

THE DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2002—Continued

AMENDMENT NO. 2107

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. The Senator from Louisiana, the manager of this bill, needs 4 extra minutes. I ask unanimous consent that she be given 4 extra minutes and that Senator DEWINE be given 4 extra minutes in relation to this amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, I yield 2 minutes to the Senator from New Jersey.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I rise to voice my very strong support for the District of Columbia's efforts to cut HIV/AIDS transmission through its needle exchange program and strongly oppose the Allen amendment. First, I compliment the leadership of the chairwoman, the distinguished Senator from Louisiana, for her efforts in making sure that democracy works in the District of Columbia, that we leave to the local folks home rule regarding those matters we leave to home rule all across this country. I can only argue that the District of Columbia should be able to use its own funds as it sees fit, the same as do other localities in the country.

Let me start with the bottom line on the fundamental issue. Needle exchange programs work and they save lives. Facts speak for themselves. The Senator from Illinois was very articulate in bringing out a lot of them. I will go over a little more of that. There are over 130 needle exchange programs operating in the Nation, in 80 cities and 31 States. They work. These programs, like the District of Columbia's programs, are supported at the local level by people who want to attack this scourge of drug addiction and HIV/AIDS in our communities. They are supported by States and a huge amount of private funds in the country. Again, the simple reason is that they work.

Countless government and private scientific studies have proved the effectiveness of the needle exchange programs. They limit the spread of HIV/AIDS. Fact. They do that without any sense or any kind of objective evidence that they do anything to spread drug use. The Centers for Disease Control, the University of California, and the U.S. General Accounting Office, among a whole host of others, have shown that these programs substantially reduce the transmission of HIV/AIDS without encouraging drug use.

I want to give an example. Beth Israel Medical Center in New York studied needle exchange programs in the city and found that the program reduced infections by two-thirds—a very substantial program. The study found that injection drug use did not increase at all in the city at the same time. Similarly, a 1997 study by the National Institutes of Health concluded that needle exchange programs reduced HIV by at least 30 percent and reduced risk behaviors among drug injecting drug users.

In fact, needle exchange programs serve as an effective link to drug treatment programs. So you get a double-edged benefit; not only do you limit the spread of HIV/AIDS, but you introduce people to drug treatment programs.

According to the recent CDC Morbidity and Mortality Weekly Report, 95 percent of needle exchange programs refer clients to substance abuse treatment. Last year, the Surgeon General found that needle exchange not only reduces HIV transmission but many may also reduce injection drug use for these people who are in the programs. Reference to drug treatment programs is a good thing. That is how we reduce this scourge in our country.

Mr. President, the District of Columbia and communities nationwide are facing a two-pronged public health crisis of injection drug use and a persistent and growing HIV/AIDS epidemic. As many as half of all HIV infections are caused by the sharing of HIV-contaminated injection tools.

I conclude by saying this is an important program that needs the Senate support. We can do a lot to make a big difference in our communities.

I thank the Chair.

Mr. KENNEDY. Mr. President, more than 40,000 people a year become infected with HIV, the virus that causes AIDS. Half of all new HIV infections in the United States occur among drug users.

In addition, approximately 4 million Americans have been infected with the hepatitis C virus. Injection drug use is responsible for at least 60 percent of those infections.

Numerous authorities, including the National Academy of Sciences, the Surgeon General, the Centers for Disease Control and Prevention, the American Medical Association, the Academy of Pediatrics, and the American Public Health Association have concluded that needle-exchange programs reduce the transmission of HIV and hepatitis C without encouraging the illegal use of drugs.

It is indefensible for Congress to tell the citizens of the District of Columbia that they cannot spend their own money on programs that stop the spread of fatal, infectious diseases. It is irresponsible for members of Congress to oppose a locally funded program on

the ground that it encourages illegal drug use, when every major health organization in the United States says that the opposite is true.

People's lives are at stake. I urge my colleagues to oppose the Allen amendment.

Mrs. CARNAHAN. Mr. President, the Senate is currently considering the fiscal year 2002 District of Columbia Appropriations bill. I would like to recognize Senators LANDRIEU and DEWINE for their strong leadership in moving this important bill through committee.

The District of Columbia shares a unique relationship with the Federal Government. It is the only locality in the country whose budget intersects so directly with Congress. Congress is charged with approving both the Federal and local budget for the District. Consequently, the city cannot move forward with its own new budget until the Congress finishes its work and approves the bill. I encourage the Senate to approve this bill as quickly as possible.

Several amendments may be offered to this bill that impose Federal restrictions on how the District of Columbia spends the money that it collects in local taxes. The District of Columbia is fortunate to have such an able leader in Mayor Anthony Williams. This past year, the mayor, along with the city council, have put together a budget for the city that reflects its own priorities that meet local needs. I do not intend to support amendments to this bill that impose restrictions on how the District spends it money.

I would not want Congress telling St. Louis or Kansas City how to spend their local tax dollars. The same standard should be applied to the District of Columbia. The District of Columbia is our Nation's Capital and an international symbol of democracy. The Congress should honor the unique status of this city by allowing the District to make its own decisions on how taxes raised from its own citizens should be spent.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. LANDRIEU. I yield time to the Senator from Rhode Island.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Mr. President, I strongly support Chairman LANDRIEU's intention in the District of Columbia fiscal year 2002 appropriations bill to allow the city to use its own funds to support a needle exchange program in the city, and I oppose Senator ALLEN's amendment to restrict the use of those funds.

The current ban on the use of Federal funds for this program remains intact in the legislation before us.

This issue truly is about the ability of an independent jurisdiction to use its locally raised revenue to support a program that its elected officials have deemed appropriate.

In my own State of Rhode Island, for example, a needle exchange program called ENCORE has existed in the city of Providence since 1995, supported by local funds. This has been, and continues to be, a very successful program. Many of the other programs in the 34 States that currently have either state-funded or city-funded needle exchange programs also have been successful in decreasing the spread of HIV/AIDS.

There are currently well over 100 different needle exchange programs around the country working to effect this positive change.

The ENCORE program in Rhode Island has enrolled over 1,500 clients and provides education, counseling, access to sterile syringes, and referrals to substance abuse treatment programs. Followup studies and data continue to show that participants in this program have substantially reduced their risk behaviors.

However, the HIV/AIDS epidemic continues to be very serious in my State, particularly as individuals with the disease are able to live longer and therefore constitute a greater percentage of the State population. That is why the State of Rhode Island continues to look for new methods to deal with the spread of this disease, and why programs like ENCORE are so important.

The Surgeon General echoed this report in one of his own studies in March 2000, stating that "there is conclusive scientific evidence that syringe exchange programs, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces transmission of HIV and does not encourage the illegal use of drugs." That has been the case in my own State, and that will be the case if we allow the District of Columbia to take a similar approach with its own funds.

