

victims have no choice but to accept these demands, even though there is no legal reason why most of the documents should be kept under wraps.

While courts actually have the legal authority to deny requests for secrecy, often they do not—because both sides have agreed, and judges don't take the time to independently look into the matter themselves.

Over the years, we have raised this concern, citing several examples, including defective heart valves, exploding fuel tanks, and dangerous playground equipment. In case after case, people have been injured or killed by defective products that remained on the market while crucial information was sealed from the public light. This is not only wrong, it is also unacceptable.

There is no doubt that the most flagrant abuse of secrecy orders involves Big Tobacco. This tactic has served the industry in two disturbing ways. First, it dramatically drove up the cost of litigation by making every plaintiff "reinvent the wheel." As one tobacco official boasted, rather crudely, "the way we won these cases was not by spending all of [our] money, but by making that other S.O.B. spend all his." And secrecy orders helped them do it.

Second, secrecy kept crucial documents away from public view. The tobacco companies have used secrecy orders and attorney-client privilege to conceal all kinds of materials critical to public health and safety, including many relating to teen smoking and nicotine levels. Once these documents were released, public outrage compelled action. But if the public had this information earlier, we could have saved thousands of lives.

The underlying tobacco bill—which I strongly support—sets up a depository where tobacco companies are supposed to send current and future documents. But the tobacco companies have made clear that they will not cooperate. They'll just tie up this and other provisions in court, and the promise of a meaningful document library will literally be empty.

So the bill leaves a big, big loophole. In the future, tobacco companies could add new ingredients to cigarettes that pose health risks or make tobacco more addictive. And they will still be able to rely on secrecy orders to conceal these hazards from the public.

Our proposal will close this loophole. It is simple, effective and limited in scope. It only applies to a small category of cases, like tobacco, which involve public health or safety. Before approving secrecy orders, courts would apply a balancing test—they could permit secrecy solely if the need for privacy outweighs the public's right to know. In addition, the amendment bars any agreement that would prevent disclosure to the federal and state agencies charged with protecting public safety.

Mr. President, our proposal does apply to more than just tobacco cases,

of course, and it should. We need to prevent others from copying the tobacco industry's tactics.

Bipartisan support for this proposal has grown over the years. Last Congress, it passed the Judiciary Committee 11 to 7. So if the tobacco bill moves forward, this proposal should be included.

But even if the tobacco bill goes down, we still need to address this problem. Because who knows what other hazards are hidden behind courthouse doors? So if necessary I will offer this amendment to another measure.

Today, a debate is raging about whether the President is hiding behind court orders and legal privileges. But when health and safety are at issue, there shouldn't be any debate at all. This is far too important. We need to learn our lessons from tobacco and take action to stop the next threat.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

PATIENTS' BILL OF RIGHTS

Mr. DORGAN. Mr. President, I want to speak just for a moment about the Patients' Bill of Rights that we have introduced in the Senate and that many of us in the Senate hope can be considered on an expeditious basis by the U.S. Senate.

The Patients' Bill of Rights is a piece of legislation designed to address some of the concerns we have about managed care. In many instances, health plans are denying patients the right to know all of the treatment options available for their not just the cheapest treatments available. The Patients' Bill of Rights would guarantee that right, along with the opportunity to understand your rights with respect to emergency care and a range of other rights that we believe should be inherent.

I want to tell the Senate another story, as we have done almost every day the Senate has been in session, that describes, again, the urgent need for passage of the Patients' Bill of Rights.

This is about a young woman named Paige Lancaster from Stafford, VA. In 1991, when Paige Lancaster was 11 years old, her mother took her to see her HMO pediatrician because she had complained of nausea and severe daily headaches for some long while.

For the next 4 years, Paige repeatedly sought medical treatment for headaches from two other HMO pedia-

tricians available. They prescribed adult-strength narcotics but never once consulted with a neurologist nor did they recommend during all this time an MRI, CAT scan, EEG, or any other diagnostic test, for that matter, to diagnose Paige's condition.

Then in 1996, Paige's school counselor worried about this young girl's deteriorating high school performance. She recommended to the doctors that they perform some diagnostic tests to determine the cause of this young lady's debilitating symptoms.

Mr. President, 4½ years after the first visit by this child complaining of severe headaches, the doctors finally ordered an EEG and an MRI. The MRI revealed a massive right frontal tumor and cystic mass that had infiltrated over 40 percent of her brain. One week later, Paige underwent surgery to remove the tumor. However, the surgery was unsuccessful because of the tumor's size and maturity. Paige then underwent a second and third surgery and radiation therapy, and she is, we are told, likely to require additional surgery and ongoing intensive care.

What is so outrageous about this case is that the HMO covering Paige had in place a financial incentive program under which her physicians would receive bonuses for avoiding excessive treatments and tests.

This is not something new. We know of managed care organizations in which the contracts with the physicians require that, if a patient of the physician shows up in an emergency room, the cost of that emergency treatment comes out of the payment to the physician—an unholy circumstance, in my judgment, because it creates exactly the wrong kind of incentive for physicians.

In this case there is the same kind of incentive in reverse. The HMO had in place a financial incentive under which physicians would receive bonuses for avoiding excessive treatments and tests. Clearly, physicians should not prescribe excessive treatments and tests, but, just as clearly, physicians should not have to consider their own financial circumstances when determining whether they should prescribe a test.

