is attempting to use the sympathetic family doctor as a Trojan horse concealing an enormous array of special legal privileges for every corporation which makes a health care product, provides a health care service, or insures the payment of a medical bill. Every provision of this bill is carefully designed to take existing rights away from those who have been harmed by medical neglect and corporate greed.

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

When will the Republican Party start worrying about injured patients and

stop trying to shield big business from the consequences of its wrongdoing?

If we were to arbitrarily restrict the rights of seriously injured patients as the sponsors of this legislation propose, what benefits would result? Certainly less accountability for health care providers will never improve the quality of health care. It will not even result in less costly care. The cost of medical malpractice premiums constitutes less than two-thirds of 1 percent, 0.66 percent, of the Nation's health care expenditures each year. Malpractice premiums are not the cause of the high rate of medical inflation.

In this era of managed care and cost controls, it is ludicrous to suggest that the major problem facing American health care is ''defensive medicine.'' The problem is not ''too much health care,'' it is ''too little'' quality health care.

A CBO report released in January of this year rejected claims being made about the high cost of ''defensive medicine''. Their analysis ''found no evidence that restrictions on tort liability reduce medical spending.'' There was ''no statistically significant difference in per capita health care spending between States with and without limits on malpractice torts.''

The White House and other supporters of caps have argued that restricting an injured patient's right to recover fair compensation will reduce malpractice premiums. But there is scant evidence to support their claim. In fact, there is substantial evidence to refute it. In the past few years, there have been dramatic increases in the cost of medical malpractice insurance in States that already have damage caps and other restrictive tort reforms on the statute books, as well as in States that do not. No substantial increase in the number or size of malpractice judgments has suddenly occurred which would justify the enormous increase in premiums which many doctors are being forced to pay. The reason for sky-high premiums cannot be found in the courtroom.

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

Let's look at the facts. Based on data from the Medical Liability Monitor on all 50 States, the average liability premium in 2003 for doctors practicing in States without caps on malpractice damages, $35,016, was less than the average premium for doctors practicing in States with caps, $40,381. There are many reasons why insurance rates vary substantially from State to State. This data demonstrates that it is not a State's tort reform laws which determine the rates. Caps do not make a significant difference in the malpractice premiums which doctors pay. This is borne out by a comparison of premium levels for a range of medical specialties.

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 BusinessWeek magazine concluded after reviewing the data, ''the statistical case for caps is flimsy,'' March 3, 2003 issue.

If a Federal cap on noneconomic 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 few 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 antitrust 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 antipatient 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. 2207, 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. 2207, 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.

Mr. MCCAIN. Mr. President, when we first began the Senate debate on S. 1637 in March, the intended purpose of the measure was to resolve appropriately the controversy between the United States and the European Union over the extraterritorial income, ETI, exemption tax benefit for exports. Almost all of us recognize the critical need to pass legislation to bring the United States back into compliance with World Trade Organization, WTO, agreements and stop the burdensome tariffs now imposed on our manufacturers. Unfortunately, achieving the legislation's worthy purpose is in jeopardy due to a host of special interest tax provision add-ons. I do not support these latest add-ons and, as such, must vote against today's cloture vote.

When S. 1637 was presented to the Senate, it was a 378-page bill. Although only one roll call vote has occurred on an amendment during the floor consideration, the bill had grown to some 527 pages by the last cloture vote on March 22. I reluctantly voted for cloture, voicing my strong concerns about the direction the bill was going at the time. But instead of reigning in the special interest add-ons, they are only growing further. The bill has now grown to a 929-page Easter basket of goodies, but with almost no debate or votes on its provisions, including the latest addition of $13 billion in energy-related tax breaks.

I recognize the strong interest of the chairman of the Energy Committee and others to pass an energy bill. I wish that I could support the bill that the committee has developed, but in its current form I cannot. But I can assure the proponents of the energy legislation that to now shift $13 billion in costs from their bill to the JOBS bill is not the way to gain support for an energy bill. Instead, they need to develop an energy bill that is more evenly balanced between stimulating the supply of conventional fuels and promoting alternative fuels and energy efficiency.

