

that right after surgery, for the first couple of weeks, they have an increased risk of getting a blood clot. We treat them with blood thinners. Still, blood clots happen.

So this is a patient who was given a blood thinner. We were trying to find out what the right delicate balance was. We worked with an internist and others. We thought we had the right delicate balance for the right dose of medication. On her right side where she had the bruise, she bled into that wound, and that bruise got more blood accumulated, a hematoma. On the left side, the side with the broken hip, she got a blood clot. She was on the blood thinners and bled into the one side, had a blood clot on the other side, and yet they call it a never event. How can Washington bureaucrats say that this is a never event?

Let's look at another so called never event that made the list. Many of the ventilator-assisted pneumonia cases I saw practicing medicine in Casper, WY, occurred in trauma patients. The Wyoming Medical Center is a centrally located trauma facility. I saw patients brought in from accidents that occurred around all the State.

Many of the patients are treated and stabilized at a local hospital 100 to 250 miles away. They are transferred to the Wyoming Medical Center. Trauma physicians have no way to determine whether the pneumonia is secondary to aspiration that occurred right there at the site of the accident or whether it occurred as a result of something that happened at the first hospital. In the physician's initial assessment, a pneumonia has not yet developed. It takes time before it shows signs. Even the Washington bureaucrats that wrote the proposed rule agree. The rule is clear and scientific evidence is clear that 60 to 80 percent of ventilator-assisted pneumonia cases cannot be prevented. How can they call that a never event?

I have been a doctor for 30 years. I can share lots of similar examples with Members. Each example begs the following question: So what if the never event occurs in one hospital and then the patient needs to be transferred to another medical facility for advanced specialty care? Medicare says they are not going to pay for that treatment. Does that mean the second physician in the second hospital will not get paid? If the receiving hospital will get paid but the first one will not, isn't that surely going to lead to more transfers from one hospital to another, moving the patient from a hospital where the hospital will not get paid to the hospital where payment will occur?

Look at it on the other side. If the receiving hospital will not get paid for a complication that occurred at the first hospital, then why should they accept the patient in transfer for the care they need? Is there any way for hospitals to appeal the decision of the Washington bureaucrats? What impact will this whole process have on medical liability? Will this list of so-called

never events lead to increased litigation? After all, if something is never supposed to happen because the Government list says it doesn't but then it happens, does that mean someone is at fault?

Where guidelines and proven medical strategies exist, doctors and hospitals strive every day to make sure serious adverse events do not ever occur. Never events should never occur.

It is important to remember that the 1999 Institute of Medicine report which called attention to medical errors in the first place said bad systems and not bad people lead to most errors. As an orthopedic surgeon, I have spent my entire professional career trying to make people better. I have been on call in the middle of the night when folks have been involved in traumatic accidents. There are people with incredible talents practicing medicine, trying to do their best, but government policies continue to needlessly hamstring the ability to help their patients. The health care of this Nation is going to be hurt by the direction that Washington bureaucrats are headed.

"Never events" should never happen. When Washington bureaucrats stretch the meaning of the word "never" to keep from paying hospitals, they mislead the public and cheat our Nation's hospitals and health care providers. Perhaps Washington should start to focus its regulatory efforts on eliminating waste, fraud, and abuse in the Medicare system. This year alone we have seen one news report after another uncovering Medicare wasting American tax dollars. Medicare is paying billions for wheelchairs, prosthetics, canes, prescription drugs, and other medical supplies, as the report shows, all prescribed by doctors who are dead, some who died 10 years ago. The Washington check writers honored hundreds of thousands of these fraudulent claims. I wonder who is holding these bureaucrats accountable.

In 2001, they pledged to fix the problem identified by the Health and Human Services Office of the Inspector General. That was 7 years ago. Recent reports estimate Medicare loses approximately \$70 to \$90 billion each year to waste, fraud, and abuse. This strips our health care system of vital resources, resources we should be devoting to care for the elderly, the frail, the vulnerable. Federal officials have an opportunity to show leadership. They could have chosen to work with hospitals and physicians to develop evidence-based guidelines. Instead they have decided to issue a rule aimed at withholding money from hospitals, not improving patient care.