The District of Columbia has the highest rate of HIV and AIDS in the country, and therefore desperately needs the ability to tackle this problem in its own way. Unfortunately, the city has been prevented from using its own locally raised revenue to deal with this issue since 1999 in this appropriations bill.

In addition, in last year's D.C. appropriations bill, even private funds were prevented from being used to support a program.

Today we have an opportunity in the bill before us to change this attitude and allow the city to enact a targeted and aggressive program to attempt to

eradicate this deadly disease from a vulnerable population.

Several important public health organizations support this move, including the American Medical Association, the American Nurses Association, the American Public Health Association, the American Academy of Pediatrics, and the U.S. Conference of Mayors, as well D.C. Mayor Anthony Williams and D.C. Police Chief Charles Ramsey. It is imperative that we add our support to this effort as well.

To reiterate, I commend the leadership of Senator LANDRIEU from Louisiana. Her position and the position of the committee is that the District of Columbia should be allowed to spend its own money on a needle exchange program. This is a program that has been embraced in 34 States and over 100 cities. One of those cities is Providence, RI. Providence has Operation ENCORE in which they provide a needle exchange together with education, counseling, and drug rehabilitation referrals. The program works.

I come today with facts, with success, to argue that the District of Columbia should be allowed to use its own money to replicate successful programs in other urban areas. They have a huge problem with AIDS in their community. This is a sensible, proven way to help people avoid the scourge of infection with AIDS, and we should support it, not try to deny them this opportunity.

It is no surprise, based on the experience of Providence, which is, at this point, enrolling over 1,500 individuals successfully, that this program has been heralded by the Surgeon General as a great success. In his words, in March of 2000:

There is conclusive scientific evidence that syringe exchange programs, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces transmission of HIV and does not encourage the illegal use of drugs.

"Conclusive scientific evidence," and today we are here to try to refute conclusive scientific evidence, which is at the heart of the proposal to strike this provision, and also to override the judgment of local authorities which is commonplace throughout this country in the over 100 municipalities that are running a program such as this.

If we want to rely upon science and also on the authority of localities to use their local funds as they wish, we have to reject this Allen amendment and we have to support the position of the committee.

This position that drug programs featuring needle exchanges are effective is supported by a host of organizations: The American Medical Association, the American Nurses Association, the American Public Health Association, the American Academy of Pediatrics, and the U.S. Conference of Mayors. It is clearly supported by the mayor of

the District of Columbia, Mayor Williams, and the police chief.

Those with the most interest in this program, with the most at risk, the most at stake, are asking us to give them the chance to use their resources to provide for a needle exchange program to reduce the transmission of AIDS and, as the Surgeon General pointed out, in no way will this encourage the illegal use of drugs. I cannot think of a more sensible position to support.

I urge my colleagues to reject the Allen amendment and support Chairman LANDRIEU's position.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, our side rests its case. I believe our speakers have concluded. Senator DURBIN and I have some closing remarks, and I have some things to submit for the RECORD. I understand the Senator from Virginia may have some time remaining on his side. I understand from the leader he would like to get to this vote as soon as possible. I inquire of the Senator from Virginia what his intentions are and how much time he intends to use.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. ALLEN. Mr. President, I say to the Senator from Louisiana, I have a few minutes, no more than 3 or 4, maybe 5 at most, of concluding remarks. The others on our side who wanted to speak are elsewhere, and the vote will get them back here.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the Senator from Virginia have 5 minutes and that we have 2 minutes for closing remarks, and then we will be ready to vote.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, I certainly have no objection to the request. We have a number of Senators who have inquired as to when the vote will occur. I wonder if the two Senators can agree we can have the vote at 11:15 a.m.

Mr. ALLEN. Agreed.

Ms. LANDRIEU. Agreed.

Mr. REID. I pose that, Mr. President, as a unanimous consent request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Louisiana had requested in her unanimous consent request that the Senator from Virginia have 5 minutes and that she have 2 minutes.

Mr. REID. There will be time left over. That sounds great to me.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. ALLEN. I thank the Chair.

Mr. President, in conclusion, as Senators are getting ready to vote on this

amendment, my amendment actually keeps the policies the way they have been in prior administrations. I cited General McCaffrey who was the drug czar under President Clinton. General McCaffrey stated the problem is not clean needles, the problem is drug addiction.

One thing that has arisen a great deal in this debate is not the message we are sending, although I think it is the wrong message if we actually say we are going to use taxpayer funds in the District of Columbia to give drug users, drug addicts, clean needles and syringes. The evidence is clearly mixed on it. We can get evidence, I suppose, from those who are drug addicts. I would not consider them the most credible witnesses under any cross-examination. Indeed both sides cite studies. Whether it is a study in New York or Vancouver or various other studies, these needle exchange networks only create networks for drug users to exchange information and drugs and have no positive impact whatsoever on drug use nor do they have an impact on stopping HIV transmission.

Of course, I do think AIDS and HIV ought to be addressed, but, as General McCaffrey states, the way of doing it is not to encourage and facilitate drug delivery devices that are cleaner than one would ordinarily use.

The main argument, though, is a jurisdictional one. I have the same general sentiments as the Senator from Illinois when we are talking about local control. I really do not like it. Notice Virginia, of course, is not one of the States that allows needle exchange. I am one who generally, as a matter of philosophy, trust the people in the States. I believe the 10th amendment is very important as a part of our Bill of Rights granting to the people in the States those rights that are not specifically granted to the Federal Government. But this is an issue that has to do with the District of Columbia.

The District of Columbia is under the purview and oversight of the Congress because it is the seat of Government. The part of the District of Columbia that remains is that which was ceded for the seat of Government by the State of Maryland. Virginia also granted some land, which is now Arlington County. It was not necessary, and it was retro-ceded to Virginia.

Just to show how Congress recognizes its special role in oversight as far as the District is concerned, both the House and the Senate have authorizing subcommittees specifically to address the needs of the District. There is no Chicago committee or Kansas City committee or Oklahoma City committee or Los Angeles committee in the House nor a subcommittee on them.

To argue this is a States rights issue or 10th amendment issue negates and clouds the reality that we have a re-

sponsibility in the Senate to have oversight over the laws and the activities, the safety and the conduct in the District of Columbia.

It is my view that it would be the wise and prudent course of conduct to not have the Senate in any way condone granting free needles, or free syringes to those who are engaged in and, in fact, are illegal drug addicts. I hope my colleagues in the Senate will stand for that principle for the District of Columbia, which is looked upon as not only our Nation's Capital but also the home of our legislative body, and of freedom of our representative democracy by people all over the world.

I thank the Chair. I yield back my time.

The PRESIDING OFFICER (Mr. REED). The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank the Senator from Illinois for his usual force and clarity in outlining many good arguments supporting the tabling of the Allen amendment.

