United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 106th CONGRESS, FIRST SESSION

Vol. 145 WASHINGTON, THURSDAY, JULY 1, 1999 No. 96

Senate

Y2K ACT—CONFERENCE REPORT

Mr. McCAIN. Mr. President, I ask unanimous consent to lay aside the pending business and turn to the conference report to accompany H.R. 775.

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

The clerk will report.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 775), to establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of June 29, 1999.)

The PRESIDING OFFICER. Under the previous order, debate on the conference report is limited in the following manner:

The Senator from Arizona, Mr. MCCAIN, 20 minutes;

The Senator from Connecticut, Mr. DODD, 15 minutes;

The Senator from Oregon, Mr. WYDEN, 15 minutes;

The Senator from Vermont, Mr. LEAHY, 10 minutes;

The Senator from South Carolina, Mr. HOLLINGS, 50 minutes.

Immediately following that debate, the Senate will proceed to a vote on the adoption of the conference report with no other intervening action or debate.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I don't intend to use all of my time. I intend to yield 5 minutes to the Senator from Washington. I have talked to other Members who have time under this agreement. For the benefit of my colleagues, I think we will not use all of the time as outlined in the unanimous-consent agreement.

I am pleased to urge the final passage of the conference report on H.R. 775. This has been a long and arduous process. While there have been times when the bill appeared to be moving slowly, or even dying, I was always confident we would do the right thing and pass this final bill.

We are now ready to enact this critical legislation. For the benefit of my colleagues, the House has just passed the conference report by a vote of 404–24. This is a victory for the Nation and for the continued prosperity of our economy as we enter the new millennium.

This is a critical piece of legislation. It allows all of our businesses and industries, large and small, hitech and non-hitech, to concentrate their efforts for the next 6 months on preventing Y2K problems from happening, and planning remediation measures. Rather than spending time, resources and money planning litigation defenses, we can be focusing on the means for fixing the problems.

This legislation strikes a very fair and practical balance in protecting the economy and protecting the rights of consumers. And very importantly, I want to note, it addresses needs and problems of small businesses, as well as large.

I would like to dispel any misconceptions or misinformation that there was any underhandedness in the final negotiation and drafting of revisions to this bill. Despite attempts to address Administration concerns last week with revisions and compromises that were made Friday, over the weekend, and on Monday, final negotiations and proposals by the White House were made on Tuesday morning, as we pressed against the deadline for completion of the conference report. Final revisions and drafting were made with every effort and good faith intention to respond to the generalized requests of the White House. Challenges to the integrity, professionalism and honor of the conferees and staff are unwarranted. This is a fair bill that reflects a bipartisan compromise.

Perhaps the recent vote just a few minutes ago in the House might indicate that is an overwhelming view in the other body. I am sure the vote in the Senate will also indicate overwhelming support for this legislation.

During the conference, the Senate and the House proponents of the legislation agreed to at least 10 substantive changes to the bill. These significant compromises were in addition to 10 or more major concessions made in the Senate from the time it was passed by the committee until its passage on the floor. These revisions and compromises have resulted in a more narrowly tailored piece of legislation but one that will still accomplish everything we set out to accomplish when the bill was introduced in January.

We know the provisions of the bill:

The 30-day notice and 60-day remediation period allows prompt resolution of problems without time-consuming and expensive litigation

It provides that defendants are responsible for the share of harm they cause, with some exceptions to ensure that consumers are made whole.

It requires plaintiffs to mitigate damages.

It penalizes defendants who intentionally defraud or injure plaintiffs; or who are bad actors.

It provides liability protection for those not directly involved in a Y2K failure.

It assures that someone will not lose his house if a mortgage payment cannot be made or processed because of a Y2K failure.

It sunsets in three years.

It does not deny the right of anyone to redress legitimate grievances.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

This legislation will encourage an atmosphere of cooperation in solving problems, rather than rushing to the courthouse. Emphasizing the need to talk out and resolve differences rather than litigating them will be helpful not only in the Y2K situation, but I hope will move us away from the litigious nature of our country today.

I am especially pleased at the level of bipartisan and bicameral cooperation in bringing this legislation to fruition. This legislation demonstrated the true ability of both parties and both bodies of Congress to work together for the good of the country. The efforts on both sides of the aisle and both sides of the Capitol to achieve consensus have been tireless. This conference has truly been a civics class example of how Congress can rise above special interest demands to do the right thing in the public interest

Mr. President, there are many who have contributed to this effort, particularly during the conference with the House. I want to especially mention the steadfast support and efforts of both Senator DODD and WYDEN. They worked late into the night this week to negotiate with the White House and assure the President's support.

I thank my two colleagues, Senator DODD and Senator WYDEN. This bill passed the Commerce Committee 11–9 on a strict partisan vote. Thanks to the efforts of those two individuals, who have been tireless, we were able to not only work with the other side of the Capitol, but the White House. Senator WYDEN and Senator DODD have better relations with the White House than I do. That is no secret to anyone around here. The fact that they were able to work more closely with the White House than I ever could have was a significant and, frankly, critical part of this agreement that we made. I again extend my deep appreciation to them.

It did not win them the ''Miss Congeniality'' award in their own caucus—something I am familiar with on this side of the aisle.

My appreciation, as well as a certain amount of sympathy, goes out to them. In all seriousness, without their efforts we would not be here.

I also think they would join me in expressing appreciation to Congressman GOODLATTE and Congressman DAVIS on the other side. Congressman GOODLATTE and Congressman DAVIS started with a piece of legislation far more ''restrictive''—if that is the right word—in the opinion of some, a lot better.

The fact is, they were willing to agree to the movement in the compromises that were made. They clearly could have held their ground and we couldn't have moved forward.

By the way, Congressmen GOODLATTE, DAVIS, and SENSENBRENNER were the originators of this legislation.

I also thank Senator GORTON, Senator FEINSTEIN, Senator HATCH, and Senator BENNETT.

It reminds me of the old line of Jack Kennedy after the Bay of Pigs: Victory has 1,000 fathers and defeat has 1 poor lonely orphan.

Along with that philosophy, I thank the staff members on both sides of the aisle and both sides of the Capitol: Carol Grunberg of Senator WYDEN's staff; Shawn Maher of Senator DODD's staff; Jeanne Bumpus of Senator GORTON's staff; Larry Block with Senator HATCH; Steven Wall on Senator LOTT's staff; Laurie Rubenstein with Senator LIEBERMAN; Tania Calhoun of the Y2K Committee; Diana Schacht of the House Judiciary Committee; Phil Kiko, of Congressman SENSENBRENNER's staff; Amy Herrink, of Congressman DAVIS staff; and Ben Kline of Congressman GOODLATTE's staff.

Finally, I thank the coalition that got behind this legislation. Their help was as broad as any coalition of businesses—large, small, and medium sized—I have seen in my experience here in the Senate.

I thank the National Association of Manufacturers, the Chambers of Commerce, and hi-tech groups, including ITAA, ITI, and BSA.

I ask unanimous consent a list of the year 2000 coalition members be printed in the RECORD.

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

YEAR 2000 COALITION MEMBERS LIST

Aerospace Industries Association.
Airconditioning & Refrigeration Institute.
Alaska High-Tech Business Council.
Alliance of American Insurers.
American Bankers Association.
American Bearing Manufacturers Association.
American Boiler Manufacturers Association.
American Council of Life Insurance.
American Electronics Association.
American Entrepreneurs for Economic Growth.
American Gas Association.
American Institute of Certified Public Accountants.
American Insurance Association.
American Iron & Steel Institute.
American Paper Machinery Association.
American Society of Employers.
American Textile Machinery Association.
American Tort Reform Association.
America's Community Bankers.
Arizona Association of Industries.
Arizona Software Association.
Associated Employers.
Associated Industries of Missouri.
Associated Oregon Industries, Inc.
Association of Manufacturing Technology.
Association of Management Consulting Firms.
BIFMA International.
Business and Industry Trade Association.
Business Council of Alabama.
Business Software Alliance.
Chemical Manufacturers Association.
Chemical Specialties Manufacturers Association.
Colorado Association of Commerce and Industry.
Colorado Software Association.
Compressed Gas Association.
Computing Technology Industry Association.
Connecticut Business & Industry Association, Inc.
Connecticut Technology Association.
Construction Industry Manufacturers Association.
Conveyor Equipment Manufacturers Association.
Copper & Brass Fabricators Council.
Copper Development Association, Inc.
Council of Industrial Boiler Owners.
Edison Electric Institute.
Employers Group.
Farm Equipment Manufacturers Association.
Flexible Packaging Association.
Food Distributors International.
Grocery Manufacturers of America.
Gypsum Association.
Health Industry Manufacturers Association.
Independent Community Bankers Association.
Indiana Information Technology Association.
Indiana Manufacturers Association, Inc.
Industrial Management Council.
Information Technology Association of America.
Information Technology Industry Council.
International Mass Retail Association.
International Sleep Products Association.
Interstate Natural Gas Association of America.
Investment Company Institute.
Iowa Association of Business & Industry.
Manufacturers Association of Mid-Eastern PA.
Manufacturer's Association of Northwest Pennsylvania.
Manufacturing Alliance of Connecticut, Inc.
Metal Treating Institute.
Mississippi Manufacturers Association.
Motor & Equipment Manufacturers Association.
National Association of Computer Consultant Business.
National Association of Convenience Stores.
National Association of Hosiery Manufacturers.
National Association of Independent Insurers.
National Association of Manufacturers.
National Association of Mutual Insurance Companies.
National Association of Wholesaler-Distributors.
National Electrical Manufacturers Association.
National Federation of Independent Business.
National Food Processors Association.
National Housewares Manufacturers Association.
National Marine Manufacturers Association.
National Retail Federation.
National Venture Capital Association.
North Carolina Electronic and Information Technology Association.
Technology New Jersey.
NPES, The Association of Suppliers of Printing, Publishing, and Converting Technologies.
Optical Industry Association.
Printing Industry of Illinois-Indiana Association.
Power Transmission Distributors Association.
Process Equipment Manufacturers Association.
Recreation Vehicle Industry Association.
Reinsurance Association of America.
Securities Industry Association.
Semiconductor Equipment and Materials International.
Semiconductor Industry Association.
Small Motors and Motion Association.
Software Association of Oregon.
Software & Information Industry Association.
South Carolina Chamber of Commerce.

Steel Manufacturers Association.
Telecommunications Industry Association.
The Chlorine Institute, Inc.
The Financial Services Roundtable.
The ServiceMaster Company.
Toy Manufacturers of America, Inc.
United States Chamber of Commerce.
Upstate New York Roundtable on Manufacturing.
Utah Information Technology Association.
Valve Manufacturers Association.
Washington Software Association.
West Virginia Manufactures Association.
Wisconsin Manufacturers & Commerce.

Mr. MCCAIN. We could not have succeeded without them.

I do not intend to make further remarks except to reserve about 5 minutes of my time for the Senator from Washington. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Oregon.

Mr. WYDEN. Mr. President, it is a great honor to be on the floor today to express my special appreciation at being able to work with Senator MCCAIN, Senator DODD, and so many of our colleagues on both sides of the aisle on this important legislation.

This bill is designed with one point and that is to make sure that America's prosperity does not screech to a halt when the calendar pages flip over to start a new millennium. I am of the view that with this bill, millions of consumers and businesses are more likely to be on line at the turn of the century than waiting in line for a courtroom date.

I am especially pleased at the bipartisan efforts to make sure the individual consumer was protected in this legislation. This legislation allows consumers to get punitive damages against the bad actors. It makes sure consumers cannot be ripped off with fraudulent misrepresentations. It greatly expands the opportunity for consumers to bring cases in State rather than Federal court. And the conference report ensures that the individual consumer doesn't get the shaft because they are going to be in a position to be made whole when you take the entire package of remedies that would be available to them.

I am going to focus for just a moment on the 20 major changes that were made in this legislation after it left the Senate Commerce Committee; seven of them Chairman MCCAIN and I agreed on and one of them was a bottom-line proposition for me. The Senator from South Carolina, who is so eloquent with respect to the rights of plaintiffs in our country, was concerned, legitimately, about the long-term ramifications of this legislation. At my insistence, after the Senate Commerce Committee completed its work, Chairman MCCAIN added a 3-year sunset provision to this legislation. So this is going to be a bill to deal with a finite, discrete problem, not something that is going to linger for decades and decades.

We also eliminated the vague Federal defenses that were involved early on. We dropped the preemptive standards for punitive damages. We made sure that bad actors were not going to get a free ride. We restored joint liability for defendants who knowingly committed fraud. There were extra damages for plaintiffs facing insolvent defendants and we restored limited liability for directors and officers. That is what we began with after it left the Senate Commerce Committee and why I was pleased to join with Chairman MCCAIN.

Then Senator DODD, who is the Democrats' leader on these technology issues and who has given me, as a junior Member of this body, so much counsel, came along and made an additional set of important changes so as to particularly protect small businesses. We also went further with respect to officers and directors, and we made sure that plaintiffs were not going to face tougher evidentiary standards because of the good work done by the Senator from Connecticut.

Then we went to the conference committee and there were 10 major changes made to address concerns of the White House. In the area of proportionate liability, we doubled the orphan share for the solvent defendants, we tripled the orphan share for defendants when the plaintiffs were bad actors, and we assured that individual consumers facing insolvent defendants were made whole.

We made a number of changes in the class action area. We boosted the monetary threshold. In committee, when we began it was at $1 million. Now it is at $10 million. We boosted the class size from 50 to 100 plaintiffs. We also added provisions to make sure cases could be dealt with under remand provisions to assist the consumer.

Finally, there were changes in securities law to exempt private securities claims under this act, strong provisions with respect to contract enforcement. And to address a number of the important issues that our colleague from North Carolina has raised with respect to economic loss, we stipulated the economic loss rules would apply in a number of instances so as to give the consumer yet another tier of protection.

