

last several decades, my Democratic colleagues have blocked the development of America's energy supplies, blocked our own energy independence, even back in the seventies, when President Carter stopped the development of nuclear power generation and our European allies moved on to where now 80 percent of their electricity comes from clean and efficient nuclear power. Even the founder of Greenpeace has come back and said it was a mistake to stop that. Yet today we make electricity with natural gas, which is increasing the demand for natural gas and has raised the prices so that many of our manufacturers can no longer compete because of the high cost of energy in this country. And the price keeps going up.

We have seen the same thing happen with oil and gas where for years we blocked the development of our own energy supplies, our own oil supplies, and now we are down here trying to blame the President and others for the high cost of gasoline.

If we track what happens on many of the votes—I know I have heard on this floor that the oil reserves in Alaska wouldn't make that big a difference. But we know that only a 2- or 3-percent increase in our supply at this time would dramatically reduce the cost of gasoline. Yet on all of these dates over the years, going back to 1991, consistently our Democratic colleagues have voted to block the development of oil reserves in ANWR, and we see the price of gasoline going up consistent with those votes.

I have heard on this floor for a number of years that the 5-percent additional supply that would be provided by ANWR would make no difference in the cost of gasoline. Yet we saw during Katrina, when we lost 5 percent of our supply, what it did to the cost of gasoline and what it is doing today.

We can't continue to block what needs to be done and then blame other people when we have problems because it doesn't get done.

Today I wish to talk particularly about health care because we have gotten word from our Democratic colleagues that they are going to block several important provisions that we are going to try to get on the floor for debate next week.

One of those is medical malpractice. A very important component in the cost of health care is the fact that we are suing doctors out of business. We have 20 States now that are considered in crisis because of medical liability. We have another 24 that show warning signs, which means the loss of doctors, the loss of access to care, and less insurance available. South Carolina is in that group.

Let me share some statistics that should get folks' attention: 59 percent of physicians believe that the fear of liability discourages discussion and thinking about ways to reduce health care costs. The costs of defensive medicine are estimated to be between \$70

billion and \$126 billion a year. I think I need to say that again. The cost of defensive medicine is up to \$126 billion a year to try to cover doctors from liability because of unlimited lawsuits against doctors. Blue Cross, a major insurer, when surveyed said it is already a serious problem as far as adding to the cost of health insurance premiums.

There are many things we can do to fix that, but folks need to understand the real costs because I know my Democratic colleagues will say that it is not a factor.

The only people getting rich from medical malpractice are the personal injury lawyers. Keep these things in mind during our debate next week: More than 70 percent of the claims against doctors or hospitals are dropped or dismissed before they reach a verdict, but even if they are dismissed, the claims costs are \$18,000 in legal expenses. In 2004, medical liability costs that were settled—when cases are settled—the legal costs were \$60,000. In the cases where they actually went to trial but the doctor or hospital won, the average cost jumped to \$94,000.

The Wall Street Journal points out a number of facts like these, but one of them should really hit home. They were using Texas as an example because Texas has made some reforms that we will be considering for our country that have made a big difference.

Hospital premiums to protect against lawsuits more than doubled in Texas between 2000 and 2003. But I think probably the most disheartening statistic I have seen is that between 1999 and 2002, the annual per-bed cost for litigation protection for nursing homes went from \$250 to \$5,000. That is what nursing homes have to pay just for liability coverage for malpractice lawsuits. That is at a time when we have a new and large wave of retirees whom we need help when it comes to nursing homes. Yet we are suing them out of their hospital beds.

We know we can fix this. Part of the problem, I am afraid, is right here in Congress. As I said before, the only people really getting rich from the system we have now are personal injury lawyers. One statistic to remember is between 2003 and 2004, personal injury lawyers gave \$102 million to House and Senate candidates. They got a good payback. In fact, it was a 10,000-percent rate of return because during that same period, over \$18 billion in malpractice awards were given during 1 year—over \$18 billion. We cannot continue to allow this to be a part of our health care system and then come down here and complain about the cost of health care.

We know that many doctors are leaving rural areas and no longer delivering babies. This is a fact. This is not political rhetoric. We know that in many places around the country, if someone is injured badly with a head injury in a car accident and they go to an emer-

gency room, there are no neurologists there because they won't take calls because they are likely to get paid very little from Medicaid or another insurance company, but they could lose millions of dollars because of lawsuits.

