

from the House last week. Chairman SENSENBRENNER gave a speech last week talking about why he had, in his bill, his legislation, at the request of the White House—I am sure the White House has backed off on this; I certainly hope so—but making people who are here who are undocumented, felons. He gave some illustrations that were not very good. He talked about, Japan doesn't have many immigrants that come illegally. That is right, that is because it is an island. They would have to swim there or come in on an airplane or boat. They don't have the mass migration problems we have.

I hope the leader, with the many things he has to do, would understand that we have, after this week, only 2 weeks left in this legislative session. The leader stated we are going to try to finish this before Memorial Day. To do that, we are going to have to get on that bill. If we have all these amendments, it is going to take a lot of time.

Mr. FRIST. Mr. President, briefly, because I know the Democratic leader has another statement to make, I am absolutely committed to completing and giving adequate time to complete what is a complex bill. As the Democratic leader implied, there are a lot of issues we need to talk about in this bill. I appreciate the spirit in which he and I are approaching the bill, in terms of allowing debate and amendment and also addressing issues about conference, to make sure—I know what his intent is—that the will of the Senate is expressed strongly in that conference.

I do encourage all of our colleagues to recognize that step one is debating the bill here on the floor of the Senate, getting it off the floor with a majority vote, and I would argue for a good comprehensive bill stressing the border and border security. What I would like to do, as I discussed scheduling with the Democratic leader, is to be on the immigration bill next week and the following week. That should give adequate time.

There was one last thing, at least on our side of the aisle. In terms of numbers of amendments, we are doing our very best to focus each and every day on the amendments which would be substantive amendments, to try not to have unnecessary amendments or amendments just for political reasons but substantive amendments coming to the floor. Hopefully, coming to the floor, people will continue work. People don't see that on the floor, but literally every day we are meeting looking at those amendments. So once we get on the bill, we can have a fair process, not a lot of unnecessary time spent figuring out what the amendments would be. I am confident that we can, working together, be on a bill that will be a comprehensive bill, that will be a bill reflecting the will of the Senate, by early next week.

The PRESIDING OFFICER. The Democratic leader.

MEDICAL MALPRACTICE

Mr. REID. Mr. President, people will have other thoughts on medical malpractice legislation as they come to the floor, as they cast their vote. But for me, I want to make this a day to remember a wonderful woman by the name of Billie Robinson. I have handled medical malpractice cases. I want to talk about this one. I have talked about her before. I want to talk about her again. I could talk about other cases, but nothing has been so fixed in my mind, as I prepared for today, as Billie Robinson.

I really didn't know Billie Robinson when she had all of her faculties; I only knew her after she had this surgery. Billie Robinson came from my hometown of Searchlight. She was like some other people in Searchlight, she had basically no education. She was a hard worker. She worked very hard physically. She developed headaches that were difficult for her to describe, but she did her best and went to a series of physicians. Every physician she went to told her she drank too much and she should lay off the booze and she would be better.

She ultimately went to her fifth or sixth doctor, and the doctor decided maybe he should look and see what is inside her head and ordered some x rays and other diagnostic tests and found she had a tremendously large tumor in her head causing these blinding headaches. Her activities, her actions were not a result of alcoholism; they were the result of her head having a tumor causing her these horrible headaches. And yes, she did drink. She drank everything she could get her hands on to try to relieve that pain. A simple test early on would have determined what was wrong with Billie Robinson.

As I said, when I saw her, she had already had the surgery. She didn't speak well. She would speak with very slurred speech, but you could tell this woman was a good woman. She had a good heart. She had no alternative, in an effort to live her remaining days in some dignity, but to try to seek some type of redress for the negligence of those doctors who had seen her, and she did get some satisfaction. It was not necessary that we go to a jury because those doctors who had attempted to treat her realized they had not done their job properly. So she lived out her life in a condition that was not appropriate.

Had she had that surgery years before when the tumor was small, she would have been normal. It was not a malignant tumor. By the time they were able to operate, there had been so much damage because of the growth of the tumor that she had significant brain damage. She was able to buy herself a new mobile home and lived a quiet, peaceful life in Searchlight.

Today, I remember Billie Robinson. Had this legislation been in effect that the majority is trying to pass today, if it had been in effect then, Billie Robin-

son would not have been able to buy herself a new mobile home. She worked for minimum wage almost all of her life. She would not have been able to have recovered compensation for the pain and suffering, to any degree, that she went through. She basically would not have had much.