Our Nation needs a game plan for Y2K. This legislation is not going to solve all of the Y2K problems that crop up early in the next century. But what we will do by passing this legislation is ensure that we do not compound the problems we know are going to occur. We are doing it in a way that is going to ensure consumers are made whole, that bad actors face the stiffest of penalties, and at the same time we do not encourage mindless litigation that does nothing other than drain the vitality out of our economic prosperity.

I have believed for a long time that failure to pass legislation in this area would be similar to lobbing a monkey wrench into the Nation's technology engine which is driving our prosperity. This legislation gives us the opportunity to keep that prosperity going. I am very honored to have had the opportunity to be part of this effort.

I pay special thanks, in wrapping up my remarks, to my colleague, Senator DODD, the Democratic leader on these technology issues. A little bit after midnight on Monday—I guess that would be early Tuesday morning—this relatively young Senator was getting a little pooped and beginning to wonder how much longer I could keep going. The distinguished Senator from Connecticut said: This is not an option. We are going to stay at it until this legislation gets done. I say to my pal from Oregon, I am going to be talking to the President of the United States tonight.

I looked at my watch and I thought: Well, it is quarter to 1. This is going to be interesting, to learn a little bit more about this call. But in fact, as a result of the efforts of Senator DODD, the work that was done by Chairman MCCAIN and his staff and a variety of colleagues on both sides of the aisle in those early morning hours, on Tuesday we consummated the 20 major changes that were made in this legislation to ensure we had a bipartisan bill. So I have to tell you, this legislation, which was on the ropes early Tuesday morning with a lot of us thinking that it was going down for the count, now is a bill that our body can be proud of. It is a genuine compromise. I am not going to continue further because I know there are a number of colleagues who wish to speak as well. But I do want to pay tribute to a number of our staff who put in these extraordinary hours.

I see Marti Allbright and Mark Buse over there, with Chairman MCCAIN; Senator DODD's staff as well. Carol Grunberg, who is here with me, is sort of the Senate's Bionic Woman. She just kept going when it was so important to keep the parties together.

I am proud to be part of this effort. I look forward to what I hope will be a resounding vote in the Senate before too long. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is reserved under the unanimous consent agreement for the Senator from Vermont?

The PRESIDING OFFICER. The Senator has 10 minutes.

Mr. LEAHY. Mr. President, this conference report on the Y2K liability protection bill is being roundly praised, but not universally. Not universally. And it should not be. This bill is worse than the bill the Senate passed only a few weeks ago. The conference report provides expanded legal protections, especially at the expense of consumers, and I believe it raises serious constitutional questions. I do not support it because it is an unjustified wish list for special interests that are or might become involved in Y2K litigation.

The conference report greatly expands the scope of the Senate-passed bill by amending this act to apply to a potential Y2K failure. In fact, section 4

of the bill was amended during the conference to apply to the act's legal restrictions for a potential Y2K failure that could occur or has allegedly caused harm or injury before January 1, 2003. Let me ask, what is a potential Y2K failure? Nobody knows. I tell you this, over the next 4 years almost every lawsuit involving any technology issue could trigger the bill's special legal protections under this sweeping definition.

Once again, the majority is manipulating a key phrase to suit the wants of a special interest. The business lobby has inserted its own expanded definition of a Y2K action to broaden the scope of this bill. A House conferee observed when this expanded definition was first proposed last Thursday that it was an expansive definition that had been expressly rejected during House Judiciary Committee proceedings. It certainly was not accepted here. Lo and behold, like the ''Lady of the Lake'' rising, we find this comes out of the ether during the conference.

Not really even during the conference. In fact, that may be one reason the conference was never called to meet for a second time to go over the proposed conference report or to even vote on these matters, because it was easier to have matters not considered by the House or the Senate or the conference or voted on, but those that came from somewhere—not from us. But there they are.

In fact, after the first truncated meeting was adjourned and a possible follow up meeting was postponed Tuesday morning, the conference was never called back into public session to debate the proposal or even permit amendments to be offered and voted on. I predicted at the first and only preliminary meeting of the conference that I would not be allowed an opportunity to improve the bill by adding balance and protecting consumers, or at least even get a vote on it. I am sorry to report that I was correct. In fact, the conference report was filed without any follow up meeting or votes by the conference committee.

That is an interesting way of doing things. If we have a lobby that does not want something, like the juvenile justice bill that passed—they do not want it because they lost on the gun issues—why, it comes to a screeching halt: We are studying it, we are reviewing it, we want to deliberate this, we need to have time for votes, we have to have a conference and go thoroughly into it.

We have another lobby that says we want this Y2K bill: We do not like the bill that passed the Senate, and the House did not do enough for us. Will you throw a bunch of stuff in, don't vote on it, don't talk about it, don't have any procedure, just toss it in, because this is what we want, and, oh, by the way, we want it right now, we need it in a hurry.

This vagueness of a potential Y2K failure will also add to more future litigation instead of curbing it. From a bill that is supposed to deter frivolous litigation, this new, vague definition will produce more lawsuits and may give special legal protection to many more companies than the Senate-passed bill.

These special legal protections include: 90-day waiting period to file a lawsuit, heightened pleading requirements, duty to anticipate and avoid Y2K damages, overriding implied warranties under State law, proportionate liability, and many others. All these special legal protections still apply to small business owners and consumers in this so-called compromise. In fact, the bill, as presently drafted, would preempt consumer protection laws of each of the 50 States.

I have to ask: Why does this bill create new protections for large corporations while taking away existing protections for ordinary citizens? Maybe they do not have as much influence at the conference.

Many consumers may not be aware of potential Y2K problems in the products they buy for personal, family, or household purposes. They just go to the store and buy it and expect it to work. They are going to find a real surprise if there is something in there that does not work. One thing that will not work is the usual remedies they expect out of the consumer protection laws.

This bill as presently drafted would preempt the consumer protection laws of each of the 50 states and restrict the legal rights of consumers who are harmed by Y2K computer failures.

Why is this bill creating new protections for large corporations while taking away existing protections for the ordinary citizen? We all know that individual consumers do not have the same knowledge or bargaining power in the marketplace as businesses with more resources.

Many consumers may not be aware of potential Y2K problems in the products that they buy for personal, family or household purposes. Consumers just go to the local store or neighborhood mall to buy a home computer or the latest software package. They expect their new purchase to work. What if it does not, due to a Y2K problem?

Then the average consumer should be able to use his or her home state's consumer protection laws to get a refund, replacement part or other justice. But not under this bill.

The conference report also greatly expands the jurisdiction of the federal courts to consider Y2K cases under its class action provisions—now throwing Y2K cases into Federal court if a plaintiff seeks an award of punitive damages. Again, this expansion of the Senate-passed bill is unjustified.

It could be legal malpractice for an attorney not to seek punitive damages at the beginning of a case, when the complaint is filed and before discovery of all the facts has commenced. This provision makes no sense and may cause great harm.

Chief Justice Rehnquist and the Judicial Conference soundly rejected this approach months ago. The Judicial Conference found that shifting Y2K cases from state courts ''holds the potential for overwhelming the federal courts, resulting in substantial costs and delays.'' I wonder who pays for that. I bet it is us.

In addition, the Judicial Conference concluded ''the proposed Y2K amendments are inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction.''

These views are shared by the state court judges, as reflected in the position of the Conference of Chief Justices. They note that these Y2K bills ''pose a direct challenge to the principles of federalism underlying our system of government.'' They describe these bills as ''radically'' altering the complementary role of the state and federal courts. The Chief Justices of our state courts remind us: ''The founding fathers created our federal system for a reason that Congress should be extremely reticent to overturn.''

I thought the Administration had also rejected this approach.

Mr. President, I suspect that the sweeping federal procedural and substantive changes to state law in this conference report will not pass constitutional muster when challenged. The conference report does not create a federal cause of action for Y2K lawsuits. Instead, the bill forces federal rules and liability protections on state-based claims and procedures. This will result in the dismissal of claims that might otherwise succeed under state law and clearly usurps the ability of state legislatures to make and enforce the laws for their citizens.

The conference report is an arrogant dismissal of the basic constitutional principle of federalism. Given the Supreme Court's recent rulings on the power of the States in relation to the Congress under our Constitution, I predict the Supreme Court will strike down this new law as unconstitutional.

We in Congress should not be tramping on the rights of the States to set the legal procedures for their courts and define the legal rights for their citizens.

On May 1, 1999, Assistant Attorney General Eleanor Acheson outlined the Department of Justice's views on this legislation. The Department of Justice concluded that: ''Because the McCain-Wyden-Dodd proposal modifies tort and contract law so as to reduce the liability of potential Y2K defendants, it reduces the incentive for potential defendants to avert Y2K failures. In a similar fashion, we do not believe that modifying the rules of liability that apply to meritorious tort and contract actions will deter frivolous Y2K claims, which by definition will be filed regardless of the rules of liability. Instead, the modification in the McCain-Wyden-Dodd bill seem more likely to curtail legitimate Y2K lawsuits.''

I agreed with the Department of Justice on May 1, 1999, when this letter

was written, and I agree with this letter today. Mr. President, I ask unanimous consent that the full text of the Department of Justice's views as of May 1, 1999, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LEAHY. This conference report is telling the business community: Don't worry, be happy when it comes to Y2K remediation; don't worry about fixing the problem, don't worry about trying to protect the consumers, because the Senate and the House are going to protect you; all you have to worry about is yourself, not those who buy your products.

If they take that attitude using this bill as a shield, it only makes Y2K computer problems worse next year instead of fixing them this year. The best defense against any Y2K lawsuit is to be Y2K compliant in 1999, not waiting for a problem to happen and in the year 2000 say: Oh, wait a minute, they took care of us in the Congress; too bad, we're home free.

That is why I hosted a Y2K conference in Vermont to help small businesses prepare for 2000. That is why I taped a Y2K public service announcement in my home state. That is why I cosponsored Senator BOND and Senator KERRY's new law, the ''Small Business Year 2000 Readiness Act,'' to create SBA loans for small businesses to eliminate their Y2K computer problems now. That is why I introduced, with Senator DODD as the lead cosponsor, the ''Small Business Y2K Compliance Act,'' S. 962, to offer new tax incentives for purchasing Y2K compliant hardware and software.

These real measures will avoid future Y2K lawsuits by encouraging Y2K compliance now.

Last year, I joined with Senator HATCH to pass into law a consensus bill known as ''The Year 2000 Information and Readiness Disclosure Act.'' We worked on a bipartisan basis with Senator BENNETT, Senator DODD, the Administration, industry representatives and others to reach agreement on a bill to facilitate information sharing to encourage Y2K compliance.

The new law, enacted less than nine months ago, is working to encourage companies to work together and share Y2K solutions and test results. It promotes company-to-company information sharing while not limiting rights of consumers. That is the model we should use to enact balanced and narrow legislation to deter frivolous Y2K litigation while encouraging responsible Y2K compliance.

Unlike last year's Y2K information sharing law, this conference report is not narrow or balanced. Instead it is an justified wish list for special interests that are or might become involved in Y2K litigation.

The coming of the millennium should not be an excuse for cutting off the rights of those who will be harmed. It should not be an excuse for turning our States' civil justice system upside down. It should not be an excuse for immunizing those who recklessly disregard the coming problem to the detriment of American consumers.

EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF POLICY DEVELOPMENT,
Washington, DC, May 1, 1999.

Hon. ALBERT GORE, Jr.,
President, U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am writing to clarify the Justice Department's views on the McCain-Wyden bill, S. 96, as amended by Senator DODD's April 28 proposal. We appreciate the efforts of Senator DODD to improve S. 96. Nevertheless, Senator DODD's amendments do not cure many of the defects that prompted the Department to oppose S. 96, and the Department continues to oppose the bill, even with Senator DODD's amendments. The Department, however, understands that Senators KERRY and ROBB are working on an amendment in the nature of a substitute that addresses our primary concerns and which we can support.

The Administration has, all along, advocated Y2K legislation as long is it serves three important goals: (i) giving companies every incentive to become Y2K compliant; (ii) encouraging resolution of Y2K problems without resort to litigation; and (iii) deterring frivolous Y2K lawsuits without deterring legitimate Y2K claims. We are convinced, however, that the McCain-Wyden-Dodd bill does not achieve these goals. In fact, that bill may significantly undermine two of them. Because the McCain-Wyden-Dodd proposal modifies tort and contract law so as to reduce the liability of potential Y2K defendants, it reduces the incentive for potential defendants to avert Y2K failures. In a similar fashion, we do not believe that modifying the rules of liability that apply to meritorious tort and contract actions will deter frivolous Y2K claims, which by definition will be filed regardless of the rules of liability. Instead, the modifications in this McCain-Wyden-Dodd bill seem more likely to curtail legitimate Y2K lawsuits.

I will now outline briefly some of the Department's major concerns with the McCain-Wyden-Dodd version of S. 96.

COVERAGE ISSUES

The McCain-Wyden-Dodd proposal would apply to Y2K lawsuits brought by consumers and to private securities actions. McCain-Wyden-Dodd contains a number of provisions that make it more difficult for plaintiffs to assert and recover on their Y2K claims—they must provide more extensive notice to all defendants, satisfy higher pleading requirements, and may even then be denied their economic losses and punitive damages. Although these restrictions may be appropriate as applied to businesses with greater financial and other resources, imposing these heavier burdens is likely to erect insuperable obstacles for plaintiffs who are consumers.

The McCain-Wyden-Dodd proposal also applies to private securities actions, even though such actions are already governed by the comprehensive provisions of the Private Securities Litigation Reform Act of 1995 and the Securities Litigation Uniform Standards Act of 1998. Considerable time and effort was spent in designing those two laws as a means of barring meritless claims but allowing the filing of legitimate claims. In the absence of any evidence that this legislation was ineffective at achieving these purposes, there would appear to be no need to upset the careful balance it achieved by applying the sweeping reforms of McCain-Wyden-Dodd to litigation already covered by that prior legislation.

