

Given the objection to the motion to proceed to these bills, it was necessary to file cloture motions on the motions to proceed; thus, we now have scheduled up to two cloture motions on Monday at 5:15, beginning at 5:15. The first will be on a motion to proceed to the Medical Care Access Protection Act, and the second vote will be on the cloture motion relative to the motion to proceed to the Healthy Mothers and Healthy Babies Access to Care Act. If those cloture motions fail, on Tuesday morning we will have a cloture vote on proceeding to the Small Business Health Plans legislation.

Mr. President, the way this is configured is that we have a vote on the first medical liability bill, which is a comprehensive bill built pretty much on this Texas model that I referred to in my earlier remarks. If that is successful, we will continue the debate on that. If it is not, we would continue with another medical liability bill that has a slightly different focus to it, again based on the Texas model. It will focus on in particular where medical liability premiums are felt most acutely: in women's health care and babies' health care, pediatrics and maternal health care, and that is obstetricians and gynecologists. I hope we will be allowed to proceed and debate on those two. We will be voting on both of those, or at least one of those but up to two on Monday night, with no votes after those two votes on Monday night.

Depending on the outcome but following whatever that outcome is, we will turn to the small business health reform plans. The small business health plans, as we know, have the potential for addressing many of the issues I talked to earlier—the cost issue, the access issue, and the quality issue as well—because what they do is allow small businesses—and most businesses in this country are small businesses; they create about three-quarters of the jobs in this country—they allow small businesses to group together so that they will have that purchasing clout which we know comes with numbers. When we add that purchasing clout, you can go and bargain for better prices, negotiate for better prices, and with that comes a lower cost of health care to all people who work in small businesses that participate. With that, people who don't have health care today who work for small businesses will be able to get a plan that is within reach, instead of the hugely expensive plans that are out there today.

So I am very excited about addressing the skyrocketing costs of health care head-on: choice, consumerism, patient-centered health care, all of which will be centered on the medical liability issue we will be debating and the small business health plans.

Mr. President, I yield the floor.

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MEDICAL CARE ACCESS PROTECTION ACT OF 2006—MOTION TO PROCEED—Continued

Mr. FRIST. Mr. President, I move to proceed to S. 22, so that Senators may speak to that motion.

The ACTING PRESIDENT pro tempore. The motion is pending.

Mr. FRIST. Mr. President, over the course of the morning we will have various speakers coming in to talk about a number of issues focusing on the issues I have spoken to on health care and the cost of health care and how it affects people in their everyday lives.

CINCO DE MAYO AND THE CONTRIBUTIONS OF MEXICAN AMERICANS

Mr. FRIST. Mr. President, I also will take a moment to interject what is a celebration today. It started with two events that happened 144 years ago this week, two events that signify great advances in the history of freedom in North America.

On May 1, 1862, Admiral David G. Farragut—the first Latino flag officer in any branch of the U.S. military and the first person awarded the rank of Admiral in the U.S. Navy—won a decisive engagement with Confederate naval vessels in New Orleans Harbor.

This was, perhaps, the most important naval engagement of the Civil War.

While almost 3 more years of difficult fighting still awaited Union troops, Farragut's victory at New Orleans: cut the Confederacy in half; granted union forces control of the Mississippi; contributed greatly to the Union victory; and, in turn, helped end slavery.

As Farragut's troops occupied the city of New Orleans, another event over 1,000 miles away was unfolding.

On May 5, 1862, a fighting force of 2,000 peasants confronted 6,000 well-equipped and expertly trained French troops. The French had come to conquer the small town. Instead, they found a fierce and proud resistance, and the peasant army prevailed.

A Mexican defeat that day could have even undone Farragut's victory at New Orleans.

French Emperor Napoleon III hated the United States and had clear sympathies with the Confederacy and its slave-holding culture.

With a base in Mexico, Napoleon's forces might have crossed the Rio Grande to offer support to the South in its battle with Union forces.

And Union forces were fully aware of the threat. General Phillip Sheridan supplied the Mexicans with the ammunition and equipment they needed to expel the French. Some Americans even joined the Mexican Army.

The battles were waged and won.

The Union prevailed, and Mexico successfully fought off the French invasion.

The Mexican victory on Cinco de Mayo wiped the last vestige of indigenous monarchy from the North American continent.

As the Cinco de Mayo story illustrates, our countries have a long and intertwined history. It has, at times, been a difficult one. But it has also been one of shared victory.

Cinco de Mayo also gives us an opportunity to recognize the invaluable contributions of Mexican Americans to our culture.

Through their vibrant traditions and deep commitment to faith, family, and country, Mexican Americans have enriched our society.

They are our friends and neighbors, our fellow citizens and protectors. Citizens of Mexican descent are, at this very moment, fighting in Iraq and Afghanistan to protect the American homeland.

So, today, we celebrate the unique contributions of our Mexican American comrades, and we toast our future, shared achievements.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, today 46 million Americans are living with no health insurance.

I am not sure everyone understands what it means to have no health insurance. We as Senators don't have a problem with that. We have insurance. I think it is very good insurance.

I can remember my parents having no health insurance when my dad worked in the mines. Once in a while he would go someplace else to work and he would have some insurance. After my dad passed away my mother had Medicare. That was the best insurance she ever had.

You would think that since I was a boy, America would have made progress in this health care problem, but it has gone the other way. More people are uninsured now than before. There is a real health care crisis in America today. The crisis can be felt in people's homes, in neighborhoods, in the workplace, and even corporate board rooms because they realize it is a problem when 46 million people have no health insurance.

Health care costs are going up and up. In all of the newspapers around America today there is an article which talks about what has happened. More people are forced to opt out of employers' insurance, the article says. A growing number of Americans who

work for companies that offer health insurance are having to turn it down. Many companies don't offer insurance, but even at those that do, people can't afford to opt into the system. Why? Because of a 42-percent jump in premiums over five years.

The Robert Wood Johnson Foundation said 3 million fewer U.S. workers eligible for employer-sponsored health insurance enrolled in 2003 compared with 1998.

Even where insurance is available people are not opting into it. Why? Because now it costs on average \$3,481 to be able to afford this insurance for an employer-sponsored individual policy. And these statistics from the Robert Wood Johnson Foundation are 3 years old.

It would be far more than that now.

Health care costs too much. Premiums are going up. Premiums have increased 70 percent since the year 2000. It has crippled businesses, including some of the stalwarts in American society such as Ford and GM. And the cost of prescription drugs is part of that.

The Medicare drug plan has been a mess, to say the least. In Nevada, a relatively small State in numbers of people, almost a half million people have no health insurance. More than 100,000 children have no health insurance in Nevada.

Then there is the fact that many diseases could be cured, which would cut down on the cost of health care, diseases such as diabetes, Parkinson's, Alzheimer's. We don't know all of them for which we are looking for a cure.

Of course, we can't move forward in research because the Republican majority refuses to allow us to move forward with this crucial legislation.

We need a new direction in health care. Republicans have had 5½ years to put their arms around this crisis. But even with control of the White House, the Senate, and the House, they failed. They continue to hold in their arms the insurance industry.

Next week, Republicans have scheduled what they call a Health Care Week. This is really a mini debate in an area where we have a major crisis—the Republican approach to a national emergency is one that brings a number of questions to mind.

My first question is, Why has it taken so long even to have a mini debate?

We are about 80 percent of the way through this 109th Congress. We have spent weeks and weeks picking fights over radical judges and weeks to help big business on issues such as class actions and asbestos.

With a national emergency on health care we are going to spend a handful of days, literally. This Health Care Week is a public relations gimmick—something like the "Mission Accomplished."

The majority couldn't be serious about helping American people with health care and do what we are ex-

pected to do about health care in a week.

My second question is, Who do the Republicans want to help? The people getting help under this Republican majority are special interests. Not the people we have tried to break through and have the middle-class American people represented in Congress. Republicans don't have a single prescription for America's health care emergency, except that they have a cabinet full of medicine to fatten big business.

On Monday, they want to have a vote on this same, tired medical malpractice bill that we have defeated day in, day out, week in, week out, month after month, year after year.

They keep bringing them up and having them defeated. Why? Because they do not mean anything to the American people.

If we are going to do something about health care, are we going to do something that just makes the insurance industry even bigger and stronger and fatter than it now is?

That is what these medical malpractice bills do; they enrich the insurance industry and do nothing to help working Americans.

Nevada is a good example. A few years ago, we were told there was a medical malpractice "crisis" in Nevada. The Republican Governor called a special session of the legislature. They set caps on pain and suffering damages.

