

Lieberman	Nelson (NE)	Sarbanes
Lincoln	Obama	Schumer
Menendez	Pryor	Shelby
Mikulski	Reed	Stabenow
Murray	Reid	Wyden
Nelson (FL)	Salazar	

NOT VOTING—7

Biden	Conrad	Rockefeller
Brownback	Jeffords	
Burns	McCain	

The PRESIDING OFFICER (Mr. VITTER). On this vote, the yeas are 49, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. BYRD. Mr. President, last Wednesday, Senator ENSIGN introduced S. 22, the Medical Care Access Protection Act of 2006, a bill that would “cap” legal damages awarded to victims of medical malpractice. Senators SANTORUM and GREGG similarly, just last week, introduced S. 23, the Healthy Mothers and Healthy Babies Access to Care Act, a bill to limit legal damages in cases involving obstetrical and gynecological services.

Today I voted not to invoke cloture on the motions to proceed to these two bills, because there has been no debate of these particular measures in the 109th Congress. There have been no hearings scheduled or held on the bills this year, and their provisions raise questions to which West Virginians deserve complete and well-considered responses.

The situation in West Virginia today is not as it was several years ago, when the State legislature enacted medical liability tort reform. At that time, there was a perceived crisis based on the escalating costs of medical insurance premiums, and there were serious concerns that doctors and other health care providers may have been leaving the State to avoid the expenses they incurred in protecting themselves from legal liability. Today, however, even the West Virginia State Medical Association, a strong supporter of medical liability reform, advises that, based on the significant changes passed by the West Virginia State Legislature in 2003, the State has “already seen positive results with recent decreases in insurance premiums and an increase in the ability to recruit physicians to the state.”

Based on the acknowledged success of West Virginia’s legislative enactments in this area, it would be irresponsible, if not downright foolhardy, to enact S. 22 and S. 23 with little examination and no recent debate, particularly when the provisions of these bills would explicitly preempt certain State laws. In addition, the bills shorten the time during which patients can bring cases; they limit punitive damages; they exempt from product liability lawsuits health care providers who have prescribed drugs or devices approved by the FDA; and they generally revamp our Nation’s medical liability system in the wink of an eye, though the bills’ provisions have been subject to little, if any, serious scrutiny.

Based on the changes that have occurred in our medical liability system since 2003, legislation of this importance requires careful consideration by the Senate’s relevant committees of jurisdiction. To give such important provisions such short shrift, particularly in this changed environment, would do a tremendous disservice to medical providers and patients throughout both West Virginia and the Nation.

Mr. KOHL. Today the Senate once again considered medical liability reform bills—S. 22 and S. 23—both of which would impose an arbitrary cap on the amount of noneconomic damages—pain and suffering awards—an injured patient can receive in a medical malpractice lawsuit.

This is not the first time the Senate has dealt with such legislation. In years past, there were real problems with skyrocketing premiums that insurance companies were charging doctors. Even then, imposing damage caps was the wrong approach to address the issue and remains just as wrong today. A so-called reform based on arbitrarily capping pain and suffering awards is not a panacea. Studies show that passing a Federal medical malpractice law with damage caps will likely have no impact on runaway insurance premiums. Further, there is no promise that any savings insurance companies realize from such a law would be passed on to doctors.

Moreover, we find that medical malpractice premiums have leveled off or are no longer increasing in both States with and without caps on noneconomic damages. A reasonable person could question why we are even considering this legislation when it appears the problem is abating. Nonetheless, some insist against all evidence that we need to pass these bills to save the health care system. Just as I have opposed similar damage cap bills in the past, I will oppose both S. 22 and S. 23.

Wisconsin has thoroughly addressed this issue with great success. As a result, we do not have a medical liability insurance crisis like some other States. Wisconsin has a noneconomic cap and a system that works for doctors and patients alike. Specifically, Wisconsin limits the amount of liability insurance a medical professional must obtain, and beyond that, Wisconsin’s Patient Compensation Fund ensures that injured patients are fully reimbursed for their damages. I oppose doing anything to upset the delicate balance the State has found.

Though neither S. 22 nor S. 23 would preempt Wisconsin’s damage caps, Wisconsin law would be overturned in several other areas. For example, Wisconsin law grants children the right to sue, better ensures that victims fully recover their damages from defendants, and does not limit attorney fees as much as the Federal proposal. I will not support a Federal solution that undoes Wisconsin’s law.

To be sure, the larger issue of medical liability reform deserves a serious

debate instead of the resurfacing of a one-sided solution. We might want to look to Wisconsin as a model.