CLASS ACTION PROVISIONS

The McCain-Wyden-Dodd proposal creates federal jurisdiction over any Y2K class action where more than one million dollars is at issue. With this low threshold, this proposal allows most Y2K class actions brought in state court, even those based solely on state law, to be moved to federal court, where they would be analyzed under federal standards. Class action claims that could have been brought under state law would have to be dismissed unless they also satisfy those federal standards. Not only would this result in the dismissal of claims that might have succeeded under state law, but it would also usurp the ability of state legislatures to define the relief available to their citizens.

PROVISIONS MODIFYING STATE TORT LAW AFFECTING Y2K CLAIMS

The McCain-Wyden-Dodd proposal substantially rewrites state tort law as applied to Y2K claims. Section 13, for example, freezes in time many aspects of the state law governing resolution of Y2K tort claims as it existed on January 1, 1999, thereby preventing the States from enacting any reforms to their tort law, even reforms that apply generally to all tort claims. Other sections of McCain-Wyden-Dodd significantly curtail the damages Y2K plaintiffs may recover for their injuries. Most dramatically, section 12 bars recovery of economic losses in all tort suits not involving personal injury or property damage, including fraud and misrepresentation suits where the only damages are economic losses. This is not simply a codification of existing state law rules; section 12 establishes a new—and much broader—restriction for the recovery of these damages. Finally, section 5 of McCain-Wyden-Dodd usurps state law regarding recovery of damages with a rule of proportionate liability for all Y2K defendants, no matter how much they might have contributed to the plaintiff's injuries.

Because of the concerns I have outlined, the Department remains opposed to S. 96, even as modified by Senator DODD's proposed amendments.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

ELEANOR D. ACHESON,
Assistant Attorney General,
U.S. Department of Justice.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I yield sufficient time as may be necessary under the time I am allotted under the agreement.

Mr. President, a notable author once stated that ''decades surrounding a new millennium are periods of severe disruptions and cultural transformations.'' In the context of American politics, it appears that this prophecy is coming to fruition even before the 21st century officially arrives.

From the manner in which this legislation has been considered, and unfortunately, from its ultimate passage, it appears that this country is embarking upon a serious transformation of America's constitutionalism.

For 200 years, we have honored a system of federalism that recognized the appropriate balance between States

and the Federal Government concerning the administration of civil law. Civil disputes unrelated to constitutional claims were considered to be reserved to the states and local citizens. But this cherished notion of states' rights no longer seems to be the case. Now, upon the idea of promoting industrialism, and more specifically, the so-called growth of technology, it appears that federalism, as well as the constitutional rights of American citizens, are becoming not only dishonored, but for sale to the highest bidder.

There are some who will support this legislation today upon the grounds that this is a bill limited in scope. Nothing could be further from the truth. This legislation includes some of the broadest limitations ever imposed on consumers' civil remedies, including severe restrictions on the recovery of economic losses and the ability to pursue class action suits.

The majority's claims about the recovery of economic losses greatly exceed the degree to which economic losses will be recoverable under the bill. In reality, the legislation will forbid the recovery of economic losses in almost every situation.

The conference majority contends that the class action provision has been made more pro-plaintiff because of the change made to the monetary requirement—from $1 million to $10 million—and the change made to the class size requirement, which is now 100 members. However, the conference majority failed to highlight the decision by the conference committee to add a provision that allows any class action suit to be removed to federal court in the event the suit includes a claim for punitive damages. The addition of this provision has expanded the federalization of class actions suits well beyond the provision in the original bill.

The conference report states that my provision on consumer credit protection has been revised to reflect the true intent of the provision, which was to prevent consumers from losing their mortgages because of Y2K failures. However, the purpose of the provision was not to singularly protect mortgages, but to protect consumers against adverse actions in relation to all debt-related transactions, including automobile loans and credit card obligations.

I know that many of my colleagues on this side of the aisle will vote for final passage because of the President's decision to sign this bill. I am most disappointed in the President's decision. When the President announced and carried out his veto of the products liability bill three years ago, I applauded. He states then that there was no justification for broad restrictions on punitive damages, joint and several liability, and broad preemption of State law. He reiterated those concerns in several statements on this bill. Yet, he announces his intention to sign the bill. In fact, his staff says he'll sign the legislation, even though it doesn't reflect the actual agreement between the White House and conference members.

I assure my colleagues that if we remain on this course, the constitutional and moral soul of this Nation will soon perish. This ideology of short term gain, and success at all costs, will surely work to our detriment. Consideration of this bill reminds me of a quote by Horace Rumpole, when he said:

> We went to all that trouble with King John to get trial by our peers, and now a lot of lawyers with the minds of business consultants want to abolish juries.

Mr. President, when I hear the expression by my distinguished chairman about a victory for the Nation and such nonsense from the distinguished Senator from Oregon about the consumers not getting the shaft—that is exactly what they are getting. That is exactly what is happening.

We tried our best to protect the consumers. You name the consumer organization in America—Public Citizen, Consumers Union—they are all still opposed to this conference report.

I stand here with a letter which the American Bar Association recently wrote:

> The American Bar Association opposes enactment of H.R. 775 in either the form that passed the Senate on June 15, 1999 or the form that passed the House of Representatives on May 12, 1999. . .The American Bar Association believes that the rights of the States should not be trampled in the rush to enact legislation to address concerns about Y2K. Traditionally, legal principles governing both tort and contract action have been the province of the States, not the Federal Government. The legal issues likely to be presented by the Year 2000 problem are not unique.

I ask unanimous consent the letter from the American Bar Association be printed in the RECORD.

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

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, June 22, 1999.

Hon. TRENT LOTT,
U.S. Senate,
Majority Leader of the Senate,
Washington, DC.

DEAR MR. MAJORITY LEADER: We understand that the Administration and key members of Congress are continuing to try to resolve differences with respect to H.R. 775, Y2K liability legislation. Last Friday, the ABA's Board of Governors met in Boston and adopted policy regarding the pending legislation. I am writing to you to express the American Bar Association's views on this legislation.

The American Bar Association opposes enactment of H.R. 775 in either the form that passed the Senate on June 15, 1999, or the form that passed the House of Representatives on May 12, 1999. The ABA is supportive of efforts to impose a reasonable waiting period before a lawsuit could be brought and encouraging potential litigants to utilize alternative dispute resolution methods during this period. The ABA is also supportive of encouraging the disclosure of known Y2K defects and of encouraging businesses, with appropriate antitrust relief, to cooperate in the development and implementation of remediation of Y2K defects. However, the ABA strongly opposes provisions in the versions of the legislation that passed both in the House and in the Senate that would: (1) provide for federal standards regarding the award of punitive damages; (2) limit the extent of defendants' liability to their proportional share of damages; (3) limit the liability of officers and directors in Y2K proceedings; (4) allow for removal of almost all Y2K class actions to federal court; and (5) preempt the state laws to place a federal cap on punitive damages. The ABA also opposes the fee-shifting provisions of section 508 of H.R. 775, as passed by the House.

The ABA believes that the rights of the states should not be trampled in the rush to enact legislation to address concerns about Y2K. Traditionally, legal principles governing both tort and contract actions have been the province of the states, not the federal government. The legal issues likely to be presented by the Year 2000 problem are not unique. Except for some regulatory action undertaken by federal and state agencies, there is little in the nature of special Y2K law. Disputes arising from Year 2000 computer failures likely will involve garden-variety claims of misrepresentation, fraud, breach of contract, insurance coverage and the like. There is no reason to believe that the legal standards and procedures applicable to non-Y2K-related tort, contract and class action claims are not appropriate for resolution of lawsuits involving the Year 2000 issue.

The ABA believes that it is doubtful that H.R. 775, as passed by either House, would encourage more or better Year 2000 remediation, or more or better disclosure about Year 2000 readiness. In fact, we believe that the opposite result is the more likely. Many businesses are inspired to undertake their Year 2000 remediation projects with a higher degree of diligence precisely because of potential legal liability. Legislation changing the standards of liability breeds uncertainty, and prudent business people frequently opt not to spend money in the face of uncertain returns. Where the relevant law of the jurisdictions in which businesses now operate is fairly certain, any new federal law will only muddy the waters. In light of the almost certain constitutional challenges and the necessity of litigation to interpret a new law in the various states, the efficacy of any new legislation will also be minimal at best.

From the perspective of directors and officers insurance issues, a Y2K safe harbor could put the directors and officers in a Catch-22 situation. Year 2000 compliance is expensive. Compliance obligations must be weighed, like any other business decision, against the costs and the liabilities of non-compliance. If the penalties associated with Year 2000 are removed, it is plausible the directors' and officers' decision-making pendulum would swing the other way—toward maximizing corporate short term profits.

Moreover, proposed legislation has the potential to penalize organizations that have been the most diligent in their Year 2000 preparations. Many companies have spent millions of dollars in this endeavor. More significantly, many started early, and have virtually completed their projects, performing innumerable tests and drills. Some are helping their customers and other members of the business community by sharing the knowledge they have learned. These efforts should be encouraged. However, by raising the bar for bringing and sustaining legal action, Congress may be penalizing those companies who through their own foresight spent their resources to adequately

deal with Year 2000 issues. Those who choose not to spend sufficient resources could have a competitive advantage. In short, whatever benefits the proposed legislation may have are likely to be too little, too late and to reward the wrong people.

The fee-shifting provisions of Section 508 of H.R. 775, as passed the House, would preempt federal, state and local statutes and court rules to apply a modified ''losers pay'' or fee-shifting court rule with respect to any Year 2000 claim for money or property. They would require that if either side rejected a settlement offer prior to trial and did less well at trial than the offer, that party would be responsible for the attorney's fees and costs of the other party from the date on which the last offer was made by the adverse party.

Section 508 would force parties either to accept a settlement offer or run the risk of incurring the fees of the other side. This would encourage ''low-ball'' settlement offers by the defendant rather than a realistic appraisal of the value of the case. Only the wealthy claimant would be able to run the risk of incurring such fees; in particular, the middle-class claimant who has some assets to lose would be in the greatest jeopardy. In a clear case of liability, the advantage might be partially alleviated by a counter offer or demand. But in all cases, the risk of litigation would be greater for someone who believes their claim or defense is just.

The American Bar Association does not endorse court rules or statutes that provide for fee-shifting based upon rejection of settlement offers. Such proposals would deter those who lack the financial wherewithal to absorb not only their own legal fees but also those of their adversaries from filing meritorious claims or defending meritorious positions. They favor the litigant with financial muscle, provide a disincentive to all claimants with limited financial means and encourage settlement by gamesmanship rather than encouraging realistic appraisals. Ultimately they erode our country's concept of equal justice under the law.

Although the ABA does not support court rules or statutes that provide for fee-shifting based on rejection of settlement offers, it adopted policy in February 1996 suggesting that if such a statute or rule is being contemplated, certain safeguards outlined in an ''offer of judgment procedure'' be incorporated in such a statute or rule. We would be happy to provide you with a copy of this offer of judgment procedure should you wish to review it and to answer any questions you may have about the ABA policy on this matter.

Please let me know if I can provide you with additional information or otherwise be of assistance to you on this matter.

Sincerely,

ROBERT D. EVANS.

Mr. HOLLINGS. No Governor, no Attorney General, no State legal group supports this legislation. On the contrary, there is a letter here from the Conference of Chief Justices of the several States in opposition to this measure.

I ask unanimous consent to have that printed in the RECORD.

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

CONFERENCE OF CHIEF JUSTICES, OFFICE OF GOVERNMENT RELATIONS, NATIONAL CENTER FOR STATE COURTS,

Arlington, VA, May 25, 1999.

Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: I am writing on behalf of the Conference of Chief Justices (CCJ), to express our concern with S. 96 and H.R. 775 in their present form. We understand that S. 96 and H.R. 775 are attempts to address the serious problem of potential litigation surrounding the Y2K issue. However, in part, the bills pose a direct challenge to the principles of federalism underlying our system of government. We are particularly concerned that each bill would in effect replace established state class action procedures in favor of removal to the Federal courts on most cases. The members of CCJ seriously question the wisdom of such an action.

In this regard, CCJ agrees with the position of the U.S. Judicial Conference as submitted by Judge Walter Stapleton to the House Judiciary Committee on April 13, 1999. His testimony points out that:

''State legislatures and other rule-making bodies provide rules for aggregation of state-law claims into class-wide litigation in order to achieve certain litigation economies of scale. By providing for class treatment, state policymakers express the view that the state's own resources can be best deployed not through repetitive and potentially duplicative individual litigation, but through some form of class treatment. H.R. 775 could deprive the state courts of the power to hear much of this class litigation and might well create incentives for plaintiffs who prefer a state forum to bring a series of individual claims. Such individual litigation might place a greater burden on the state courts and thwart the states' policies of more efficient disposition.

Federal jurisdiction over class litigation is an area where change should be approached with caution and careful consideration of the underlying relationship between state and federal courts.''

We would emphasize that State courts presently handle 95 percent of the nation's judicial business. State and Federal courts have developed a complementary role in regard to our jurisprudence and these bills would radically alter this relationship. It is not enough to argue these bills affect only a segment of commerce, or that resolution of the problem on a state by state basis is inconvenient. It is a bad precedent that could have future ramifications. The founding fathers created our federal system for a reason that Congress should be extremely reticent to overturn.

If you have any questions, please feel free to contact me directly, or contact Tom Henderson or Ed O'Connell who staff our Government Relations Office. They can be reached at (703) 841–0200.

Respectfully,

DAVID A. BROCK,
Chief Justice,
President, Conference of Chief Justices.

Mr. HOLLINGS. Certainly everybody wants money. I want money. You want money. Republicans want money. Democrats want money. The White House is going crazy after money. Heavens above, everybody knows everybody wants money.

If you think this is just a spurious comment, let's go back. Here it is: ''GOP Vies for Backing of High-Tech Leaders. Party Aims to Exploit Y2K Vote. . .''

That is from the Washington Post, dated June 13. I ask unanimous consent to have that printed in the RECORD.