Who has benefitted? Not those people who have the wrong leg taken off in surgery, or who have been given the wrong medicine in surgery. And the doctors haven't benefitted either.

The insurance rates in Nevada haven't gone down. Let me repeat that, in the few years since that legislation passed, insurance rates have not gone down in Nevada for doctors. That "crisis" was something that was put forward by the insurance industry, and they have done well—they are paying victims less but they are still charging doctors the same high premiums.

The insurance industry wants to have this benefit in every state, even the states that have refused to enact caps on damages. It's the same old story. Last Congress, the Senate rejected three times virtually identical bills—the same one-size-fits-all medical malpractice bill for the most seriously injured victims.

It's true that people make mistakes. But when you are talking about medicine, these mistakes can be very serious. Most of these mistakes aren't made in a wanton fashion. Rarely does that happen. But people make mistakes. They are negligent.

Two years ago or so, I went to Walter Reed for surgery on my left foot. They wheeled me into the operating room, and as I am laying there getting ready for the surgery. I asked the doctor and the people in attendance: Why do you have a black mark on my right foot?

They said: That is where we are going to do the surgery.

Luckily, I pointed out that they had marked the wrong foot. So they erased the black mark on my right foot and did the surgery on the left foot, the correct one.

This surgery was not life threatening to me, but it took 4 or 5 months for me to recover from the surgery to the foot that needed it, let alone if I'd have had to recover also for a foot that didn't. People make mistakes.

That is what medical malpractice is all about. Doctors make mistakes and hurt people. In our system of fairness and justice, the only way to respond is with dollars. To set these arbitrary caps to save the insurance industry is senseless and unfair.

Not one of these bills we are going to take up next week has anything to do with helping people with their health care.

One bill they claim will help small business. The others they claim will help patients and doctors. These bills will do just the opposite.

In the Orwellian world in which we find ourselves in Washington, under Republican control, whatever they say it does just the opposite. Far from helping, the measure dealing with small business health care, for example, that we will get to next week, threatens the coverage of those who have insurance now. It does nothing to extend coverage to those who need it. It gives control of our health care to the insurance companies even more. Insurers, not doctors, will decide if you get coverage and what you will be charged. That is what the legislation is about.

After these three bills, we are done with health care this year. That is enough. We have had health care week. Three bills that do nothing, and we are done with health care and on to something else.

The third question: Why is this majority refusing to consider real solutions to Americans' health care problems in their so-called health care week? I applaud my colleagues for recognizing health care deserves the Senate time. But the agenda is frightening. A Republican in the White House, both Houses of Congress controlled by Republicans—excuses? They should have none. They have it all. But they have given America nothing.

Where, for example, is stem cell research? Where are Medicare improvements? Where is relief for the uninsured and small businesses in this country?

In one bill, sponsored by Senators BAUCUS, LINCOLN, and DURBIN, they have health care legislation in the Senate that would actually help small businesses. It would give them the ability to pool and choose from the same health care options that we as Senators have. If it is good enough for us, why don't we give everyone the same opportunity we have, and do it soon—such as next week?

Senator LEAHY, ranking member of the Judiciary Committee, has insurance reform legislation that brings the

insurance industry under the Federal antitrust laws. Right now, the insurance industry can conspire and fix prices and do all kinds of things other businesses cannot do because they are not subject to antitrust laws. Why is the insurance industry exempt? Because of the McCarran-Ferguson Act. I am sorry to report that a Nevada Senator by the name of Pat McCarran has his name affixed to some of the most unfair legislation this country has ever seen.

It was enacted during the height of the Depression when Senator McCarran and a man by the name of Ferguson, a Member of Congress, got together and said, let's give the insurance industry a break. We will not have the Sherman Antitrust Act apply to them.

The legislation was supposed to be in existence for a couple years, but 70-plus years, it is still in effect. Who is the biggest, most powerful industry in America? It is the insurance industry, yet they are not subject to the Sherman Antitrust Act. The only other business that isn't subject is professional baseball, major league baseball. Senator LEAHY wants to change this. I support him in this. This is a real way to bring insurance premiums in line and really help doctors and health costs. Make the insurance industry subject to the same laws all other industries are subject to and premiums will go down.

What about stem cell research? We talked about that yesterday. Senator FRIST said he is going to bring it up. I hope he does. I talked to him about that before. Time is running out. Every day we wait to give our scientists the tools they need is another day of suffering for millions of Americans, fearing they will never have the opportunity to have their loved ones or themselves cured of these dreaded diseases. We need this groundbreaking research. If the Government acted in the 1940s and 1950s such as the Republicans are acting today, we would not have a vaccine for polio.

Where is Medicare on the Republican agenda? After May 15th, a few days from now, any people who have not signed up for this flawed plan have to wait until next year. And next year when they sign up, they have to pay a penalty. They cannot sign up in the meantime. They have to wait until next year.

Five months after this program has gone into effect, it is still mired in confusion and red tape.

A real health care week would fix Medicare's problems, extend the May 15 deadline, it might eliminate penalty from the President's drug program, and include a repeal of Medicare's prohibition from negotiating with drug companies for cheaper prescription drug prices.

Isn't it hard to comprehend that Medicare cannot bargain for lower prices for the drugs they purchase? CVS can. Rite-Aid can but not Medicare. Why? Because when that bill was

written, they wanted to give an unfair advantage to the drug companies. And they gave it to them.

America's health care crisis is real. Unfortunately, the majority's commitment to solving it is not. Next week, as we did with gas prices, Republican actions will tell us they care about health care, as they cared about gasoline prices. The best they could come up with was a \$100 rebate which has been panned in every newspaper and by every commentator in America the last 10 days.

It is not what they say they stand for, it is whom they stand for that matters. And it is not for the American people. With their health care week, the majority is making it very clear they stand with insurance companies, not the American people.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I, for one, am pleased we are moving forward this next week with the health care agenda in an attempt to hold down the costs of health care.

My colleague who just spoke said: I don't think any Senators have ever experienced life without health insurance. Before I came to the Senate, I didn't have health insurance. So I come to the Senate today as a small businessman who has had to struggle with the costs of health insurance in my small business. I also had to struggle with my employees, making sure that they had appropriate health insurance to meet the immediate needs of their family.

The fact that the majority leader has decided this next week to declare health care week to help put forth three pieces of legislation, Senate bills 22 and 23 which deal with liability reform is great. We cannot continue to bury our heads in the sand and ignore the fact that lawyers, some way or the other, do not contribute to the cost of health care. The fact is, the threat of lawsuits do add to the cost of health care.

Finally, I am pleased one of the bills coming forward in the Senate is the bill allowing small businesses to form associations. Then, as a purchasing unit, they have more power in the marketplace and can negotiate cheaper health insurance policies as a general rule. It does not happen all the time. But at least it gives the small businessman one more tool in trying to hold down the costs of health care.

As a small businessman, I had to struggle to maintain health coverage in my veterinarian practice and reached the point at one time where I said: I think what we finally need to do, as a small businessman I cannot afford health insurance, so we will work with each individual employee and give them extra pay so they can go out and shop for their own health insurance. So many times when you have small businesses, as I did, you become the first employer of many new employees entering into the workplace. With the

idea they would be somewhat mobile and moving around from one employer to another for the next few years, we decided that was okay, and my wife and I decided to begin setting aside our own savings account to pay for health care costs in case, for some reason or another, I had an incident or she had an incident where we needed to go to the hospital and have some health care.

Being a veterinarian and lifting heavy dogs on the exam table all the time and not expecting the dog owner to pick up the other half of a Great Dane, I ended up having back problems and had to have back surgery. I didn't have health insurance. I paid for it myself out of my own pocket. Fortunately, my wife and I had the foresight to set aside a savings plan so that if something such as this did happen, we could pay for it. But it set us back. We were able to survive that particular incident. It was kind of an interesting thing. They did not want us to go into the hospital. They would not let us in because we did not have health insurance. I said: I will pay for it. When we got in there, we had the surgery, and I did very well, and I am very active today. Consequently, they did a great job on the surgery, and when we checked out of the hospital, they said they would reduce our costs 20 percent because "we do not have to deal with the paperwork of dealing with the costs of having to process your claim."

So much of the paperwork is driven by trying to protect themselves from frivolous lawsuits. That has been my personal experience.