There are some commonsense things we can do, and we have seen this happen in Texas with their reforms that we will be looking at next week. I implore my colleagues to consider what Texas did, and before we get into all the misrepresentations, the malpractice bills we are going to talk about next week do not put any limits on economic damages and allow up to \$750,000 for pain and suffering. So a person who is injured could get their salary for life, all their health care paid for, and up to \$750,000 additional money for pain and suffering in Texas. What that has done in just 1 year is cut their lawsuits in half. The cost of liability insurance has been reduced almost 20 percent in just a short period of time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DEMINT. Mr. President, I ask unanimous consent for 2 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. I won't object assuming there will be 2 additional minutes on this side.

The PRESIDING OFFICER. Time is equally divided.

Without objection, it is so ordered.

Mr. DEMINT. Mr. President, I will conclude again with the hope and the request that we can debate this honestly. Certainly we do not want patients being hurt and not being compensated, but we also don't want many more patients not finding a doctor, not being able to afford their health care or to get health insurance. These are things we can fix if we work together.

If you notice on my chart, I don't accuse this of being Republican or Democrat. It is just an issue we need to address. We need to do something commonsense with medical malpractice. Please, let us put the bill on the floor next week for debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, is the Senator from Massachusetts seeking recognition for a unanimous consent request?

Mr. KENNEDY. I am. I was going to make comments for 2 or 3 minutes and then make a consent request.

Mr. LEAHY. I was going to proceed for about 5 minutes, but if the Senator from Massachusetts wishes to go first, that is fine.

Mr. KENNEDY. I will wait.

#### MEDICAL MALPRACTICE

Mr. LEAHY. Mr. President, it is interesting to hear the statistics being tossed around. I am sure the distinguished Senator did not mean by his chart to suggest somehow bribes have been offered to people in how they vote.

Mr. President, we have States without caps on medical malpractice recoveries. They have 14 percent more practicing physicians than those with caps. We hear about the increasingly burdensome medical malpractice premiums and, indeed, they are. Health care providers pay onerous amounts to be insured. That is why I have introduced a bill directed specifically toward medical malpractice insurance reform because, after all, there is no correlation between malpractice claims and rising insurance premiums. Between 2000 and 2004, insurers increased premiums 134 percent, even though payments remained flat.

They say this legislation drastically reduces insurance rates. Of course, the American Insurance Association has said we have not promised price reductions for tort reform. They have been quoted as saying: We wouldn't tell you or anyone the reason to pass tort reform would be to reduce insurance rates. In fact, a majority of States that have enacted caps have seen no reductions. In fact, on average, doctors in States with caps pay more for insurance than they do in States without caps.

The fact is, there is one place that makes money. Claims go down and insurance premiums go up. It is like the rising gas prices and the record oil company profits. Maybe we ought to be asking medical malpractice insurers exactly why their premiums are so exorbitant? If it is not because they are paying an increasing amount of claims. They are not doing that. Rates are going up much faster than any claims. It could be a soft stock market, bad investments, or greed. That is what we ought to ask about. In my State, without caps, we increased the number of doctors. So don't use this argument that somehow in rural areas, in rural States, we are going to lose doctors. We are gaining doctors. We should ask the insurance companies why their rates go up, even though the payments are flat.

We should also remember that America's courts belong to the American people, not to the special interests of the insurance companies. These bills are bad public policy. They are ill-timed.

We ought to be debating the priorities of the American people, not debating ways to make greater profits for the insurance companies. We ought to talk about energy policy and skyrocketing gas prices. Wouldn't it be good to have a real debate on the fiasco in Iraq today, a real debate about what has gone wrong in the war in Iraq? That could take a couple of months just to list them. A lot has gone wrong since the President announced: "Mission Accomplished."

We ought to be talking about the comprehensive immigration bill or stem cell research. What about the horrific genocide in Darfur?

So I am disappointed that the majority leader has decided instead that the

Senate's and the public's valuable time should be taken up with these bills. I am also disappointed that he has decided to bypass any consideration of these bills. Instead, the insurance companies, and probably some of the large medical companies, have a special interest bill that benefits the insurance companies at the expense of patients with legitimate injuries coming straight to the floor.

These are real people. I will give you one example in my own State of Vermont. On April 7, 2000, Diana Levine had a severe migraine headache. She went to a health center. Ms. Levine was a musician. She received a painkiller, along with an injection of another sedative. That caused complications and she had two amputation surgeries of her left arm. A musician. She sued the corporate giant, Wyeth, for improper guidelines on the sedative because it didn't warn about these dangerous combinations. They knew about it, but they didn't warn anybody. She said:

I never expected to sue anyone in my life. . . . Sometimes it takes something like this to make it known when a drug is not being used right.