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

GOP VIES FOR BACKING OF HIGH-TECH LEADERS—PARTY AIMS TO EXPLOIT Y2K VOTE, CEO SUMMIT

(By Thomas B. Edsall)

Republicans will make an all-out bid to wrest the cash and prestige of Silicon Valley from the Democratic Party this week by capitalizing on a crucial Senate vote and a three-day National Summit on High Technology, events that will have high-tech executives lining the halls of Congress in unprecedented numbers.

The Senate vote on a measure to protect the high-tech industry from Y2K computer damage suits and the gathering of the industry's corporate elite at the summit sponsored by the Republican-controlled Joint Economic Committee are designed to demonstrate the commitment of the GOP to the unfettered market forces so beloved by the chip makers, venture capitalists and software CEOs of ''the new economy,'' and to reveal pointedly to high-tech leaders the influence in the Democratic Party of one of their most feared adversaries, the trial lawyers.

The trial bar has filed numerous securities suits against the industry and its members are expected to unleash lawsuits over the expected breakdown of computers that have not been adjusted to deal with the date change on Jan. 1, 2000, popularly known as the Y2K computer glitch.

''This is one of the few segments of the business community that hasn't reflexively gone Republican,'' said Rob Atkinson, director of the Technology and New Economy Project of the Democratic Progressive Policy Institute. ''Now, the Republicans have started to wake up and say, 'We want the high-tech community to be ours.'''

The high-tech industry is a significant source of political money. The Center for Responsive Politics estimated that the computer industry and its executives gave just under $9 million to congressional candidates in 1997–98, and early in the presidential nomination fights, Vice President Gore has raised an estimated $75,000 from the industry, slightly more than the $67,000 raised by Texas Gov. George W. Bush.

As, or perhaps more, important than the money, however, is the partisan competition to be on the side of a driving force in the national economy.

Rep. Thomas M. Davis III (Va.), chairman of the National Republican Congressional Committee and a leader of the GOP's high-tech drive, contends that high-tech executives realize that such ''vestiges of the old Democratic coalition'' as organized labor and the trial lawyers ''will not allow them [Democrats] to support high tech.''

In fact, the legislative record of both parties and of the Clinton administration on high-tech issues is mixed, with each taking stands for and against positions supported by the Information Technology Industry Council (ITIC), a group praised by both sides of the aisle.

In Congress, the GOP has a substantial advantage in its ITIC ratings. In the House, computations based on the ITIC's vote analysis showed Republicans receiving an average ranking of 69.7 percent, compared with the Democrats' 49.1 percent. The ratings were closer in the Senate: 83.9 percent for Republicans, 71.1 percent for Democrats.

The ratings were based on 1997-98 votes on securities litigation reform, Internet taxes, temporary work visas for skilled foreigners,

''fast-track'' trade proposals, computer export controls and encryption legislation.

Only votes on economic and regulatory issues were considered. Votes on social issues such as abortion, school prayer and pornography were excluded, since those have little bearing on the industry's bottom line. The libertarian tradition in the hightech community makes the religious right and the anti-abortion movement significant liabilities for the Republican Party.

Also, the development of sophisticated encryption and faster computers has put the industry in direct conflict with those seeking to restrict trade with potentially hostile nations, and with law enforcement officials seeking wiretap access to electronically transmitted information.

And the demand for technology-sophisticated workers runs head-on into anti-immigration forces in both parties.

In terms of partisan competition, Democrats are increasingly worried that the GOP's full-scale assault is likely to weaken the Democratic advantages among libertarian high-tech entrepreneurs.

Some Democrats have been stunned by the impressive collection of technology company executives who have joined a 72-member high-tech fund-raising committee for Bush. These computer industry leaders include America Online's James L. Barksdale, Cisco Systems' John Chambers, Intel's Gordon Moore, LSI Logic's Wilfred J. Corrigan, Applied Materials' James C. Morgan and Advance Mirco Devices' W.J. Sanders III.

Democratic conflicts pitting plaintiffs' lawyers against the technology sector will be thrust into the open when the Senate votes this week on legislation limiting corporate liability in Y2K damage suits, a measure backed strongly by the high-tech industry but opposed by trial lawyers.

That vote is expected to take place Tuesday, in the middle of the Joint Economic Committee's three-day summit. The sessions, put together by Republican Sens. Connie Mack (Fla.) and Robert F. Bennett (Utah), will provide a public forum to an extraordinary array of high-tech luminaries.

On Monday, those scheduled to testify include IBM's Louis V. Gerstner Jr., Intel's Craig R. Barrett and Federal Reserve Chairman Alan Greenspan. Day two will feature Microsoft's Bill Gates, Adobe Systems' John E. Warnock and Novell's Eric Schmidt. Wednesday will be the turn of Sun Microsystems' Scott McNealy, America Online chief technology officer Marc Andreessen and eBay's Meg Whitman.

Democrats are worried about the timing of the hearings and the Y2K vote, said Lisa Quigly, chief of staff of Rep. Calvin M. Dooley (Calif.), co-chairman of the New Democrat Coalition, which has strong ties to the technology sector.

''We are miles ahead of them [Republicans]; they don't have the relationships at all,'' Quigly said, but ''because some [Democrats] are not supporting Y2K [liability legislation], it looks as if Democrats are not for high tech.''

Democrats have made what they hope will be a preemptive strike that will take the edge off the Republican challenge.

Last week, House Minority Leader Richard A. Gephardt (D-Mo.), who has not had strong ties with the high-tech community, appointed a high-tech advisory committee headed by two Californians whose districts are centers of high-tech entrepreneurial activity: Reps. Zoe Lofgren and Anna G. Eshoo.

The Gephardt announcement coincided with a New Democrat Network-sponsored ''technology outreach'' day, which featured sessions with Microsoft senior vice president Craig Mundie, venture capitalist John Doerr, Dell Computer's Michael Dell and Hewlett Packard's Lewis E. Platt.

In what may prove to be a faint hope, Simon Rosenberg, executive director of the New Democrat Network, said that high-tech leaders are going to see the GOP drive this week as ''a very overt and clumsy attempt to catch up on high tech. But this challenge of which party is going to be the one that most adapts to the new realities and the new challenge is going to be with us for a long time.''

Mr. HOLLINGS. Here is the same: ''Congress Chasing Campaign Donors Early and Often'' about Y2K. That is from the New York Times, dated June 14. I ask unanimous consent to have that article printed in the RECORD.

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

[From the New York Times, June 14, 1999]

CONGRESS CHASING CAMPAIGN DONORS EARLY AND OFTEN

(By Alison Mitchell)

WASHINGTON, June 13—As campaign finance legislation languishes, Congress has gone on an allout funding-raising binge driven by the battle for control of the House, competition for money with the Presidential campaigns and an early push by incumbents to scare off challengers.

In a sign of just how intense the money chase has become, all four Senate and House campaign committees have, for the first time, created their own special programs to court and cater to donors willing to give them $100,000 in each of the two years of the 2000 campaign cycle.

Unabashed by the debate over President Clinton's use of the White House to court deep-pocketed donors in 1996, the committees are offering generous contributors an array of incentives, like access to party leaders, special issue briefings and meetings in lush locales.

In the case of the Democratic Congressional Campaign Committee, which is led this year by Representative Patrick J. Kennedy of Rhode Island, that even includes a weekend at the Kennedy family compound in Hyannisport, Mass., as close as it gets to a Democratic shrine.

''If we're going to raise more money,'' said Edward M. Kennedy of Massachusetts, ''we're going to have to do it in bigger chunks.''

The creation of the groups is a sign of how the 2000 battle for Congress is causing an escalation in the pursuit of so-called soft money, the kind of unrestricted contributions from wealthy individuals, corporations and labor unions that the parties have used to get around the post-Watergate contribution limits.

By law, an individual can give only $20,000 a year to the party committees to use for the direct purpose of electing a Federal candidate. So the bulk of these $100,000 donations would be considered of soft money, which can be used for activities like party building or advertisements advocating issues.

Once such money was largely the purview of the national political parties, not their Congressional arms. But last year the Congressional committees became more aggressive in pursuit of the money, and these programs show that they are now going even further. Previously the big-donor programs on Capitol Hill were tailored for the $15,000 and $25,000 contributor. (The Republicans had a $100,000 ''Majority '98'' program for the House and Senate elections last year, but divided the proceeds among several party committees.)

For those trying to stanch the flow of money into politics, these are bad omens.

''You've ended up with an absolutely 'anything goes' attitude,'' said Fred Wertheimer, an advocate of legislation, now stalled, that would ban soft-money contributions. He called the $100,000 groups a ''qualitative expansion of soft money.''

Representative Thomas M. Davis 3d of Virginia, the chairman of the National Republican Congressional Committee, says the Democrats are hypocrites for raising such donations because they have rallied around the bill to ban them while Republican leaders have firmly opposed it. ''The difference is they profess to oppose soft money,'' Mr. Davis said.

The Democrats say the will not disarm until the law changes.

''All of us are hoping for campaign finance reform, but we are also preparing for the worst'' said Senator Robert G. Torricelli of New Jersey, who as chairman of the Democratic Senatorial Campaign Committee is in charge of fund-raising and recruiting candidates.

The fund-raising flurry is driven in large part by an unusual political season in which not just the White House but the House could change hands. A few even argue that control of the Senate could be in play.

''It's impossible to predict which party will control which institution,'' Mr. Torricelli said.

The House and Senate committees are also pushing to raise money before they have to go into head-on competition with the Presidential race. And they want to show the kind of high-dollar strength that gives an air of victory and draws more donors. The committees are just as zealous in pursuit of the traditional donations for Federal campaigns as they are in seeking soft money.

''The stakes are high, whatever the outcome,'' said Gary J. Andres, a lobbyist who is working closely with the National Republican Congressional Committee to advise endangered Republicans and help them raise money. ''So I think you're going to see an expanded effort on both sides of the aisle.''

The fund-raising is particularly aggressive in the House, where a shift of just six seats in the next election could return the Democrats to the majority. Congressional leaders say the narrowness of the Republican majority is not only attracting more money for each party, it is causing some donors and interests to give to both.

It's a funny dynamic,'' Mr. Davis said. ''You have some people scared to death the Democrats will take the House and they will give you more. And there are groups that will hedge their bets. If they didn't think the Democrats had a chance they would probably just give to us.''

House Democrats are bluntly telling lobbyists and corporate interests with offices along K Street here that they had best take out some insurance should the Democrats take back the House.

Representative Kennedy said that Democrats in this cycle would be ''expecting much more from those who haven't traditionally been supporters of us but have been giving large contributions to our opponents and can't be expected to not at least meet us halfway.'' He said, ''They need to balance out the sheets a little bit.''

Through the first quarter of 1999, the House Democrats' campaign committee took in a record $6.8 million. By the end of this month, Democratic officials say they might reach about $14 million—what it took House Democrats the entire year to raise in 1997, the last comparable nonelection year. In three separate events last week, President Clinton, Vice President Al Gore and Hillary Rodham Clinton all appeared at fund-raisers for House Democrats.

The House Republicans' campaign committee will be posting its first contribution

figures at the end of this month. But the Republicans say they beat the Democrats in the first quarter in traditional donations by 2 to 1, raising over $7 million, and also topped the Democrats in soft money. On June 23, Republicans expect to raise more than $7 million at a gala for both the House and Senate.

The Republicans traditionally bring in far more money than the Democrats.

The fund-raising drive is equally intense for individual candidates. Particularly in the House, any incumbent who could face a competitive race in 2000 is working overtime to raise as much money as possible by June 30, the next filing deadline for the Federal Election Commission. Almost every night there is at least one fund-raiser somewhere in the vicinity of Capitol Hill.

The election commission reports are used by political strategists and donors to judge the potential strength of candidates. And in many cases the size of these bank accounts can draw in more donors—or scare them away from a competitor, helping determine whether a strong challenger should jump into a race.

House Republicans are pushing incumbents who already face significant challengers or who drew less than 55 percent of the vote in 1998. The goal is to try to have $200,000 in each of their campaign accounts by the end of the month.

Mr. Davis of Virginia says he knows the importance of the June 30 filing deadline. When he was trying to decide whether to challenge the incumbent Democrat, Leslie Byrne, in 1994, he looked at her campaign bank account. ''She had only 25 grand in the bank and I said, 'Maybe I can do this,'" he said. ''If she had had $250,000 in the bank, I guarantee I wouldn't have run.''

House Democrats are trying to make sure that all their freshmen in seats that may not be safe have about $150,000 in their accounts by the end of the month. ''It's a real focused and intense effort,'' said David Plouffe, the executive director of the Democratic Congressional Campaign Committee.

In some cases the House Democrats say they have challengers lined up and are helping them, too.

Patrick Casey, who lost by a whisker to Representative Donald L. Sherwood of Pennsylvania in one of the closest House races of 1998, traveled to Washington last Wednesday for a fund-raiser where Representative Richard A. Gephardt or Missouri, the minority leader, helped him raise $50,000.

Congressional leaders have also joined the sweepstakes. Speaker J. Dennis Hastert, for example, is now spending Mondays, Fridays and weekends raising money for House members, hopscotching the country.

He plans to take a four-day tour of California later this month to try to raise $2 million at 16 events, most of it for House candidates. His aides say he has raised $5 million this year for candidates and the party.

Mr. Gephardt, who would supplant Mr. Hastert as Speaker if the Democrats were to win back the House majority, is also on the circuit. Last week he helped raise money for Mr. Casey and for Representative Carolyn McCarthy of Long Island, attended a Rhode Island event with Mr. Gore and flew home to Missouri to appear with Mrs. Clinton. He aides say that by June 30, he will have raised $4 million.

Representative Tom Delay of Texas, the majority whip, has mobilized his entire whip organization of House members to help the Republicans' 10 most vulnerable incumbents. In a program he calls Romp, for Retain Our Majority Program, he has asked these members to raise $3,000 each for each of the 10 incumbents.