That is why I am in the Senate today talking in favor of Senate bill 22, called the Medical Care Access Protection Act of 2006, which is a comprehensive liability reform bill, and in support of Senate bill 23, which is called the Healthy Mothers and Healthy Babies Access to Health Care Act, and talking in favor of the association health plans bill that allow small businesses to come together and form associations so they can, as a bargaining unit, bargain down and get a more reasonable cost on their health insurance.

What happens if we do nothing? Right now there are many smart young men and women across the country who are being literally driven away from the health care industry. We are attracting fewer and fewer high-quality medical students than ever before. In some States and some specialties, practicing doctors are actually leaving their professions behind.

A little later on I will give you the experiences of a doctor in a rural community who is actually preparing to leave his profession because of the high cost of health insurance. Most of it is because of the high liability insurance, and it is extremely prohibitive for young students and doctors to stay in a field they cannot afford because of the high liability insurance costs. This is creating a problem for patients in

health care across the country but particularly in the rural areas. I will address that later on.

Doctors are more reluctant to perform complex and high-risk medical procedures such as those involving pediatric orthopedics and spine surgery. It is not an easy procedure having to repair the bone of a fractured infant or having to do spinal surgeries as I experienced. This puts patients' access to emergency and trauma care at risk, also, because this is another high-risk area. Many times, you have to tailor the treatment plan to what is happening with the patient. There is not always a textbook approach, where you treat every patient exactly the same. Every patient is a little bit different.

Doctors are moving to States with a more favorable medical liability climate, leaving some areas underserved. In the State of Colorado, which I proudly represent, about a decade ago we did a lot to try and hold down the costs of medical insurance. We dealt with a lot of aspects of medical liability reform. Many of those we have in this bill, but we actually went further than what is in the bill.

The bottom line is, in Colorado, we were able to hold down the costs of medical insurance for medical doctors fairly significantly. One of the problems that happened in States such as Colorado, although we had done a lot of things to hold down the cost of health insurance, we found because health insurance companies pool their risks from States other than Colorado, we did not have the impact in some cases we expected to have because other States have not done that much in trying to hold down the cost of health insurance and liability problems that doctors incur when they are in their practices.

We were disappointed in that regard. That is why I, as a Senator, feel we need to have a national approach to this problem. That is because there is a lot of variation out there between States, and those States that are not doing anything have an adverse impact on States such as Colorado that are willing to step forward and try to reduce the liability risk and to reduce frivolous lawsuits.

Now, in Colorado, we are lucky enough today to already have had some liability reform for frivolous lawsuits. But across the Nation, States are experiencing extreme shortages in health care professionals because of the cost of liability insurance.

Now, another thing that may happen if we do not do anything is that medical students that may eventually wish to settle in States such as Colorado, but cannot because they cannot get the training they need because they cannot afford the liability insurance in States where they have to go to do their residency. We have a medical school in Colorado, but lots of times medical students are encouraged, with their residency and whatnot, to go to other hospitals and other institutions because

everybody has a little bit different view of how they are going to handle different types of cases, and this exposes them to different points of view, so they can make up their mind what best works for them. So they will lose that opportunity.

Now, the bill, S. 22, would create a graduated cap system similar to what was just put in place in Texas. If we look at the Texas model, we have seen some remarkable results. But the bill would provide for unlimited economic damages. So if the patient wins a lawsuit against a medical doctor to provide for a decent living for their family, then they can collect those economic damages. It provides a stacked cap model that would keep non-economic damages at or below \$750,000. They break it out this way: There would be up to \$250,000 from a decision rendered against a health care provider and \$250,000 from a decision rendered against a single health care institution and \$250,000 from a decision rendered against more than one health care institution, not to exceed \$500,000. It also provides punitive damages, but those are not to be any greater than twice the economic damage award or \$250,000.

This bill also guarantees that lawsuits are filed no later than 3 years after the injury and extends the statute of limitations for minors injured before age 6. Under the age of 6, not always does an incident emerge right away. So if you have too short of a statute of liability, then it does create a problem for the patient. So this bill also looks at what we can do to take care of legitimate lawsuits that patients might have. This is one of the aspects which is provided for in the bill we have before us.

The language also intends to maximize patient recovery of payment by focusing on attorney payment regulations. It also establishes standards for expert witness rules, promotes fairness in the recovery of health benefits, and attempts to prevent double recovery.

It keeps the focus on the patient by attempting to curtail frivolous lawsuits, which is the key.

I mentioned Texas earlier in my comments, where there was legislation that was recently put into effect. Here is what happened in that State since September of 2003. They have added nearly 4,000 doctors in their State. Insurance premiums have declined. The number of lawsuits filed against doctors has been cut in half. Those are very significant events. It is similar to what we experienced in the State of Colorado when we passed a far-ranging liability reform bill.

Currently, we are at a crossroads on a very controversial issue.

Now, in the interest of my constituents, I have cosponsored this particular piece of legislation, S. 22, the Medical Care Access Protection Act of 2006. It still allows for individuals to file claims for compensation for all economic damages they have incurred and allows for a reasonable amount of punitive damages.

Now, I have a few anecdotal situations I would like to talk about that affected Colorado. These are doctors who came and visited my office, and here is what they had to say, why they think we had to have medical liability reform.

The first one is about a medical doctor in Ft. Morgan. It is a relatively small rural town in northeastern Colorado. He expressed his concern in having to stop accepting new patients. He was concerned that with the rising costs of liability insurance, he would no longer be able to afford to accept new patients with the amount he is reimbursed. Even more distressing for this doctor in rural Colorado was the fact that he was going to have to start turning away patients whom he had been serving for years. His final question was, if he could not afford to serve them, who would? This brings up anecdotal evidence of what I explained earlier, that because of the high cost of liability insurance, doctors are giving up patients in rural areas because they simply cannot afford to service them because of the liability incurred.

Last week, a student with the American Osteopathic Association expressed his troubles finishing up his education. This applies to student experiences. This student is from rural Colorado, with plans to return to rural Colorado to practice. The problem is, he cannot afford the medical liability insurance in other States to get the specialized training he needs to come and practice in rural Colorado.

Now, doctors in small bordering towns of Colorado, such as Wray, Holyoke, and Burlington, cross the border into Nebraska to serve the rural areas of both States. Now, even if they are lucky enough to be able to afford the medical liability insurance in Colorado, it is nearly impossible for them to afford the additional liability insurance they would need to practice in the rural areas of the bordering State, which is probably closest and more accessible. This is another reason I think we need to have some national legislation.

Doctors and specialists from Ft. Collins drive as far as Cheyenne to serve the patients of the frontier country in between those two destinations. Without their dedication, the constituents they serve would be left without health care. We are now faced with that reality because these dedicated doctors can no longer afford the medical liability insurance they are required to have to practice in rural areas.

It was expressed in a meeting this week that eventually the need for liability reform legislation would be null and void. Why? Because large hospitals are beginning to pay on a salary so doctors can afford the rising cost of medical liability insurance without worrying about the rate of reimbursement. That may be a solution in urban areas where there is the opportunity for doctors to practice at a large hospital. But in rural areas, that is not an

option, and the cost of medical liability insurance will force doctors out of rural areas where they are desperately needed. That is why I think it is so very important we move ahead with these pieces of legislation.

I have shared with my colleagues some anecdotal evidence as far as the State of Colorado is concerned. Based on the Colorado experience and based on my personal experience, we cannot afford to continue to stick our head in the sand. We need to realize and recognize there is a problem out there with frivolous lawsuits against dedicated, hard-working medical doctors, particularly those who are trying to make their practices operate in rural areas.

So I, for one, ask my colleagues to join me because of the serious problem that is facing the medical community. I believe it is time for the Congress to act, and I am delighted that the Senate has decided to take up the bill this next week.

I yield the floor, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I thank the Senator from Colorado for his comments. He has made a great contribution. He knows a little bit about this because of his own background as a veterinarian in terms of health care.

I come to the floor to speak as somebody who has personally experienced the phenomenon of being placed in the position toward my practice—I am a practicing physician. I still practice on Monday mornings. I still practice on the weekends. I have delivered several babies during this session of the Senate.

What the American people need to understand is we are going to spend \$2.3 trillion this year on health care in this country. And \$1 out of every \$3 does not go to help anybody get well. We are never going to be able to compete globally if we cannot control the health care costs in this country. So I wish to walk you through, for just a minute, how this threat of liability raises the cost of health care for everybody in this country.