After a full trial, knowing that her career as a musician was gone, the jury said she deserved \$2.4 million for past and future medical expenses and, of course, \$5 million for the daily pain she is suffering. Most of that would have been cut out under this bill. That makes me think this bill is political and doesn't go to the root cause of medical malpractice.

Let's not forget that medical errors happen to 100,000 people each year. One out of over 100 hospitalized patients suffers negligent care. Just turn on the news every night and we hear about it. More people die as a result of medical errors than automobile and workplace accidents combined. More die from that than automobile accidents and workplace accidents combined, but only 3 percent of them even file a claim. These statistics tell us there is not so much a malpractice lawsuit problem as a medical safety problem.

I fail to see how arbitrarily limiting the rights of citizens addresses this serious problem, particularly because in many cases the judicial system is the only forum in which such an error is brought to light. Rather than looking for ways to limit our citizens' access to justice, we should look for ways in which we can encourage the medical community to strive for the highest standards in the delivery of its services. It is in our interest as citizens, and it is certainly in the interest of all the dedicated and caring people in the medical profession whose oath commands them to do no harm. My wife Marcelle dedicated her career to the care of others through nursing, and I know how seriously those in the medical profession take their solemn responsibilities. The best place for positive change to occur is from within the medical profession, not from within our courtrooms.

The bills on the floor today favor the interests of insurance companies over patients, the interests of profit over sound health care, and they provide illusory promises of lower insurance rates for doctors, while addressing none of the underlying causes of medical malpractice. This is not the fix that is needed.

We hear numerous complaints from politicians about the harm malpractice lawsuits cause to patient access and the medical profession. We hear claims about doctors practicing defensive medicine at the expense of innovation and aggressive treatment. We hear claims about doctors fleeing communities. We hear claims about the reluctance of our young people to enter the medical profession. We hear claims about pregnant women who cannot find obstetricians to provide care throughout pregnancy and birth. There might be some merit to this legislation if these claims we routinely hear were true. They are not.

The myths associated with medical malpractice lawsuits have virtually all been discredited. Two of the primary arguments in favor of capping non-economic damages are lowering insurance premiums and preventing doctors from leaving their State or their profession. The available data suggests that these arguments are unfounded.

In my home State of Vermont, the most recent data show that the number of physicians practicing in the State has risen steadily from 1,918 doctors in 1996, to 2,589 doctors in 2004. The number of OB-GYNs in Vermont is also higher today than it was in 2000. Today Vermont residents benefit from 113 OB-GYNs, compared with 91 in 2000.

This trend exists nationally as well: The number of physicians nationally has risen between 1996 and 2004. We also now have more physicians under the age of 35 today than we did in 1996. The number of doctors per capita in this country has been steadily increasing since 1965. It is hard to understand how these trends can be characterized as the loss of people from the medical profession. There is also no correlation between a State damages cap and the number of doctors practicing in the State. Nationally, States without caps have 14 percent more practicing physicians.

As we consider the majority leader's bills, I urge other Senators to help expose the myths associated with the legislation we address today. In fairness to the American people, we should be debating the facts, not the myths. If we acknowledge that the real problem is medical malpractice and the injuries and deaths that result, and not the lawsuits that seek to remedy these harms, I know we can go a long way to helping the medical profession work from within to assure that doctors meet the highest possible standards and strive to prevent medical errors. After all, those in the medical profession are in the best position to understand what changes must occur, and

how best to make sure that needed changes occur. As an example of this I want to highlight the efforts of anesthesiologists, who accomplished a nearly sevenfold reduction in anesthesia-related errors through cooperative changes to their systems and practices. Not surprisingly, when anesthesia-related errors decreased, so did insurance premiums. This should be our model of how to effectively address medical malpractice. If we work together, between needed reforms in the insurance industry, and by supporting medical professionals in improving the critical work they do, I know we can tackle this problem effectively.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, first of all, I thank my colleague and friend from Vermont for his excellent statement and comments. I look forward to joining with him on the debate of that issue when we have a chance on Monday and Tuesday next. I share the disappointment of the Senator from Vermont that we will not have an opportunity to address the stem cell issue on the floor of the Senate, which can offer such extraordinary hope to so many families in this country.

We are in the life science century. We have seen this enormous progress that has been made with the mapping of the human genome, with imaging, nanotechnology—breathtaking advances—and stem cell research offers a very similar kind of opportunity. We have legislation that is on the calendar that was approved in a bipartisan way in the House of Representatives, and it has been on the calendar now for about a year. I think most of us were heartened when we heard our majority leader indicate his general support—a change in position—his general support for the items which are in the House bill that is on the calendar now before the Senate. Evidently, though, we will not have an opportunity next week to consider that stem cell bill.