I ask unanimous consent to have printed in the RECORD letters from the American Public Health Association, the District of Columbia Housing Authority, the nonprofit organization called Prevention Works, as well as the Whitman-Walker Clinic, Inc.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DISTRICT OF COLUMBIA
HOUSING AUTHORITY,
Washington, DC, June 5, 2001.

Hon. TED STEVENS,
Chairman, Senate Appropriations Committee,
U.S. Senate, Washington, DC.

Hon. C.W. BILL YOUNG,
Chairman, House Appropriations Committee,
House of Representatives, Washington, DC.

DEAR CHAIRMEN YOUNG AND STEVENS: As required by Section 150(b) of the District of Columbia Appropriations Act for Fiscal Year 2001 (Public Law 106-522), the District of Columbia Housing Authority Police Department (DCHAPD) submits to the House and Senate Committees on Appropriations its report on illegal drug activity at or near any public housing site where a needle exchange program is conducted.

During the reporting period from January 1, 2001, to May 31, 2001, Prevention Works was the only organization administering a needle exchange program near a public housing development. Distribution locations were at 15th and Ives Streets, SE, which is near Hopkins Apartments located at 1430 L Street, SE; Central and Southern Avenues SE, which is near East Capitol Dwellings located at 5725 East Capitol Street, SE; and 21st and H Streets NE, which is near Langston Terrace located at 21st and Benning Road, NE. During this period, there were no needle exchange distribution sites in operation directly on public housing properties.

During the reporting period, we monitored each of the areas where the needle exchange van operated near a public housing site so as not to impact the behavior of needle exchange clients. Based on our observations, the maximum amount of time that the van remained at any one site was approximately 90 minutes. The activity in and around the

van did not cause any disturbances. People visiting the van were there long enough to receive their supplies and usually left the area immediately. There was also no evidence that the presence of the needle exchange van led to increased crime. It should be understood that the needle exchange "sites" are not permanent sites, but rather stops on a weekly schedule of van routes. It should also be noted that in addition to the exchange of needles, the Prevention Works van provides free food and coffee to anyone approaching the van. During the reporting period, we received no resident complaints or concerns regarding the operation of the needle exchange program near the three public housing developments.

The DCHAPD will continue to monitor all disbursement sites located near our public housing developments and report accordingly. If you have need for further information, please feel free to call DCHAPD, Chief Madison Jenkins, Jr., at (202) 535-2588.

Sincerely,

MICHAEL KELLY,
Executive Director.

AMERICAN PUBLIC HEALTH ASSOCIATION,
Washington, DC, September 25, 2001.

Hon. ROBERT BYRD,
Chairman, Senate Committee on Appropriations,
Washington, DC.

DEAR CHAIRMAN BYRD: The American Public Health Association (APHA), consisting of more than 50,000 public health professionals dedicated to advancing the nation's health, strongly urges you to oppose any amendment to the FY 02 District of Columbia Appropriations bill that would place further restrictions on the District's needle exchange programs. While APHA opposes any provision to ban the use of federal, local or private money to fund needle exchange programs, we are encouraged that the House Appropriations Committee did not include last year's extraordinarily burdensome restrictions on the operation of needle exchange programs in the District. We urge your Committee to follow the House Committee's lead and at a minimum, oppose last year's operational restrictions.

Since 1994, APHA has advocated for the development, implementation, evaluation, and funding of needle exchange programs to help prevent HIV infection. All APHA public policy is passed by the Association Governing Council and is required to meet strict scientific criteria. APHA policy on needle exchange is no different—an enormous body of published research, including more than seven federally sponsored reports, demonstrates that needle exchange programs reduce the spread of HIV while not increasing drug use by program participants or others in the community where the program is conducted. These findings are also reflected in a March 2000 report released by Surgeon General David Satcher reviewing all of the scientific research on needle exchange programs completed since 1998.

The current epidemiology of HIV/AIDS is clear—women and children are affected disproportionately by heterosexual HIV infection associated either directly or indirectly with transmission from injectable drug users. These new cases of HIV/AIDS that are linked to injectable drug use largely can be prevented through the provision of sterile needles to drug users coupled with other public health tools including health education and condom distribution.

Needle exchange programs increase the contact that health professionals have with injectable drug users, thereby increasing opportunities to conduct health education and

disease prevention activities, including drug treatment and counseling. The efficacy of these programs is proven—placing further restrictions on funding and operations threaten the District's efforts to reach those individuals most at risk of HIV infection. Public health and saving lives must take precedence over politics. Your opposition to any further restrictions on these important public health programs is critical.

Thank you for your consideration of our views and your attention to this critical public health matter.

Sincerely,

MOHAMMAD N. AKHTER, MD, MPH,
Executive Director.

WHITMAN-WALKER CLINIC INC,
Washington, DC, September 3, 2001.

Hon. MARY L. LANDRIEU,
Chair, Committee on Appropriations, Subcommittee on the District of Columbia, U.S. Senate, Washington, DC.

DEAR SENATOR LANDRIEU: As Executive Director of the Whitman-Walker Clinic, the largest HIV/AIDS service provider in the Washington, D.C. metropolitan area, I again urge you not to include language in this year's DC Appropriations bill that would restrict the District's ability to prevent the spread of HIV/AIDS.

In previous years, the Congress has added a series of overly restrictive prohibitions on the District's AIDS prevention needle exchange program. This year, under your leadership, we hope that you will respect the decisions and policies of the District's elected officials and not include such provisions in the bill. Further, we ask that you oppose any efforts to add such restrictions by others during consideration of the D.C. appropriations bill.

Sadly, the District of Columbia has one of the highest rates of HIV/AIDS in the nation. As of December 31, 2000, more than 13,000 people had been diagnosed with AIDS, and more than 6,600 people were living with AIDS in the District. Approximately, one-third of all AIDS cases in the District are attributed to intravenous drug use. It is estimated that 1 in 20 adults is HIV positive.

The spread of HIV can be prevented, and one scientifically proven way to do so is through needle exchange programs. According to the Centers for Disease Control and Prevention, the number of these programs is increasing, with 131 needle exchange programs across the country in at least 81 cities and 31 states, plus the District of Columbia. Four of these programs are conducted in the State of Michigan, with two in Detroit, one in Grand Rapids, and one in Kalamazoo. Almost 40 percent of all needle exchange programs receive public funding. The good news is that recent data presented at the 2001 National HIV Prevention Conference shows that programs are having an affect in decreasing new transmissions. Moreover, exhaustive scientific studies have all concluded that needle exchange programs reduce HIV infection and do not increase drug use.

Needle exchange programs are supported by the American Medical Association, the National Academy of Sciences, the American Academy of Pediatrics, the American Bar Association, and the U.S. Conference of Mayors, among others. Even the recent United Nations Declaration of Commitment on HIV/AIDS, signed by the United States, supports "access to sterile injecting equipment" as one way of preventing the spread of AIDS.

