only five states require all such equipment for Advanced Life Support ambulances. 34 percent of EMTs and paramedics report that they still do not feel comfortable treating children. In 1996, 66 percent of persons who failed the national EMT exam did so because they failed the pediatric/OB section. A recent study found that paramedics' skills and knowledge for treating critically ill or injured children completely decayed by six months post-training; yet no state requires even annual retraining in pediatric care. Children with special health care needs present major complications for emergency treatment. Yet, only six states have approved continuing education courses that address this topic. Only nine states have the capacity to produce reports on pediatric emergency medical services care using statewide emergency medical services data. Perhaps most significantly, however, is the finding that LESS THAN HALF (46 percent) of hospitals with emergency departments have necessary equipment for stabilization of ill and injured children, and only 40 percent of our nation's hospitals with emergency departments have written transfer agreements with a higher level facility to ensure that children receive timely and appropriate hospital care when they need it. Many public policy experts have also raised the issue of how pediatric emergency care is being covered under managed care programs.

Earlier, I referred to the impressive report which the Congress had received from the experts at the Institute of Medicine. In my judgment, perhaps the most critical Institute of Medicine recommendation is that the Congress should provide $30 million annually for this special program. Those of us from Hawaii truly appreciate on a first-hand basis the many far reaching health policy recommendations that have been made over the years by our visionary pediatrician, Dr. Calvin Sia. I, as one U.S. Senator, shall continue to do my best to implement Dr. Sia's recommendations. Our nation's children and families deserve no less.●

NOMINATION OF JUDGE PAEZ

Mr. ABRAHAM. Mr. President, I wanted to make a few comments about Judge Paez's nomination, which was recently reported out of the Judiciary Committee with six Members noting dissents. Because I had a prior commitment, when the markup was moved from 10:00 A.M. to 5:30 P.M. Thursday afternoon I was not able to be there and accordingly did not record a position on this matter, which was voted on by voice vote with those wishing to note a dissent doing so. I would like the record to reflect, however, that I have serious objections to this nominee's confirmation. My reasons center around some comments Judge Paez made about two California initiatives while he was serving as a district judge.

In a speech given at Boalt Hall in April of 1995 as part of a series of lectures on Law & Cultural Diversity honoring Judge Mario Olmos, a Boalt Hall graduate, Judge Paez said the following:

> The Latino community has, for some time now, faced heightened discrimination and hostility, which came to a head with the passage of Proposition 187. The proposed anti-civil rights initiative [which was eventually placed on the ballot as Proposition 209] will inflame the issues all over again, without contributing to any serious discussion of our differences and similarities or ways to ensure equal opportunity for all.

Here are my concerns. In the case of Proposition 187, an initiative barring receipt of state-funded benefits by illegal aliens, at the time Judge Paez made these remarks, he was a sitting district court judge, and there was litigation pending in Judge Paez's own court regarding the constitutionality of this initiative. That court had granted a t.r.o. and had before it a request for a preliminary injunction, which the district court did not rule on until November 1995, seven months after Judge Paez made this speech. Assuming some aspects of the initiative ultimately survived this facial constitutional challenge, a question that I believe has just gone to the Ninth Circuit, there was also certain to be litigation over how it should be interpreted.

Judge Paez's comments on the initiative, it seems to me, at a minimum at least unnecessarily raise a question as to whether he will be able to decide cases presenting issues relating to Proposition 187 impartially. Indeed, at his hearing, when asked about these remarks, Judge Paez practically acknowledged this problem in that he cited the pending cases as a reason why he needed to be cautious in answering Judiciary Committee Members' questions about what he had said. That is the very reason he should not have said what he did in the first place. Accordingly, I think these comments are inconsistent with Canon 4 of the Model Code of Judicial Conduct, governing judges' extra-judicial activities. Under that canon, off the bench a judge is supposed to conduct himself or herself so as not to ''cast reasonable doubt on the judge's capacity to act impartially as a judge.''