Today, I rise in protest. I rise to object to these Republican bills, these two bills that are put here as a result of the insurance industry. These measures before the Senate do not represent a serious attempt to improve health care or the civil justice system in our country. Moving to these bills is a tired political exercise, and the Senate should reject this political exercise out of hand. To think, with American consumers paying more than \$3 a gallon for gas—the record is in San Diego, \$3.40 today; all over Nevada, it is more than \$3; the average across the country is \$2.95—college tuition moving out of the reach of the middle class; to think, with the number of the Iraq war dead now pushing 2,500; to think, with immigration now being a security crisis unresolved; to think, with our country's deficit soon approaching \$9 trillion; to think, with 46 million Americans lacking health care coverage, that we are moving to bills that are unnecessary and will go nowhere? What a waste of the Senate's time.

It is wrong that we are doing this. We could more profitably use this time on any of the issues about which I just spoke. We could more properly use the scarce time remaining to address any of these urgent challenges facing America's families. I haven't even mentioned energy. We could do that. And we could address the real health care crisis, not this "make do" health care crisis.

Both of these bills the Senate will consider today contain the same one-size-fits-all cap on damages. These bills have been rejected time and time again, and rightfully so. Both contain the same unjustified protections for hospitals, rest homes, HMOs, and, of course, insurance companies. In fact, these proposals are virtually identical to legislation we turned aside three times the last Congress. These bills are the same old song, and the votes will be the same old dance: Democrats protecting the American consumer from these huge companies.

The top of this company pyramid, of course, is the insurance company, then hospital companies, extended-care facilities, rest homes. Even though these measures would dramatically rewrite the tort laws of all 50 States and even though they would denigrate the legal rights of countless Americans, they have undergone no serious legislative review in this Congress.

Don't be fooled by the bill numbers—S. 22 and S. 23—they are simply placeholders for legislative text that was only formally introduced last Wednesday. In fact, the text of these bills was not even available until a couple of days ago.

The majority leader used a procedural technique called rule XIV that brings these bills straight to the Senate floor to avoid consideration of these bills by either the Judiciary Committee or the Health Committee. There has not been a single committee hearing, not a single witness, not a single opportunity to amend, not a single opportunity to compromise or negotiate. With this insurance industry legislation before this body, every step of the legislative process has been abandoned.

Why has the majority proceeded in this manner? Because this is not a serious exercise in legislating. It is a political stunt being performed for the sole purpose of allowing Republicans to go back to their special interest friends led by the insurance industry and say: Look what we have tried to do to help, even though they should not be fooled by these transparent theatrics because that is all it is.

The majority is short-circuiting the committee process because of the illusion of medical malpractice crisis. It is an illusion. It doesn't exist. Medical malpractice crisis? No. Health care crisis? Yes. There is a health crisis, but it has nothing to do with tort laws. It has nothing to do with the Billie Robinsons of this world. It has nothing to do with the people out there who are struggling to be able to take their kid to see the doctor, to be able to buy prescription drugs. It is a crisis when 46 million Americans have no health insurance, it is a crisis when health insurance is too costly for the average American. It is a crisis when medical errors are the sixth leading cause of death in America. But not a single provision in this legislation will provide health insurance to the uninsured, lower health care costs, or make patients safer. In reality, the whole premise of the medical malpractice crisis is unfounded.

Over the weekend, I read a book. It is an insightful book entitled "The Medical Malpractice Myth," written by Tom Baker. Who is Tom Baker? Tom Baker is not a trial lawyer, he is not a lawyer who specializes in medical malpractice cases. Tom Baker's father and father-in-law are physicians. Tom Baker is a professor of law at the University of Connecticut School of Law. He is director of the Insurance Law Center at that university. He is not affiliated in any way with trial lawyers.

In this book, Professor Baker methodically debunks the most common myths in the medical malpractice debate.

Myth No. 1: "Lawyers, not doctors, cause malpractice."

Professor Baker presents numerous studies demonstrating that the real problem is too much malpractice, not too much litigation. Of course, most doctors are skilled professionals and don't commit malpractice, but just as there are a few rotten apples in every basket, there are a small number of unskilled, uncaring, and negligent physicians in every State. Unfortunately,

they don't always come to the attention of the licensing boards, and some move from State to State to avoid disciplinary action. These rotten-apple doctors should be held accountable, and the victims of their negligence deserve to be compensated, just like Billie Robinson deserves to be compensated.

Myth No. 2: "Lawsuits make health care unaffordable."

That is a myth.

Professor Baker demonstrates that medical malpractice rates are based more on the cyclical nature of the stock market than on malpractice verdicts. When insurance companies' investments lose money, the companies raise their rates which they charge doctors to compensate for their loss.

There is no better example that exists than what St. Paul did in the Las Vegas, NV, area. In fact, they had a deal. If the Clark County Medical Association referred a doctor to them, they gave a kickback to the Clark County Medical Association. They had almost all of the medical malpractice insurance in the Las Vegas area. What happened? There was a general lapse in the economy, the stock market wasn't doing well, real estate wasn't doing well, and they were in big trouble because they do not make their money with their premiums. They invest the premiums. That is where they make the money. When they make bad investments, that is when they come in and start talking about how unaffordable medical malpractice is. As a result, caps on damages do not reduce insurance premiums in the long run.