We have been heartened by your comments that you do not support riders to the D.C. Appropriations Bill. We are also pleased

that, in transmitting the District's budget to the Congress, the Bush Administration deleted section 150, which placed unduly restrictive limitations on the operation of the needle exchange program. We hope you will follow the lead of the Bush Administration, and also delete these provisions from last year's bill, and further, enable the District government to fund the program as other cities are allowed to do.

While the news of late has focused on the international AIDS crisis, we have a crisis of our own in the District, which particularly affects African Americans. District leaders and health officials are doing their best to deal with the HIV crisis at home. I know you care about the health of the District's people, and trust that you will demonstrate it when you consider the District's appropriations bill, and the District life-saving needle exchange program.

Thank you for your continued support for the District of Columbia. As you consider this issue, if you have any questions or comments, please feel free to call me at 202/797-3511.

Sincerely,

A. CORNELIUS BAKER,
Executive Director.

PREVENTION WORKS,
Washington, DC, July 23, 2001.

Hon. MARY LANDRIEU,
Chair, Committee on Appropriations, Subcommittee on the District of Columbia, U.S. Senate, Washington, DC.

DEAR SENATOR LANDRIEU: I am writing as the Executive Director of Prevention Works, the needle exchange program in the District of Columbia. Our mission is to curb the spread of HIV, hepatitis, and other blood-borne diseases among drug users, their sexual partners, and newborn children. The District has an AIDS rate over 10 times the national average. According to Health Department statistics, 36% of people living with AIDS here have been injection drug users. In addition, almost a third (31%) of the cases attributed to heterosexual contact involved sex with a drug injector. Our outreach and education are crucial to the health of our entire community.

Elected officials in the District are aware of the AIDS pandemic here and its connection to drug use. That is why they funded the needle exchange program from 1996 to 1998. Since October 1998 Congress has prohibited the District from using logically raised public funds to support needle exchange. This lack of public funding has had dramatic effects on our program and on our community, as has this year's Congressionally-mandated relocation of all exchange sites to a limited area of the city.

Program Instability: Prevention Works cannot guarantee the same level of services each month because of insecure private funding.

Service Reliability Impaired: Having to move our exchange sites has resulted in a diminished client base because clients can not find the program. The change appears arbitrary to clients, and because sites no longer conform to patterns of high drug activity, many clients have been lost and may never reaccess services.

Program Services and Referrals Compromised: Having to monitor Congressional activity and pursue smaller and more numerous private funding streams means that valuable program resources are directed to these administrative activities. Resources for monitoring and improving services are lost and the quality of linkages with drug

treatment and other services are compromised. Organizations that are allowed to get larger and more predictable public funding do not face this challenge.

Obstacle to Collaboration: Prevention Works may be a client's first or only contact with the comprehensive network of service providers in the District. However, our clients' access to substance abuse treatment and the rest of the public health infrastructure is hindered because community-based organizations and government agencies are hesitant to work with Prevention Works because of understandable fears of repercussions on their own public funding.

Participants Concerns: Increased restrictions affect program consumers and increase the general stigma associated with needle exchange. This increased stigma drives clients further underground rendering this population even more difficult to reach. Increased restrictions do not result in less drug use, but they do lessen trust among a predominantly African American population that has been historically alienated from the public health establishment.

Community Health Needs Ignored: Reducing HIV and other health risks among people who inject drugs is a national priority as defined in Healthy People 2010. Currently prohibited by Congress from funding Prevention Works—the only program with an established presence among this marginalized and hidden population—the District has no chance of effectively achieving these federally defined objectives. In addition, because of new performance-based funding guidelines, the ban on local funding for needle exchange places future District funding in even more jeopardy.

The federally imposed restrictions on needle exchange do not improve the health of any District resident. They merely limit effective outreach and prevention of deadly disease among the city's most vulnerable residents.

Sincerely,

PAOLA BARAHONA, MPH,
Executive Director.

Ms. LANDRIEU. Again, I ask the Senator from Illinois for any closing remarks he might add.

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute and 10 seconds.

Mr. DURBIN. I thank all those who have joined me on this side, including the Senator from Rhode Island and the Senator from New Jersey.

The District of Columbia is facing the worst HIV/AIDS epidemic in America, nine times worse than the national average. The medical community and the law enforcement community of this city have asked us to give them the tools and weapons to fight this epidemic.

The needle exchange program has proven successful in fighting this epidemic. That is why we have to defeat the Allen amendment. To do otherwise is to ignore the American Medical Association and every major public health group that has told us that needle exchange programs work. To reject the medical and scientific evidence and to take away this weapon against the war on drugs and the war on HIV and AIDS is wrong.

We appropriate less than 10 percent of the funds the district will spend out of Congress. The rest is their own money, and they are only asking to spend their own money as 34 other States do for programs that they think are important to protect their citizens.

The Senator from Virginia may not be surprised to find some Virginia license plates at the needle exchange program in DC. We need to keep this program in place.

The PRESIDING OFFICER. The time of the Senator has expired.

Ms. LANDRIEU. Mr. President, I move the Allen amendment be tabled, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I ask unanimous consent that Senator NICKLES also be added as a cosponsor to this amendment.

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

Mr. REID. 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. REID. 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. REID. Mr. President, I ask unanimous consent that even though we are probably a minute or so early, the vote begin now.

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

All time has expired. The question is on agreeing to the motion. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 328 Leg.]

YEAS—53

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Ensign	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Feinstein	Reed
Cantwell	Graham	Reid
Carnahan	Harkin	Rockefeller
Carper	Hollings	Sarbanes
Chafee	Inouye	Schumer
Cleland	Jeffords	Smith (OR)
Clinton	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wellstone
Daschle	Landrieu	Wyden
Dayton	Leahy	

NAYS—47

Allard	Brownback	Campbell
Allen	Bunning	Cochran
Bennett	Burns	Craig
Bond	Byrd	Crapo

DeWine	Hutchison	Santorum
Domenici	Inhofe	Sessions
Enzi	Kyl	Shelby
Fitzgerald	Lott	Smith (NH)
Frist	Lugar	Snowe
Gramm	McCain	Stevens
Grassley	McConnell	Thomas
Gregg	Miller	Thompson
Hagel	Murkowski	Thurmond
Hatch	Nelson (NE)	Voinovich
Helms	Nickles	Warner
Hutchinson	Roberts	

The motion was agreed to.

Ms. LANDRIEU. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized to offer an amendment on which there shall be 60 minutes equally divided, 30 minutes of which are to be used at this time.