Only 16 percent of the lawsuits that are filed across the entire country have any merit whatsoever. Mr. President, 84 percent of them are filed with the idea that we can intimidate people into settling a case so a lawyer can make money. It has nothing to do with the patient. It has everything to do with enriching the trial bar. I have experienced that personally as a physician who has delivered over 4,000 children into this world.

What happens is, we change the behavior of physicians because of the tremendous liability that is out there. There are some very good statistics that reveal that. We know that 6 percent of the cost of health care today is for tests that are ordered on patients in this country that are not needed by the patient at all but are needed by the physicians to protect them in case they have some aggressive lawyer who

wants to try to say: You didn't do everything in your power to make sure somebody is getting well. So we are going to waste \$140 billion—\$140 billion—this year on tests that our people do not need because of the threat of liability exposure. Think what that money could do for access for everybody else who does not have health care today. We could buy everybody in the country who does not have health care health care with just the money we are wasting on the tests.

The idea of extorting a settlement from a frivolous lawsuit does not come without significant cost to this country. It is not just the cost of the tests that are ordered that are not needed, there is also the cost of defending it. In the one case I have had in 24 years as a physician, the lawyer costs to defend me in that case, which was thrown out of court twice, were \$65,000—for that one case. That was just the lawyer fees, and that was back in the 1980s. And I spent about \$60,000 worth of time that I was not working taking care of patients to prepare myself for all the grilling and interrogation that comes from an aggressive lawyer who thinks they are going to hit a home run off my insurance that I pay. The consequences of that have been that malpractice rates, liability insurance rates, have skyrocketed.

In Texas, what we know is happening is, it is not just that with their new system, they have more doctors coming, it is not just that the cost of liability insurance is going down, but the availability of care is increasing, and the number of dollars spent on waste for tests we don't need is declining in Texas. But it is going up everywhere else where we have not addressed this problem.

We are going to hear all sorts of cases: that the problem is not the trial bar; the problem is we make mistakes and don't get compensated. Well, that is not the case because most insurance companies, if there is a legitimate case—and doctors make errors—they settle the case. They don't go to court.

What actually happens some of the time as to that 16 percent of the cases that are legitimate, in Oklahoma, is that somebody who truly had an injury does not get compensated because the lawyers who are now defending the doctors have gotten so good that they win cases they probably should not have.

So we have all these distortions that are occurring because the focus is on how much money can we put in the hands of people who "are representing somebody with an injury," when, in fact, they are representing themselves and their own wealth.

I am going to support both of these bills, but we need to wake up in America. If we are going to compete globally, then we have to readdress all of health care in this country. We have to go to a consumer-driven, transparent market where you know what the price is, you know what the outcome of the provider is, you know they are fol-

lowing best practices, and you should not be paying more than anybody else for the same thing. And the value judgment you make on your health care needs to be yours.

We also need to make your insurance yours, not your employers'. And it needs to be able to go with you wherever you go. There will never be job lock if we do that. We need to give the individual the tax break rather than the company the tax break. And we need to put everybody with some skin in the game when it comes to health care. In our country, we know, if we have markets that really drive that, we will improve the quality, we will increase the access, we will get rid of the bad players, and we will lower the costs. And we have to lower the costs of health care. We can do it.

At \$2.3 trillion, if we took 20 percent and squeezed it out, we would have \$460 billion we would not be spending on health care because it is not being spent on it now—it is spent on the machine of health care and the waste, as I just described it, on tests that are not necessary. That money would go into capital which would raise innovation, which would raise salaries, which would create more jobs, which would create greater prosperity.

But when we have this false sense of entitlement to the trial bar, through extortion—and that is what it is; it is pure extortion, because most of them are filed not with the hopes of winning the case but with extorting the settlement because it is cheaper to settle than to pay all the lawyer fees—we continue to have this ordering of tests that are not necessary because we have to defend ourselves. I am glad we are going to be addressing that. I plan on introducing another couple of bills in the next week as we address health care to move some of the things I talked about.

In Oklahoma, we have three cities that have over 50,000 people. Since 2003, they each had a total of six OB/GYNs. There are two left out of those three cities because of malpractice rates. Malpractice rates for OB/GYNs in Oklahoma rose 89 percent last year. My partners can't deliver over 100 babies a year without having a tremendous increase, and their average cost for the delivery per baby is over \$500 per child, based on the malpractice cost alone.

We have great problems. We can fix them. But we can't fix them by protecting a special interest group that has been protected for years that claims they want to do something great for people but who most of the time are motivated to do something great for themselves.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. I ask unanimous consent to speak in morning business for such time as I may consume.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, this has been an interesting week, and next week in the Senate will also be interesting. I want to talk about a couple of those matters.

I know there are a lot of people in the country, some in this Chamber, who believe that politics in America these days is pretty dysfunctional. We are not speaking directly to the issues that are most important to the American people. We are not confronting the issues that have developed with the American economy and foreign policy. Many people are concerned about that. I count myself among them.

I have always been proud to serve in the Senate. I come from a town of 300 people, a high school class of nine students, and to go from a desk in a small high school in southwestern North Dakota to a desk in the Senate, I have always felt enormously privileged to do that. But there are times when I am very concerned about the institution of politics.

John F. Kennedy used to say that every mother kind of hoped that her child might grow up to become President, as long as they didn't have to be active in politics. But of course, politics is the method by which we make decisions. The document called the Constitution that starts with the three words "we the people" means the people are in charge. They are the ones who decide, grabbing the American steering wheel, which direction we head.

Let me describe my concern about the dysfunctional politics and the dysfunctional system that exists. I don't think one party is all bad and the other party is all good or that one is all right and one is all wrong. I do think that we are on the wrong path and off track. We have one-party control in the White House, the House, and the Senate. It seems to me we need to get busy and get serious about addressing the fundamental problems we face in domestic policy and foreign policy.

Next week we are going to deal with health issues, we are told. But even though we are going to deal with health issues, the majority leader has said the way the Senate will deal with health issues is, he will file cloture on some bills to come to the floor dealing with medical malpractice, dealing with health care costs. The purpose of this process is to say: We are going to deal with the issue of medical malpractice, and we are not going to allow anyone else to deal with any other issue dealing with health care costs.

I happen to have pretty strong views about this issue of medical malpractice. We have somewhere, it is estimated, between 40,000 and 90,000 people a year die in hospitals as a result of mistakes. To suggest that someone should be immune from accountability because of mistakes is wrong. I have a longer story about all of that. But would I like to see there be a process that is simpler and easier than going through the tort system to resolve

these issues? Yes, I would. I believe that is possible. But to suggest that we ought to limit those who are victimized by bad medicine—and there are cases of bad medicine; it does exist—to suggest we ought to limit their opportunities to seek redress is wrong.

As long as we are going to talk about health care costs—and that is a very serious issue; health care costs are increasing dramatically for families, for businesses, for the Government in Medicaid and Medicare—perhaps we should talk about the array of issues we should be dealing with. Let me cite some examples.

No. 1, the highest rate of growth in health care costs is the cost of prescription drugs. It used to be when someone got sick, you would put them in a hospital bed for acute care, and then they would be let out, discharged, a week or 2 later, and that was the way health care was delivered. These days we have miracle drugs. Prescription drugs are used to treat illnesses so that people don't have to have acute care hospital stays. But the increased price in prescription drugs is almost unbelievable. We pay the highest prices in the entire world for prescription drugs. Why is that the case? It is the case because the pharmaceutical industry can charge the highest prices in the world for prescription drugs.

I took a bus one day and took some North Dakota citizens to Canada. In a one-room pharmacy in Emerson, Canada, just miles north of a pharmacy in North Dakota, these North Dakota citizens purchased their prescription drugs.

They were all FDA approved, in many cases made in America and shipped to Canada. So our citizens went to Canada to buy prescription drugs, Lipitor, Prevacid, a whole series of prescription drugs. All of them were dramatically less expensive in Canada than they are here. And not only Canada, they would have found the same thing in England and France and virtually every other country. We pay the highest prices in the world for prescription drugs.

A bipartisan group of Senators and Members of the House believe that the way to break the back of increased drug prices or drug pricing that is unfair to the American consumer is to allow the reimportation of prescription drugs from Canada. The FDA will allow someone to come across for personal use with maybe 3 months' worth of drugs, but otherwise it is illegal. In Europe, it is not illegal. If you are in Germany and want to buy a drug from France, if you are in Spain and want to buy a prescription drug from Italy, they have a system by which you do that. It is called parallel trading.

It has been done for 20 years. There is no safety issue. And through it the consumers are able to get the best prices on approved prescription drugs. In this country, you can't.