Mr. CHAFEE. Mr. President, today I voted in favor of invoking cloture on S. 22, the Medical Care Access Protection Act of 2006, and S. 23, the Healthy Mothers and Healthy Babies Access to Care Act. I have concerns about various aspects of the legislation including the specific levels of the proposed damage caps. However, I do believe that reform of the medical malpractice system should be considered by the Senate to discourage frivolous lawsuits and to ensure that individuals are able to access affordable health care. For these reasons, I voted to invoke cloture on both of these bills in an effort to move this important debate forward.

The PRESIDING OFFICER. The Senator from Wyoming.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

SMALL BUSINESS HEALTH PLANS

Mr. ENZI. Mr. President, I rise today to support action on health care this week. There is a bill that will be voted on tomorrow morning that I think is extremely critical to the health of the Nation.

As chairman of the Committee on Health, Education, Labor, and Pensions, I can attest that access to affordable health care is the No. 1 issue for working families who contact my committee. I do need to explain where we are in this process.

We have a bill that made it out of committee to provide for small business health plans. There has been unanimous consent requested to proceed to the debate. That was denied. That is just the right to debate the bill, but it was denied. So a cloture motion was put in, and we will vote on that cloture motion tomorrow. That will be the 3 days after the cloture motion was filed. So that is a 3-day delay that we already have in solving small business health plan problems.

Tomorrow morning we will vote at 10. I can’t imagine anybody voting against better health for people who work in small businesses. I am anticipating that we will get 60 votes. When we get 60 votes, we still will not get to debate the bill. We will have 30 hours of debate on that cloture vote before we will get to offer any amendments. Thirty hours. That could easily be 3 days. It could easily be Thursday before we get to offer the first amendment. I hope the other side will help to get cloture so that we can proceed to the debate. Then I hope that they would agree to shorten that time significantly so we could actually get to amendments and debate the bill.

We need to have a debate over the rising cost of health care. More importantly, we need to take action. Americans are tired of the status quo. They are tired of more of the same from the Senate. They are tired of excuses. They do want to see change for the better.

The majority leader announced his intention to bring a bill before the Senate that would allow small businesses to band together across the country and negotiate for better health care benefits at better prices. This bill sets up a system where we get a little bit of uniformity out there for the small businesses to band together across State lines and form a big enough pool that they have some power to negotiate against the insurance companies.

It is probably important to do that vote. I have some actuarial studies that show how many more people will be brought into the system, and CBO has done some evaluations of how many more people will be able to be insured and what kind of savings there will be. But I don't think they have the numbers right. The numbers are far greater than what they list.

Here is the reason I believe that. I had a lot of people call me Friday and Saturday and Sunday and let me know about the ads being run across the country. They are not referring to it as the small business health plans or even the Health Insurance Marketplace Modernization and Affordability Act. They are not even referring to it as S. 1955. They are referring to it as the Enzi bill. It is not the Enzi bill. It is the small business health plan bill. There are even Web sites set up. Thousands, if not millions, of dollars are being spent on advertising against it, which tells me that perhaps the ability for small companies to get together and negotiate against the insurance companies might be worth a lot more than anybody anticipated. That is where the ads are coming from.

Tomorrow morning we will be voting on the motion to proceed to the consideration of S. 1955. The bill will reduce the cost of health care, especially for America's small business owners and working families. Today, of the 45 million people without health insurance, 22 million own or work for small business, according to the Small Business Committee definition of a small business, or they live in families that depend on that small business for wages. Besides the 22 million out of the 45 million, there is another 5 million who are self-employed who could take advantage of this bill. That makes 27 million people who can't afford decent health insurance right now.

It is long past time for Congress to take action. The American people aren't going to accept excuses any longer. It is time for the Senate to take the first major step in nearly 15 years toward more affordable health insurance options for small businesses and working families.

There has been a bill on the House side that has passed 8 times in the last

12 years for association health plans. The Senate has never gotten any kind of a bill like that out of committee until now. This bill is not quite like that bill. This bill was derived by talking to the insurance companies, talking to the insurance commissioners, having them sit down with the associations and try to find a workable way that would not unlevel the playing field so that some people would be paying more for their health insurance while others were paying less. They worked for almost a year with me. All of them were convinced that something needed to be done. All of them were willing to work in a positive manner to come up with a bill that would work. That is what we have before us now.

That is not to say that the bill won't be changed through the debate, if we can get to the debate. There probably will be changes. There can be amendments to the bill. One of the things I have learned being in the State legislature as well as in Congress is that quite often amendments do help make a bill better. I do know that the American people support giving small businesses the same power that big businesses have had to negotiate for better benefits and better prices.