It is time to rethink this flawed policy. Policies must work to improve patient care, not to punish hospitals. Hospital doors must remain open.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. I ask unanimous consent that the order for the quorum call be rescinded.

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

ENERGY

Mr. CORNYN. Mr. President, I was pleased to see a report that the continuing resolution that will keep the Government running while Congress adjourns during the election period and beyond, that the continuing resolution proposed by the Democratic leadership in the House will actually eliminate a moratorium or a ban on drilling and exploration in the Outer Continental Shelf, which is, of course, the submerged Federal lands off our coastlines which are reported to have, by all of the experts, huge volumes of oil and gas. This actually represents a tremendous development in the Congress.

For a long time now we have been saying we need to develop more of America's natural resources, American energy at home, so we would be less dependent on imported oil and gas from the Middle East. Until this point, those entreaties, those pleadings, those requests had fallen on deaf ears, it seemed. But I congratulate the Democratic leadership in the House. This could go down as a bipartisan success of which we should be proud.

I remind our colleagues this is only part of the equation. We have said we need to find more American energy so we would be less dependent on imported oil from the Middle East. Where might we find that? It has been documented that deep sea exploration in the Outer Continental Shelf, the submerged lands off our coastlines, could produce as much as 14.3 billion barrels of oil. That is a lot. The western oil shale—which I am unclear whether the continuing resolution will deal with, but which has currently received a ban on development and exploration of western oil shale—is projected to have the equivalent of 800 billion barrels of oil. That is even more than the Outer Continental Shelf. Then there is, of course, the Arctic Coastal Plain which is estimated to have 10.4 billion barrels of oil, for a total estimate of 824.7 billion barrels of oil right in the good old U.S. of A. This would eliminate all oil imports, once it was on line and was being produced, for more than 198 years. These are fantastic numbers and time periods. I know it is hard to conceive, but even if these numbers are not exactly right, what it demonstrates is that we have a lot of great oil and gas reserves in America. And all of the money that T. Boone Pickens, through his advertising campaign to raise the visibility of this issue, all the money which he has documented, which we are sending overseas to buy oil and gas, we could actually reduce that dramatically by producing more at home.

We have said, of course, it is only part of the equation. While we need to find more, we also need to use less.

Yesterday we also did the third leg of the stool. We voted to extend the various tax credits and subsidies that would encourage development of alternative sources of energy. In Texas, we are known as an energy State. I bet most people would be surprised to know that in addition to oil and gas, we are the No. 1 electricity producer in the Nation from wind energy. Obviously, those alternative sources of energy are very important.

I caution my colleagues to the fact that no matter how much we act to eliminate the moratorium on the ban on offshore exploration, we still haven't done enough to open western oil shale. We still haven't done anything to open exploration and production in the Arctic Coastal Plain. I know while this 824 billion figure seems like a lot, it is estimated, once on line, it would produce about 3 billion barrels of oil a day, reducing our dependency. Just as the President's elimination of the executive ban on offshore exploration is a hopeful sign and elimination of the Federal moratorium on exploration and production in the Outer Continental Shelf is likewise a hopeful sign, it is a necessary but not a sufficient answer to the problem. That is because significant oil and gas reserves that exist in America, where producers and leaseholders already have a right to explore and produce that oil and gas and where they have invested more than \$2 billion into these projects, because of lawsuits, opponents have blocked drilling in a way that, unfortunately, is going to take years and years and years to resolve.

There are many examples of litigation thwarting approved drilling projects on existing leases. The area I am talking about specifically is, the Federal Government has leased land and approved drilling in the Beaufort Sea off the coast of Alaska's Arctic National Wildlife Refuge. Too often, long-term planning and heavy investments of human and financial resources necessary to develop and produce these reserves are frustrated, and future investment discouraged, when projects that have been extensively reviewed and approved by the responsible Federal agencies are shut down and effectively thwarted by frivolous litigation.