The majority leader is going to bring a health care bill to the floor next

week that deals with medical malpractice and will apparently "fill the amendment tree" or file cloture so that no amendments can be offered. But will the majority leader allow us to vote on a bipartisan proposal to put downward pressure on prescription drug prices? No, he would not do that. Why? Because the pharmaceutical industry doesn't want that legislation on the floor. So we will not have it, I guess.

We have been trying for years. A bipartisan group of Senators believe we ought to do that, believe we ought to tackle the issue of increased cost of health care by tackling the escalating prices of prescription drugs. But we can't get that bill onto the Senate floor.

The majority leader is taking specific steps now to prevent it. Why? Because he is helping, in my judgment, the pharmaceutical industry. It is what they want. How about doing what the American people want for a change? Let the American people in these chambers. How about opening the door to having the people's interests served here? So we won't be dealing with the issue of prescription drug prices, I guess, next week. We are going to try, but the majority leader will block us, I assume. That is what we have been told.

How about this little provision—the most unbelievably pernicious provision that was put in the bill that was passed to add prescription drug coverage to Medicare. Do you know there is a provision added in that bill that says, by the way, the Federal Government cannot use its purchasing power to negotiate for lower prescription drug prices with the pharmaceutical industry. Is that not unbelievable? A prohibition on the Federal Government negotiating for lower prescription drug prices with the pharmaceutical industry. In whose interest is that, do you think? Is that in the pharmaceutical industry's interest? Of course it is.

I wish somebody would come to the Senate floor and take credit for it and say I wrote that, and I wrote it because I believe the pharmaceutical industry should be able to charge higher prices and should not have to negotiate. Not one Senator, I believe, will claim credit for that legislation. But it was there. So the majority is deciding that they are going to block an opportunity to get rid of that, repeal that provision and allow the negotiation for lower drug prices that will put downward pressure on health care costs. The majority says we don't want anything to do with that; you cannot offer that amendment next week. We are going to talk about health care and health care costs, but you are prevented from offering that amendment. Why? Maybe it would pass and that would not be good for the pharmaceutical industry. It is unbelievable to me. Talk about dysfunctional behavior in the Senate. If we are going to deal with health care and health care costs, how about allowing legislation on the Senate floor that

really does that. Let's have an up-or-down vote on the issue of reimportation of prescription drugs so that the American people can benefit from the same prices people are paying in other countries. Should the American people be paying the highest prices?

Some time ago, I sat on a hay bale on a farm at a meeting of farmers. And a fellow in his mideighties said:

My wife has been fighting breast cancer for 3 years, and for 3 years we have driven to Canada every 3 months to buy her prescription drugs.

I asked why. He said:

Because we pay only 20 percent of the price we have to pay in the United States for the same drug.

Tamoxifen is a drug to treat breast cancer. If one uses that, you can save 80 to 90 percent if you buy that in Canada. It's an FDA-approved drug. Is that fair to the American people—to say you should pay the highest prices in the world? Oh, by the way, we are not interested in helping you put downward pressure on prices in this country.

That makes no sense to me. Next week we will see this dysfunctional behavior in the Senate. We will be prevented from the ability to consider pieces of bipartisan legislation. In both cases that I have talked about this morning, they will prevent votes on them. Why? Both are opposed by the pharmaceutical industry. So God forbid the Senate should have an up-or-down vote.

It is interesting. Regarding pharmaceuticals, senior citizens in this country are about 12 percent of the population, and they consume about one-third of the prescription drugs. So senior citizens are 12 percent of the population and consume one-third of all of the prescription drugs. In many cases, they are the least able to pay these escalating prices. And pharmaceuticals—the prescription drugs that you need—are not a luxury; you need them.

It is interesting that the same is true with respect to energy, isn't it? Another part of the dysfunctional behavior around here is dealing with energy costs. That is another subject.

Are we going to get legislation on the floor of the Senate to deal with energy issues? Not likely—at least not in a meaningful way. We have seen press reports about what is happening. Exxon oil had a \$36.1 billion profit last year, which is the highest profit in the history of corporations. I am not against profit at all. Good for them. But all that profit comes at the expense and pain of the American consumer. So that is not good for the consumer.

So what do we do about that? I say this. If all that money that is going into the coffers of the oil industry is being used to sink back into the ground for exploration and development of additional supplies, and therefore lower prices, good for them and good for us. But I know that is not happening. I know that Exxon is using about a third of its profits to buy back its stock. Business Week magazine says

that big oil invested in trying to find oil on Wall Street. Well, there is no oil on Wall Street. That is all about mergers and acquisitions. That doesn't expand the supply of energy. I think we ought to say this to big oil: If you are not using these profits to expand the supply and reduce the price, then you ought to be paying a portion of that into the Federal Government as a recapture, a windfall profit recapture that we send back in its entirety to the consumers from whence it came. I would like to vote on that in the Senate. I think that is something we ought to consider on the floor of the Senate.

Energy is not a luxury. Look, I understand we have serious problems with energy. Those who come to the floor and say there is a free market in oil—what a load of nonsense. There is no free market in oil. First of all, you have OPEC ministers in a closed room around a table deciding how much they are going to produce out of the sands of the Middle East. OPEC ministers decide how much they are going to produce and what that might do to affect price. Second, the big oil companies have two names now. They fell in love and got married. It was Exxon and Mobil, and then they merged and now it is ExxonMobil. There was Phillips and Conoco. Now it is PhillipsConoco. They decided to get hitched. The Federal Government turned a blind eye to that and said that is fine.

And finally, you have futures markets. The futures markets become orgies of speculation. It is a dramatic amount of speculation that drives up prices. The result is that the consumers in this country, I think, are seriously injured by what is happening. All of the pain is on the side of the person who is driving up to the gas pump or the farmer who is trying to figure out how to pay for the fuel he needs for spring planting. All of the gain is on the side of the enterprises, the major integrated oil companies, making the highest profits in the history of corporations, and the OPEC countries. And the royal family of Saudi Arabia thanks you.

This is something wrong with this. I understand that we have long-term problems and we need aggressive energy policies that address them. I have been working for some long while on the issue of trying to pole-vault over the circumstances by which we power our vehicle fleet in this country. We need to get to a hydrogen fuel cell future, with twice the efficiency of power to the wheel. You put water vapor out the tailpipe using hydrogen and fuel cells. We have, for a century, decided we are going to use gasoline to run through carburetors, and now fuel injectors, to power our vehicles. It doesn't make sense to me. Sixty percent of all of the oil comes from troubled parts of the world—Saudi Arabia, Kuwait, Iraq, and Venezuela. It makes no sense to be that dependent and for America to be hostage to that situation.

We need to move to a different future. I think it ought to be hydrogen and fuel cell. Even as we move along, we are never going to not need oil, natural gas and coal, but at least let's remove our addiction to finding it from troubled parts of the world that hold our economy hostage. We need to increase production of fossil fuels and do it in a way that doesn't injure our environment. We need to do much more with respect to renewables. I am talking about the biofuels, ethanol, and biodiesel. We need to do much more with respect to efficiency as well. Everything that we do every day with light switches and virtually everything that powers everything we do needs to be made much more efficient.

We need to tell the auto makers that you cannot do this anymore; you cannot build 5,000-pound cars that get 15 miles per gallon. At least we should say to consumers that it is not in your interest to buy them. We ought to say to the auto companies that the way you are going to compete best is to make efficient cars, and we are going to hold you to a better and higher standard. In the long term, we understand this.

We suck 84 million barrels of oil out of this planet of ours every single day—84 million barrels a day out of this Earth. We use one-fourth of it in the United States. This little spot uses one-fourth of all of the oil. China has 1.3 billion people. They now have 20 million automobiles. In 15 years, China is going to have 120 million automobiles. They are going to add 100 million automobiles to the roads. Where is the energy going to come from? That is the question.

That is why I say we have long-term issues we have to deal with. We have to decide that we are going to go to a different future. Senator LINDSAY GRAHAM from South Carolina and I had a caucus on hydrogen and fuel cells. If you don't care where you are going, you are never going to be lost. You have to decide what your destination is. What policies do we want for our energy future? We cannot sit around thumbing our suspenders and bellowing about all of these issues and doing nothing about them.

We passed an Energy bill a while ago—and my compliments to Senators DOMENICI and BINGAMAN. I am one of the senior members on the Energy Committee. I helped write the renewable fuels title and the hydrogen fuel cell title. But we need to do much more. And at the moment, what has happened to oil prices at \$75 a barrel—when the major oil companies had their highest profits in history when oil was at \$40 a barrel, it is fundamentally unfair to American consumers. We need to do something about it. I would like to vote on that in the Senate.