Ms. LANDRIEU. Mr. President, if the Senator from Texas will yield for just a moment as she prepares to speak on her amendment, as you know, we have had a lot of consensus in this underlying bill. We have worked very hard through many stages of our committee to bring consensus on some of these issues. There is one issue that is going to require some debate and discussion. I hope between what Senator HUTCHISON can bring to this debate and Senator DURBIN, we might be able to come to some joint resolution. It is unclear at this point if that will happen. This debate is going to move forward.

I have to say with all due respect to both Senators, with whom I have visited at length about this issue—so has Senator DEWINE—both have genuine concerns for the schoolchildren of the District and the well-being of the school districts. They are both very passionate about these particular views. We were unable to come to a resolution. So this debate will ensue.

I would like to speak about a couple of things which are of concern to me as manager of this bill and as the appropriations chair for the committee.

It is very disconcerting that we cannot get the kind of information from the District, or the CFO, or the school board, or any other financial entity to give us the details of outstanding judgments—how much they are, how many there are, and that kind of information. We are not able to verify some of the information that was sent to us, which itself is a problem to me not only as manager of the bill but as chair of this committee.

I hope we will be respectful of that issue as we debate whether it is appropriate to have caps for attorneys representing children and families with special needs—whether or not it is appropriate to have caps based on the data. But if people are looking to us or to the staff for some specifics, we have tried our best. It is a real problem, when we don't have this information, to be able to explain to people for the

benefit of debate how much the judgments are that are outstanding, how many there are, what moneys we may be saving, what moneys we may be spending, and what the interest rates are. It would be very pertinent in trying to resolve this issue.

I say to the Senator from Texas and to the Senator from Illinois that we cannot really trust the documents we have. We will just do the best we can.

I appreciate the Senators feeling so strongly about their respective positions and hope the outcome will be something that will serve the children of the District, their parents, the school system, and the taxpayers in the fairest manner possible.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized.

Mrs. HUTCHISON. I thank the Chair.

AMENDMENT NO. 2110

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself and Mr. SESSIONS, proposes an amendment numbered 2110.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Under "General Provisions" insert the following new section:

SEC. . (a) None of the funds contained in this Act may be made available to pay the fees of an attorney who represents a party who prevails in an action or any attorney who defends any action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) If—

(1) the hourly rate of compensation of the attorney exceeds 300 percent of the maximum amount of compensation under section 11-2604(b)(1), District of Columbia Code; or

(2) the maximum amount of compensation of the attorney exceeds 300 percent of the maximum amount of compensation under section 11-2604(b)(1), District of Columbia Code, except that compensation and reimbursement in excess of such maximum may be approved for extended or complex representation in accordance with section 11-2604(c), District of Columbia Code; and

(3) in no case may the compensation limits in paragraphs (1) and (2) exceed \$3,000.

(b) Notwithstanding the preceding subsection, if the Mayor and the Superintendent of the District of Columbia Public Schools concur in a Memorandum of Understanding setting forth a new rate and amount of compensation, or a new limit referred to in subsection (a)(3), then such new rates or limits shall apply in lieu of the rates and limits set forth in the preceding subsection to both the attorney who represents the prevailing party and the attorney who defends the action.

(c) Notwithstanding 20 U.S.C. §1415, 42 U.S.C. §1988, 29 U.S.C. §794a, or any other law, none of the funds appropriated under this Act, or in appropriations acts for subsequent fiscal years, may be made available to

pay attorneys' fees accrued prior to the effective date of this Act that exceeds a cap imposed on attorney's fees by prior appropriations acts that were in effect during the fiscal year when the work was performed, or when payment was requested for work previously performed, in an action brought against the District of Columbia Public Schools under the Individuals With Disabilities Act (20 U.S.C. §1400 et seq.).

Mrs. HUTCHISON. Mr. President, Senator SESSIONS and I are offering this amendment for one simple reason: We want to improve the quality of education for the District of Columbia. Our amendment will preserve an estimated \$44 million for special education funding in the District.

The amendment will continue a provision contained in the last three DC appropriations bills that cap the allowable fees an attorney may charge for a child's special education placement in the District of Columbia. We raise the cap in the present law from \$125 an hour to \$150 per hour, and a per-case limit from \$2,500 to \$3,000.

Our amendment also continues a provision contained in last year's bill that allows the District of Columbia, acting through the mayor and school superintendent, to waive those caps if they believe it is in the best interest of the D.C. students to do so.

I also point out that our amendment will prevent an estimated \$32 million in retroactive attorney's fees from being awarded, as has been threatened by the D.C. Circuit Court. That court has ruled that should this fee cap be lifted, they will go back and actually undo the will of Congress by awarding all the billed attorney fees in excess of the caps during the last 3 years.

Our amendment is supported by the school board and the superintendent of schools in the District. And the mayor has told me he also has supported this. They support it because it allows them to put the dollars in education for the children. They are trying to use the money for the education programs. In fact, they have put the money they have saved since the caps were put in place, that would have gone to attorney's fees, into the special needs programs, and they have increased the number of children who now can be taken into the programs.

Why is our amendment necessary? In fiscal year 1998, the District of Columbia spent \$14 million solely to pay attorneys who challenged the District's placement of special education children. The next year, in fiscal year 1999, the District spent \$3.5 million in attorney's fees. This meant that the District had approximately \$10 million in additional funds for the education of these children. The District allocated all this money saved to improving the quality of their special education programs.

And those programs have continued. Over the next 3 years, D.C. allocated \$32 million in funds that would otherwise have gone to pay attorneys to im-

proving special education programs for disabled and special needs children.

This effort has significantly improved the availability and quality of special education. They have also been able to reduce the backlog of initial assessments of special education children from 1,805, before the imposition of the cap, to 143 as of March of this year.

Now they are hiring new special education teachers, purchasing new assistive medical devices, and providing new training and education for existing special education teachers.

So what we are trying to do with this amendment is make sure the education dollars, which are so crucial for the District to improve the quality of education and the quality of special education, stay in the education budget rather than going to pay lawyer's fees.

I ask unanimous consent that a letter the president of the school board and the superintendent of D.C. schools have written in support of our amendment be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DISTRICT OF COLUMBIA
BOARD OF EDUCATION,
Washington, DC, October 26, 2001.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Russell Senate Building,
Washington, DC.

DEAR SENATOR HUTCHISON: On behalf of the District of Columbia Board of Education and the DC Public Schools, we are writing to strongly urge you to include language in the FY 2002 appropriations bill for the District of Columbia that provides a cap on the amount of funds expended for special education attorney fees. Specifically, we are requesting language comparable to that contained in the District of Columbia Appropriations Act of 2001, P.L. 106-522.