The fact that it has taken us so long to get to this point has to be frustrating for our constituents and the small businessmen. That is most of the people in the United States. They are either small business or they work in small businesses. When they work in a small business, they understand the plight of the business much better than in a big business. We already gave big business a lot more opportunity to negotiate than what we have in this bill for small business. This is a great start for small businesses to bring those costs down.

Small business owners and working families do want an up-or-down vote on small business health plans. They think they deserve it, and I believe they deserve it. I believe almost everybody here thinks they deserve a vote on whether they ought to be able to have a fraction of what the big companies have as an advantage in working with the insurance companies.

For years the small business owners have been asking the Senate to grant them the power that the big businesses have so they can secure affordable health care for their employees and their families. For the first time in over a decade, the Senate committee has reported a bill that gives small business owners the power they are seeking. Americans have sent hundreds of thousands of letters, petitions, phone calls, e-mails, faxes to the Senate over the past few weeks in support of small business health plans. The National Federation of Independent Businesses, one of the associations interested in this, delivered 500,000 petitions from across the United States asking us to do something. The people have taken time out of their busy days to demand action, and they deserve that up-or-down vote.

I remember getting permission, shortly after I got to the Senate, to hold a small business hearing in Casper, WY. That is the big city in the center of Wyoming. I held that hearing. I was pleased. I had about 100 small businessmen show up to lend their support and express their needs.

Afterward, one of the reporters asked: Aren't you disappointed you only had 100 people show up?

I said: Actually, this is small business. I am kind of surprised that 100 showed up because in small business, if you have an extra person who can spend a day at a hearing, you would probably fire them because you would have one more person than you needed.

In small business, they don't have nearly the diversity or the specialization, but they have a lot of personal ability and flexibility to take their product to market and to make a difference against the big companies that way. But they need some extra help. I know the minority leader will want an up-or-down vote on a bill sponsored by Senators DURBIN and LINCOLN. I believe the minority leader should get that up-or-down vote, even though I don't believe the bill he supports would provide the kind of change small business owners want and need. I know what the support is for that bill. I would love to do the comparisons between what we are trying to do in small business health plans and that. Let's see what the will of the Senate is, and let's not resort to blocking consideration through procedural motions.

I am sure some of my Democratic colleagues will want to use their share of the 30 hours of debate after this vote to discuss a variety of health care issues. Some Members of the minority will want to discuss the Medicare drug benefit. I have heard that on the floor in this preliminary time. Some will want to talk about drug importation. Some will want to talk about stem cell research. I know that from the debate we have had on the floor today. It is their right under the Senate rules.

I am not sure how I would go about explaining that to the small business owners and the working families who work in those small businesses. I suppose that the vast majority of those small business owners are going to be too busy during the day and night to watch the Senate debate on C-SPAN2. But those who do will understand that the issues we are talking about are not the solution they are expecting, and that they are external to the bill we are debating at this time. Those are important issues. But if they are just being done to block a bill—and that will be the way it will be termed by small business—I suspect there will be a price to pay for that kind of action.

I hope, for all our sakes, that the TVs in hospital emergency rooms are not tuned to C-SPAN. Some of those Americans who depend on small business and are in the emergency room may have no health insurance. Maybe their company dropped the coverage last year or

maybe the company could not afford health insurance in the first place.

What would they say if they were watching us this week? After all, the caption on the screen will read that we are supposed to be debating health insurance for working families. But instead of debating two competing visions for providing more affordable health care options for small businesses, we will be talking about Democratic amendments on a number of issues, including the Medicare drug benefit, which has already been done, and people are signing up in numbers that had not been anticipated. There is also already enough competition out there that it has driven the prices down. That is what competition does. It is working for seniors and they are saving money.

But instead of talking about things that are working for Americans, we should be debating the challenges that still face us, such as the rising cost of health care for America's working families.

Every day, emergency rooms treat more than 30,000 uninsured Americans who work for or depend on small business. That is at least 30,000 reasons why we should move right away to the consideration of S. 1955 to create small business health plans.

For the first time in more than a decade, the Senate has been presented with a bill that would create a whole new set of affordable health care choices through small business health plans.

Is it the perfect bill? No. I have never seen one in my 9 years in the Senate. We won't get to see anything even near perfect if we don't get to debate it. I believe most of my colleagues like the concept of getting as much perfection through amendments as possible and do want to work with me on it. Procedural votes won't get that done.

If we are waiting for the perfect bill, the one true and comprehensive solution to fix our health care system, then someone needs to bring us a tent, flashlights, and field rations, because we are going to be a very long time waiting for that. I am hoping it is not a series of 30-hour waits to debate things that won't have anything to do with getting small business health plans for small businesses. Americans are never waiting for perfection from Congress. They have given up on that long ago. But they do want action.