I think it is important to consider how do we deal with this issue because this is clearly unfair. The oil industry is important to us. I have done a number of things to try to be helpful to

them. But when I see something that is wrong, I think we ought to set it right. The oil industry is upset with my saying, look, if you are going to accumulate these profits, use them to reduce price; and if they are not going to do that, we ought to recapture it and use it as a rebate exclusively to the American consumers and find a way—not this \$100 nonsense that floated around here, but a real rebate that takes some pressure off of these American consumers. I think that is something that we have a responsibility to do.

I want to mention as well that yesterday we passed an emergency supplemental bill. The reason we are dealing with an emergency bill is that President asks for zero money, no money in his budget for operations in Iraq and Afghanistan. I have spoken on the floor many times about that. The administration comes in and says, all right, we don't know how much it is going to cost to have our soldiers fighting in Iraq and Afghanistan, so we are not going to ask for money in the regular budget. We are going to ask for it later as an emergency, so it doesn't count and isn't scored, and we add it to the Federal deficit. That is a game. It should not happen. We are now spending somewhere between \$7 billion to \$10 billion a month in Iraq and Afghanistan. Honest budgeting would require this administration to say here is what we think we are going to spend this year and ask for the money; then figure out how we are going to pay for it. Is the only sacrifice we are going to ask from the soldiers who we say, go to Iraq for a year, or the National Guard to whom we say, put your boots on and for the next 16 or 18 months you are going to be gone from your home, your family, your job—you are a citizen soldier, but you are going to spend 12 months in Iraq and 4 or 5 months perhaps training to get there. So we are going to take you away from home for 16, 18 months. Is that the only sacrifice being asked in this country? Could we perhaps, as a Congress, decide to ask the people to begin to pay for the cost of this? Is that wrong to ask the American people to sacrifice as well? We have to spend this money, so maybe we can all pay for it.

The President doesn't want to do that. The President doesn't want to confront the reality of where our fiscal policy is. We are far off track. We have the biggest deficits in history, and I know they brag that they say our deficit is only going to be \$300 billion, \$350 billion in the coming year. But look at the increase in debt. They are to go borrow more than \$600 billion in the coming year. In addition, they are borrowing over \$700 billion for the biggest trade deficit in history. We are out of kilter to the tune of \$1.4 trillion, and they snore their way through all of this.

Just hang around, shine your shoes, thumb your suspenders and snore a little. Don't worry, things will be happy, things will be better.

What a dysfunctional system. The American people, I think, deserve this Congress and this President to stare truth in the eye and understand what is going on, yes, in fiscal policy, in health care, in education, in military policy and, yes, in foreign policy. I don't think, regrettably, that is happening.

There is a remarkable thing that happens in this country, and that is every even-numbered year, our Constitution provides the American people grab the steering wheel.

Last weekend, I was in Philadelphia. I went to the Constitution Center. It was the first time I had been back to Philadelphia in a while. I remember something that happened, I believe, in 1988. In 1988—I think I have the year right—was the 200th birthday of the writing of the Constitution.

As all of us remember, the Constitution was written by 55 White men. Fifty-five White men went into a room in Philadelphia, pulled the shades—there was no air-conditioning; it was a hot Philadelphia summer—and they wrote a constitution for this country. George Washington's chair, by the way, is still in that room.

When you go to the room and see where they sat, you will notice George Washington's chair is still there with half a rising Sun decorated on the back of the chair. Ben Franklin sat over here. Mason and Madison sat over here.

So on the 200th birthday—at the time 55 White men wrote the Constitution, and I emphasize "White men" only to make the point that our country has changed in the way we govern and the way we respond—55 Americans went back into that room in Philadelphia. I was one of the 55 chosen to go back into that room to be involved in the 200th anniversary ceremony of the writing of the Constitution. Among the 55 were men, women, minorities.

It was pretty remarkable. I sat in that room thinking about coming from a small school in North Dakota and studying the Constitution, understanding the first three words, "We the people," and then trying to think back a couple hundred years in which these 55 men, really remarkable people who wrote this framework of ours, the framework of our Government, that has been altered only 17 times in over 220 years, outside of the 10 amendments for the Bill of Rights.

I tried to think of how they were evaluating what kind of country is this, what kind of country will it become, and what kind of a constitutional framework will be flexible enough to allow it to change with changing times.

It is pretty remarkable what they did. The work they did was pretty dramatic. It is work that is the creation of the most successful democracy in the history of humankind, and it is relatively young, not much more than a couple hundred years old. Not very old. And yet it is the most successful in the history of humankind.

It provides for the separation of powers, branches of Government—legislative, judicial, and executive. And it provides that the American people, we the people, are in charge. All the power in America is in the power of one—one person casting one vote on one day. That is all the power in America. There are no guns. There are no armies that march. There is just the power of one enumerated in the Constitution that on even-numbered years, the American people one by one grab America's steering wheel.

The reason I mention that is this is another even-numbered year. We have two grand political parties in this country. I am not somebody who believes one is all bad and one is all good. Both parties have contributed substantially to this country's past, and I hope they will contribute to its future. Occasionally, this country gets off track, and I think we are very seriously off track. It is the case in fiscal policy. It is the case in health policy, certainly the case in foreign policy, immigration policy—you name it.

We have serious problems that require, should require this Congress to stare them in the eye and work in a bipartisan way to fix them. But we have this dysfunctional system. We have a complete abject lack of leadership coming from the White House, in my judgment, with all due respect, and we have a majority party in this Congress that now in the next series of issues dealing, for example, with health care costs will decide next week that we should not be able to offer amendments to deal with the real issues of health care costs. So we are not addressing head on the kind of issues about which the American people care.

Having said all of that, I want to make the point that if I felt so discouraged that nothing can get done and nothing will get done, it would be hard to get up in the mornings to go to work. But I think there are enough people of good will, enough people who come to these positions who understand that America needs good stewardship, and responsible politics means addressing real issues, as hard as they are and as tough as they are. I think there are enough of them that at some point very soon, we are going to see a different track, a different approach, and we are going to see real efforts to address real problems at long last.

There is much to be concerned about regarding our country's future, but there is also much about which to be hopeful. This country has been a beacon to the world in many ways. We have survived a civil war. We beat back the oppression of Adolf Hitler. We have done so many unbelievable things. We split the atom. We spliced genes. We invented plastic. We invented radar. We invented the telephone, the television, the computer. We built airplanes and learned how to fly them. Then build rockets to fly to the Moon, walk on the Moon, and plant the American Flag. What an unbelievable place this is.

Travel around the world and ask people how they see this country—I haven't talked about immigration, but if tomorrow we said as a country we have no more immigration quotas, this country is open to anyone living anywhere in the world who wishes to come to America, welcome, come and stay and work, if that happened, we understand what the circumstances would be. We would be overrun with immigration.

I landed in a clearing in kind of a jungle area between Nicaragua and Honduras one day. The helicopter ran out of gas. The campesinos had come to see who came down in a helicopter. We had an interpreter with us and started talking because we were lost and didn't get found for some hours. We asked the campesinos from Honduras and Nicaragua: What is it you aspire for your lives? We want to come to America; we want to come to America, they said. Why? Because there is opportunity in America.

It is unbelievable. So if we just said: Look, anybody who wants to come can come, we would be overrun with people coming into this country. We can't do that. This is an Earth that spins around the Sun. It has 6.4 billion people living on it. Half of them have never made a telephone call, half of them live on less than \$2 a day, and 1.5 billion don't have daily access to potable water. And this little spot called the United States is extraordinary, but it didn't get there by accident. It got there because enough people cared about the right things. Yes, about rights—especially rights—women's rights, worker rights, civil rights, the rights that people have, the rights to which people, we the people, refer. Those are fights we have had for a long time.

Having said all that, I still believe there is a great reservoir of hope for this country to have its best 200 years ahead of it. It requires, however, for us to work together and to understand you can't gloss over problems, you have to confront problems and deal with problems in a thoughtful, sensitive way.

I will come on Monday, I assume, and if the plans are as I heard yesterday to bring a bill to the floor and then prevent any other ideas on health care costs, we will be right back in the same dysfunctional approach we have seen for far too long coming from both the White House and the Congress. I think the American people hope for better. They certainly deserve better. And I hope next week we will see something better than that.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak in morning business for 20 minutes, and I probably will not speak that long.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. GRASSLEY are printed in today's RECORD under "Morning Business.")