And all the House Republican leaders have helped raise money for a new group called the Republican Majority Issues Committee, which is trying to raise $25 million to get out the conservative vote in critical Congressional districts.

The Democrats have called for an investigation of the group because it is not registered with the Federal Election Commission as a campaign organization or disclosing its donors.

Karl Gallant, an ally of Mr. DeLay, who is forming the group, said it was not required to register because it would not be endorsing candidates. ''We are not giving money to candidates,'' Mr. Gallant said. ''We are going to be an independent committee that will educate voters on where candidates stand on conservative issues.

Mr. HOLLINGS. You think it is not timely on money? Here at 2 o'clock this afternoon an article was printed regarding Governor Bush. I guess have to be more respectful. He is liable to be President. It reads, Governor Bush—''At a breakfast this morning Bush gets big support from Silicon Valley.'' He got all the executives out there. He just pledges all these things, I am telling you right now, way better than the distinguished chairman. And the distinguished chairman is pretty good.

I ask unanimous consent to have this printed in the RECORD.

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

BUSH GETS BIG SUPPORT FROM SILICON VALLEY

(By Alan Elsner, Political Correspondent)

PALO ALTO, CA (Reuters)—Republican presidential front-runner George W. Bush's money-raising juggernaut roared through Silicon Valley Thursday, drawing support from a stellar list of high-tech industry titans.

Bush, the governor of Texas, has smashed all previous records by raising more than $36.3 million in the first half of the year. He began the second half with a fund-raising breakfast that had been expected to bring in an additional $300,000 but seemed likely to far exceed that estimate.

''This is not my first trip to this incredible land called Silicon Valley. This is my first trip as president of the United States,'' an elated Bush said, before quickly correcting himself to say, ''As soon-to-be president of the United States.''

Among the executives there to greet him were Cisco Systems chief executive John Chambers, Microsoft executive vice president Robert Herbold, Oracle Corp. (Nasdaq: *ORCL—news*) president and CEO Ray Alen, Intel Corp. (Nasdaq: *INTC—news*) chairman Gordon Moore, eBay president and CEO Meg Whitman, Hewlett Packard president Lew Platt and Charles Schwab, chairman and CEO of the stockbroker company that bears his name.

It was a highly impressive turnout from a region that Vice President Al Gore, who may be Bush's Democratic presidential opponent in next year's election, has been courting for years. But Bush had already raised more money from Silicon Valley than Gore in the first three months of this year.

Executives said they were attracted by Bush's program of supporting innovation, breaking down trade barriers and removing government regulation.

''The governor has strong support from the high-tech industry that is driven by ingenuity, innovation and the free enterprise system. It's great to have a candidate focused on those fundamentals,'' said Herbold.

Lane added: ''This industry needs support from government to continue growing and the Republicans and Bush have been more supportive of business aspects of building this industry.''

Bush, who leads the field for the Republican presidential nomination by a wide margin and has a 10 to 20 percentage point advantage over Gore in recent polls, said the attendance of so many prominent executives at his fund-raiser sent an important message that would be noted all across the country.

In his speech, Bush pledged to ''take the side of innovation over litigation every single time'' and put forward a number of general ideas of what he might do as president.

He said he would reduce the threat of massive litigation arising from the Year 2000 computer bug known as Y2K. He gave grudging praise to President Clinton, who this week struck a compromise with Congress to limit liability awards.

Bush has promised to fight for meaningful tort reform to limit lawsuits against business, a favorite Republican theme. He also proposed making the Internet a duty and tariff-free zone worldwide and promised to combat theft of U.S. intellectual property.

Bush said he would loosen regulations limiting the export of civilian computer technology while still protecting militarily sensitive technology.

He also proposed a permanent tax credit for research and development. Currently, the credit, worth about $2.5 billion, needs to be renewed annually by Congress.

Bush's unprecedented fund-raising prowess has led some commentators to predict the race for the Republican presidential nomination is virtually over before it has begun. Only publisher Steve Forbes, who can draw on a vast personal fortune, will be able to come close to matching Bush's financial resources.

Of the other Republicans, Arizona Sen. John McCain has a war chest of $6.1 million and the rest of the field is under $3.5 million. Bush also outpaced Gore in fund raising by two-to-one.

Mr. HOLLINGS. So the record is made with respect to money. Ordinarily, we have the rule—I want to be within the Senate rules of the dignity of the body. But we have to get to the reality. No one is asking for this except those in the money chase. And, yes, it is bipartisan. There isn't any question about that.

But this is a shabby performance. It is a sad day in the history of the Senate. Now what really occurred when we went into that conference is that the House receded to the Senate except for a minor amendment. We voted on it. Then they started negotiating on the fix, so as to ensure everybody was on board. They knew they were going to get a bill. The Senator from Connecticut then made the call to the President after midnight. I thought the only person who could get the President after midnight was Monica.

The White House sent five veto letters. Yet, the President plans to sign the bill, notwithstanding.

How emblematic of this administration. We fought like tigers to get this economy going with the 1993 budget. We cut spending. We raised taxes. We did away with 300,000 Federal employees. We got the economy going even though we could not get a single vote on the other side.

Then later, of course, the President joined the other side, went down and threw all of his friends in Congress overboard saying we taxed them too much. Then we had GATT. Then we had the NAFTA with Mexico, and he threw his labor friends overboard. Of course, that has been an abomination.

You cannot get to reality. They said it was going to increase trade. We went from a $5 billion-plus to a $20 billion-minus deficit. That was going to pay the Mexican worker better. He is taking home 20 percent less pay. It was going to solve the immigration problem. It is worse. It was going to solve the drug problem. They have a narcodemocracy down there.

But the President threw that crowd overboard. Now he throws overboard the consumers, middle America, after five veto messages on a much worse bill.

The Senator from Vermont is right on target. There isn't any question, when they put out this sheet here—even from my side—in the policy committee meeting there at lunch: How the conference report improves on the Senate-passed bill proportionate liability, even though they rejected Senator KERRY's proposal to place the burden on the defendant. They put the burden on the plaintiff. Individual consumers supposedly are carved out of proportionate liability, that is if they are not part of a class.

If by chance they are part of a class, their suit is automatically removable to federal court, in the event the claim seeks punitive damages. The President said he would never federalize class actions. They claim the bill preserves the authority of states to void contracts. But I can list a number of contracts that would be illegal under State law but would be enforceable under the conference-reported bill. So contracts which were entered into on a fraudulent or unconstitutional basis would still be enforced.

I will never forget the distinguished Senator from North Carolina; he tried to instruct the Senator from Oregon on economic damages.

I will give you the case. The client comes in. I am an old-time lawyer, and I represent clients. You have to tell them the truth. The poor client comes in and says: Hollings, I've got a $10,000 computer I bought last year, and now it's after January the first, and it has crashed. It is not Y2K compliant. They told me it was going to last for 10 years. I want you to bring my case.

I said: Wait a minute. They have to understand you have 90 days to wait around even though there is no duty to fix. The Senator from California, Mrs. BOXER, offered an amendment to require a free fix—that was in response to the Senator from Oregon's lament about fix the problem, fix the problem, just fix the problem. Well, that is exactly what were attempting to do. We said: Let's get rid of the lawyers. We will fix the problem. Yet, they would not accept that in the conference report.

So I say to the prospective client: In that 90 days nothing is going to happen. Then I have to investigate in great detail because on proportionate liability I do not want to find that the parquet from Hewlett-Packard was made in India and thus discover that I should have gone to New Delhi instead of Hartford to bring this case. I have to then file the pleadings. I have to thereupon get in with the interrogatories, attend all the discoveries because that is the billable-hour crowd.

You do not have money for billable hours obviously. This is middle America. That is how they get their day in court. So I will attend the interrogatories. I will conduct the trial, and I will handle the appeal.

By that time, you will owe me over $10,000. Now do you really want me to bring this case, considering you can't get any economic loss? I know you said you had to let two of your employees go because you could not pay them during all this time that it has been down. I know you have a loss of business. I know you have lost your reputation and everything else of that kind. But there is no economic loss.

The distinguished Senator from North Carolina is the best in the business. He will elaborate on that particular point. But that, more or less, gets rid of the lawyers. There never has been anything really for Y2K cases for attorneys. But to come in here now and say it does that, it is just shocking that we have just done away with middle America. The civil justice system has been permanently damaged. The very system that supports our Democratic society and consumers. That is why I stand here, for the consumers of America, for middle America, for those who cannot employ a trial attorney.

I go right to that White House and why they changed, because the best story that came out was in the New York Times. I think it is dated just yesterday, June 30. It has this statement in here, that the Vice President, as he begins his campaign for the Presidency, was eager to rid himself of the ''taint'' of financial support from trial lawyers.

No. 1, try to get some money out of that trial lawyer crowd, hard money. It is limited to $1,000. Soft money, let's go to Silicon Valley. There is Bush. He is there this morning, the Governor. This is the soft money bill. That crowd, he has $36 million. He has more than GORE, the Vice President, the President, and Bill Bradley all put together. One fellow has it. He can get that money. They know where to get soft money.

I can't get much hard money out of that trial lawyer crowd. I want more from them, I want them to know. I have publicly stated that on the floor. But they don't have soft money.

But the ''taint'' is the one I take exception to, because I am proud to be associated with trial lawyers. They are in there, down in the pits, on the front lines protecting middle America. All I hear in this Congress is about middle America—taxes, taxes, taxes. How about rights, rights, rights? They don't have the money for billable hours.

A crowd such as we have up here in this Washington group, all the lobbyists, I am glad they put that list—is that the billable hour list the distinguished chairman just handed in for the record?

So with the billable hour list, sure, they are lazy. They don't try cases. They continue cases. They go to the golf course. The clock runs and they send the bills. But you have to produce if you are a trial lawyer or you don't get anything. You take on all the expenses.

This is a system that has worked for over 200 years at the State level. All the State authorities now are opposed to this Federal adulteration, but they are talking about how they are looking out for consumers and a victory for America and those kind of things.

I am particularly shocked at my Republican chairman who has led the fight on campaign finance reform. I worked with him. I have a bill in for a constitutional amendment to try to legalize, if you please, the 1974 act before it was made unconstitutional by the Supreme Court of the United States. In one line: The Congress of the United States is hereby empowered to regulate or control spending in Federal elections. Once we do that, we go back to the 1974 act, do away with the soft money, everything on top of the table, and we are limited on the amount of money—we, candidate—we are limited on buying the office. But the money to buy the office is bad enough when the money goes so far as to buy the principle. That is a shocking thing to me. If there is such a thing as campaign finance reform, then in the name of campaign finance reform, kill this conference report, because this is an abortion. There isn't any question in my mind. It is way worse than we have ever had in any particular measure.

I want to say one word about the software industry, because I have worked in the Congress over the years with that particular industry, but they are learning a bad lesson now. They are learning they can buy anything, because they can change around State law, just them.

I have been up here, 32, now going on 33, years. We have never done this for any special group. Here they agree something could be fixed in 90 days. That is the provision in the bill.

We are giving them still—you have July, August, September, October, November, December, almost 6 months to still get it fixed, rather than 90 days. But they come in and demand this, when they now really are trying to demand everything.

Everybody ought to know that the Internet was started by the antigovernment crowd, free market, free market. After we developed the Internet in 1968, with Dopper, thereupon, there came, later on, in the middle of the 1980s, none other than the

best of the best, President Reagan. He gave a voluntary restraint agreement to the semiconductor industry because they were going broke. Intel had given up one of their particular display chips, if you remember. They were going out of business. They hung on, and we instituted Semi-Tech. When I went into the Intel plant in Dublin, Ireland, the manager there, Mr. Frank McCabe, said: Senator, we would have never had all of this if you hadn't put the $500 million in Semi-Tech. That is government.

They are all talking about pork, pork, pork. I want to emphasize the pork about which my distinguished colleague always talks. We gave them that particular pork, and now they have come to town and they want estate tax cuts. They want the capital gains tax cut. They want to do away with taxing the Internet. If you buy something on Main Street, America, you have to pay the sales tax. But if you buy it on the Internet, there is no tax. It is a free ride. Don't tax the Internet. And by the way, don't hold me liable. Let's legalize negligence. Let's legalize fraud, with this particular bill, and then just repeal the tort system.

This is a sad day for the Senate to come here with this particular conference report and talk in terms of a victory for America. It is a real bad setback by the White House, the leadership—not on the House side, I can tell you that. We have struggled over this thing. I tried to hold it up as much as I could, but the die has been cast.

I will retain at this particular point the remainder of my time.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Connecticut.

Mr. DODD. Mr. President, I don't think I know where the Senator from South Carolina stands on this issue, having listened to his eloquence. I disagree with him about this bill, but he is a wonderful Member of the Senate and a good friend. I always enjoy being a witness to his eloquence here on the floor of the Senate, even when I may be the object of some of that eloquence, along with my capital city of Hartford, CT.

Let me begin by saying I support this conference report. I commend the chairman of the committee, Senator MCCAIN, for his fine work. There was a tremendous amount of pressure on him last week. There were some who wanted to get this done about a week ago, with the hope there would be a veto. I guess they may have seen some political mileage if the bill had been vetoed. That would have been a victory in the minds of some. He willingly allowed us to have the weekend and the following few days to try to work out differences.

None of us knew whether we would succeed. Frankly, we weren't very optimistic we could work out the differences, given a lot of the rhetoric associated with this bill. The fact that we were able to spend some time at it and see if we couldn't find common ground, I appreciate very much. I know most of the Members of this body and others do, as well.

I also want to commend my colleague from Oregon, Senator WYDEN, who did a very fine job. We worked very closely on this to try to find some language and some provisions which would build broader support for this legislation. Also, I want to recognize the efforts of a number of our colleagues whose support was also instrumental in the successful completion of this conference report: Senator GORTON, Senator HATCH, Senator FEINSTEIN, my colleague, Senator LIEBERMAN, and Senator BENNETT, with whom I serve on the special committee on the Y2K issue, which was established by the majority leader and the minority leader, Senators LOTT and DASCHLE, about a year and a half ago, to look at the issue of the Y2K problem.

