fact that in addition to trying to solve this problem by taking money from an insolvent program, we also are planning to pass what Tennessee's Governor has called the mother of all unfunded mandates; making States, if you will, increase their Medicaid rolls at their expense so we in Washington can say we have reformed health care.

But I have to say one of the most sinister moves I have seen take place in my 2 years and 10 months being in the Senate is the Stabenow bill. The Stabenow bill seeks to say we are going to deal with SGR, that we are going to deal with our obligation in Medicare to pay physicians at least the rates they are making today. We are going to pass on a $¼ trillion bill to future generations in order to get support from physicians across our country.

I talked to physicians in our State this weekend, a meeting at Tennessee Medical Association—the American Medical Association was on the line—and I was shocked at the response. Today the Hill cited a meeting where Senator REID and others met with physicians in order to buy their support. I know we all know the selling of one's body is one of the oldest businesses that has existed in the history of the world. So the AMA is now engaged in basically selling the support of its body by leveraging—by throwing future generations under the bus, by in essence urging that we as Congress pass this week a $¼ trillion spending bill, unpaid for. If we would do that, we might get their support in health care reform.

I have to tell you, I have never witnessed something more sinister than the Stabenow bill. It is my hope that this week Senators on both sides of the aisle will come together and realize we have to graduate.

We talk fondly about the ''greatest generation,'' our parents and others, who did so much in the way of sacrificing for this country to make sure that generations who came after had a better way of life. I am sad to say that—while I consider it the greatest privilege of my life to serve in this body, and I thank the citizens of Tennessee for allowing me this lease, this 6-year lease to serve in this body to try to conduct myself in a way that will put our country's long-term interests first—I am sad to say I serve during what I would call the ''selfish generation.'' The political leadership we have today, of which we are a part, no doubt embodies the most selfish policies this country has seen in its history. There is no question that is the case; that for short-term political gain, in order to make some constituents happy, in order to give people what they want with no sacrifice, we are willing to throw future generations under the bus.

It is my hope, this week even, this body will graduate from that selfish existence, doing things we know absolutely are undermining the future of this country, and that we will come together and look at this legislation in the appropriate way. I hope there will be Senators on both sides of the aisle that revolt at the majority leader's push to purchase the support of physicians all across our country by, in essence, creating legislation that puts our country another $¼ trillion in debt.

Madam President, I wanted to say this is not at all what the President said he would do. This President has said he would offer health care reform that balanced the budget. The American people understand by doing what the Stabenow bill seeks to do this week, that is absolutely not true. This administration absolutely is not living up to the commitment it has given the people of this country.

This body needs to stand up and do what is right. I hope we will do that this week. I hope we will defeat the Stabenow bill as it now has been introduced. I hope we will work together to do those things that are responsible.

I absolutely agree physicians around this country do not need to take a 21-percent cut. I have probably been the most outspoken person on that issue in the Senate since I came here. But what we need to do is balance our resources, not continue to do things we think make sense on one hand to the detriment of future generations. It is my hope this will be embodied as part of the overall health care reform package.

This gets to my point I have been making on this floor and in committees and other places for months; that is, it makes absolutely no sense to use $404 billion out of Medicare to finance health care reform and not deal with SGR. I hope other Senators will join me in revolting against this most sinister act that, hopefully, will not come to fruition this week.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded the call the roll.

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

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

HEALTH CARE REFORM

Mr. ENSIGN. Madam President, I rise today to discuss why meaningful medical liability reform must be included in the health care reform package. Americans spend far more on lawsuits than any other country, and more than twice as much as all countries except for one.

According to a recent study conducted by the Tillinghast-Towers Perrin Group, the direct cost of health care lawsuits is $30 billion per year. These costs are multiplied by the indirect costs of lawsuits, especially doctors ordering costly tests out of fear of being sued.

Estimates of wasted money spent on unneeded tests range from over $100 billion each year to nearly $250 billion annually. In a 2006 article in the New England Journal of Medicine, it suggests that as much as 40 percent of medical liability lawsuits are frivolous.

Medical liability insurance premiums are threatening the stability of our Nation's health care system. These rates are forcing many physicians, hospitals, and other health care providers to move out of high liability States, limit the scope of their practices, and some even to close their doors permanently. This crisis is affecting more and more patients. It is threatening access to reliable, quality health care services.