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business for as long as I shall require.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, I come to the floor to address two topics today. The first has to do with medical liability, and the second has to do with my resolution to have the Senate express what I think almost every American understands, which is that when we say the Pledge of Allegiance, when we sing the National Anthem, when we take the oath of allegiance for citizenship in America, we should do it in our common language: English.

MEDICAL LIABILITY REFORM

Mr. President, first let me express my concern about the medical liability crisis that is occurring in Tennessee and across our country. I am particularly concerned about a crisis in access to medical care for mothers and babies in Tennessee. In 45 of Tennessee's 95 counties, pregnant mothers have to drive for miles to get prenatal health care and to deliver their babies. In 15 of those counties, pregnant mothers have no access whatsoever to any prenatal care within their counties. Only 1 of 104 medical students graduating from Vanderbilt University Medical School in 2004 chose to be an OB-GYN, according to Dr. Frank Boehm, professor of obstetrics and gynecology at Vanderbilt University Medical Center. Dr. Boehm cautions that:

We must not lose sight of the fact that one of the side effects of our current medical malpractice crisis in OB-GYN is a steady loss of medical students choosing to practice one of our most important medical specialties. If this decline in OB-GYN doctors continues, patients having babies or needing high-risk gynecologic care will be faced with access problems this country has not seen.

That is Dr. Frank Boehm, Vanderbilt Medical School, as reported in the *Tennessean* on July 20, 2004.

Dr. Ron Blankenbaker, associate dean of the University of Tennessee College of Medicine, Chattanooga, said four of the six doctors at UT Family Practice who provided obstetrical care have stopped working in this specialty because of fears of malpractice lawsuits. That was in the *Chattanooga Times Free Press* in February of 2005.

It is clear that we are in a medical crisis and we must do something to improve access to care for mothers and their babies. For this reason, I am

proud to be a cosponsor of S. 23, the Healthy Mothers and Healthy Babies Access to Care Act, a bill to protect access to care for mothers and babies by providing medical liability reform for obstetric and gynecological care. I am also proud to be a cosponsor of S. 22, the Medical Care Access Protection Act of 2006, a comprehensive medical liability reform bill.

This is the third time during my tenure in the Senate that I have come to the floor to discuss medical liability concerns. While we have debated solutions every time, we have not had the votes necessary to enact those solutions.

Sadly, during this time of inaction, the situation has gotten much worse in my home State of Tennessee. In February of this year, Tennessee was declared a medical liability "Crisis State" by the American Medical Association, joining 20 other crisis States where broken medical liability systems are jeopardizing access to health care.

I have heard from doctors and hospitals from one end of Tennessee to the other, all concerned with the skyrocketing costs of medical liability premiums. The average medical liability insurance premium for Tennessee doctors has increased 84 percent since 1999 due, in large part, to our out-of-control jury awards. That is according to the Tennessee Medical Association. In the past 10 years, 100 percent of cardiac surgeons, 92 percent of OB-GYNs, 92 percent of orthopedists, and 70 percent of all doctors in Tennessee have faced legal action—again, according to the Tennessee Medical Association. The medical liability crisis is driving up the cost of health care for all Tennesseans. The annual cost of defensive medicine,—that is the extra tests and procedures performed by doctors to protect them from lawsuits—is estimated at \$70 to \$120 billion per year, nationwide, according to the U.S. Department of Health and Human Services.

Defensive medicine adds \$2 billion to health care costs just for Tennesseans. That is almost \$1,000 for every Tennessee household that is spent on unnecessary defensive medicine costs—tests, and procedures performed by doctors to keep them from getting sued—and they are still getting sued.

In Tennessee, 78 percent of doctors report ordering extra tests and procedures due to litigation fears. Nearly half of those doctors estimate that 20 percent or more of their procedures fall into the defensive medicine category. Again, I believe it is pretty clear we are facing a crisis.

Here is what the bills would do. The Healthy Mothers and Healthy Babies Access to Care Act and the Medical Care Access Protection Act would help us get out of this crisis. I hope we can pass these bills and see them signed into law. These bills ensure fair and just compensation for patient injury by providing full compensation for economic damages. In plain English, if you

are actually hurt, this bill permits you to be paid 100 percent of the value of those damages. It does not interfere with that at all. If a patient is injured, he or she will have unlimited access to economic damages to pay for recovery.

These bills also place a sensible cap of up to \$750,000 on awards for non-economic damages. The caps on non-economic damages are fashioned after the Texas State law. After Texas passed statewide medical liability reform in 2003, medical malpractice rates decreased, access to care has been increasing, new doctors are moving to Texas, current doctors are staying in Texas, and new insurers are entering the Texas medical liability market, creating more choices for physicians.

I am happy for Texas. A lot of our family lives in Texas. But I would like to see Tennesseans and other Americans have some of these same advantages. Our Senate bills are modeled after the Texas law, and I hope to see this success story spread to Tennessee and spread nationwide because Tennessee mothers and Tennessee babies and all medical patients deserve access to health care.

THE NATIONAL ANTHEM

Mr. ALEXANDER. Mr. President, I turn my attention to another subject, one I have discussed several times. As a courtesy, I want to let my friends on the other side know that I intend to ask unanimous consent, at the end of my remarks, that my resolution be discharged from the Judiciary Committee. I hope that will be approved, but if it is not approved, I want my friends on the other side to know they need to have a way to register their objection before I make that request.

Today is May 5. In Mexico and in Mexican restaurants across this country, today is known as "Cinco de Mayo." That is because today is the day General Ignacio Zaragoza defeated the invading French forces of Napoleon III.

In the United States, we often think of this holiday as a good reason to go to a Mexican restaurant and enjoy a margarita, but for our southern neighbors it is a very important holiday. France invaded Mexico in 1862, 41 years after Mexico had won its independence from Spain. It took the Mexicans 5 years, but once they succeeded in driving out the French occupiers, their country was finally free, and it has remained free since that time.

As they celebrate this important day in their nation's history, I have no doubt that many Mexicans will be singing their national anthem, and I suspect they will all sing it in Spanish, their nation's common language.

I make this point because at the beginning of this week, on Monday, I introduced a resolution in the Senate to affirm that here in the United States of America, statements of national unity, especially the Pledge of Allegiance and the national anthem, ought to be said or sung in our common language—English.

I am not talking about what we are free to do as Americans, I am talking about what we ought to do as Americans.

Last Monday, I offered this resolution which now has 12 cosponsors, including the distinguished Presiding Officer, because I thought it was important for this body to remember what unites us as Americans. Ours is a nation not based upon race, not based upon ethnicity, not based upon national origin, but based upon our shared values, enshrined in our founding documents, the Declaration of Independence and the Constitution, upon our history as a nation and, yes, upon our shared common language—English.

Every Senate office received a request for this resolution of mine to be passed by unanimous consent. That request was agreed to by every Senator on the Republican side. But the other side, the Democratic side, objected. I can only assume that at least some on the Democratic side objected because at least some of them believe that Americans should, at least some of the time, sing our national anthem in Spanish or some other foreign language. Perhaps they also believe we should recite the Pledge of Allegiance in Chinese, which is the second most spoken foreign language in the United States.

Yesterday, I tried again. I tried to pass this very simple and straightforward resolution. Again I was blocked by objections from the Democratic side. I am surprised by this reaction because leading Hispanic Democrats have said they agree with me.

On Monday, Wolf Blitzer of CNN asked Mayor Antonio Villaraigosa about singing the national anthem in Spanish. Here is what the Mayor of Los Angeles, a Hispanic and a Democrat, had to say in his conversation with Wolf Blitzer:

Wolf, let me just say to you, let me just make it absolutely clear, I was offended, I was offended because, for me, the national anthem is something that I believe deserves respect. And I think that . . . without question, that the vast majority of people in the United States of America were offended as well.

Continuing the quote from the Mayor of Los Angeles, Mayor Villaraigosa:

. . . our anthem should be sung in English. The Spanish and Mexican anthems should be sung in Spanish. The French anthem in French.

So I was offended by it—

Said the Mayor of Los Angeles— and I think most people were. And remember very few people bought into that. It really was a non-issue, but I think it was important to dismiss it as quickly as possible.

