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*Senate*

## HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT OF 2003

Mr. CARPER. Mr. President, before Senator Feinstein leaves the Chamber, she has laid out what may well be a very reasonable alternative for this body and our colleagues in the House to consider with respect to medical malpractice. She has played a vital role as we have worked over the last several years to craft a compromise on class action reform and offered maybe the critical amendment to the bill.

What I would like to do in the 10 minutes I am going to speak is compare and contrast, if I can, the approach in bringing this medical malpractice bill to the Senate today with the approach that has been followed as we have tried to bring class action reform legislation to the Senate floor.

Let me step back for a moment. For those who may be listening to this discussion, class action reform seeks to address the issue of when a class of people are harmed what kind of redress do they have to seek compensation? I think most of us would agree that if a person were harmed by a product, good, or service that they had come in contact with or acquired that that person should be made whole. I think we would also agree if a whole class of people were somehow damaged by a product, good, or service that they came in contact with that the class of people should be made whole.

The question is, In what forum should those damaged persons, the damaged class, the plaintiff class—where do they turn to for redress to gain compensation for their injury or for their harm?

In my view, and I think it is a view probably shared by a majority of my colleagues, we believe that if the plaintiff class happens to be in a State different from the State that the defendant is from, our Constitution would suggest that maybe in those cases that rather than the case being litigated in the State where all of the plaintiffs are located, if the defendant is from another State, that the fair thing to do to both the defendant and the plaintiff is to litigate that matter in Federal court. That has been a subject of some debate.

It is not an issue that involves limits on punitive damages, economic, noneconomic damages, pain and suffering. The debate does not lie there. Rather, the debate lies in the area of in what court, in what jurisdiction should those kinds of questions be resolved.

I have been in the Senate for a bit more than 3 years. During that course of time, there have been any number of hearings in the Senate Judiciary Committee and in the House Judiciary Committee to bring before the respective panels in both bodies those

who believe that we need to change the status quo with respect to class action litigation and those who think that what we have is just fine.

Proponents and advocates have had the opportunity to speak their points of view and to testify repeatedly in the Senate and in the House. In fact, over the last couple of years, this is what has happened in the Senate: Legislation has been developed in committee, it has been debated in committee, it has been amended in committee, and it has been brought to the floor in an effort to try to have it debated, amended, and voted on.

Last fall, we were able to get 59 votes to proceed to the bill, to take it up and offer amendments on the floor, but on class action we fell just short of the 60 that we needed to invoke cloture. So we went back and we did some more work. Those of us who think changes are necessary worked with some of our Democrat colleagues, three of them especially, and others as well, to come up with changes that would make the bill better, fairer, and more defensible. Hopefully, within the next several weeks we will have the opportunity to debate that on the floor and to offer further amendments to class action reform legislation.

It has been a long process, some would say too long. What happens is we start off with a reasonable proposal, debate it in committee, improve it in committee, report it out of committee, and then we are going to have the opportunity to bring the bill to the floor and it will be altered, I think improved, when that same bill comes to the floor.

Once the bill is on the floor, we will have the opportunity for full and open debate to consider what people like about it and do not like about it. They can offer their changes

and we will have an up-or-down vote at the end of the day when we have amended the bill. That is what we call regular order. That is the way an issue of this nature should be decided.

To my knowledge, maybe in the last 3 years there has been one hearing in one committee in the Senate on the issue of medical malpractice. If there have been others, I am not aware of them. A year ago, there was one hearing in one committee on this issue. I do not believe the bill has been marked up in that committee.

They did not vote on that bill in that committee. They did not seek to amend this medical malpractice bill in that committee. Instead, we simply find a related bill appearing on the Senate agenda with no opportunity to offer amendments, to improve it as maybe Senator Feinstein, Senator Durbin, or others would like to do but, rather, to have to kind of take it or leave it. That is not regular order and that is not the way to build consensus, particularly on an issue as difficult and as contentious as this one.

Another issue we have been dealing with, which involves litigation reform, is the subject of asbestosis. We all know that for many years people used asbestos. It was used in all kinds of projects, construction, automobiles, brakes, ship construction. Asbestos was commonly used. We later found out that it kills people. It causes asbestosis, mesothelioma, and other diseases. We now have been working for years to try to figure out how do we compensate the victims of asbestos exposure to make them whole. That process is one that has gone on for any number of years, too. The process we followed there is the opportunity to fully debate the issue in committees, to hold hearings in committees,

where people who are for and against it have a chance to express their views. There are a lot of interested parties such as insurance companies, manufacturers, labor unions, the trial bar, and others that have had the opportunity to add their input. I hope what we now have coming to the Senate floor sometime later this spring is legislation that says maybe the way we handle asbestos litigation in this country can be improved on so we make sure people who are sick and dying of asbestos exposure get the help they need, and make sure people who are not sick will not ever be sick and do not siphon off money from those who truly need it. We need to come up with a fair system and one, frankly, that will stem the loss of companies, corporations, and businesses that are going bankrupt by the scores of asbestos exposure.

If we compare the way this body has approached class action reform legislation, in a very deliberate and thoughtful fashion, with plenty of opportunity for debate and changes, and compare that with what is before us today, it is night and day. There is really very little similarity.

I suggest to our friends on the other side of the aisle that on this particular issue if they are interested in finding a fair and reasonable solution, there are a number of us on this side of the aisle who would be willing to engage with them to find that. In the meantime, I would suggest they take a look at what States are doing.

Senator Feinstein talked about her own State. In Delaware, the Governor put together a group, not a partisan group but a group that includes the trial bar, health providers, hospital representatives, folks within government and outside of government, to try to figure out if we needed to make any changes in our own State with respect to medical malpractice.

In the end, they said: We do not think we have a problem in Delaware with physicians being unable to get the coverage at a reasonable price. We do not have out of control jury awards. This is not a huge Delaware problem. Rather, they did suggest one change which I think is instructive. What they did was said why do we not provide for the certification of medical malpractice litigation to certify that it is not a frivolous lawsuit. If someone wants to bring a suit before it ends up in court, there will be a panel of knowledgeable people within that area of health care who will look at the assertion of the plaintiff and decide whether or not this is a frivolous lawsuit. If it is, the litigation does not go forward. That is what one State is doing, as a temporary measure.

I close by saying this: Unlike asbestos litigation reform, which needs a national solution, unlike class action litigation reform, which I believe needs a national solution, for the most part States can deal with on a case-by-case, State-by-State basis issues revolving around medical malpractice. I think for the most part we are better off pursuing that. Not everybody will agree with me on that point, but I think most people in this body will agree on this point, and that is the right way to legislate on these contentious issues is the approach we have taken with respect to class action reform and the approach we are taking with respect to asbestos litigation reform, where all sides have the opportunity to be heard, Members get to offer their amendments in committee and on the floor and then we go forward. That is the way to do business, and if we do business on those bases and in that accord, on a more consistent basis, we will be able to not only talk about doing something that needs to be done but actually accomplish it.

I yield the floor.

