UNANIMOUS-CONSENT REQUEST—S. 249

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 249 regarding inpatient care for breast cancer, and there be 2 hours for debate equally divided with one relevant amendment in order to be offered by Senator D'Amato, and following the disposition of the amendment the bill be advanced to third reading and a vote occur on its passage, all without intervening action or debate.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DASCHLE. Reserving the right to object, let me just say how disappointed I am that the Senator from New York continues to persist in his erroneous conclusion that somehow these are melded together. I will put forward a new proposal for my colleague and friend from New York. I would propose that we take up the D'AMATO bill today, that we debate it as he suggests so long as by June 15, or at any date in June that would be of his choosing, we can take up and debate the Patient Protection bill for whatever time it takes. If it is complex, let's debate it. If it ought to be amended, let's debate it. If the Senator from New York is prepared to give me that opportunity, to say in June we will take up patient protections with amendments, we will have the debate on his bill today and my bill in June. I would make that proposal to the Senator from New York, reserving the right to object.

Mr. D'AMATO. I understand that, and let me respond by saying that I wish I could and did have the authority to accept that because I would do it, because I think we should have a full debate and a full discussion on the Patients' Bill of Rights. And I think it will not be limited, should not be limited to 2 hours. I thank my colleague, the Senate minority leader, for recognizing the complexity of the bill that is, I don't know how many pages. It is voluminous. And it is important.

Here it is. I don't know whether it has even had a hearing. It is 109 pages. It is controversial, to say the least. And there are many parts of this bill which I would be supporting. There is absolutely no doubt about it.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. D'AMATO. However, we are linking the two together. By suggesting that in order to get this straightforward bill, this legislation that says no more drive-by mastectomies and that women will be guaranteed the right to have reconstructive surgery where there is a radical mastectomy, it is linking the two together. I think that is unfortunate. I might be willing to come and join my colleagues and battle for a date certain or to fight for hearings at least. I don't know whether we have had hearings. I don't think we have. I see Senator KENNEDY here.

But the point of the matter is that we are linking the two. We are saying we are not going to consider whether women should have that right. Where I don't believe there is one Senator here who feels they should not have, not one, why should we link the two, with one bill 109 pages, which 90 percent of the Members have not read, have not studied, have not gone through. Again, it is linkage, and therefore I am compelled to say that notwithstanding the good intents of my friend, it is linkage.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DASCHLE. Continuing to reserve the right to object, since my colleague from New York did now object to my counterproposal, I am flabbergasted. I am absolutely flabbergasted that the Senator from New York would say, since we have not seen action on our bill, we should take up his bill. And why are we taking up his bill under these circumstances? Because the Finance Committee has not acted. That is the reason. We are going to go around the Finance Committee to go straight to the floor, and he is saying we shouldn't go around the Labor Committee to go straight to the floor for the Patient Protection Act.

So let there not be any confusion here as to what is going on. Everyone ought to know this. This is as glaring as the lights themselves. Our Republican colleagues, for whatever reason, are denying the opportunity to consider a Patient Protection Act, today, tomorrow or any other day. And they are hiding behind the mastectomy bill to do it.

Well, let's not hide behind any legislation. Let's strip away all the rhetoric. They do not want to do it. They simply do not want to do it. I don't know why they don't want to do it, given that about 80 or 90 percent of the American people are demanding we do it, but they can explain it.

No one should be misled here. The problem is not that we are combining the two bills. I have just released them. There isn't any connection anymore. We will take up the Feinstein-D'Amato bill today and take up the Patient Protection Act in the next couple of months. Just let us take it up. That is all we are asking.

So, Mr. President, I am really astounded at that logic and that rationale. But I don't think anybody is misled here. They don't want to take up the patient protection legislation, and I am very disappointed, and I think the American people would be as well.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let's look at this in perspective. I have asked staff has there been a hearing with respect to S. 1890, a bill that is over 100 pages, the complexities of which, everyone has to admit, go well beyond a very straightforward, very limited bill which we believe guarantees women a right that I don't think there is one person here who could object to, and that is, length of stay should be determined by the medical necessity of the procedure; and, second, that reconstructive surgery should be a woman's right. She should not have to go to appeal to some board or some insurance plan because ERISA prevents States from having legislation that would order this.