Apparently a few of the very few people in America who buy into that are on the other side of the aisle. They are objecting to this resolution that says, when we start the day with the Pledge of Allegiance, when we sing the national anthem, when we take the oath of allegiance, we ought to do it in our common language, English. It doesn't

require it. It doesn't make it a law. It doesn't say we are not free to do whatever we want to. It just says we ought to. And as the mayor of Los Angeles said, he was offended by the suggestion that we should not do it, and he thought very few people bought into that, it is a nonissue; let's dismiss it as quickly as possible. The way to dismiss it is to adopt this resolution sponsored by 12 Members of the Senate.

I agree with Mayor Villaraigosa, we should dismiss this idea of singing the national anthem in foreign languages as quickly as possible, and that is what I tried to do by offering this resolution.

Governor Bill Richardson of New Mexico, also a Democrat and a Hispanic, agrees. He appeared on the CBS "Early Show" with me on Monday morning. We were talking about the day without immigrants. After I explained my view on singing the national anthem in English and talked about this resolution, here is what Governor Richardson had to say:

Well, I agree. The national anthem should be in English. And I believe that, again, most immigrants want to become Americans. They want to learn English. They want to be part of the American mainstream. They wear NFL jerseys. They want to be American.

So I don't believe that view that immigrants want to learn the anthem in Spanish is accurate. I think that was a side show. But, definitely our anthem is English.

That is Governor Bill Richardson of New Mexico. But apparently some Senate Democrats disagree. Apparently some of them think we should at least some of the time sing it in a foreign language. But maybe I misunderstood, so let me try again.

Let me say again, I understand from the other side that there is no one here to object, that the Democrats have all gone home, and that if I were to bring up my resolution today, as I had intended to do, that it would pass by unanimous consent without an objection from the Democratic side because no one is here to object.

I think as a matter of Senatorial courtesy I should not do that. I respect my colleagues, and I don't intend to surprise them any more than I would like for them to surprise me. So I will not, today, ask for unanimous consent that S. Res. 458 be discharged from the Judiciary Committee and that the Senate proceed to its consideration and ask that the resolution and preamble be agreed to and the motion to reconsider be laid upon the table. I will not do that today.

But I would like to put my friends on the other side on notice that I intend to do this every other day, every other day that I am here and as long as this is not enacted I intend to do it, and each day I will do it in a constructive way. I will try to help the American people have a short civics lesson on what unites us as a country.

This is not a country where our identity is based on our race. This is not a country where our identity is based on our ethnicity or where our ancestors came from. This is a country that is

based on a few ideas that are found in our founding documents, based on our common history, and based on our common language. We are proud to be from wherever we come from or where our ancestors came from. We are prouder to be American. Almost every American agrees with that.

That's why we created our common schools 150 years ago. In the words of Al Shanker, as I said yesterday, we created the common school to help mostly immigrant children learn to read and write in English and learn math and to learn what it meant to be an American. In 1906 we passed a law that anyone who becomes a citizen of this country needs to pass a test in English. Today we require it to be an eight-grade level of understanding of English.

This Senate, by a 91-to-1 vote last month, said that as we consider an immigration bill, we better focus especially, and redouble our efforts, on helping prospective citizens become Americans because when we have a lot of people from other countries come here, the real limit on that is how quickly we can assimilate them into our culture, how quickly they can become Americans. We want new legal immigrants, but we do not want enclaves of people living here who have their allegiance to other countries and who permanently decide to speak another language and who don't pledge allegiance to our flag. That underlies our debate on immigration as much as anything else.

So this is a very fundamental issue for me, and I believe it is so for a great many Americans. It is important for the people of this country to know that 12 of us in the Senate have before this body a very simple resolution, not about what we are made to do but about what we ought to do, and what we ought to do—whether we are at our Boy Scout or Cub Scout meeting or whether we are opening the day in the Senate, and we say the Pledge of Allegiance—we ought to say it in our common language. If we are singing the national anthem before a football game, it ought to be in our common language, English. If we are taking the oath of allegiance required for citizenship in the United States of America, which a half million to a million new citizens do every year, we ought to do so in English.

We ought to say that as Senators. The mayor of Los Angeles said it. He is offended by the idea, he says, that our national anthem should not be sung in some other language. Governor Bill Richardson says it. He agrees. He doesn't think it ought to be an issue.

This bill has been introduced in the House of Representatives. It has strong Democratic support there. What is wrong with the Senate Democrats? Why do they insist, day after day, that our national anthem, our Pledge of Allegiance, and our oath of citizenship ought to be said or sung in some other language than our common language, English?

I would like to get this cleared up.

Out of respect for my colleagues in the Senate and the fact they are not here to object, but they do object, I will not ask unanimous consent today. But I again wish to say to my friends that this floor is for the debating of important issues. This is an important issue. We have so little civics and U.S. history taught in America's schools today that perhaps we need a little civics lesson every single day on the floor of the Senate. I intend to provide it every single day I am here until this legislation is voted on. And when it is voted on, I predict it will pass by a wide margin with bipartisan support; it might even pass with unanimous support.

Thank you, Mr. President. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMAS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

THE RISING COST OF GASOLINE

Mr. GRASSLEY. Mr. President, I would like to speak on a matter that has gotten a lot of attention lately, and for good reason. The rising cost of gasoline is hitting all Americans hard. Families, businesses, farmers, and truckers are all hurting as the cost escalates out of control.

With gas prices now hovering around \$3 a gallon, everyone in Congress is looking for a solution or for someone to blame. Unfortunately, some have chosen to pinpoint ethanol as the culprit. However, blaming ethanol for the costs at the pump ignores the fact that crude is at near record highs, and our country is still suffering from a strained domestic refining industry.

Around the country, gasoline refiners are making a voluntary decision to remove MTBE, a gasoline additive, from the market. In its place, they are using ethanol. So, ethanol is currently being blended for the first time in many parts of the East Coast and in Texas.

Because of the new demand for ethanol, some of my colleagues have begun to argue that there is a shortage and that it is responsible for the rising cost of gasoline. They look to increased imports of ethanol, and the lifting of the import tariff, as the solution. Let me be clear: there is no shortage of ethanol. And, ethanol is a tiny fraction of cost of gasoline.

You don't have to take my word for it. Guy Caruso, Administrator of the Energy Information Administration of the Department of Energy, recently stated that the 10 percent blend of ethanol is affecting prices by "just a few

pennies." Ethanol's role in gasoline prices is a tiny fraction of the overall increase.

I would like to address the claim that there is a shortage of ethanol. According to the Energy Information Administration, 130,000 barrels per day of ethanol are needed to replace MTBE. Last month, 302,000 barrels of ethanol were produced each day. That seems to me like it is enough to meet the demand. There is also 25 days of ethanol supply in storage.

Have there been some transportation issues surrounding the transition from MTBE to ethanol? The answer is yes, and they're being dealt with. Sufficient supplies of ethanol are where they need to be. There is no shortage of ethanol.

If there is no shortage, what good does it do to eliminate the import tariff on imported ethanol? None. Domestic supplies are sufficient.

Lifting the tariff won't have an impact on gas prices because the only other major producer of ethanol—Brazil—simply doesn't have enough ethanol to export at significant levels at this time. I know this issue well. I was in Brazil just six weeks ago, and one thing I heard over and over was that Brazil is experiencing an ethanol shortage.

Shortages of ethanol in Brazil are being driven by strong demand for ethanol in that country. Looking at the longer term, USDA analysts in Brazil are reporting that Brazil is anticipating even higher demand for ethanol later this year and in 2007.

Given low supplies in Brazil, there has even been talk of importing ethanol into Brazil.

I would like to point out something else. Brazil and other countries can already ship duty-free ethanol to the United States. They don't have to pay the U.S. tariff. Under the Caribbean Basin Initiative, Brazilian ethanol that is merely dehydrated in a Caribbean country can enter the U.S. market duty-free up to 7 percent of the U.S. ethanol market. That's generous access, but Brazil has never even come close to hitting the 7 percent cap.

And it isn't that the Caribbean countries don't have the capacity to dehydrate more Brazilian ethanol. They do.

As we're already providing duty-free access for Brazilian ethanol shipped through Caribbean countries, and as Brazil isn't taking full advantage of this duty-free treatment, I don't know why we should bend over backwards to provide even more duty-free access for Brazilian ethanol.

I especially don't know why we should do this given Brazil's stance in the Doha Round negotiations of the World Trade Organization. Brazil is the leader of the G-20 negotiating group in the WTO negotiations, a group that is resisting our efforts to obtain improved market access for U.S. products around the world.

In addition, the Brazilian government intervenes extensively in the price and supply of ethanol in that