It is our determination that the exclusion of such language could result in an additional cost of at least \$44 million to the District of Columbia Public Schools in FY 2002 (including approximately \$32 million in fees subject to the cap in FY 1999 through FY 2001 that could now be billed, plus at least \$12 million in new fees no longer subject to the cap). It is our collective opinion that the result of such an expenditure will seriously and adversely affect our ability to provide educational materials, textbooks, and operational support to the students, teachers, and staff of the DC schools. This will, as a consequence, further jeopardize the opportunity of our children to receive a quality education.

We are grateful for your past support of our efforts to improve the quality of education provided to the children of our City and we look forward to working with you to continue to build upon our growing accomplishments. Your support of this request will be a significant step toward further realization of our mutual goals for education.

Thank you in advance for your consideration of this matter. Should you have any questions or require additional information, please do not hesitate to contact us.

Respectfully,

Ms. PEGGY COOPER
CAFRITZ,
President.

Dr. PAUL L. VANCE,
Superintendent.

Mrs. HUTCHISON. I would like to read briefly from that letter:

It is our determination that the exclusion of [the cap] could result in an additional cost of at least \$44 million to the District of Columbia Public Schools in FY 2002. . . . It is our collective opinion that the result of such an expenditure will seriously and adversely affect our ability to provide education materials, textbooks, and operational support to the students, teachers, and staff of the DC schools. This will, as a consequence, further jeopardize the opportunity of our children to receive a quality education.

I urge my colleagues to vote for this amendment. It is a reasonable cap. We are not trying to starve lawyers. We want legitimate lawyers to be able to earn a living. But \$150 an hour is quite a legitimate amount to spend. I think if anyone has the legitimate interests of the school district at heart, they will listen to the superintendent of schools and the president of the school board to let them do what they believe they need to do to improve the education in the schools. And they do not want to spend this money on lawyer's fees.

They are doing the best they can. There are no complaints—or maybe there are complaints; I guess there are complaints against every school district, but there are no complaints that they are not making every effort to increase the quality of and the number of children they can serve in these special needs classes.

Madam President, I now would like to reserve the remainder of my time. I ask that either Senator DURBIN or Senator SESSIONS be allowed to speak. Senator SESSIONS is my cosponsor. I do not know if Senator DURBIN wishes to speak first.

The PRESIDING OFFICER (Mrs. CARNAHAN). Who yields time?

Ms. LANDRIEU. Madam President, I yield time, as stated in the unanimous consent agreement, to the Senator from Illinois for a response to this amendment. Then probably, after the Senator from Illinois speaks, the Senator from Alabama would like to speak. And then Senator MURRAY could be recognized in morning business.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the chair of the subcommittee for yielding to me.

Madam President, several years ago Congress decided to pass a law which was revolutionary. It said that in the United States of America, if you had a child who needed special educational assistance, we were going to try to help that child. It really was a commitment that had never been made before.

I can recall, as a child growing up in my small hometown, that it was rare to see kids with learning disabilities and physical disabilities in my classroom. I do not know where those kids were. They were certainly here on Earth, but they were not in the classroom.

So Congress said: We are going to change that. We are going to open the doors of education in the schools across America to children with special needs—kids who are disabled, mentally and physically, kids who have learning disabilities. We are going to give them a chance.

That bill passed with an overwhelming, bipartisan vote because it sounded so right and so American for us to stand up and say: That is why America will be different.

We knew, when we passed that bill, it would not be easy because many of these children really need special attention. I have seen it in classrooms across Illinois and people have seen it across the Nation. But the success stories are so gratifying, that children, who would have been tossed in the trash heap just a few years ago, are given a chance. With special education and special assistance, they can become productive citizens in America and have a good, wholesome, and happy life.

Democrats and Republicans said: This is a good thing for us to do. But what are we going to do about school districts that turn these kids down, that will not give them the chance to go into the schools, where the parents are distraught, where they have no place to turn? What are we going to do in that situation?

The law said, if it comes to that, if the school district will not accept the child who needs special education, there may have to be a hearing. Of course, hearings involve attorneys. An attorney would have to stand up for that child and that child's family and try to give that child the chance the parents want.

Who will pay for that attorney, because some of these kids are from the poorest families in America. They are not all rich families and rich kids. The law said, when it comes to that issue, the court will decide. If the attorney representing that disabled child—a child with a learning problem—prevails in the lawsuit, the court can award attorney fees to the attorney who represented the child, and the school district that resisted bringing the child in for special education will have to pay the attorney fees.

I have just stated the law in America. Through her amendment, the Senator from Texas wants to change what I have just described in one city—the District of Columbia—to say that in this, the Nation's Capital, we will not play by the same rules that Texas, Louisiana, Ohio, and every other State, including Alabama, plays by. No. In the District of Columbia we are going to do it differently. We are going to say, in the District of Columbia, no matter how complicated the case, no matter how many problems that child might have, no matter how many hearings might be necessary, no matter

how much effort is put up by the school board to stop this child from coming into special education, no matter how much is involved in it, no attorney is paid more than \$3,000, period—none, not a penny.

That \$3,000 limit does not apply in Texas, does not apply in Illinois, Washington State, Alabama, or any other State. The Senator from Texas would have us apply that here in the District of Columbia.

So when you put a limit on the attorney's fees in complicated and difficult cases, how easy is it for a person, a family, a mother and a father, to find an attorney to represent their son or daughter? It becomes increasingly difficult.

What the Hutchison amendment does is to close the courthouse door, close the opportunity for administrative hearings for children who are seeking special education in the District of Columbia.

Need I remind my colleagues, the District of Columbia is one of the poorest cities in America. There are children in this city who, through no fault of their own, came to the Earth in the usual way—as Harry Chapin used to sing in a song—who came to the Earth in the usual way with a lot of problems, disabilities. These kids, through no fault of their own, will find the schoolhouse door is closed to them because of the Hutchison amendment.

She has said these kids cannot have the same legal representation as children all across America who are asking for an opportunity for special education. Her war is against trial lawyers. I used to be one. I plead guilty as charged, Your Honor. But I can tell you, to say that no lawyer will spend more than 20 hours on any case involving special education is just terrible. It is terrible when you consider the outcome. The losers here won't be the trial lawyers. They will find other work. The losers be will be the children and their families who do not want to give up hope for these kids.

Senator HUTCHISON says it is a matter of dollars and cents: Either give it to the trial lawyers or give it to the school district. Certainly, the schools of D.C. and schools across America need more money. But does this meet the test of fairness and justice? Does it meet the test of those who proudly voted for the IDEA legislation and said they really cared about special education? It does not meet that test.

Let me tell you something else that is unintended perhaps but has to be said: When Senator HUTCHISON limits the amount the District of Columbia can pay to any lawyer representing any child, no matter how complicated the case, to \$3,000, do you know what the D.C. courts have said? They have said: We reject that. We are going to award to these attorneys the fees to which they are reasonably entitled. We under-

stand the D.C. appropriations bill passed by Congress may limit how much Congress can pay out to those lawyers, but that is not going to limit our right under the IDEA bill to award these attorney's fees.