Let me say this. We have had a hearing on S. 249, and we have had two votes to attempt to get it. Senator FEINSTEIN, myself, and others—and I might say our bill has broad, bipartisan support. There is not one Member on the Patients' Bill of Rights from the Republican Party. You can say that you are not linking, you can say you are not blocking, but that is exactly what has happened. The women of America are being denied a right to something that they should have—that we should enact into law, and we should be proud, and all 100 Senators should come down and vote for this and sponsor this—because we want the Patients' Bill of Rights to be heard at a particular time and we are linking the two. That is exactly what is happening.

I could support various provisions in the Patients' Bill of Rights—the clinical trials. I think we should have them. I want to support them. But to say that we should deny the women of America an opportunity to be heard on this and to have a vote on this is counterproductive; it is wrong. It is a shame that the Senate operates in this manner.

But everyone has a right to be heard. Everyone has a right to make their objections. I think it is unfortunate. My friend and colleague from California, Senator FEINSTEIN, has been waiting very patiently. If I might—

Several Senators addressed the Chair.

Mr. DASCHLE. Mr. President, I think the unanimous-consent request is still pending. Reserving the right to object.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Reserving the right to object, let me just say the Senator from New York has said on several occasions now that this has not been the subject of any hearings. The Labor Committee has dealt with this issue at more than seven hearings, hearings that have brought people in from around the country, talking about this particular problem and about how serious it is. There has been one meeting in the subcommittee of the Finance Committee on his bill.

So let's talk about hearings. Let's talk about the array of people who have come forth and said, ''Why are you waiting? Why aren't you moving ahead with this legislation?'' I don't have an answer to that. Our caucus is attempting to promote the opportunity for all people to be heard on this issue.

The Senator from New York also made mention of the fact that his bill deals with mastectomy, and it is a very

important contribution. I applaud Senator FEINSTEIN and others for making the effort, as they have, to get to this point. But his legislation is very, very narrowly focused.

He said he supports clinical trials. We want to give him the opportunity to vote for it. He says he supports access to specialists. We want to give him the opportunity to vote for it. He wants to protect the information, the records of patients. Let's give him and others a chance to vote for it. That is what our bill does. It goes way beyond simply the right, that a woman surely should have, to be more confident about her ability to get the proper treatment when in a situation as sensitive as a mastectomy. But let's provide them the protection through clinical trials. Let's ensure that they can see necessary specialists. Let's ensure that their records are going to be protected. Let's do it all. Let's not do half a job, let's do the whole job. That is what we are talking about here.

So I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

Mr. D'AMATO. I call for the regular order.

The PRESIDING OFFICER. The Senator from New York has the floor.

WOMEN'S HEALTH AND CANCER RIGHTS ACT

Mr. D'AMATO. I yield 10 minutes to the Senator from California, Senator FEINSTEIN.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. D'AMATO. Regular order. I believe under the regular order I control up to an hour.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAUCUS. Mr. President, I make a point of order.

Mr. D'AMATO. Mr. President, I yield to the Senator from California, for up to 10 minutes, for a question.

Mr. FORD. Mr. President, take charge and give direction to these Senators.

The PRESIDING OFFICER. The Senator from New York has been recognized under the regular order. The Senator from New York does not control the floor. If he seeks to yield time, that requires a unanimous consent.

Is there objection to yielding time?

Mr. D'AMATO. Mr. President, my colleague from California has a question. I would like to yield for a question to the Senator from California.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York has a right to yield for a question. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to ask the Senator from New York a question.

As I recall, we introduced this amendment as a bill on January 30, 1997. That was 16 months ago. The Patients' Bill of Rights, I believe, was introduced on March 31st of this year. Is that not correct?

Mr. D'AMATO. Would the Senator——

Mrs. FEINSTEIN. My question about when we introduced this bill, a bill that would give a woman and her physician the right to determine the length of a hospital stay when she has a mastectomy, and quite possibly a radical mastectomy. The length of stay in the hospital would be the decision of her physician, not the HMO; we introduced this bill 16 months ago. Correct? The Patients' Bill of Rights was introduced in March of this year. Is that not correct?