It is undisputed that oil and gas can be extracted from below the surface in a cleaner and more environmentally sensitive way than ever before. This is something that is vividly demonstrated by the fact that if you land or take off from an airplane at DFW Airport in the metroplex of Texas, the Dallas-Fort Worth area, you can actually land at the DFW Airport and you will see a number of drilling rigs on the DFW Airport property. What they are drilling through there is something called the Barnett Shale, a prolific producer of natural gas right there in a highly populated area. It is being done in an

environmentally responsible way, a way that is safe to the human occupants of that area and a way that, because of modern drilling technology, you can use a single well bore and basically go in all directions by thousands of feet and produce a lot more natural gas than you could have using old drilling technology. So just like when it comes to coming up with better sources of alternative energy, technology has produced a more efficient, more environmentally responsible way of drilling for oil and gas right here in the United States.

But to get back to my point, even if we lift this ban—all of these bans—unless we do something about the limitless litigation that prevents drilling from ever starting, we might as well have done nothing because this effectively shuts down drilling and production of American energy as much as any moratorium could. Unless we reform this litigation system, any repeal of a drilling ban does nothing to help consumers at the pump.

So I urge my colleagues to work with me and all of us who are interested in trying to find a solution to this tremendous dependency on foreign oil. Lifting the moratorium is an important step. I congratulate the Democratic leadership coming together with Republicans who have been calling for this for many months now. But no one should be fooled—and this would be the most cynical of all—if Congress pretended to actually be solving a problem when we know that this frivolous litigation effectively bans development of America's natural resources. This would be the most cynical move of all if we did nothing about that second part, about the frivolous litigation, because already I think people across America look at Congress as appearing to do things, perhaps superficially appearing to be responsive to their concerns, but in the end roadblocks continue to exist which impede, if not block, any realistic reform or progress on the particular subject.

So this is something I hope we will not give up on. I think today if, in fact, we do pass a continuing resolution that eliminates the moratorium on Outer Continental Shelf exploration development, it will be a great day. It is a necessary—again, a necessary—but insufficient way of addressing the ultimate dependency on imported oil.

We know high energy prices affect our economy. As a matter of fact, even though prices have dipped some, the fact is, today, according to USA Today, the average price of gasoline is \$3.72 a gallon in America. It had gone as high as \$4.11 a gallon and has come down a little bit, but it is hard to remember just a year ago a gallon of gasoline sold for an average of \$2.80 a gallon. In other words, it is up about 92 cents a gallon over a year ago, even though it has come down a little bit.

The underlying problem that is putting so much pressure on gasoline and oil prices is, of course, the law of sup-

ply and demand and the fact that growing economies such as India and China are using more and more energy, which means we are competing globally for the same oil, which, of course, unless we produce more, the law of supply and demand tells us the price will continue to go up.

So we should not be fooled into thinking we have solved the problem by eliminating only the moratorium on the Outer Continental Shelf—and there is more that remains to be done with the western oil shale and the Arctic Coastal Plain—we should not fool ourselves into thinking we have solved the problem, even if we were to lift those moratoria, unless we address this frivolous litigation that has had a way of bogging down this development in areas already leased and where leaseholders and producers have already invested billions of dollars. We need to do something about that.

So I hope we will return—if not this week—and my hope would be we could do this at the same time. There are a number of proposals. Congressman SHADEGG over in the House of Representatives has done good work in this area. Senator TED STEVENS from Alaska has some very good and interesting proposals. I have heard Senator KIT BOND of Missouri talking about some ideas he has. I have a proposal we have been working on that we think will address the delays in this frivolous litigation, while preserving to those who were genuinely harmed the right to recover compensation if, in fact, there is damage as a result of some misconduct on the part of the individuals who are producing or exploring for energy in America.

So far so good. I think we ought to acknowledge the progress that is being made after all of these months. But we are not there yet. I hope we will see continued cooperation as we actually help to bring down the price at the pump and reduce America's dependency on imported oil in a way that endangers our national security and threatens our economy at a time when our economy is quite fragile indeed.

Mr. President, I ask unanimous consent to speak for an additional 5 minutes.

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

Mr. CORNYN. I thank the Chair.

THE ECONOMY

Mr. CORNYN. Mr. President, I want to say a few words about the principles that will guide my consideration and my vote on the proposal made by the administration, by the Secretary of Treasury, Henry Paulson, and Ben Bernanke, the Chairman of the Federal Reserve Board.

I have to tell you I am extremely upset we find ourselves in this terrible situation. I can tell you the phone calls I have been getting from my constituents are that they are overwhelmingly angry at how we could possibly find ourselves in this situation.