So what has happened?

Let's assume in a case that an attorney works long and hard for many years on a special education case and the court says, you are entitled to \$10,000 in attorney's fees. The Hutchison amendment says, no, D.C. can only pay \$3,000. What happens to the difference; what happens to the \$7,000? The \$7,000 is still an obligation of the District of Columbia. Senator HUTCHISON is not doing the District any favor.

What is happening is all of these awards in court above the Hutchison payment level continue to build up in the District of Columbia, and interest is running on them. This mountain of debt for the District of Columbia is going to be there whether Senator HUTCHISON or Senator DURBIN like it or not. It is a reality. In every city and school district across America, they face their legal obligation—in Texas, Louisiana, Alabama, and in Illinois. But Senator HUTCHISON would say we won't face that legal obligation when it comes to the District of Columbia.

The root problem is the weakness and poor performance of the D.C. public school system. They come racing to us now and say, we don't want the attorneys who want children to come in as special education children to be paid what they are entitled to be paid by the court.

Litigation is merely a symptom of a larger problem. Fifteen percent of the kids in the D.C. public school system are special needs children, 10,500 children. The appropriate way to reduce the burden of litigation on the D.C. public school system is for the system to comply with the law and provide the services and education that children with special needs deserve in every State in the Union, and every school district in America plays by those rules. But not under the Hutchison amendment. She has said there will be one exception: the District of Columbia, one of the poorest cities in America with children suffering from learning disabilities. That system, those children, those families will not have the same legal representation as kids across America.

Singling out the District of Columbia is just plain wrong. This isn't a war against trial lawyers. This is a war against poor children who need a helping hand. That is just not fair.

I asked before in the earlier debate, why is it when this appropriations bill comes to the floor, every Member of the Senate and House wants to turn into a mayor or a member of the city council? Time and again we defer these judgments to the city council and

mayor. In Springfield, IL, and Chicago, IL, we say: It is your call. When it comes to the District of Columbia, no, we want to superimpose our decision, our judgment. It is not fair for the District of Columbia public school system to be standing here begging to be treated as a home rule unit and then say to Congress: Make sure you carve out a little exception for D.C. when it comes to special education students. They want to have it both ways.

The mayor, whom I respect very much, has talked out of both sides of his mouth on this issue. I don't know where he stands on this issue. I can't follow it. I really respect this man. But eight members of the D.C. city council have written a letter, a compelling letter. I ask unanimous consent that the letter from the D.C. council of September 24 be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COUNCIL OF THE
DISTRICT OF COLUMBIA,
Washington, DC, September 24, 2001.

Re: special education attorney fees.

Hon. MARY LANDRIEU,
Chairwoman, Subcommittee on the District of Columbia, Senate Committee on Appropriations, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LANDRIEU: As the Congress considers the District's appropriation for fiscal year 2002 we understand that the House has dropped any provision limiting attorney fees in special education cases. We hope and urge that the Senate agree.

As you know, the federal Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) mandates special education for children with learning disabilities, and provides that where a child must go to court to effect his or her right that child (if he wins) is entitled to have his attorney's fees paid by the government. That the District has been singled out for the last three years with a limit on the fees has been a matter of great controversy.

The position of the Council and Mayor is quite clear: we adopted a proposed budget that contains no cap on attorneys fees. Our objections to a fee cap include:

A cap makes it more difficult for children to obtain special education to which they are entitled. It is a simple fact: a cap on fees reduces the number of attorneys willing to take such cases and, therefore, reduces access to counsel.

A cap discriminates against low income children. Affluent families can afford legal representation; the cap affects them but they still have an economic ability to help their children.

The effect of the cap is to treat the children of the District of Columbia differently—and less favorably—than any other child in any other state in the nation. District children have fewer rights with the cap.

The way to improve special education in the District of Columbia must be programmatic—improve the programs rather than limit the advocacy for special needs children.

We want public school children to obtain the best possible education. Reforms must be done in a way that does not disadvantage children. It is our strongly held view that the cap on attorney fees places already vul-

nerable children at an even greater disadvantage. For all of these reasons we ask that the Senate follow the House and eschew any provision limiting attorneys fees for prevailing parties under the federal Individuals with Disabilities Education Act.

Sincerely,

SHARON AMBROSE,
Ward 6.
DAVID CATANIA,
At-Large.
KEVIN CHAVOUS,
Chairman Comm. on
Education & Libraries.
ADRIAN FENTY,
Ward 4.
JIM GRAHAM,
Ward 1.
PHIL MENDELSON,
At-Large.
KATHY PATTERSON,
Ward 3.
CAROL SCHWARTZ,
At-Large.

Mr. DURBIN. These include Republican as well as Democratic and Independent members of the council. They write in part:

The position of the Council and Mayor is quite clear: we adopted a proposed budget that contains no cap on attorneys fees. Our objections to a fee cap include:

A cap makes it more difficult for children to obtain special education to which they are entitled. It is a simple fact: a cap on fees reduces the number of attorneys willing to take such cases and, therefore, reduces access to counsel.

A cap discriminates against low income children.

The effect of the cap is to treat the children of the District of Columbia differently—and less favorably—than any other child in any other state in the nation.

I was a practicing attorney before I came to Congress, and there are some wonderful people who are involved in pro bono—free—legal work. They do great work. There are also some attorneys who can't find any other kind of work; they are not up to it. I don't think we should put the future and fate of these special ed kids in the hands of an attorney who may or may not be qualified to handle the case. That is exactly what we are doing.

This is discrimination against the special ed kids in the District of Columbia. The District of Columbia school system should be ashamed that they have called on this Congress to perpetuate this injustice. I hope this Congress will think twice. If you voted proudly for IDEA, if you really stand for children with disabilities, then for goodness' sake give them the legal rights to pursue the right they have under law.

I yield the floor.

Ms. LANDRIEU. May I inquire how much time the Senator from Alabama might need to speak on this amendment?

Mr. SESSIONS. I will finish the time of Senator HUTCHISON. How much time does the Senator have?

The PRESIDING OFFICER. The Senator from Alabama has 8½ minutes.

Ms. LANDRIEU. That would be fine, of course, under the consent agreement, because the Senator from Washington State is on the floor and wants to speak not on this amendment but as in morning business. I was just inquiring. The Senator from Alabama is entitled to proceed.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, the Individuals with Disabilities Education Act has done a lot of great things. It has had a consistently strong goal to mainstream disabled children into regular classrooms.

I have in the last year or so visited 20 schools in my State. I try to take the opportunity each time to meet with the principals and teachers in a conference and ask them about their problems, what are their frustrations, what is working, what is not working, what can we do in the Federal Government to help them.