I have a good friend from Nevada who practices obstetrics. In his practice he specializes in high-risk pregnancies. Because of medical liability problems that we have seen in the past several years, his insurance company limits the number of high-risk pregnancies in which he can assist.

If you are a woman and you are pregnant with a high-risk pregnancy, it would seem to me you would want the doctors who specialize in high-risk pregnancies to see you. This only makes sense. However, because of the medical liability crisis we are facing in this country, the best of the best are limited in the number of cases they can handle.

Because of the unaffordable medical liability insurance premiums, it is now common for obstetricians to not deliver babies and for other specialists to no longer provide emergency calls or provide certain high-risk procedures.

Ask yourself this question: What if I were in need of an emergency procedure? What if I were the woman who had a high-risk pregnancy and could not find a specialist to provide me with the health care I needed?

The medical liability crisis is threatening patient access to reliable, quality health services all across America. Additionally, costly medical liability premiums have forced some emergency rooms to shut down temporarily in recent years.

In my home State of Nevada, our level 1 trauma center was closed for 10 days in 2002. This closure left every patient within a 10,000-square-mile area unserved by a level 1 trauma center.

Unfortunately, a gentleman by the name of Jim Lawson was one of those in need of a trauma unit at that time. Jim lived in Las Vegas and was just 1 month shy of his 60th birthday. He had recently returned from visiting his daughter in California. When he returned, he was injured in a severe car accident. Jim should have been taken to the University Medical Center's level 1 trauma center. Unfortunately, it was closed.

Instead, Jim was taken to another emergency room where he was stabilized and then transferred to Salt Lake City's trauma center. Tragically, Jim never made it that far. He died that day due to cardiac arrest caused by blunt force from physical trauma.

Why was Nevada's only level 1 trauma center closed that day? Due to the

simple fact that doctors could not afford the medical liability insurance premiums, and there were not enough doctors to provide the care.

Ultimately, the State had to step in and take over the liability to reopen the trauma center. Our State has caps on how much someone can sue for, so medical liability insurance is affordable.

More than 35 percent of the neurosurgeons have altered their emergency or trauma call coverage because of the medical liability crisis. This means patients with head injuries or who are in need of neurosurgical services must be transferred to other facilities, delaying much needed care.

Doctor Alamo of Henderson, NV, brought another example of this problem to my attention. Doctor Alamo was presented with a teenager suffering from myasthenia gravis. She was in a crisis and in need of immediate medical treatment. Because of the medical liability situation, there was no emergency neurologist on-call to assist this young woman.

Dr. Alamo called several neurologists in the area and none of them wanted to take her case because of the medical liability situation. So Dr. Alamo had the young woman transported all the way to California by helicopter to receive the medical care she so desperately needed.

These kinds of situations should not happen and should not be forced to happen because of the medical liability crisis we face in America. Stories such as these are all too common across our country.

To address the growing medical liability crisis in my home State of Nevada, the State enacted legislation that includes a cap on noneconomic damages and a cap on total damages for trauma care. Several other States have enacted similar reforms.

This should not be a Republican or a Democratic issue. Simply put, the current medical liability crisis means patients cannot find access to care when they need it most in many areas.

Without Federal legislation, the exodus of providers in the practice of medicine will continue, and patients will find it increasingly difficult to obtain needed care. As we work on comprehensive health care reform, one of our primary goals must be to enact meaningful medical liability reform to help patients access care.

As you know, President Obama recently addressed the entire Congress on health reform. During his speech he said:

> I do not believe malpractice reform is a silver bullet, but I have talked to enough doctors to know that defensive medicine may be contributing to unnecessary costs.

The President went on to say he asked Secretary Sebelius to move forward on demonstration projects in individual States to test ways to put patient safety first and let doctors focus on practicing medicine. Let's face reality. There is no doubt that defensive medicine occurs every day and that the costs to the health care system are staggering.

As I mentioned earlier, tens if not hundreds of billions of dollars are wasted every year due to the practice of defensive medicine, largely in an attempt to avoid frivolous, junk lawsuits. Just think of how many uninsured patients we could cover with this money or how much cheaper the premiums would be for those who already have insurance.