For the most part, insurance rates have not gone down in those States which have capped damages. Nevada is a good example. After the self-imposed crisis that St. Paul created, the Governor held a special session of the legislature and they set a cap of \$350,000 on pain and suffering damages. OB-GYN malpractice premiums are 37 percent higher than in States without caps, general surgery premiums are 52 percent higher, and internal medicine premiums are 44 percent higher. In fact, since 2001, claims paid by Nevada's largest insurer have dropped 16.7 percent while premiums have increased almost 33 percent.

From 2000 to 2005, the net payouts of malpractice insurers declined 3.1 percent. But over the same period in which payouts were declining, net insurance premiums were increasing by 93.2 percent. So claims decreased, but the companies more than doubled their premiums.

Even if caps on damages did affect malpractice premiums, there is no reason to believe that caps would make health care more affordable overall.

According to the Congressional Budget Office, malpractice costs amount to less than 2 percent of overall health care spending. If a reduction of 25 to 30 percent in malpractice costs were attainable, it would lower health care costs by only 0.4 percent to 0.5 percent.

Myth No. 3: "Lawsuits deny access to care."

That is a myth. It is only a myth.

Despite the century-old complaint that lawsuits drive doctors from their practices, the medical profession continues to grow each year, and applications to medical schools have increased—and they are increasing right now. The number of physicians in the United States has increased every year since 1996, from 738,000 in 1996 to almost 885,000 in 2004—less than 2 years ago.

In 2003, the nonpartisan General Accounting Office surveyed five States repeatedly cited by the American Medical Association as examples of communities suffering from shortages of care because doctors are fleeing. The report concluded that such claims are widely overstated, and I quote, "Many of the reported physician actions and hospital-based service reductions were not substantiated or did not widely affect access to health care." Where doctor shortages exist, they are due to population shifts and the reluctance of doctors to practice in rural and low-income areas.

In any event, caps on damages do not change the availability of physicians. States without caps on damages have more doctors per capita and 14 percent more active physicians than States with caps on damages. For example, the number of OB-GYNs in the United States has increased by nearly 25 percent—from 33,000 in 1990 to 42,000 in 2004. But in Nevada, where we have caps on damages, there are 27 percent fewer OB-GYNs than in States that don't have caps.

Myth No. 4: "Lawsuits cause doctors to practice wasteful defensive medicine."

In his book, Dr. Professor Baker devotes a whole chapter to the goods on defensive medicine. He cites reports from the Congressional Budget Office and the former Congressional Office of Technology Assessment that question estimates of defensive medicine. The Congressional Budget Office specifically concludes that any savings from reducing defensive medicine would be small at best.

Myth No. 5: "Most lawsuits are frivolous."

Anyone who listened to the radio today heard a report that this isn't true. Take one look at the book "The Faces of Neglect Behind the Closed Doors of Nursing Homes"—and you'll see case after case of neglect in these institutions, case after case, horrible pictures of things that were done to these men and women in rest homes. If this legislation passes, don't worry about holding them accountable anymore.

Not every lawsuit has merit, but the tort system has plenty of mechanisms for weeding out frivolous claims. According to Professor Baker, "[m]ost undeserving claims disappear before trial; most trials end in a verdict for the doctor; doctors almost never pay claims out of their own pockets; and

hospitals and insurance companies refuse to pay claims unless there is good evidence of malpractice." And that is an understatement.

At the same time, the assertion that there exists an "explosion" in medical malpractice payouts in recent years is simply untrue. The average verdict size is relatively low and has remained stable for many years. A study by Americans for Insurance Reform found payouts have been virtually flat since the mid-1980s. As it is, Americans use the civil justice system as a last resort, going to court after all their efforts have failed.

For these reasons, Professor Baker concludes that the medical malpractice crisis is a product of exaggeration and distortion.

But even if there were a medical malpractice problem that needed to be cured, these bills are not the right medicine. They are riddled with major flaws. Let me talk about a few of them.

First, they would impose an unreasonably low \$250,000 cap on pain and suffering. Proponents of these bills claim that the cap is \$750,000, but in the typical case where there is a single negligent party, the cap remains \$250,000. In cases where the wrong limb is amputated or a patient is paralyzed or a mother loses a child, \$250,000, I submit, is grossly inadequate. And it is even worse under S. 23. Under this legislation, the life of a woman rendered sterile by gross negligence of an OB-GYN is worth less than that of a man mistakenly sterilized.

This is bad legislation.

Second, these bills discriminate against women in more ways than that. By capping pain and suffering while simultaneously preserving full compensation for lost wages and salary, these bills devalue the worth of homemakers and stay-at-home parents. For instance, a homemaker whose reproductive system is destroyed by negligent treatment would suffer only noneconomic losses which are arbitrarily capped by this bill.