The thing I hear over and over again—and I ask Senators if they hear the same thing; I suspect they do—is that the Individuals with Disabilities Education Act has become a legal nightmare. It has created laws that are not helpful and are costing the schools tremendous sums of money in litigation. It is not helping children in ways we would like to help them. Yes, we want to mainstream every child who can be mainstreamed.

I will share this story. I attended a wonderful, award-winning elementary school in a mid-size town in Alabama. It was so well decorated. It was the first week of the school year. The classrooms were well appointed, well organized, with bulletin boards of first quality. My wife taught elementary school a number of years, and I know about those things and what you are supposed to do. The principal told me this story.

He said: The first day of school, when we were working as hard as we could to do all the things necessary to make that first day a great day for the kids, I spent that afternoon and until 7:30 that night with 13 individuals, including a group of lawyers, over how long an individual child should be kept in the mainstream classroom.

This child had a serious emotional disability and was not going to be removed from school but would be put in an alternative setting where the disability could be dealt with. But the parents and lawyers wanted the child to be mainstreamed. In the previous year, I believe that child had been in the classroom 1 hour a day. The principal had concluded the child didn't need to do that. He was disrupting the classroom and the child would not benefit from being in the classroom an hour a day, and he decided to change that policy. So they did that under the individual plan for the child. As a result, an objection was raised. The compromise—he told me this, and I find

this unbelievable—was that the child was allowed to be in the classroom for 15 minutes a day. After all of that.

As part of that settlement, the school was obligated to pay the lawyer who brought the allegation because the child had prevailed—at least in some part. So they had to pay the lawyer's fee for their lawyers and the lawyer's fee of the people on the other side. The teachers and all who had relevant information about this had to disrupt their first day of school to meet and meet and meet. They had to prepare and they had to talk to experts and have expert testimony about this child and what they could do—all because of the Federal education disabilities act.

We want to help children who can be in the classroom—children who have sight disability, who can't hear, or children who have other disabilities and are in wheelchairs; they need to be mainstreamed. We want to achieve that. Nothing here would say otherwise. There are a lot of problem areas, though, and there is a cottage industry of lawyers who are filing lawsuits regularly.

The District of Columbia tells us they had nearly 2,000 cases last year, and they are over the kinds of issues about which I am talking. These children are not being thrown on the ash heap. The question often is, What kind of program or benefit do they get? Do they stay in the main classroom or go to a special education classroom.

We had a case in Alabama—and this is true all over America—where a child was so unable to control himself—apparently unable, or at least did not control himself—an aide was hired by the State to meet him at the school bus stop in the morning, go to school with that child, sit with him all day in the classroom, and come home with him in the afternoon. This is happening all over America.

The lawyers and the regulations are impacting principals and teachers who love children. They want to see children do well, and they want to see every child reach their highest and fullest potential; but they are being handicapped by complex regulations and litigation. I say that in general. Then I will say this: \$150 an hour is not unusual. There are a lot of regulations that we have where the hourly fees are lower than that. Criminal defense attorneys are paid less than that in most States in America. \$150 an hour is a 20-percent increase over the current law.

This Hutchison amendment is a 20-percent increase over current law in the District of Columbia. This was requested by the District of Columbia. They say, well, you don't cap other lawyer's fees. Other lawyers don't have their fees capped.

Let me say this: If someone cheats you on a contract and you sue them and you win the lawsuit, they don't pay you anything for legal fees, unless

it is in the contract, which it normally is not. Most people in America file a lawsuit, they pay their lawyer out of what they recover. So we have given a special advantage to lawyers in disability cases and in several other instances in lawsuits against Government agencies. We have agreed to pay their legal fees, but they are not guaranteed unlimited legal fees, guaranteed to be paid forever, however much they want or whatever some judge may agree to award them.

So I think this is a reasonable amendment. It is a serious request of the school board of this city, which is facing an avalanche of lawsuits. There were nearly 2,000 last year. None of this money that is expended—the \$10.5 million that was saved last year is not being thrown away. The \$10.5 million that is saved can be used to help disabled children and provide them better programs. If we pay out more money in legal fees, from where do people think it is coming? It is coming from the children. That is where it is coming from—the people we want to help. We need to address nationally some of the litigation that is arising with the Individuals with Disabilities Education Act. There is not a superintendent of schools in America who has been on the job very long, I suggest—or certainly very few who would suggest this system is working effectively.

Principals tell me all the time it is a nightmare for them. It is disrupting their ability to educate our children. They tell me the child who is getting hurt is the average child. There are special programs for the bright children and for those with disabilities, but the average child is getting short-changed. Oftentimes, teachers are so frustrated they are leaving the profession. They are being sued for how they handle difficult circumstances.

The PRESIDING OFFICER. The time of the Senator from Alabama has expired.

Mr. SESSIONS. I thank the Chair and reiterate my support for the Hutchison amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I want to speak for a moment. The Senator from Washington wants to be recognized. I want to say this: I voted with Senator SESSIONS on the last amendment he offered on this subject. I actually agreed very strongly with what he said. Many of us on both sides of the aisle voted with him, as he has outlined so beautifully some of the real problems with special education as far as Federal rules and regulations go. We are all well intended. We all want to help these children, but there is a major disagreement and debate about whether the rules are actually helping or hurting.

The Senator is absolutely correct that many of our resources are not

being devoted to sort of mainstream children because of the complicated rules about special needs and also gifted children. It is a problem and it has to be worked out. I agree with the Senator. My disagreement is that this amendment doesn't actually fix that problem, and it makes it worse, not better, which is why I probably cannot support this exact amendment and why we have tried to work out some compromise between the Senators.

I wanted to say that for the record, and I want to also say that in limiting the attorney's fees to \$150 an hour, which doesn't seem to many people to be much of a limit—that is quite a lot of money to make, particularly in these times. But the problem the Senator, as an attorney and prosecutor, should know is the real problem is the overall limit of \$3,000 per case.

So what happens is an attorney basically can only spend 2½ days. That would allow them to process one or two motions and may not cover them until the end of the case.

These are long and complicated and, as he has described, very difficult cases. That is the problem Senator DURBIN is trying to raise. So I hope we can resolve it. Maybe the good prosecutor, my colleague from Alabama, would have a suggestion about that to us.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2:30 p.m. with Senators permitted to speak therein for up to 10 minutes each and with the time to be equally divided and controlled by the two leaders or their designees.

The Senator from Washington.

Mrs. MURRAY. Madam President, I intend to speak as in morning business. I believe the Senator from Minnesota would like to propound a unanimous consent request.

Mr. WELLSTONE. Madam President, I ask unanimous consent that I follow the remarks of the Senator from Washington in morning business.

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

The Senator from Washington is recognized.

Mrs. MURRAY. I thank the Chair.

(The remarks of Mrs. MURRAY and Ms. SNOWE pertaining to the introduction of S. 1643 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Minnesota.