RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. CORNYN). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will begin a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Mississippi.

MEDICAL LIABILITY REFORM

Mr. LOTT. Mr. President, I thank the distinguished leader for the information he has just given us about the schedule for the month of July. Obviously, we do have a lot of important work to do. Having dealt with the difficulties of having to put in full days, including votes on Mondays and Fridays, I know it is not always well received. It has to be done in order to achieve these very important pieces of legislation that need to be acted on in July.

I especially thank the leader for going forward with the legislation on medical liability reform, the Patients First Act. In my own State of Mississippi, we have a health care catastrophe on our hands. Doctors are losing their coverage. They are leaving the State. And they are getting out of specialty services such as in the case of an OB/GYN. They are getting out of obstetrics. It is causing a huge problem along the Mississippi gulf coast where we have over 500,000 people. We are down to three neurosurgeons. We did have seven. We have two fully staffed trauma facilities in that area, only two. And with only three doctors now, on weekends we are really stretched very thin. If we lose one more neurosurgeon, we will not be able to keep those two trauma facilities operative.

We also have a problem in getting an adequate number of orthopedic surgeons. As Dr. FRIST knows, you have to have an orthopedic surgeon available also for trauma services. We recently attracted a doctor from St. Louis, MO who wanted to raise his family in a smaller community. He is an outstanding doctor. He was paying $70,000 a year for his medical liability insurance when he left St. Louis. He came to our State. Within 6 months his coverage went up to $150,000 a year. This is an African American doctor, highly qualified, desperately needed there in the Pascagoula-Moss Pt., MS area. I am afraid he is not going to be able to stay with that kind of problem.

This is a huge problem. Some of my friends I went to law school with are saying: Let the States handle this problem. Some States have done a pretty good job. California has done an exemplary job. I believe this legislation is pretty closely patterned after the California example.

Some States have done some good work but other States have done nothing or very little. My own State, while the legislature wrestled with it, made some progress but it has not been nearly enough. My friends in the bar say this is a States rights issue, more or less. But in this case there is no question that this is driving up health care costs across the board. Doctors will tell you that they are ordering additional procedures—defensive medicine, if you will—and it is clearly affecting how much Medicare is costing.

I have heard astronomical numbers, and I will verify them before I speak on this issue tomorrow or the next day as to exactly how much the impact of this excessive lawsuit activity against doctors and the medical professions and the hospitals is driving up the cost of Medicare. There is no question—you might say the States have a right to do this and can handle it, or tort reform, or product liability even; but in this case there is no question that it has a Federal ramification that is costing us lots of money.

We are trying to do the right thing for Medicare beneficiaries. We are trying to put prescription drugs in there but we need reform and we have to find some ways to reduce the costs that are being paid out by Medicare. This is one way to do it.

I am excited that we are going forward with this bill. I don't know if we can get enough votes to stop a filibuster but that is not the important thing. The important thing is that we have a crisis developing in America in health care delivery and the medical liability area, and so I think we should take it up and let's have the vote—and we may have to have more than one vote.

JUDICIAL NOMINATIONS

The other thing I want to do is pick up on what the leader said about judicial nominations. I continue to be concerned that we are in the process of setting a precedent, where judges can be defeated by filibuster. That has not been the rule. That has not been done—there is maybe one instance that you can point to in 200 years. In that case, I think it is a very fragile argument because the nominee, Abe Fortas, was debated for only 10 days, and there were ethical problems that developed and his name was withdrawn. We didn't do it during the Clinton years.

A lot of delays are involved when you are talking about how Senators react, and sending a blue slip to indicate their preference on judicial nominations, and there were concerns and a lot of problems. But not one time did we defeat a judge by filibuster. I had to file cloture, I think, six or seven times but in each case we either vitiated it or had a vote on cloture and then went straight to the vote. We completed action on those judges.

I don't think we should have a litmus test that involves one issue, or a few issues, because I make the case repeatedly that I voted for Justice Ruth Bader Ginsburg, even though I knew that philosophically I would not agree with her. On a lot of issues I strongly disagreed with her. But she was qualified by education, experience, temperament, and ethics. She had a right, I believe, to have an up-or-down vote. She got one and she was confirmed, and I voted for her.

On two of the other nominees, I believe for the Ninth Circuit, Berzon and Paez, I felt very strongly that they should not be on that circuit court bench. But, again, they came through the committee, we debated them on the floor, there was an attempted filibuster, which I opposed, and we voted on them. I voted against them but they got a vote. They were confirmed and they now serve on the judiciary.

I think the leader has tried very diligently to find a way to get away from these filibusters, even though we still have two. I think we have had five or six votes on cloture on Miguel Estrada, and I think we have had two on Priscilla Owen. But I hear there may be filibusters on other qualified men and women, as well as the minorities that are going to be affected by this—especially in the case of Miguel Estrada.

So we have to find a way to get away from this. There is even talk now that maybe we should have recess appointments. I don't think that is a good precedent either. I spoke against it on the floor when President Clinton did it, so how can I now say it is OK? But if we continue down this trail of filibustering judges, there will be a reaction. There will have to be additional action.

The leader has introduced a bill that has been reported out of the Rules Committee that would be very careful. After 12 days, you could file cloture, and then it would be 60 votes required; the second cloture, 57; the third cloture, 54; and finally, only 51 after basically what would take a full month. I think that is a very long, protracted, and unnecessary process but it, again, shows good faith on the part of the leader to find a way to get ourselves out of this precedent.

I think we will all rue the day if we do this. Yes, we have all ramped up the difficulty in confirming judges on both sides with a number of men and women, perhaps unfairly. But we are taking a huge leap and really undermining the process for confirming Federal judges if we allow filibusters to stand. We must find a way in the next couple of months to work through this. I call on my colleagues on both sides of the aisle, let's let cooler heads prevail and pull back from this precipice that we are standing on and find a way to give these judges an up-or-down vote. I believe we will be better as an institution and the judiciary will be better if we avoid this problem.

I have been thinking about these issues over the past week when I have been at home. I particularly was confronted everywhere I went with the problem of doctors in my State of Mississippi, and to be able to keep the doctors in practice, keep them from retiring and leaving the States, we must act in this area.