We must stop playing games and start doing something real to address important health care issues. Unfortunately, the Finance Committee bill that was voted on last week only includes a meaningless sense of the Senate on medical liability reform. That seems to parrot some of the President's remarks.

Specifically, the language in the bill expresses the Sense of the Senate that States should be encouraged to develop and test alternatives to the current civil litigation system as a way of improving patient safety, reducing medical errors, encouraging the efficient resolution of disputes, increasing the availability of prompt and fair resolution of disputes and on and on and on. It is only a Sense of the Senate.

The provision also expresses the sense of the Senate that Congress should consider establishing a State demonstration program to evaluate alternatives to the current civil litigation system.

Let's be honest with ourselves. The Sense of the Senate is fluff. It ignores the substantial progress many States have already made with medical liability reform. Capping noneconomic damage awards has been highly successful in a number of States, such as Texas, and is something we should consider as part of health care reform.

It is important for the Senate to consider capping punitive damages, limiting attorneys' fees, and providing that if multiple defendants contributed to a mistake, each defendant should pay only for the portion of the mistake for which they are responsible.

So let's do the right thing. Let's enact real medical liability reform rather than a meaningless Sense of the Senate. As part of the health care debate, I will be offering a comprehensive medical liability reform amendment that sets reasonable limits on noneconomic damages while also providing for unlimited economic damages.

My amendment is a responsible reform measure that includes joint liability and collateral source improvements, and limits on attorney fees according to a sliding scale. My legislation also includes an expert witness provision to ensure that relevant medical experts serve as trial witnesses instead of so-called professional witnesses who are too often used to further the abuse of the system.

What happens today in our medical liability system is we have professional witnesses. Too often they are not a specialist in the field for which they are called to testify. Yet because juries do not know they are not a true expert, their testimony is allowed to influence liability claims.

My amendment uses a Texas style of caps on noneconomic damages that provides a cap of $250,000 for a judgment against a physician or health care provider. In addition, the patient can be awarded up to $250,000 for a judgment against one health care institution.

Under Texas law, judgments against two or more health care institutions cannot exceed $500,000, with each institution not liable for more than half that. In total, noneconomic damages cannot exceed $750,000.

Medical liability reform works, and it is already turning the tide against frivolous lawsuits and outrageous jury awards in some States. We have seen it in California, in Texas, and in my home State of Nevada, where the number of medical malpractice lawsuits has decreased dramatically.

It has been a crisis driving doctors out of business for too long. It is time to protect patients across the country and to ensure access to quality health care.

To illustrate my point, I would like to tell you about the success of medical liability reform in Texas. Over 16,000 new physicians have come to Texas since reform was enacted. The number of high-risk medical specialists in Texas is growing. Since 2003, Texas has added 650 emergency room doctors, 350 heart doctors, over 200 obstetricians, 160 orthopedic surgeons, and almost 60 neurosurgeons.

These additions are not limited to urban Texas. The ranks of rural obstetricians have grown by almost 30 percent. Twenty-two rural counties have added an obstetrician and 10 counties have added their first OB. The statistics go on and on about the success in Texas.

In addition to improvements in access to health care, charity care has also greatly expanded due to medical liability reform. Today, Texas hospitals are rendering $600 million more in charity care annually than they were just 6 years ago—$600 million more in charity care by hospitals than they were giving before medical liability reform.

Liability savings have allowed hospitals to upgrade medical equipment, expand emergency rooms, expand outpatient services, staff Emergency Rooms 24/7 with high risk specialists, improve salaries for nurses, and launch patient safety programs.

Without reforms and the attendant savings, these healthy developments would not have been possible. Lawsuit reform has been a magnet for attracting doctors and the funding mechanism to improve access to care and enhance patient safety.

Physicians have seen a decrease in their medical liability premiums. Since 2003, physicians in Texas have saved, collectively, almost $600 million in

their liability premiums. Today, most Texas doctors are paying lower liability premiums than they were almost 10 years ago.

All major physician liability carriers in Texas have cut their rates since the passage of the reforms and most of them by double digits.

Texas's reforms prove lawsuit reform can improve access to care, expand the number of doctors and types of care hospitals are able to offer, and help reduce medical costs. According to a conservative estimate by the Congressional Budget Office, CBO, if Congress adopted only a few of the proposed lawsuit reforms, the deficit would decrease by $54 billion over 10 years.