If the Senate is to consider an energy tax incentive bill or an energy authorizing bill, we should be following regular order, and bringing legislation to the floor and debating in its own right. Instead, we are being asked to simply accept a 362-page energy bill add-on without debate or further amendments.

With our limited legislative time during this election year, the Senate would serve the American public far better if it stayed focused on accomplishing the intended purpose of legislating. Unfortunately, the JOBS bill, which is a much needed bill, is being dragged down with the unnecessary weight of billions of dollars in wasteful subsidies, tax breaks, and special exemptions for special interest industries. With the Nation facing a half-trillion dollar deficit, now is not the time for Congress to be enacting new tax credits and carving out sweet deals for special interests.

Mr. FRIST. Mr. President, today, we will be voting on a cloture motion to allow the Senate to proceed to debate S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004. I strongly urge my colleagues to vote for the motion to proceed.

It should be clear to all those following this debate 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. Unfortunately, this system hurts our most vulnerable patients the most—those needing help from highly trained medical specialists like neurosurgeons and obstetricians. 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 Members have problems with certain parts of the bill that is fine. Let's move to the bill, offer amendments, and fully debate this needed reform.

But if action is delayed, we know what will happen: patients will suffer, women will suffer and babies will suffer. Those seeking care from emergency rooms and trauma centers will suffer. OB/GYNs will continue to flee their practices and drop obstetrical services, and more doctors will refuse to perform vitally needed emergency services.

I remind my colleagues that our current litigation system does more than simply threaten access to care. 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 unneeded 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 taxpayers 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. 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 Pregnancy and Trauma Care Access Protection Act. I thank my colleague Senator GREGG, who has skillfully led this debate, and I thank Senator ENSIGN, a leading proponent of reform, who has seen the current crisis in his own State of Nevada.

This legislation will protect access to care for our most vulnerable citizens and ensure that those who are negligently injured receive fair and just compensation. Again, I encourage my colleagues to move this legislation forward. We cannot afford further delay.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that I be recognized to make a statement and, upon the conclusion of my statement, the Senate recess until 2:15 as provided under the previous order.

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

FSC/ETI

Mr. GRASSLEY. Mr. President, I am extremely disappointed that we have to be here today debating the FSC/ETI bill. The fact is, with America's economic health at risk, the bipartisan JOBS bill should have been debated and voted out of this body last month. Instead, attempts to move this jobs in manufacturing bill has been stymied. As a result, American manufacturing is not only being deprived of a competitive boost that it deserves at a time of no job creation in manufacturing but, in addition to that, U.S. exporters are stuck with a 6-percent European tax on our products going there.

This situation has festered for much too long. It has been several years since the World Trade Organization has ruled that the FSC/ETI regime did not meet our World Trade Organization obligations that this Senate and the other body agreed to a long time ago. Since then, we have known that. It is a fact. We have all known that unless we changed our current tax system, tariffs against our exports were looming.

To try to avoid these sanctions, Senator BAUCUS and I came together over a year ago and formed a bipartisan, bicameral working group to find a real, permanent solution to this problem.

The result is bipartisan. Remember that nothing gets done in the Senate that is not bipartisan. We have a jobs in manufacturing act before the Senate, and we will be voting on that today. This bill was passed out of my committee by a vote of 19 to 2. That means all Democrats voted for it. It provided a real and permanent solution to our FSC/ETI problems in a way which complies with our WTO obligations.

The bipartisan jobs in manufacturing act helps America's manufacturing sector. It helps us compete by giving an across-the-board 3-percentage point tax cut to all companies, large or small, that manufacture in the United States.

At a time when manufacturing is flat, this 3-percent tax cut can make a real difference to a company's bottom line perhaps bringing up enough capital and creating enough manufacturing growth to enable it or any company to hire in the manufacturing sector.

That is something every Senator would like to see. But because of political games and dilatory tactics by some in the Senate, this relief is not forthcoming.

I want Americans to understand that Senators on my side of the aisle are ready, willing, and able to provide a real shot in the arm to America's manufacturing sector. But after working so long in a bipartisan way, we are being blocked. We are blocked from providing the relief that American manufacturing deserves and needs.