As for Judge Paez's comments regarding Proposition 209, barring racial preferences in the provision of public services, I believe they raise similar concerns and some additional ones as well. Proposition 209 had not even been placed before the voters at the time these comments were made, and so as far as I am aware, there was no pending litigation about it at the time Judge Paez made these comments—although we have had before us another nominee for the Ninth Circuit who tried to get an injunction against circulating petitions to place an initiative on the ballot, so such litigation certainly was not an impossibility even at that stage of the process. Even if no challenge along those lines were brought, however, it was crystal clear that there certainly would be ample litigation about it if the initiative was placed on the ballot and passed, and that again, it was likely to be in Judge Paez's court. Indeed we know that is in fact what happened. So in that instance as well, it seems to me that these comments are dubious under Canon 4.

In addition, I think they are problematic under Canon 5(D). That canon generally prohibits judges from engaging in political activity. Judge Paez gave this speech on April 6, 1995. The next day, the California Democratic Party opened its State convention, where press reports say that the question of how to respond to the circulating initiative was one of the central issues on the table. One day later, President Clinton went out to California to give a speech on the subject. According to the press, at the time many were arguing that given California's significance in Presidential politics, this issue could play a critical role in the Presidential election.

Given this context, Judge Paez's comments look a lot like a judge intervening in a hot political controversy. Granted, the forum where Judge Paez made these remarks—a lecture series at a law school—may insulate them from actually violating Canon 5. And it is possible that Judge Paez was just unlucky about the timing of his remarks, and had no intention of affecting the California Democratic Party's position (although in answer to a question at his hearing about how an initiative that tracks the Fourteenth Amendment could be ''anti-civil rights'', he said that at the time he was giving his remarks, he remembered ''just reading in the papers there was a lot of debate going on as to how it should actually be formulated,'' suggesting that perhaps he was following that debate). Regardless of his actual intention, however, the appearance that a judge is injecting himself into politics is exactly what Canon 5(D) is designed to avoid, and that is presumably why it is formulated as a flat prohibition.

When he was asked about these comments at his hearing, Judge Paez said ''we shouldn't and I wasn't trying to take a political position. We were bound by certain ethics. Nonetheless, as I said a minute ago, we are—we have a life outside of our role as a judge as well, and it was an—I was trying to address a particular broad issue, and so I made those remarks.'' He also said that he regretted having used the particular words he did. In written answers to follow up questions, he also explained why in his view his remarks did not violate Canon 3A(6) (prohibiting judicial comments on the merits of pending cases) and how ''upon reflection, [he] underst[ood] how [his] reference to the proposed initiative could have led some to believe that [he] might have a biased view of the constitutionality of Proposition 209.'' He continued ''I regret that anyone would have that perception, as I assure you that was not

and is not the case. I am sorry that I may have given anyone such an impression by uncritically referring to the proposed initiative in the way that I did.''

I do not think these responses are sufficient. The concerns that have been raised about these matters are not esoteric. They are the kind of thing that I think we reasonably expect judges to think about before they give public remarks. Nor was Judge Paez brand new to the bench when he made these remarks: he gave the speech in April 1995, some nine months after his appointment. Finally, Judge Paez indicated in response to written questions from Senator ASHCROFT (1) that since his comments only went to the divisive nature of the initiative, he ''hope[d]'' it would have been clear to the people of California that he had not prejudged the matter but that (2) in any event he would not have recused himself from hearing a challenge to Proposition 209 because he believes he could have been impartial in the matter since judges often have personal opinions on policy questions but are expected to put them aside. It seems to me, however, that given that Judge Paez went out of his way as a judge to say what he did, it would be perfectly reasonable for the people of California not to trust his impartiality and that a recusal pledge with respect to cases involving these initiatives was a bare minimum indicator of the sincerity of his expressions of regret.

Despite the central role that the initiative process has played in California in correcting judicial excesses, I have supported two prior nominees. One was a nominee to a California district court seat who had written a piece criticizing the initiative process itself. The other was a nominee to the Circuit Court whose pro bono work challenging a Washington initiative even before it had been placed on the ballot I alluded to earlier. These activities raised some questions about whether either of these nominees should be confirmed for judicial positions where they would of necessity be passing on the validity of initiatives. In each instance, the nominee's explanations persuaded me that they should be given the benefit of the doubt. Unfortunately, in Judge Paez's case, I find myself unable to do so, and accordingly I have serious objections to his elevation to the Ninth Circuit.

CREDIT UNION MEMBERSHIP

• Mrs. BOXER. Mr. President, on February 25, the Supreme Court issued an opinion invalidating the National Credit Union Administration's (NCUA) multiple group policy. I am concerned that the Court's ruling may require some current credit union members to divest their credit union membership. Let me explain.