At the same time, the bills limit punitive damages, a change which disproportionately affects women patients. Punitive damages are very rare in malpractice cases, but the cases where they do occur often involve sexual abuse of a female patient. Punitives would be virtually impossible to receive under this legislation.

Third, the bills unjustifiably protect large corporations that own nursing homes from liability when they abuse or kill their patients. The National Citizens Coalition for Nursing Home Reform released this book, I mentioned earlier, "The Faces of Neglect; Behind the Closed Doors of Nursing Homes," which profiles the heartbreaking experiences of 36 Americans who have suffered from abuse and neglect while in long-term facilities. These are only a few cases of hundreds and hundreds. The book includes the story of Barbara Salerno, a Reno, NV, woman whose father died due to the neglect of a nursing home. It is a tragic case.

The numbers of seniors who could be hurt by this bill are staggering. According to the GAO, 300,000 elderly and disabled residents live in chronically deficient nursing homes where they are "at risk of harm due to woefully deficient care." Nationwide, 26.2 percent of nursing homes were cited for violations related to quality of care by regulatory agencies in 2004 alone, yet this bill gives sweeping liability protections to these negligent facilities.

Fourth, these bills are an affront to federalism. Republicans love to talk about States rights, except when they want to impose a Federal solution on all 50 States. More than half of all States have already enacted malpractice reforms, but these bills would override these State legislative decisions. Specifically, this bill preempts those States which have debated a cap on damages and decided against that step on their own.

For these reasons and many others, the pending bills are objectionable. In fact, the entire concept of medical malpractice reform is misguided. The right way to bring down medical malpractice insurance premiums is to reform the insurance industry, which is badly in need of oversight.

A study commissioned by the Center for Justice and Democracy showed that insurance premiums more than doubled between 2000 and 2004 even though claims for pay-outs remained essentially flat. Given this price gouging, it is little wonder that the profits of the Nation's five largest medical malpractice insurers rose by nearly 18 percent last year, more than double the "Fortune 500" average.

We need to strengthen Federal oversight of insurance industry practices that contribute to these rises in malpractice premiums. Unfortunately, the insurance industry enjoys almost complete immunity from Federal antitrust laws, and using this exemption, insurance companies can collude to set rates, resulting in higher premiums than true competition would achieve. Federal enforcement officials cannot investigate any such collusion because of this exemption.

I am embarrassed to say this law came about as a result of the Nevada Senator McCarran. The McCarran-Ferguson Act. That is, I submit, the only bad thing he did.

This act was passed to give a few years of relief to the insurance industry. Now, some 70 years later, insurance companies are the only businesses—other than Major League Baseball—not subject to antitrust laws. This rationale for this exemption has long since passed. Insurance should be like any other business—subject to antitrust laws.

Senator LEAHY's bill would accomplish this. To pretend these medical malpractice bills have anything to do with making health more affordable is a cruel joke. These bills override the sound judgment of State legislatures and juries and substitute the arbitrary

judgement of an insurance friendly Congress.

We should not reward insurance companies making record profits. We should help doctors by reforming the insurance industry rather than undermining the legal rights of seriously injured malpractice patients. That is what these would do.

I am going to vote against cloture. It is bad legislation. I hope that once again, we will help the American consumers and defeat these two bad bills.

MEDICAL CARE ACCESS PROTECTION ACT OF 2006—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration on the motion to proceed to S. 22, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 422, S. 22, a bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time from 1:30 p.m. until 2 p.m. shall be under the control of the minority, and the time from 2 p.m. to 2:30 p.m. shall be under the control of the majority. The time will rotate in this format until the time from 5 p.m. to 5:15 p.m. which will be under the control of the majority.

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, under the previous order, with the time being allocated to this side, I wish to speak on the Medicare prescription drug deadline that is fast approaching 1 week from today. Since this week is called Health Week In the Senate, it is strange we are not going to be discussing the extension of the deadline of May 15, a week from today. It is a deadline for all the senior citizens. For those who want to sign up for the Medicare prescription drug benefit, they have to do so by the deadline; otherwise, they get penalized 1 percent a month. If they sign up for the wrong plan, they are stuck for a year and they cannot change plans.

Of course, senior citizens are having a very difficult time figuring out in this multiplicity of plans what the formulary is in a plan, if it would cover their prescription drugs. If suddenly they choose a plan that does not cover their prescriptions, they are stuck for a year unless they do not sign up, and then they are going to be penalized economically up to 12 percent a year.

It is imperative we take up this legislation and extend the deadline and provide essential protections for Medicare beneficiaries during the first year of implementation of this Medicare prescription drug benefit.

We have been advocating for some period of time providing seniors with a meaningful prescription drug coverage, not one that is overly confusing and