The Lancasters, Paige's parents, challenged the HMO's handling of Paige's case, but, unfortunately for them, the insurance for their children was provided by Mr. Lancaster's employer and was subject to something called ERISA, the Employee Retirement Income Security Act. Under ERISA, the only available remedy to the patient is the cost of the benefit denied, in this case the \$800 cost of the MRI. In other words, under ERISA, the HMO cannot be sued. The piece of legislation that we have proposed in the U.S. Senate, the Patients' Bill of Rights, would hold HMOs accountable by allowing patients to sue when their HMO's coverage, or lack of it, has caused them harm. The bill will also require HMOs to disclose any financial

incentives that might cause the HMO doctors to skimp on patient care. Any incentives that exist between the HMO and the doctor must be disclosed to the patients.

This young girl, Paige Lancaster, waited nearly 5 years for a diagnosis, one might argue, in part, because the wrong incentives existed between an HMO and a doctor. The incentives were about saving money rather than providing quality health care.

We very much hope we can get back to the notion in this country that practicing medicine ought to be done in doctor's offices and hospitals, not in the office of some insurance company accountant 500 or 1,000 miles away. It is our hope that we will be able to bring to the floor of the Senate the Patients' Bill of Rights because we think this country needs it. We hope the Senate can debate it and pass it in the coming weeks.

Mr. President, I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent to speak as in morning business not to exceed 5 minutes.

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

ELIZABETH "BETSY" DOWNS
ENGELKEN

Mr. STEVENS. Mr. President, the other day, I had the pleasure of being invited to join my son Ben at the Blessed Sacrament School in Arlington to see my granddaughter participate in one of her first events at that school. I appreciated that opportunity because I had occasion to meet up with a friend, Elizabeth "Betsy" Downs Engelken, who has been a teacher there for some 20 years. We have something in common. She happens to also have a relationship to my granddaughter, because she is the mother of my son's wife, Elizabeth.

As Betsy retires after 20 years, I thought I would come to the floor and talk about this lady who has developed such creative teaching skills and has endless enthusiasm for the children with whom she works. She has a sparkling sense of humor, and it is really a delight to see what she has done working with the Diocese of Arlington for these past 20 years.

While she has been there, Betsy Engelken has developed unique talents to identify students that need special assistance and have learning disabilities. She has been a representative of the teachers on the school board and successfully initiated action to bring about additional recognition for teachers and pay increases.

She has worked on developing new techniques to find ways to bring children into the 21st century. She has brought them awareness of the new kinds of systems that they encounter as they go through school. But above

all, I think she has really had a great impact on the many children she has taught because she has a real commitment to children.

So I want to share with my colleagues the joy I have had recently in terms of being able to participate in this event with my granddaughter Susan. And I also want to congratulate Elizabeth "Betsy" Downs Engelken for her years of commitment to the children of this area.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

NATIONAL TOBACCO POLICY AND
YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, as most Senators are aware, there is a signing ceremony at the White House at 5:30 on the highway transportation bill, so a large number of Senators will be there for that occasion. But we thought it was important we get a vote on the drug-related amendment this afternoon. So we have checked with parties on both sides.

I ask unanimous consent that a vote occur on amendment No. 2451 at 6 p.m. this evening, and immediately following that vote the Senate proceed to vote on the Democratic alternative, with the time between now and 6 o'clock to be equally divided on the issue of drugs.

I further ask unanimous consent that immediately following the granting of this consent, the Democratic leader be recognized to offer their alternative, and the Coverdell amendment be temporarily laid aside for that purpose.

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

Mr. LOTT. For the information of all Senators—and I know Senator KERRY will want to comment; but I want to make it clear what we have done here—these two votes will be the two votes that will begin at 6 p.m., with one right behind the one at 6. They will be the last two votes of the evening.

Following those two votes, we will continue to work on a similar agreement, which we have not yet gotten everybody to sign off on, that will provide for votes on the marriage penalty and the self-deductibility of taxes issue by midday on Wednesday. We are working to see if we can get an agreement to have a vote at 1 o'clock, followed by an alternative that the Democrats would offer.

We do have a joint meeting in the morning to hear the President of South Korea at 10 o'clock. So we will not ac-

tually be able to get started on the marriage penalty and its alternative discussion until about 11 o'clock. But Senators will be notified when the second cloture vote will occur and the marriage penalty votes will occur during Wednesday's session of the Senate, we assume shortly after the noon hour; hopefully by 1 or 2 o'clock.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I want to thank the majority leader for his hard work in putting together this unanimous consent agreement. At the completion of it, we will have made progress on two of the very important key issues associated with this legislation, the drugs and tax cut. I also want to thank him for comity in giving the other side, obviously, an opportunity to propose their amendment. I am very encouraged by this. It seems to me, and the majority leader I hope would agree, that there are a couple of substitutes—attorneys' fees and the agricultural issues—that are the difference between Lugar and the LEAF bill that would keep us from completing action on this legislation.

I want to thank the majority leader, again.

Mr. LOTT. If the Senator would yield, I want to say I have discussed with him today and with others in the Senate and in the administration, the fact of the matter is, we sort of have been locked in this position for a week. The important thing was to try to come to an agreement and get some votes on these important issues. This gets us started in that direction. I think that is important.

Mr. MCCAIN. I think they are two important provisions. Obviously, we have had significant debate on both the issue of drugs and tax cuts. I'm very pleased that we are going to make progress on both of those issues.

I hope the substitutes—one, I understand by Senator HATCH, and the other by Senators GRAMM and DOMENICI would be ready for us to start debating and discussing. We also plan to have another amendment on attorneys' fees, and then what remains, I think we could hopefully get time agreements on the amendments.

As we go through this process, one, we don't have a lot of time left; and, two, we have our up days and our down days. I suggest that all of us try to take and keep a steady stream as we work our way through this important issue.

I thank my friend from Massachusetts for his sincere and very valiant effort to try and maintain the comity on both sides of the aisle. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the majority leader and the minority leader for their efforts, jointly, with