In effect, this bill and the American manufacturing sector are being held hostage to Democratic demands to load this bipartisan legislation with a bunch of unrelated nongermane amendments. While some of these amendments are legitimate, others amount to nothing more than a wish list of political message amendments that have nothing to do with this very major piece of legislation. I, for one, am tired of watching us bide our time contemplating a wish list. American manufacturing needs solutions. It does not need a political wish list.

We have a good bipartisan bill before the Senate, a package that works for America's workers. But our plea for progress is met with nothing but demands for including one more item on some political wish list. You would think adults would make up their minds about what they want and that would be it.

It would be one thing if a political wish list did no harm, if it really didn't matter, or if the JOBS bill moved or not. But for manufacturing it does matter. Delay deprives American manufacturing of a much needed economic boost. Delay also inflicts real economic harm on innocent workers across the country.

The World Trade Organization has authorized the European Union to impose as much as $4 billion in tariffs in retaliation for our failure to bring our tax laws into compliance with international trade agreements that this body has already accepted—and accepted years ago.

Last month, on March 1, the European Union began implementing these sanctions by imposing an additional 5-percent tax on selected U.S. exports. This 5-percent Euro tax automatically increases by 1 percent for each month in which the United States of America remains out of compliance. Thus, when Members voted against stopping debate last month, the last time this bill was before this body, they contributed to a 20-percent increase in these tariffs because that additional 1 percent went into effect on April 1. Because of delay, then we have a 6-percent sales tax on our exports to Europe, making a lot of our businesses uncompetitive.

As you can see from this chart, these sanctions will continue to climb unless we act and act fast. In May, they rise another 1-percentage point to 7 percent and continue increasing until they reach a maximum of 17 percent in March of 2005. After that, then who knows what is going to happen. But by then we will have a lot of layoffs and people will wake up to the fact that harm is being done.

The European Union is not bound to cap retaliation at 17 percent. That is why I said: Who knows? In fact, they are scheduled to review the effectiveness of these retaliatory taxes at the end of 1 year. If the Europeans conclude that we are not in compliance, retaliation can escalate even further to a maximum of $4 billion a year.

If this sounds one sided, America wins more disputes in the World Trade Organization than we lose. We have won some major disputes against Europe. One time we won one about American beef being kept out of Europe. Europe still doesn't like to get some American beef. So we have imposed a tax on European exports coming into our country because that is the legal way of handling these disputes after it has been decided. I use that as an example. Europe has learned a lesson from the United States and they are doing to us what we have done to them. Why? Because in one case Europe did not want to abide by a decision, and in another case, we, up to now, have not abided by a decision. That is why we have the tax. It is quite obvious in most cases countries abide by these decisions. If they did not abide by these decisions, we would have chaos in international trade. We do not.

I make clear to the Members of this body: The effect of voting against stopping debate last month contributed strongly to raising tariffs on our exports by 2 percent. If cloture is not invoked this week, it is certain sanctions will escalate another percentage point, rising an overall level of 7 percent on selected U.S. exports. The core legislation should be very clear: A vote against stopping debate is a vote for higher taxes on our exports.

Which exporters will be hurt? All of them. No, not all of them, because the European Union was very careful in drawing up the sanctions list. In many cases, they chose to impose sanctions on U.S. exports that would most significantly feel the pain of the higher tax tariffs.

They are smart. Thus, highly competitive products with high profit margins are likely to find themselves on the list.

A press release from the American Forest and Paper Association dated March 2 of this year says this about European Union tariffs on wood product exports:

> This is a devastating development for an industry that has already closed more than 220 mills and laid off 120,000 workers since 1997.
>
> Our industry works on such tight profit margins that even a 5 percent tariff will likely price many U.S. wood and paper products out of our vital European markets. To have this happen just as United States wood and paper products are beginning to recover from a decade-long stump does irreparable harm to our industry.