We have had some 22 hearings in that committee, examining all aspects of our society—government, the private sector, nonprofits, hospitals, telecommunications, transportation, utilities, financial markets—to determine to what extent this computer bug may affect people in this country and elsewhere. I think I can say with some degree of certainty that we think, at this juncture, things should not be too bad. A lot of work has been done at all levels in our society, from local communities to the States and the national government, to try to fix this problem so it doesn't cause the kind of disruptions that many thought could occur. But I can't stand here today and tell you we can say with absolute certainty there won't be disruptions and problems. There will be some. We just hope they aren't going to be as significant as some have predicted.

One of the areas we were asked to look at is the potential for widespread litigation, the rush to the courthouse. It is no great secret in this country that we have become tremendously litigious; we like suing each other. It has become a problem that has grown over the years. Anybody who has been around certainly knows the statistics and the numbers that tell of the rush to solve every problem by a lawsuit. Certainly, I will be the first to recognize, as a member of the legal profession, that without an active and vibrant legal profession, a lot of consumer rights would be lost in this country. You need that. It can't all be done by the Justice Department, the Securities and Exchange Commission, or other agencies at the federal, State and local level. You need a vibrant private bar. That is essential.

But it also has to be one that is tempered. You have to recognize certain fact situations as they occur and determine whether or not there may be a better way of trying to resolve some of these difficulties.

That is what this bill is really all about. I will start out by saying it is a 36-month bill. This bill sunsets; every provision of this bill dies after 36 months. We are not writing something in concrete or marble here that is going to last in perpetuity. For 36 short months, this bill will exist.

During that period of time, of course, we will learn whether or not we are going to have as widespread a problem with this Y2K computer issue as some have anticipated. If we don't, then this bill really isn't that important. I hope that will be the case. Nothing would make me, as one of the coauthors of this bill, happier than to find next January, February, and March, that all of the fears that have been raised by the Y2K issue turn out to be nothing more than that—fears—and that there would be no reason to litigate or to take 90 days to try to resolve the problems. If that is the case, then the bill will last for 36 months, but it won't have any significance.

If, however, there are problems that go beyond what I think will be the case, we could end up with people racing to the courthouse to litigate the issues rather than trying to solve the problem. If businesses are spending money on legal fees rather than trying to spend money on technicians and others to solve the problem so that the users of their equipment will be made whole, then we could end up having the Y2K problem be a lot more serious than I think it is apt to be.

This agreement, this conference report—even if you had no idea what was in it, I think you would be safe to conclude that it is probably a good one, for one basic reason: no one is fully satisfied. Everyone had to make concessions in this proposal.

It is not perfect, by any stretch of the imagination. But that should not obscure the fact that it is an outstanding achievement, in my view, arrived at in a manner that is bipartisan, bicameral, and in cooperation with the executive branch.

It is narrowly crafted to address the repercussions of an event that will only happen once in history: the changing of the calendar, 183 days from today, to the new millennium. We don't know, as I said, with precision what the repercussions will be. We hope and trust that, for our citizens, they will be minimal. But we know there will be repercussions, affecting virtually every facet of our lives, from energy to health care, from food to telecommunications.

We will encounter problems associated with the Y2K glitch. And in America, where there are problems, lawsuits are never far behind. The Y2K committee, as I mentioned earlier, which I cochair with Senator BENNETT, heard hard evidence that some members of the trial bar have been gearing up for quite some time to usher in the new millennium not with a celebration, but with a subpoena. By some estimates, they will file claims totalling $1 trillion or more.

While some of these suits will have merit, many, I am fearful, will not.

They will become vehicles for profit by select members of the trial bar, not to rectify wrongs done to consumers or to businesses.

Ultimately, an avalanche of frivolous lawsuits seeking to reap a bonanza from this Y2K problem could have a crippling effect on our economy, especially on the technology-based businesses that are creating the lion's share of new jobs in our Nation today.

This bill would slow the knee-jerk rush to the courthouse. It says to those who would seek litigation as a first resort: Look before you leap. It focuses businesses and consumers on fixing the problems, not fighting over them, and getting on-line, rather than getting in line at the courthouse. It encourages them to resolve differences in a conference room, not a courtroom.

This conference report is narrowly crafted to address frivolous Y2K-related litigation, and only frivolous Y2K-related litigation. Its carefully circumscribed scope was acknowledged—albeit reluctantly—the night before last by Mr. Mark Mandell, president of the Association of Trial Lawyers of America. He had this to say about the conference report:

> It is positive that this unique response to a unique situation will be law for only three years and that the legal rights of anyone who suffers a physical injury are preserved.

I commend him for the responsibility of that statement. He is the head of the trial lawyers in this country. I quickly add that he is not endorsing this bill; he disagrees with it, but he has framed it right. It is a unique answer to a unique problem that, for 36 months, we want on the books to avoid the potential problems that can affect our society.

These are two important points that deserve to be restated:

First, as I said, this is only a 3-year bill. It works no permanent changes in our legal system. Second, it completely and totally exempts consumers who allege they have suffered physical injury as a result of a Y2K failure.

In addition, the conference report contains several other responsible and modest provisions that weed out frivolous lawsuits, do no injury to tort law and, most important, allows America's businesses to continue to create jobs.

This bill establishes a 90-day period before a suit can be filed to at least create an opportunity for the parties to remedy the defects and avoid expensive, time-consuming litigation.

We are not going to guarantee the problem will get fixed in that 90 days, but it will sort of call a timeout for 90 days, 3 months, to try to solve the problem. That is not a radical idea. It is not a radical idea at all to try to get people to work out their differences. That may be a radical idea if your motivation is to get to the courthouse as fast as you can. To that crowd, it is a radical idea. But to the businesses and consumers who would like to be made whole and have the problem fixed, having a cooling-off period for 90 days as we try to solve this problem is not asking too much in a 3-year bill.

The bill also requires plaintiffs to plead with particularity about the nature of the harm allegedly done to them, and the monetary amount of damages they are seeking as a result of that harm. That is another ''radical'' idea—that you have to allege with some specificity what caused the problem. I know that is a bad idea if you would like to sort of use boilerplate language and race to the courthouse. If you are a defendant, you ought to know what you are charged with, what the plaintiff thinks you have done wrong. That ought not to be a great radical deviation from the norm. For 36 months, we are going to require that. That ought to be permanent law, in my view, but in this bill it lasts only 36 months.

The bill also prevents plaintiffs from recovering damages that they could have reasonably and foreseeably avoided. Another radical idea. To discourage plaintiffs from suing the so-called ''deep-pocket'' defendants, the bill establishes a rule of proportionate liability.

As a general matter, it holds the defendant responsible only for the harm it causes, and not for the harm caused by other defendants. Again, what a radical idea that is. If you are fractionally responsible, they would like you to have to pay the whole tab. Again, I appreciate their desire to do so. So you shop all around, and, if you can find anybody with deep pockets who may have handled the box for 5 minutes, then you can get them in a court, and, boom, you can hit them for the total amount.

That is what has caused as many problems as anything else—the lack of proportionality and balance.

At the same time, we don't allow that provision of proportionality to apply across the board without exception. We make several reasonable exceptions in the interest of fairness.

Plaintiffs who sue as individuals, rather than as members of a larger class, may recover jointly and severally from any defendant, even if they are marginally involved, thus helping to ensure that individual consumers will fully recover damages.

The bill contains other provisions to ensure that irresponsible, reckless, or intentionally wrongful defendants are in no way shielded and are fully responsible for their actions. Defendants that commit intentional torts will be held jointly and severally liable, even if only fractionally, including for economic losses.

In addition, defendants who knowingly make false statements about the Y2K readiness of their goods or services may not seek mitigation of damages when plaintiffs rely in good faith on such statements. That is yet another consumer protection contained within this conference report.

There are still other improvements that have been made here, largely at the behest of the Administration—improvements, which, in my view, strengthen the legislation. For instance, the class action provisions. Members of a class of under 100 people, and with claims under $10 million, can stay in State court.

We made change after change to accommodate the concerns that were raised—many of them reasonable concerns, I might add—to make this a stronger and a better bill.

We are trying to avoid frivolous lawsuits for 36 months. We are trying to solve the problem. I again want to thank the committee chairman and other colleagues who have played such an important role.

Lastly, I thank this President of the United States. When I saw the President—not at 1:30 in the morning, but he was in my State last Monday—I mentioned this bill to him in a conversation that may have lasted 1 minute. I said: We will have the Y2K issue up in the next day or so. The President said: I would like to sign a bill. I think it is important to have one. But there have to be changes in this legislation before I can sign it. If you can get those changes and work with our staff, I will take a look at it.

That is not an unreasonable statement for an American President to make on an issue like this that confronts our country in 183 days. We went to work that night and worked on these changes. It was late in the evening.

When I, along with my colleague from Oregon, submitted the final proposal to the President of the United States, he said, to his credit: If you can make one more change in this particular area, then I think I could support this bill.

That is how this happened.

He is being ridiculed today because he tried to get a bill done to do something about a problem that affects, or will affect, or could affect, millions of people in this country. He ought not be ridiculed. He ought to be commended for it. Yes, he could have caved in and gone along. I know a lot of his staff and others didn't want him to sign this bill. But this President went to work, and he listened to the proposal. He made some suggestions, and he said: If you can accommodate or meet me part way here on some of these ideas, then I would be willing to sign this bill into law.

As a result of those efforts, he could have said to me on Monday afternoon: I am sorry, there isn't anything you can do with this bill; I am just flat out against it. That would have been the end of it, frankly. I wouldn't have stayed up half the night trying to work out differences. But he said try. We did. And we reached that level of support, or a level of achievement which he thought he could support, and that brought us to the point of getting this legislation done.

Again, there is nothing perfect about it. I am fully aware that there may be

some problems with it down the road. I think this is a good effort to try to minimize those difficulties, to avoid lawsuits and solve the problems, and make this country stronger when it comes to the interest of the 21st century.

Let me again thank my colleagues who persisted in their efforts to reach this point. I also want to recognize the staff who were so instrumental in bringing us to this point, particularly: Marti Albright and Mark Buse of the Commerce Committee; Manus Cooney and Larry Block of the Judiciary Committee; Jeanne Bumpus with Senator GORTON; Robert Cresanti, Tania Calhoun, and Wilke Green of the Year 2000 Committee; Carol Grunberg with Senator WYDEN; David Hantman with Senator FEINSTEIN; Laurie Rubenstein with Senator LIEBERMAN; and Steven Wall with Senator LOTT.

I thank my colleague for yielding, and I urge adoption of the conference report.

Mr. HOLLINGS. Mr. President, I yield such time as necessary to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Thank you, Mr. President.

Let me say, first, that there are two very important reasons that this has been an extraordinarily difficult issue for me. The first of those reasons is that I have extraordinary respect for the Senator from Arizona, the Senator from Connecticut, and the Senator from Oregon. They are friends of mine. They are good Americans. They are good people. They care about this country. They care about it deeply. I don't question their motives for one moment. I believe they are doing what they think is right.

The second reason is that I began this process myself desperately wanting to support some kind of Y2K bill.

The problem with the way the debate has been conducted is that the focus of my colleagues from Oregon, from Arizona, and from Connecticut has been on things we all agree on. We all agree—speaking for myself—that we should create incentives for computer companies to solve these problems, that we should create incentives for people who buy computers to work with those folks to solve problems, and to mitigate whatever damage or loss they may sustain.

We all believe there ought to be a cooling-off period. At least I believe there should be a cooling-off period. I do not think we want folks rushing to the courthouse the first time a problem rears its ugly head. I think we should have reasonable, thoughtful alternative dispute resolution.

I think all of those things are good things. They are laudable. They accomplish important goals. They are things I support and believe in. On those subjects, and on the subject of preventing frivolous litigation, I am totally in agreement with my colleagues who support this bill.

The problem is, we are not focusing on the single, most fundamental problem in this bill, which is that in 99 percent of the cases small businesses and consumers who suffer losses as a result of an irresponsible act by a computer company in respect to Y2K can recover nothing but the cost of their computer. They can't recover their lost wages. They can't recover their actual lost profit. They can't recover their overhead. If they are run out of business, they are just stuck.

Unfortunately, what we have here is what I am afraid happens too often in Washington. The little guy loses, and the big guy wins.

There is no question that the computer industry has a powerful voice in this body. The people who are going to be damaged and hurt by this bill don't even know it yet. They largely are completely unaware of it. The small business men and women of this country and consumers in small towns all over North Carolina and across the United States don't even know that they are going to suffer losses, that they are going to be put out of business. They do not know that. My question to my colleague is, Who speaks for them?

We have heard the voices loudly, clearly, powerfully, and articulately for powerful, big business. There are many things I will support industry on that I believe are in the best interests of America. The problem is, the people who are going to be injured by this bill, the people who are going to be put out of business, the people who by all accounts—my colleagues from Oregon and Connecticut have just conceded—will have real and legitimate losses, who speaks for them? I am afraid the answer is that no one speaks for them. They don't give big money to campaigns. They don't even know what is going to happen to them yet. They are out there and are innocent victims. Who is the voice for the little guy in this debate?

These losses we have talked about—I am eliminating frivolous lawsuits, I am eliminating causes that ought to be resolved, things that ought to be resolved by discussion between the seller and the buyer, all of those things that we are all in agreement on—I am talking about that little business guy or woman in Murfreesboro, NC, who bought a computer believing that it was Y2K compliant, having been told that it is Y2K compliant, and the computer is not Y2K compliant. They lose their business. They have lost thousands and thousands of dollars, and they are literally out of business.

That loss—no matter what we do in this Senate, no matter what we do in this Congress, and, with respect, no matter what the President signs in the Oval Office—that loss will not go away. It will be there, and it will not disappear.