Madam President, $54 billion is how much it would save the government. To put this in perspective, this is twice as much as the Finance Committee plans to raise by taxing medical devices.

During the Finance Committee markup, CBO's Director, Dr. Elmendorf, added that he felt the savings to the private sector would be approximately equal to the $54 billion saved by the government.

Madam President, $54 billion to decrease the deficit, and the savings in the private sector is another $54 billion. Under this conservative estimation, which is substantially less than what third-party estimates have shown, enacting medical liability reform would save at least $100 billion between the government and the private sector over 10 years.

So why would the Democrats leave medical liability reform out? Well, they did put a Sense of the Senate in the Finance Committee bill. What are the savings from the Sense of the Senate to the private sector and the government? A big, fat zero.

I will tell you why the Democrats left out medical liability reform. It is because it would hurt a Democrat special interest group: they are known as trial lawyers.

Howard Dean, the former chairman of the Democratic National Committee, put it simply:

> [T]he reason why tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth. Now, that's the truth.

I hope as the debate unfolds on the floor that many of my colleagues on the other side of the aisle will change their mind about enacting serious medical liability reform. My medical care access protection amendment is not a battle of right versus left. It is a battle of right versus wrong.

This amendment is the right prescription for patients. We need to secure patient access to quality health care services when they need it the most. I urge my colleagues to adopt this commonsense amendment when it is brought to the floor.

One last comment. We are going to be adding what is called the doctor fix. We are going to be adding the doctor fix unpaid for. It is $250 billion over the next 10 years. I have been talking a lot about the Federal debt and what we are doing to our children. The other side wants to do what we all want to do around here; that is, make sure doctors' fees in Medicare are not cut because they are already paid at a very low rate, but they are doing that without honoring what they talked about known as ''pay-go''.

We heard a lot about that during the campaign: We need to pay for everything. We cannot keep adding to the deficit. They accused this side of the aisle as being fiscally irresponsible. Now they are going to add $250 billion, take it off the table, and say: Well, it does not count. We are just going to add to the deficit $250 billion; that we can fix the doctors' payments, but we are not going to pay for it.

I think this is pretty outrageous. That is why we are going to have amendments to attempt to fix what is happening to the doctors but to do it in a fiscally responsible way so we are not adding to our children's and our grandchildren's tax burden in the future.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. McCAIN. Madam President, parliamentary inquiry: What is the pending business before the Senate?

The PRESIDING OFFICER. There is just under 3 minutes remaining in morning business.

Mr. McCAIN. And then?

The PRESIDING OFFICER. Then the Senate will turn to the conference report on homeland security.

Mr. McCAIN. Madam President, thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Madam President, I ask unanimous consent that the remaining time in morning business be yielded back.

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

Morning business is closed.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 2892, which the clerk will state.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2892), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2010, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of October 13, 2009.)

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, I speak today in support of the conference report providing appropriations for the Department of Homeland Security for fiscal year 2010. I especially wish to thank my ranking member, Senator GEORGE VOINOVICH, for his cooperation in producing the agreement that is now before the Senate. It has been 8 years—8 long years—since the attacks of 9/11. There are some people in this country who have become complacent about the threat of another attack. Don't count me as one of them. I am not one of those people.

There have been numerous terrorist attacks around the globe, including the London, Madrid, and Mumbai bombings. Just last month, a Denver man was indicted on a charge of conspiracy to use weapons of mass destruction. Where? In New York City. So we must continue to be vigilant. Nor can we be complacent about Mother Nature's power to wreak havoc with a major earthquake, flood, or hurricane, meaning that such disaster relief will require the funding provided in this bill.

This year, I have set five goals for the Homeland Security Department, five goals that I trust we all share. What are they? No. 1, to secure our borders and enforce our immigration laws. No. 2, to protect the American people—your people, my people, the American people—from terrorist threats. No. 3, to prepare for and respond to all disasters, both manmade and natural. No. 4, to support our State, local, tribal, and private sector partners with resources and information. No. 5, to give the Department of Homeland Security the management tools it needs to succeed.

I believe the conference report we are presenting today meets those goals.

Funding for the Department of Homeland Security totals $42.8 billion. Do you know how much money that is? That is $42.80 for every minute since Jesus Christ was born. That is a lot of money. It is an increase of $2.65 billion