Section 109 of the Federal Credit Union Act of 1934 provides that ''federal credit union membership shall be limited to groups having a common bond of occupation or to groups within a well-defined neighborhood, community or rural district.'' Accordingly, prior to 1982, federal credit unions were chartered to serve a single group affiliated by either occupation, association, or residency in a well-defined community.

In 1982, however, the NCUA altered its interpretation of section 109 to allow federal credit unions to comprise not just one, but multiple occupational groups. For example, a credit union formed by and serving the employees of a clothing store, could also, pursuant to the NCUA's 1982 interpretation, serve the employees of a grocery store or a pharmaceutical company. In 1990, a group of North Carolina Banks, as well as the American Bankers Association filed suit against the NCUA arguing that the NCUA interpretation was contrary to the Federal Credit Union Act. The Supreme Court recently issued an opinion in which they found on behalf of the five North Carolina banks and the American Bankers Association.

I think it is important to ensure, however, that no current credit union member be forced to give up their membership if they are multiple-group credit union members. I know that my friend and colleague Senator KERRY is also concerned about this issue.

Mr. KERRY. Mr. President, I thank Senator BOXER and I share her concern that the Supreme Court ruling could require some credit unions to remove some individuals from credit union membership. The credit unions operated in good faith when they extended membership to members of unrelated groups. However, the Supreme Court found that such actions have gone beyond the bounds of the Federal Credit Union Act.

The U.S. District Court, to which the Supreme Court returned the case, can choose from a number of alternatives to provide the required relief in *National Credit Union Administration* v. *First National Bank & Trust et al.* The Court could choose to expel current credit union members who are not affiliated with the original occupational group, grandfather all current members of credit unions but prevent credit unions from adding any new members who are not affiliated with the original group or allow credit unions to add new members from any employer groups represented by current credit union members but preclude adding members from other unrelated occupation groups.

I believe the members of all current multiple-group credit unions should be allowed to continue in the credit unions they have chosen. Dislocating approximately 10 million credit union members not affiliated with their credit union's original occupation group could potentially have serious effects on the safety and soundness of the credit unions in Massachusetts and across the nation. It would also limit the credit and financial services options for millions of working families who have come to depend on their credit unions.

I am not prejudging precisely how the Congress should legislate a final resolution of this matter. It deserves careful consideration by Senators and Representatives. But, I believe strongly that until that resolution is determined and enacted into law, it would be a grave mistake for the Court to force existing credit union members out of the affiliation with their credit unions. Such a step would be counter to the public interest.

Mrs. BOXER. I would add that the American Bankers Association, to its credit, has said that, despite the Court's ruling, it has no intention of trying to force credit union members who currently belong to multiple-employer group credit unions to divest their membership. I am hopeful, therefore, that Judge Jackson will allow all current credit union members to remain with their respective credit unions.

Mr. KERRY. I agree with my good friend and also applaud the American Bankers Association decision not to seek action to force dropping credit union members from credit union rolls. All working families in the United States, whether they live in urban or rural areas, deserve access to fairly priced credit and other financial services. Credit unions serve as a way for people of average means, without easy access to affordable credit, to pool their savings in order to make credit available to themselves and their fellow credit union members at competitive interest rates. In the Commonwealth of Massachusetts, for example, there are more than 300 credit unions serving approximately 1.7 million people. These credit unions have helped launch and sustain small businesses. Some of them have played a key role in the development and revitalization of economically distressed communities. In dozens of ways, credit unions have proven themselves to be a vital component of our financial services industry. We must not take precipitous action that could result in grave damage to this portion of the industry. That is especially important until the Congress can pass legislation.

Mrs. BOXER. I could not agree more. In my home state of California, there are 500 federal credit unions and more than 5 million credit union members. So credit unions have been an extremely valuable resource to millions of residents of my state as well.

Finally, Mr. President, I think it is important to put into some context the multiple-group charters that the NCUA began approving in 1982. Beginning in 1982, as a result of the economic conditions of the time—the downsizing of companies, the closing of plants, and slumping U.S. industries—the stability and viability of a number of individual credit unions was threatened. Simultaneously, we started seeing the beginnings of an upsurge in the number of