Mr. D'AMATO. That is correct. The Senator is correct. We introduced this on January 30, 1997.

Mrs. FEINSTEIN. And, am I correct in that the Senate Finance Committee held a hearing on our bill on November 5, 1997?

Mr. D'AMATO. That is also correct. And the Senator testified—the Senator from California came and gave some very cohesive and forceful testimony as to the need for this legislation.

Mrs. FEINSTEIN. Is it not true that we have filed this bill to be considered by the Senate two times and you offered it in the Finance Committee two times? On March 16, we filed it as an amendment to H.R. 2646, the Parent and Students Savings Account Plus Act. Is that not correct?

Mr. D'AMATO. Absolutely. The Senator is absolutely correct.

Mrs. FEINSTEIN. On May 6, we filed it as an amendment to H.R. 2676, the IRS restructuring bill. Is that not correct?

Mr. D'AMATO. That is absolutely correct.

Mrs. FEINSTEIN. And on March 31 and on February 10 of this year, did my colleague not offer it as an amendment in the Finance Committee?

Mr. D'AMATO. I did. I did. My colleague is right. We brought it to a vote.

Mrs. FEINSTEIN. Is it not true that the Senator has been unable to get the Finance Committee to move this bill to the floor?

Mr. D'AMATO. Absolutely true. Again, procedurally this is raised, just as an analogy, as is being done here—there they raised germaneness, and, unfortunately, they kept the women of America from having the opportunity to have this bill considered at that time. That is correct.

Mrs. FEINSTEIN. Is it not true that the D'Amato-Feinstein mastectomy bill has 21 cosponsors, including a bipartisan group of women Senators—Senators SNOWE, MOSELEY-BRAUN, HUTCHISON, MIKULSKI, and BOXER?

Mr. D'AMATO. Absolutely. It is a bipartisan effort. It has been that way. I applaud my colleague from California for her leadership in this matter. We have done this and conducted this in a manner that has sought to eliminate politics and think about the women of America and the families of America, because we are talking about a disease and procedures that are hurting, harming the families of America.

Mrs. FEINSTEIN. I would like the Senator from New York to know that I am a cosponsor, also, of the Patients' Bill of Rights Act. I understand the importance of this bill. I would very much welcome floor time to consider this bill as well.

However, I did indicate in our Democratic caucus that absent that opportunity, and because women all across this Nation are going through some of the same events that two women who brought this to my attention 3 years ago in California went through, and that is to show up to have a radical mastectomy at 7:30 in the morning, and then to be pushed out on the street at 4:30 that afternoon with drains in them, the effects of anesthetics still upon them, really unable even to walk—is it not true that what we strive to do is make a simple reform and say that no woman without the permission of her physician will be subject to this kind of treatment ever again in the United States of America?

Mr. D'AMATO. The Senator from California is absolutely correct.

Let me say that we worked long and hard on this. We have many of our colleagues who, because of their commitment to deal with this—it is tragic when it hits a family it has so much of an impact—said you have to have at least 48 hours. In other words, 72 hours. And we finally have been working with the people in the medical community, and I must say we built a consensus where we recognize that we should not put any time limitation whatsoever.

If I might, Mr. President, we have the Senator from Montana who is waiting to make a statement. Might I propound a unanimous consent request that he be permitted to speak for up to 3 or 4 minutes as if in morning business, and that might we also have an additional 5 minutes then—we started late—so that he could make his statement, and then without my losing the right to continue and to hold the floor and continue our discussion with respect to this?

Mr. KENNEDY. Reserving right to object, I don't want to object. I would like to have a very brief time to be able to respond. I think, as I understand it, at 11 o'clock under the consent agreement we are going to the agricultural matter.

Mr. D'AMATO. That is why I asked for an additional 5 minutes.

Mr. KENNEDY. I would like to see if we could have, say, 15 minutes to be able to respond to that time.

Mr. D'AMATO. Unfortunately, I am not in a position to agree to that. Let me say this to Senator KENNEDY. Let's say that in one-half hour we would yield to the Senator from New York 10 minutes. Is that fine?

Mr. KENNEDY. That would be very generous.