There is a fundamental concept we all have to recognize when we come to the well later today to vote. Those who vote for this bill have made a conscious decision. As long as we are willing to recognize that decision, I will respect the vote. That decision is this: We have made a conscious decision that losses—which are real and legitimate, out-of-pocket losses suffered by small business men and women all over this country—that losses are going to be shifted. We are going to move them from the responsible party to the innocent party. In this case, the innocent party is a small business; is a consumer; is somebody who cannot pay their employees anymore; is somebody who has no cash-flow because their manufacturing operation has been shut down because of a Y2K problem.

The bottom line is this: We are making a judgment on the floor of the Senate that those real and legitimate losses which everyone concedes are going to occur—that is the ''nut'' of this. Everything else we agree on. I agree with my colleagues about eliminating frivolous lawsuits, about alternative dispute resolution, about cooling off periods, about trying to do everything in our power to solve these problems. The nut of this problem is, what happens to the little guy who suffers a real loss?

When this conference report passes on the floor of the Senate later tonight, we have made the judgment that we will shift that loss. We are going to shift it on to the people who have no voice, who don't even know they are victims. They are not sitting in our offices. They are not sitting there because they don't know they have been hurt yet. We are going to shift the loss to them. We are going to make sure it stays right with them. We are going to make sure that multimillion-dollar and multibillion-dollar businesses bear as little of that loss as possible. That is exactly what this bill does. It is that simple.

For all of the rhetoric on the floor, it is not about lawyers. It is about the people who make computers. It is about the people who make computer chips. It is about the people who buy computers. Those are the parties to this transaction.

The bill that came back from conference is worse than the bill that went to conference. It is worse for a very simple and fundamental reason: It creates multiple additional roadblocks to innocent people who get hurt by the Y2K problem. A job that was already extraordinarily difficult, for them to recover for what happened to them, has become almost impossible at this point.

I say with complete respect to my colleagues who have argued vehemently on the floor that this is a 3-year bill, that it will sunset in 3 years, and for that reason it is not bad, that the argument is a smokescreen. Every Y2K problem that will come into existence will happen during that 3-year period—99 percent. By its very nature this problem will show its ugly head in

the year 2000 or the year 2001. Essentially, we are going to cover every single Y2K problem that can come into existence.

One bit of language that has been referred to in the bill that proponents claim helps improve this report over the Senate-passed version has to do with the issue of recovery of economic losses such as lost profits, lost overhead, lost income. A phrase reads: ''A party to a Y2K action making a tort claim other than a claim of intentional tort''—up until then it is fine—''arising independent of a contract.''

I have spent the last 20 years of my life as a practicing lawyer. This is what that phrase means. If a computer person walks into a small business anywhere in this country and makes a fraudulent misrepresentation, intentionally misrepresents the Y2K compliance of their product, lies, commits criminal fraud, and induces somebody to sign a contract on that basis, and in fact, if the contract itself contains fraudulent misrepresentations, what that person can recover is the cost of their computer.

They are victims of criminal fraud. I want the American people to hear this. They are the victims of criminal fraud. What they can get back is the cost of their computer.

This bill started with a good purpose. It is supported by Members of the Senate whom I have extraordinary respect for. I absolutely have no question about their motives. They are doing what they believe is right. They have made beautiful cases for it on the floor of the Senate. My concern has been and continues to be that there is a voice that is not being heard on the floor of the Senate. It is the voice of the victims; it is the voice of the consumers; it is the voice of the people who don't know yet that they are going to be put out of business. It is the voice of people who don't know yet that they have been lied to or misrepresented to, been induced to sign a contract under the specific language of this bill.

As a result of this bill, they can recover absolutely nothing but the cost of their computer.

It is wrong. It violates every concept of justice that exists in the United States and has existed for the last 200 years.

We can do the things that my colleagues want to do: Get rid of frivolous lawsuits, induce people to solve these problems, get people to work together, not go into court. We can do all those things, and we can accomplish those things. But we can do it without gutting the right of the little guy who has a real and legitimate claim and has suffered a tremendous loss, been put out of business, without taking away that very fundamental right.

Those people are going to be sitting in our offices. So I have one last question to my colleagues: When those men and women are sitting in your offices in February, March, and April of the year 2000, saying: I have been put out of business, who do I go see? Who do I go see about this? I am out of business. Computer people made fraudulent misrepresentations in my contract. They were reckless in the way they made their product. I never knew it. I am out of business.

They are sitting on our couch in our offices, and they look in our eyes and say: Who do I go see about this problem? Maybe some of my colleagues have an answer to that question. Unfortunately, I do not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I have only been in this body for 13 years. I have never heard quite such a mischaracterization of legislation as the Senator from North Carolina just displayed.

I yield 5 minutes to the Senator from Washington.

Mr. GORTON. Mr. President, the success of legislation in a matter of considerable controversy in our society is always built upon the foundation of compromise. This relatively short debate on the final passage of H.R. 775 is a perfect example of that compromise. The Senator from Oregon, who was so responsible for the final form of this bill, listed all of the changes that he required in order to approve of this legislation. The Senator from Connecticut spoke eloquently of the way in which he worked with the administration to change a ''no'' into a ''yes,'' and make this legislation a reality. My very good friend, the chairman of the Commerce Committee, the Senator from Arizona, spoke of the fact that both the original House bill and the original Senate bill were much more sweeping and much more decisive in dealing with this Y2K problem. He deserves an extraordinary degree of our thanks and our admiration for working constantly and tirelessly toward a successful conclusion, even though that conclusion is not something he regards as wholly satisfactory.

I fall on his side of that debate. I think we should have done much more. I am, in fact, a radical reformer in this whole litigation field, whether it is this narrow issue or the broader issue of product liability or medical malpractice or the questionable utility of punitive damages in civil litigation. I would go much further than this bill does. But what we have done is to bring people together to solve a problem in a way that we can deem a success, all the way through to the signature of the President of the United States.

During the last 20 years, our society and our economy may have changed more dramatically than in any other similar period of history. We have become a computerized information society, due to the very technological developments that resulted in a Y2K challenge. But the Senator from North Carolina claims to speak for the voiceless. They are not voiceless. They played a major role in this debate. The coalition that has wanted far stronger legislation than this does, of course, consist of software and hardware companies. But it also consists of the great bulk of the representatives of the customers of those companies. The National Federation of Independent Business is the largest single organization of small business in this country. It favors this legislation. It favors legislation stronger than this. So whoever the Senator from North Carolina was speaking for, it was not the small businesspeople who do not look forward to a blizzard of litigation on this subject.

Of course, in retrospect, this new technology might have thought about the Y2K problem earlier than it did. But at this point, our goal should be a solution to the problem, not a blizzard of second-guessing litigation, especially litigation that will almost certainly slow down the future development of the very technology that has been so responsible for the growth in the American economy and has caused such significant changes for the good in the lives of people all around the world.

This bill is by no means perfect. In the view of this Senator it lacks that perfection because it is not all-encompassing enough. It is, however, at least a modest step in the right direction, one supported not only by the technology companies that are responsible for the computer revolution but by their customers and consumers as well.

So with my colleagues on both sides of the aisle, I can wholeheartedly recommend the passage of this legislation to the Senate and look forward with satisfaction to the President's approval of this bill.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, once again I do not yield from the statement made that this has been one shabby charade. I intended to, and did, take the President to task, and I do so. You don't send five veto messages and then come with a sorry bill, a worse compromise. It is obvious. You can look at it on the face of it. It did not take care of the consumers. Senator LEAHY tried to. It was what we adopted in the Congress last year, in the securities bill, in the other measure; we always take care of the consumers. But here the one group penalized, sidelined, damaged, if you please, are the consumers of America.

I ask unanimous consent to have printed in the RECORD the letter from Public Citizen, opposing the bill, opposing this report.

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

PUBLIC CITIZEN,
Washington, DC, June 24, 1999.

PLEASE OPPOSE THE SENATE Y2K IMMUNITY BILL

DEAR REPRESENTATIVE: On behalf of Public Citizen's 150,000 members, we thank you for

your vote against passage of H.R. 775, the Y2K immunity bill. We urge you to continue to stand up for consumers and small businesses by voting against the Senate-passed version of this unfair legislation if it is brought to the House floor. Although this measure is somewhat ''less extreme'' than the version of the bill that you opposed when the full House voted on this measure last month, the Senate bill is also sweeping in scope, and its effect on individual and small business consumers will be virtually the same as the House bill: it will make it next to impossible for those with legitimate Y2K claims to seek full and fair compensation in state courts.

Both the Senate and House Y2K bills bestow special legal protections upon companies responsible for manufacturing and selling technology products and computer systems that will not work in the Year 2000—even to those companies that knowingly sold Y2K defective products within the last few years, and even to those that are still selling defective products and systems today. This kind of blanket protection from accountability is unfair and unwise. Not only will these bills preempt important consumer protections under state law, they are likely to undermine Y2K readiness by sending a message that Congress will not allow companies to be held accountable for their acts and omissions. They will lead to more Y2K failures and injuries, not fewer.

The Senate bill has not all, but many, of the same kind of extreme provisions that made the House bill unacceptable. For example, the Senate proposal contains:

A mandate that, to receive punitive damages at all against any defendant—even a huge corporation—a plaintiff must prove applicable state law standards for punitive damages by clear and convincing evidence—a higher burden of proof than is required under many state laws; this provision would make it harder to hold the most irresponsible defendants fully accountable.

In addition, the bill also imposes a cap on punitive damages of $250,000 or three times actual damages, whichever is less, in cases involving defendants with 50 or fewer employees; this cap applies no matter how egregious the defendant's behavior unless the plaintiff can prove by clear and convincing evidence that the small business defendant specifically intended to harm the plaintiff—an extremely difficult standard for a plaintiff in a civil case to meet.

The elimination of joint liability of defendants in most instances—even for defendants that are substantially responsible for causing a Y2K failure—with no requirement that defendants take any steps to avoid Y2K failures in the first place to receive this liability limitation; this change in law would leave many injured individuals and small business consumers without full compensation.

A provision to allow defendants to remove most state law Y2K class actions into federal court—a proposal opposed by the Judicial Conference of the United States, chaired by U.S. Supreme Court Chief Justice Rehnquist.

Additional burdens on class action plaintiffs such as heightened notice and pleading requirements and requirements that courts find that the majority of class members' injuries to be ''material'' at the outset of any litigation; these requirements will make it harder for consumers to bring their cases as a class, even if that represents the most efficient way to adjudicate their cases.

So-called ''bystander liability'' provisions, limiting the liability of parties other than the product manufacturer or seller by making it more difficult to prove claims of fraud, negligent misrepresentation, interference with contract and other claims where the defendant knew or should have known about the Y2K failure at issue.

A mandatory waiting period of 90 days before plaintiff can bring a suit—with no requirement that defendants actually fix any Y2K problems during that time, even though some plaintiffs could suffer substantial losses during that period, such as a small business that is forced to close.

In addition, the Senate added more special protections for defendants and one-sided provisions that make the Senate bill even worse in some respects than the bill that passed the House. These include:

A complete one-way preemption of state law, preserving every state law that gives more liability protections to defendants while ensuring that the bill only wipes out all current state law rights that benefit consumer and small business plaintiff.

A complete affirmative defense against governmental enforcement actions for defendants that failed to comply with most federally enforceable measurement or reporting requirements because of a Y2K failure that was ''beyond the reasonable control of the defendant;'' this applies to rules of the Environmental Protection Agency, the Food and Drug Administration, the Occupational Safety and Health Administration and other agencies, unless the violation poses an imminent threat to the environment, health, or safety.

The suspension of federal penalties for any violation of any federal regulation caused by a Y2K failure (except a rule related to the banking or monetary system) for businesses with 50 or fewer employees as long as that business did not violate the same rule within the last three years and made some ''good faith effort'' to avoid the Y2K problem.

The only pro-consumer amendment added to the bill in the Senate offers temporary protection against adverse actions by financial institutions or credit agencies for individuals or small businesses unable to meet a financial obligation, such as making a mortgage payment or paying a credit card bill, because of a Y2K failure. This is an important provision to ensure that a person's credit is not ruined or a family evicted because of an inability to make a payment through no fault of their own. But this one pro-consumer amendment in no way makes up for the overwhelming unfairness of the underlying Senate bill to most consumers and small businesses who will experience Y2K failures in products and services they have purchased, or who suffer Y2K damages from chemical spills or other Y2K-caused accidents.

Please oppose the Senate version of H.R. 775.

Sincerely,

JOAN CLAYBROOK,
President, Public Citizen.
FRANK CLEMENTE,
Director, Public Citizen's Congress Watch.

Mr. HOLLINGS. Mr. President, this is the letter we received from the distinguished executive assistant, Mr. John Podesta. I ask unanimous consent this be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, June 30, 1999.

Re H.R. 775—the Year 2000 Readiness and Responsibility Act.

Hon. THOMAS A. DASCHLE,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: The nation faces the possibility that widespread frivolous litigation will distract high technology companies and firms throughout the economy from the important work of preventing—and if necessary—repairing damage caused by the inability of systems to process dates in the new millennium. Special, time-limited legislation to deter unwarranted Y2K lawsuits is important to our economy.

Over the last few months, the Administration sought to ensure that, while we deterred frivolous claims, we also preserved important protections for litigants who suffer bona fide harm. We believed that the Senate-passed bill failed this test. The Conference Committee agreed to make a list of changes that were important to provide necessary protections.

The agreed-upon changes were translated into legislative language extremely narrowly, threatening the effectiveness of the negotiated protections. Nonetheless, we have concluded that, with these changes, the legislation is significantly improved. Specifically, as modified, the Conference Report: ensures that individual consumers can be made whole for harm suffered, even if a partially responsible party is judgment-proof; excludes actions brought by investors from most provisions of the bill and preserves the ability of the SEC to bring actions to protect investors and the integrity of the national securities markets; ensures that public health, safety and the environment are fully protected, even if some firms are temporarily unable to fully comply with all regulatory requirements due to Y2K failures; encourages companies to act responsibly and remediate because those defendants who act recklessly are liable for a greater share of a plaintiff's uncollectible damages; and ensures that unconscionable contracts cannot be enforced against unwary consumers or small businesses.