We have a good bill before us. We have a bipartisan bill before us. I am a former small business owner and I know something about the struggle to provide affordable health care to my family and to my work families.

Senator BEN NELSON, who coauthored this bill, is a former State insurance commissioner, so he knows something about the importance of protecting consumers. Senator NELSON and I have spoken about this bill with just about every Member of the Senate. We think it is a very good bill, and we have reached out to our colleagues over the

last several months to take their concerns into account as we put the bill together.

Some of our colleagues will have amendments they believe will make it even better, and they should have the opportunity to offer those amendments. Neither Senator NELSON nor I are afraid of that, nor are we afraid of any alternative bills that Members might want to propose.

I urge my colleagues to set aside tomorrow's motion to proceed to the consideration of the bill. Let's get on with it, debate it, and have some amendments. We can have constructive votes on the floor on a number of issues that will improve this bill. But if we have to go through the procedural motions, let's keep in mind those 27 million uninsured Americans who work for or depend on small businesses. Those are 27 million Americans who are counting on the Senate to act now—not next month, not next year, but now.

Let's take the step toward more affordable health care for all Americans by giving small business owners the power to create small business health plans for themselves, their families, and their workers. Give them the chance they are seeking, instead of more of the same excuses for not acting. I don't think they will buy that.

I am hoping some of the media that is doing coverage will do a little bit better job than I happened to see last weekend. PBS did a special. They forgot to talk to anybody who worked on the bill. They talked about some problems with California's health care and attributed it to this bill. This bill cannot be the cause of that yet because it is not in California.

There have been concerns by a number of other groups. One was the attorneys general for a number of States. Again, it would have been nice if they would have talked to us to be sure they had the right bill and had read it before they took their action. So we will be covering that in the next few days.

If we have to talk for 30 hours, we will be plenty willing to do that. There are a lot of people in small businesses who see this as a primary concern and need, and they wish to see it done as soon as possible. They will not be very forgiving if people are holding things up to try to defeat the bill instead of making constructive progress.

I appreciate all those who have worked with me and all of those who are still working on amendments. Particularly, I would appreciate it if they would talk to me. There are some good ideas out there, things that would work. Many are for clarification. It will make a difference to small business. I hope everybody will get past this motion to proceed and the 30 hours of debate will get finished.

NATIVE HAWAIIAN GOVERNMENT  
REORGANIZATION ACT OF 2005

Mr. ALEXANDER. Mr. President, today the U.S. Civil Rights Commis-

sion announced its opposition to S. 147, the Native Hawaiian Government Reorganization Act of 2005, which the Commission found to "discriminate on the basis of race."

It is possible that the Senate will be asked in the next few weeks to consider this legislation. I hope my colleagues will agree with the Civil Rights Commission and oppose this legislation.

Here is what the Commission had to say:

The Commission recommends against passage of the Native Hawaiian Government Reorganization Act of 2005, or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege.

S. 147, the act to which the Commission refers, would create a separate, independent, race-based government for native Hawaiians. It would undermine our unity in this country. It would undermine our history of being a nation based not on race but upon common values of liberty, equal opportunity, and democracy.

The question the bill poses is thus one that is fundamental to the very existence of our country. It creates a new government based on race. Our Constitution guarantees just the opposite—equal opportunity without regard to race.

Hawaiians are Americans. They became United States citizens in 1900. They have saluted the American flag, paid American taxes, fought in American wars. In 1959, 94 percent of Hawaiians reaffirmed that commitment to become Americans by voting to become a state. Like citizens of every other state, Hawaii votes in national elections.

Becoming an American has always meant giving up allegiance to your previous country and pledging allegiance to your new country, the United States of America.

This goes back to Valley Forge when George Washington himself signed and then administered this oath to his officers: "I . . . renounce, refuse, and abjure any allegiance or obedience to [King George III]; and I do swear that I will to the utmost of my power, support, maintain and defend the said United States. . . ."

America is different because, under our Constitution, becoming an American can have nothing to do with ancestry. That is because America is an idea, not a race. Ours is a nation based not upon race, not upon ethnicity, not upon national origin, but upon our shared values, enshrined in our founding documents, the Declaration of Independence and the Constitution, upon our history as a nation, and upon our shared language, English. An American can technically become a citizen of Japan, but would never be considered "Japanese." But if a Japanese person wants to become a citizen of the United States, he or she must become an American.

That's who we are as Americans, and when we forget that, we run the risk of