The European Union has chosen products they could get from other countries, hoping that the higher tariffs on U.S. exports will price our products out of the European market, to be replaced by similar products from other foreign competitors. It is important for Members of the Senate to understand the effect of pricing U.S. exports out of the European market is not just temporary. Longstanding business relationships can be permanently disrupted as European buyers scramble to replace cost-prohibited U.S. products. Even if our price may go down, those relationships that are made because of this uncompetitive atmosphere for American exporters may go on and we never gain back that market. Once a replacement from another country is found, there is no guarantee the European buyer will ever buy from the U.S. producer again. In the end, the lost European export market can be lost forever. If the Senate votes down this motion to stop debate this month, the cancer of sanctions will not only continue, it will spread.

On May 1 of this year the European Union will take in 10 more member countries. These countries will be bound by the same import-export regime as France and other European Union countries. Thus U.S. exports to those 10 countries will also face higher tariffs as they try to compete in these markets.

Now we will look at another chart that shows the list of countries that will be become part of the European Union starting May 1, 2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia. I hope Senators who vote against stopping debate today appreciate they are voting not only to raise the Euro tax on sensitive U.S. exports but are also voting to have that tax applied to an even broader array of countries.

Some people might argue these sanctions only hurt big companies. Do not be fooled. They are big, people might argue, and they can absorb a hit of higher tariffs. The fact is, approximately 90 percent of U.S. exporters in 2001 were small businesses with 100 employees or less. These small exporters can ill afford the sting of sanctions on their bottom line. Products impacted include jewelry, horses, dairy, fruit and vegetables, toys and games, glass and glassware, animal feed, leather goods and handbags, textile products, carpets, footwear, soap and candles, wood

products, and electric machinery. That is just a small list of 500 different products being hit. The American people are starting to take notice.

I read in part from a letter I received from the Carpet Rug Institute headquartered in Dalton, GA, stating:

> The United States carpet industry produces 45 percent of the world's carpet and is a $12 billion per year presence at the mill.
>
> The carpet industry is extremely competitive, both domestically and worldwide, with profit margins cut razor thin.
>
> The potential of an increased duty in the form of a punitive sanction may make the export of carpet and rug products by any United States manufacturer in the European Union market an economic impossibility. For the sake of the collection of an excess tariff an entire industry may be made to suffer.

And we are hearing:

> Voices from across the country are asking relief from the escalating Euro tax on our exports.

I will take a look at another letter signed by over 80 businesses and trade associations. These organizations that signed the letter want to emphasize the urgency of resolving the FSC/ETI export tax issue as soon as possible. Quick action on legislation is necessary to both comply with our WTO obligations and avoid or minimize retaliation against U.S. products.

> . . . the European Union has increased the retaliatory tariffs from 5 to 6 percent on as much as $4 billion per year of American products.
>
> These retaliatory tariffs are hurting the U.S. exports to Europe at a time when they are just beginning to rebound in the global economy and showing signs of renewed growth. Moreover, the tariffs negatively impact American workers.

The letter continues:

> We urge the Senate and House to pass FSC/ETI legislation immediately and proceed to conference as soon as possible thereafter.
>
> Thank you . . . for doing your part to send FSC/ETI bill to the President's desk without delay, thus minimizing the economically devastating trade sanctions on U.S. products and its impact on American workers who produce them.

These organizations span the entire Nation. This is not regional. Almost every State is going to be impacted by this vote this afternoon.

So let's go to the Northeast: the Virginia Forestry Association, the Associated Industries of Massachusetts, the Coalition of New England Companies for Trade, and the Greater Providence Chamber of Commerce.

From our part of the country, the Upper Midwest—the Presiding Officer is from Minnesota; I am from Iowa—we have the Detroit Regional Chamber of Commerce, the Minnesota Timber Producers Association, the Minnesota Agri-Growth Council, the Missouri Forest Products Association, and the Wisconsin Manufacturers and Commerce.

In the Pacific Northwest, we have the Pacific Coast Council of Custom Brokers and Freight Forwarders and the Softwood Export Council in the Pacific Northwest.

From the West, we have the Utah Manufacturers Association, the California Manufacturers and Technology Association, and the California Chamber of Commerce.