When I think of the stem cell legislation, I think of the possibilities of hope for families who are facing Alzheimer's disease or cancer, Parkinson's disease, diabetes because the possibilities in research are virtually unlimited. There are no assurances of the outcome, no absolute assurance that we are going to come up with cures, but for those who are on the cutting edge of basic and applied research in the science area or in the health area believe that this stem cell research offers enormous possibilities. I wish that had been included in the agenda for next week's discussion about health care, but it has not been.

#### HATE CRIMES

Mr. KENNEDY. Mr. President, I share the disappointment of many that the Republican leadership has delayed calling up the sex offender registration bill. The House passed its version last

September and the Senate Judiciary Committee reported a much improved version to the full Senate last October.

When the House passed its bill, it approved an amendment to improve the Federal hate crimes laws as well. The Senate bill does not include that provision, but many of us had hoped to add it as an amendment. I urge my colleagues to support it.

The inclusion of the Federal hate crimes law is not inconsistent with the goals of the legislation to stop crimes against children. We can clearly do more to protect our communities and encourage them to do so. Hate crimes are a violation of everything our country stands for. These are crimes against entire communities, against the whole Nation, and against the fundamental ideals on which America was founded, and they have a major impact on children. The vast majority of Congress agrees.

Last year, Senator SMITH and I offered our hate crimes bill as an amendment to the Defense Authorization Act, and it passed by a bipartisan vote of 65 to 33. The House passed a nearly identical hate crimes amendment by a vote of 223 to 199, which made it part of its sex offender registration bill. The substantial majority of both Houses of Congress have now voted in favor of the hate crimes proposal, and the time is long overdue to pass these protections into law.

The hate crimes bill is supported by a broad coalition. Over 200 law enforcement and civil rights groups, including the National District Attorneys Association, the National Sheriff's Association, and the National Association of Chiefs of Police, the Anti-Defamation League, and the U.S. Council of Mayors.

A strong Federal role in prosecuting hate crimes is essential for both practical and symbolic reasons. In practical terms, the bill will have a real world impact on the actual criminal investigations and prosecution. The symbolic value of the bill is equally important. Hate crimes target whole communities, not just individuals. Attacking people because they are gay, African American, Arab or Muslim or Jewish, or any other criteria is bigotry at its worst. We must say loudly and clearly to those inclined to commit them that they will go to prison if they do.

The vast majority of us in Congress recognize the importance of passing a hate crimes bill. This year we can make the statement even clearer by turning it into law.

#### UNANIMOUS CONSENT REQUEST— S. 1086

Mr. KENNEDY. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Democratic leader, but no later than May 25, 2006, the Senate proceed to the consideration of Calender No. 251, S. 1086, and that it be considered under the following limitations:

That there be 1 hour of debate on the bill, with the time equally divided and controlled by the two leaders or their designees; the only amendment in order, other than the committee-reported substitute amendment, be a Kennedy-Smith hate crimes amendment on which there will be 2 hours of debate with the time equally divided and controlled in the usual form; that upon the use or yielding back of time on the amendment, without further intervening action or debate, the Senate proceed to vote in relation to the amendment; that upon disposition of the Kennedy-Smith amendment and the yielding back of time on the bill, the committee substitute, as amended, if amended, be agreed to; the bill, as amended, be read a third time, and without further intervening action or debate, the Senate proceed to vote on passage of the bill.

The PRESIDING OFFICER. In my capacity as a Senator from Minnesota, at the request of leadership, I object.

Objection is heard.

Mr. KENNEDY. Mr. President, I regret that the Republican leadership has blocked our efforts to have a vote on this amendment. I expect that they will move forward on the immediate passage of the underlying bill. We should also get a vote on hate crimes. It is long overdue. It is clear that the Republican leadership will do anything to stop our hate crimes bill. I don't think it is right to delay consideration of the Senate bill on sex offenders, so the battle on hate crimes must continue. Given today's objections, let's move ahead on S. 1086.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### TORT REFORM AND RELATED ISSUES

Mr. BURNS. Mr. President, next week should be a week of looking at our health care system and debating on the direction that I think the policy should go in that area. Not only do we have tort reform that has been suggested by the leader, but also the ability of small business to band together across States to lower the cost of insurance, especially small business owners who have less than 10 employees, and sole proprietors, and even individuals, to band together and do something about lowering their costs of insurance.

Today, I want to open minds and start setting the framework of what this debate is all about that will occur next week.

It is about the unrestrained escalation of jury awards that are driving