From the Plains States and the South, we have the Arkansas Forestry Association, the Louisiana Forestry Association, the Mississippi Forestry Association, and the Texas Forestry Association.

From the Southeast, we have the Alabama Forestry Association, the Puerto Rico Manufacturers Association, the Tennessee Chamber of Commerce and Industry, and the North Carolina Forestry Association.

So as you can see, the entire country is impacted by this European tax on our exports to that part of the world. Some of the nationally impacted associations include the Agriculture Retailers Association, the American Architectural Manufacturers Association, the American Cotton Shippers Council, the American Farm Bureau Federation, the American Iron and Steel Institute, the American Peanut Council, the American Soybean Association, the American Textile Manufacturers Institute, the Manufacturing Jewelers and Suppliers of America, the National Association of Manufacturers, the National Corn Growers Association, and the National Cotton Council. And that is just a partial list.

What communication to Members of Congress is all about is businesses crying out for relief—not for the delay that we have already had for 1 month.

Let's be clear about what is at stake. American jobs are at stake because American competitiveness is at stake.

A vote against stopping debate is a vote against tax relief for America's beleaguered manufacturing sector—tax relief that goes beyond nullifying this European tax.

A vote against stopping debate is a vote to prolong the pain across America. A vote against stopping debate is a vote to increase the European tax on American exporters yet more than the 6 percent already there. A vote against stopping debate is a vote to deprive America's small exporters—because 90 percent of our exporters are small businesses of 100 employees or less—continued access to the European market, and access they may never regain.

If my colleagues vote against stopping debate, they might as well be telling American manufacturing that the United States is closed for business; that if you want access to the European export markets, you might as well go overseas and do your business because Members of this Congress have refused to give these manufacturers the tools they need to compete.

There is an answer. Stop—stop playing political games; stop pushing political wish lists; stop jeopardizing economic recovery. Instead, start supporting the ending of debate; start bringing this bill to finality; support stopping debate and start enhancing the economic recovery that is just around the corner in America's manufacturing sector if we do not snuff it out; support stopping debate and start the process that eliminates the European tax on our exports.

The choice is clear: Vote no, and you might make a few political points but I think just for a short period of time. As this Euro-tax goes up, people are laid off and you lose political points. Vote yes to stop debate and you are guaranteed to get economic progress.

So let's put aside our political games. Stop this debate. Move to finality. Consider legitimate amendments. That is what this place is all about—legitimate amendments, not just making political comment.

I summarize this way: This is like moving the goalposts. We have heard a lot from the Democratic leadership which claims they support this bipartisan bill. That is what we are hearing. I know that is what they are telling their constituents as well. I am afraid the actions of the Democratic leadership speak louder than their words. My sense is that there is a political priority to deny President Bush an opportunity to sign a bipartisan bill either this summer or this fall. It seems that the objective is to prevent that Rose Garden signing ceremony from occurring.

Of course, the victims of this strategy happen to be those companies and those workers who are hit by this Euro-tax as it ratchets up. I hope I am wrong. But the record gives me pause. I would hope that those on the other side would put the interests of firms and workers in their States above that of partisan Presidential campaign strategy. If you look at the record, you will see dramatic movements in terms of the demands of people on the other side of the aisle to promote their political message amendments, most often nongermane.

This chart draws from a favorite activity that we have in the Midwest, for example, every time Iowa plays Minnesota, and I am talking, obviously, about football. This jobs in manufacturing bill is near the Senate goal line. Unfortunately, it seems politics is driving the other side to move the goalposts.

When we came into session in January, Senator FRIST was criticized by the Democratic leadership for not moving right away this very bill, the jobs in manufacturing bill. At that time, the goalpost was clear—just 5 yards away. Then, after we were finished with the highway bill and a couple other bills, Senator FRIST attempted to go to this jobs in manufacturing bill.

Much to my surprise, we were ambushed by the leadership of the other side with unrelated amendments. I thought I had an understanding with the floor manager we were going to do amendments first that were related to the bill and then move to other amendments. That agreement was not carried out. That event caught me off guard. So a second goalpost appeared. It was the overtime amendment of my colleague from Iowa.

Now, it did not matter that we had voted on it previously. It did not matter that the amendment dealt with a proposed—not final but a proposed—Department of Labor regulation. None of that seemed to matter. That amendment was, and is still, a show-stopper to this bipartisan bill. So we are at the second goalpost, as it has been moved.

The demand of the leadership of the other side keeps changing. We were talking about just a single-digit list of amendments and, for the most part, hopefully germane amendments. We are not talking about that anymore. Now, since it looks like an overtime pay vote may be in the picture, there is a goalpost yet further away.

For the first time we are hearing of other amendments—not Finance Committee jurisdiction amendments—such as an increase in the minimum wage, that are new showstoppers.

You can't finish this bill, we are told, even though we are told the substance is great. Nobody seems to disagree on the substance of this. So why can't we get a bill to the President? Even though we don't disagree on the substance, there is still a new goalpost. Heaven help us how all that turns out.

There is a final goalpost way out there; that is, getting to conference. We may move through all the goalposts, but then we may be blocked on whether we get to conference. I hope I am proven wrong in a few minutes as we vote on this measure.

If we can't get cooperation from the other side, we have a couple alternatives: One, to go on with other business; two, to look at reconciliation in late spring. I don't want to go with either of those options because we can finish this bill now. There is always a time when the Senate has goodwill between the two parties represented. That goodwill hopefully will surface just as cream surfaces on milk.

Now it is time to get the job done. I hope we can pass this FSC/ETI legislation. It is bipartisan. That is the only way you get things done in the Senate. Consequently, because it is bipartisan, we ought to get it done. And because it is bipartisan, it deserves better treatment than it has received thus far.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 1:31 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Acting President pro tempore (Mr. SUNUNU).

PREGNANCY AND TRAUMA CARE ACCESS PROTECTION ACT OF 2004—MOTION TO PROCEED—Continued

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will proceed to a vote on the motion to invoke cloture on the motion to proceed to the consideration of S. 2207.

Under the previous order, the clerk will report the motion to invoke cloture.

The assistant 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, hereby move to bring to a close debate on the motion to proceed to Calendar No. 462, S. 2207, a bill to improve women's access to health care services and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such service.

Bill Frist, Orrin Hatch, Judd Gregg, John Ensign, Lamar Alexander, Peter Fitzgerald, Larry Craig, John Cornyn, Robert Bennett, Mike Enzi, Mitch McConnell, Ted Stevens, Norm Coleman, James Inhofe, Kay Bailey Hutchison, George Voinovich, Charles Grassley.

The ACTING PRESIDENT pro tempore. 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 the consideration of S. 2207, the Pregnancy and Trauma Care Access Protection Act of 2004, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''no.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 48, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—49

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

NAYS—48

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

NOT VOTING—3

Kerry	Lieberman	Murray

The motion was rejected.

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 49 and the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT—Resumed

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. By unanimous consent, 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 pending motion to Calendar No. 381, S. 1637.

Bill Frist, Charles Grassley, Gordon Smith, James Talent, John Ensign, John Cornyn, Wayne Allard, Olympia Snowe, Rick Santorum, Michael B. Enzi, Mike DeWine, Trent Lott, Christopher Bond, Thad Cochran, Kay Bailey Hutchison, Jim Bunning, Mitch McConnell.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the pending motion to Calendar No. 381, S. 1637, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

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

The yeas and nays resulted—yeas 50, nays 47, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—50

Alexander	Cornyn	Inhofe
Allard	Craig	Lott
Allen	Crapo	Lugar
Bennett	DeWine	McConnell
Bond	Dole	Miller
Breaux	Domenici	Murkowski
Brownback	Ensign	Nelson (NE)
Bunning	Enzi	Nickles
Burns	Fitzgerald	Roberts
Campbell	Frist	Santorum
Chafee	Graham (SC)	Sessions
Chambliss	Grassley	Shelby
Cochran	Hagel	Smith
Coleman	Hatch	Snowe
Collins	Hutchison	