As a result, I will recommend to the President that he sign the bill when it comes to his desk.

In the normal course of business, the Administration would oppose many of the extraordinary steps taken in this legislation to alter liability and procedural rules. The Y2K problem is unique and unprecedented. The Administration's support for this legislation in no way reflects support for its provisions in any other context.

Sincerely,

JOHN PODESTA.

Mr. HOLLINGS. We go to what we knew. They made the agreement, it was all signed up, and after the agreement was sent over to the White House, it was not what they agreed to even then. I read:

The agreed-upon changes were translated into legislative language extremely narrowly, threatening the effectiveness of the negotiating protections. Nonetheless, we have concluded that, with these changes . . . [we are going to sign the bill].

They were going to sign a bill. They were going to get a bill for the Vice President. We have to get this Silicon money. And they ought to be taken to task for this kind of performance here. We know what this is about. Like I say, no State, no Governor, no Attorney General, no legislature supports this effort. Let say that my distinguished friend from Connecticut is very effective. He says: What a radical idea when we have a unique problem.

No, not at all. I am reading from the American Bar Association, all the lawyers:

Traditionally, legal principles governing both tort and contract actions have been the province of the States.

Not the Federal Government. We all know that.

The legal issues likely to be presented by the year 2000 problem are not unique.

We know that. He said it is not unique, it is not a radical idea, it is not a radical idea to say what is wrong, specify in your complaint what is wrong. When the computer breaks down, I don't know what is wrong. Who does? It is like in the Food and Drug Administration, when there is bad food we have good product liability; we have a Food and Drug Administration. These products they have within their own purview, the proprietary information on the manufacturer, so if there is a product that breaks down, they know where it is. We cannot find it ordinarily. But here, they really sidelined middle America, consumers and the poor small businessman.

They said that is a radical idea. It is a radical idea. It goes against the entire thrust of the safety principles we experience here in America. We have a safe society. You can depend on the food. You can depend on the products. The European Union is now following strict liability and joint and several liability that we have here in America. A radical idea to run to the courthouse? We are not running to the courthouse.

It is a litigious society, but we will show tort claims are down and business suing business is up; domestic cases, rights cases for this right, that wrong; environment and otherwise, are up. But tort liability cases are down.

This here really legalizes torts, it legalizes negligence, it legalizes fraud, all in the name of something that happens 6 months from now when, by their own measure they say we ought to have 90 days to fix it. Unreasonable? The Senator from California, she came and said: Let's get rid of all the lawyers, just use those 90 days to require the manufacturer to fix it; that's all we need. We need to get back in business. We do not need a rush to the courthouse.

Rush to the courthouse? That implies you are going to get a rush judgment. Try to get 12 jurors to agree on anything today. You cannot get 12 Senators.

They surely have gotten something very easily. Surely, it was not unreasonable to at least say you have to fix the problem, in return for expansive restrictions on plaintiffs' rights.

Instead, they say you have to find out what is wrong and specify it before they do anything. Come on. They say that is in behalf of the consumers of America? And that is a good measure and it is a victory for America? No, Mr. President; this is a sad day when the moneys in campaigns are not just taken to get elected, are not taken just to buy the office, but when they buy the principles in order to cater to a crowd to pass this kind of legislation.

How much time remains?

The PRESIDING OFFICER. The Senator has 10 minutes 37 seconds.

Mr. HATCH. Mr. President, I want to take a few moment to speak on behalf of the conference report. As you know, the negotiations over the details of the Y2K Act entered their final phase last Friday, during the weekend, and through Monday and Tuesday of this week. With the tremendous help and diligence, particularly of Senators MCCAIN, DODD, and WYDEN, we were able to craft a compromise bill which addresses every one of the major concerns of the White House.

Let me say that the final bill reflects the spirit of compromise. But I must admit that I believe the original Judiciary and Commerce Committee bills—along with the House bill—would have been far more effective in dealing with the problem of the expected frivolous and massive Y2K litigation—than the current compromise measure. But because of the overwhelming importance and need for this bill, both sides acted in good faith and reached an equitable agreement. Let me explain the depth and breadth of the changes that were made.

First of all, the House, recognizing the urgent need to pass this legislation, acceded to the far more lenient Senate bill. In practice, this meant that twelve major provisions of the House bill were dropped, ranging from elimination of both caps on director and officer liability to caps on attorneys fees. In the conference negotiations, seven further important concessions were made. Finally, in negotiations with the White House led by Senator DODD, we agreed to six further significant modifications to the bill. Mr. President, I have a list of these changes. I also have a letter from John Podesta to Senator DODD, dated June 29, that enumerates the changes requested by the White House and—except for minor technicialities—agreed to by the conference. I ask unanimous consent that these two documents be printed in the RECORD.

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

THE Y2K ACT

1. CONCESSIONS MADE ON Y2K ACT SINCE HOUSE & SENATE ACTION

House receded to the Senate, which means:

No caps on Directors and Officers liability;

Applies current state standards for establishing punitive damages, instead of new preemptive federal standard;

Cap on punitive damages no longer applies when defendant specifically intended to injure the defendant;

Removed caps on punitive damages for larger businesses;

Restore principle of joint liability for defendants who knowingly commit fraud. (House bill provided for several, but not joint, liability);

Definition of Y2K failure narrowed and targeted directly on year-2000 date-related data;

Dropped provisions dealing with attorneys fees;

Added sunset provision limiting application of Act;

Three major exceptions to proportional liability rule added. These exceptions and, indeed, the proportionate liability section itself, were taken from recent securities law sponsored by Senator Dodd;

Dropped the reasonable efforts defense or Federal rules for admissibility of reasonable efforts;

Dropped Federal rule for heightened state of mind requirement;

Confirms substitution of Federal question for minimal diversity standard

2. FURTHER CONCESSIONS

Revised definition of Y2K action—strike ''harm or injury resulted directly or indirectly'' and replace with the WH formulation of ''harm or injury [that] arises from or is related to'' an actual or potential Y2K failure. Add same formulation to claims or defenses.

Securities claims exclusion—Rejected WH formulation that private securities claims should be exempted from the bill. New provision would allow provisions of the securities law to stand only if conflicts with provisions of the Y2K Act. We also agreed to exempt from the Y2K Act's application of securities law the duty to mitigate section.

Revised language on duty to mitigate—Added an exception for intentional fraud (unless there was an unjustifiable reliance on defendant's misrepresentations). Also exempted securities claims from this section.

Revised language on Economic Loss Rule—Adopted the approach of the Kerry Amendment, which allow for economic damages where the defendant committed an intentional tart (except where the defendant committed misrepresentation or fraud ''regarding the attributes or capabilities of the project or service that forms the basis for the underlying claims.''

Warrany and contract preservation—Addition to existing language, makes clear that contract terms can be voided by state-law doctrines of unconscionability existing as of January 1, 1999, in controlling judicial precedent of applicable sate law.

Proportion liability—new section which includes: Added three provisions: (1) made clear that the provision does not apply to contract provisions; (2) remove the 50% cap placed on those whose shares are not collectable; (3) made clear that all state law (common law as well as statutory) with grater protection applies.

Revised language on class actions—Two changes: (1) to discourage the filing of all state class actions in federal court, we increase the jurisdictional amount from $1 million to $2 million. We also add a requirement that there must be 50 or more plaintiffs to remove state class actions to federal court; and (2) to prevent elimination of state class actions, which have been removed to federal court and the judge remanded the class action as not proper in federal court (does not meet the criteria of FRCP 23), such remands will be without prejudice allowing the class action to be refiled in state court (and, if appropriate, amended and returned to federal court).

Punitivies—Punitive damage cap for small business—50 or less employees—which is the lesser of $250,000 or 3 times compensatory damages. The cap does not apply if a defendant acted with specific intent to injure the plaintiff.

CONCESSIONS PROPOSED BY SENATOR DODD

Proportionate Liability; Double orphan share for all solvent defendants; Triple orphan share for defendants proven by plaintiffs to be had actors; Exempt individual consumers in individual, but not class, actions.

Class Actions; Increase monetary threshold to $5 million; Increase class size exemption to 100 plaintiffs; Securities.

Exempt all private security claims from Y2K Act, except from bystander provision of that Act (Sec. 13(a) and (b)).

Contract Enforcement: State law governing contracts of adhesion and unconscionability remains enforceable.

Economic Loss; Doctrine will not apply to claims of fraud related to contract formation; Regulatory Relief (Gregg and Inhofe amendments).

Inhofe: Exemption applies so long as defendant could not have known of the underlying violation because of a Y2K failure of a reporting system. Similar approach with respect to Gregg. (Specifics to be worked out with Administration and others.)

THE WHITE HOUSE,
Washington, DC, June 29, 1999.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Washington, DC.

DEAR SENATOR DODD: After our discussions regarding H.R. 775, the Year 2000 Readiness and Responsibility Act, to limit liability resulting from Y2K failures, I am prepared to recommend to the President that he sign legislation that includes the following changes:

Proportionate Liability—double orphan share for all solvent defendants, triple orphan share for defendants proven by plaintiffs to be bad actors, and exempt individual consumers in individual, but not class, actions.

Class Actions—Increase monetary threshold to $10 million, and increase class size exemptions to 100 plaintiffs.

Securities—exempt all private security claims from Y2K Act.

Contract Enforcement—State law governing contracts of adhesion and unconscionability and contracts that contravene public policy remain enforceable.

Economic Loss—Doctrine will not apply to claims of fraud related to contract formation.

Regulatory Relief (Gregg and Inhofe amendments)—Changes made to ensure that the provision would not endanger the environment, public health or safety.

Should the language of the legislation reflect our understanding of the resolution of these issues, I would advise that the President sign this bill. I am hopeful that if these changes are made, legislation can be enacted on a bipartisan basis.

Sincerely,

JOHN PODESTA.

Mr. HATCH. There can be no question that the final bill is more than a fair compromise. It balances the need to protect consumers against the need to safeguard business—particularly our high tech industries—from the ravages of unrestrained predatory litigation. Indeed, some experts maintain that litigation over the Y2K bug could cost the world economy over one trillion dollars.

I must emphasize the importance of this. One reason that our economy has been prospering is the beneficial effect of its increasing computerization. The Chairman of the Federal Reserve Board, Alan Greenspan, has asserted several times that the economy's increased productivity is in part due to computerization and the information revolution. And one of America's biggest exports is high technology goods and services. Without this bill, we would be strangling the proverbial goose that lays the golden egg. America must remain the pacesetter in high technology and the leader of the information revolution. Our security and national defense demands it.

Because of the importance of this issue, I have stated that I want a bill and not a partisan issue. I believed that compromise was the only way to achieve a product that was both fair and that would pass Congress. The bill we produced is a good product. But, it could have been a better product if the administration had been more forthcoming. Despite frequent requests by myself, Chairman MCCAIN, and other Senators, for the administration to become actively involved, the administration did not seriously enter into negotiations until last week. They now—after hours and hours of talks—reluctantly support the bill. Well, better late than never, I guess.

I want to reiterate my thanks to Chairman MCCAIN and Senators DODD and WYDEN. I also want to thank the other conferees, Senators BENNETT, THURMOND, GORTON, STEVENS, BURNS, LEAHY, HOLLINGS, and KERRY, for all their hard work and efforts in making this bill fair, as well as, effective. Senator BENNETT in particular was an early advocate for prompt and meaningful action on Y2K. I would also be remiss not to note my appreciation for the hard work and dedication of the cosponsor of my Senate Judiciary Y2K bill, Senator FEINSTEIN.

I also want to thank the House conferees for their hard work and for their wisdom and prudence. Finally, I want to thank the Senator and House staff for their dedication. I know the long hours they labored.

I urge all Senators to support this compromise conference report.

Mr. BOND. Mr. President, I rise to applaud my colleagues in the Senate and our friends in the House of Representatives for acting promptly to negotiate a conference report on the Y2K Act. As chairman of the Committee on Small businesses, I have paid particular interest to the small business community's concerns about the Y2K problems. While the ultimate consequences that will result from the Y2K problem are as yet unknown, small family-owned businesses are understandably concerned about their futures after the new year. They are concerned that their companies may be in danger either from the problem itself or from suits brought by trial lawyers concerned only with the fees they can obtain from settlements.

These businesses have reason to worry that they will be bankrupted by never-ending litigation. Small, woman-owned and family-owned businesses are the most vulnerable from costly litigation, either as plaintiffs or defendants, because they do not have the time to devote to it and do not have excess revenue to afford it. In addition, small businesses do not want to sue companies with which they have long-standing relationships and whose survival is tied to their own. Yet, these vulnerable businesses see the looming specter of endless litigation on the horizon.

Experts have estimated that total litigation costs related to the Y2K problem will be astronomical. For example, the Gartner Group, an international consulting firm has estimated that more than $1 trillion will be spent on Y2K litigation. Therefore, this legislation, by encouraging resolution of Y2K disputes outside the courtroom and decreasing the number of frivolous lawsuits that small businesses may have to face, will help to ensure that litigation arising from this problem will not devastate the millions of small businesses that are the engine of our nation's economy.

The small businesses that are troubled about the prospects of Y2K litigation are located on Main Streets all across America, not just Silicon Valley. They are this country's mom and pop groceries, its dry cleaners and its hardware stores. The National Federation of Independent Businesses, the nation's largest small business association, strongly supports this legislation. The NFIB surveyed its members and found that an overwhelming 93 percent support capping damage awards for Y2K suits. The small business community is speaking with a unified voice in support of legislation to limit the impact of Y2K suits for the good of this nation and by voting for the conference report today we are not ignoring this voice.

The conference report also contains an important amendment that was adopted in the Senate sponsored by Senator GREGG and co-sponsored by me. While the underlying bill will ensure that small businesses do not face financial ruin from costly litigation, the amendment will make certain that our own government does not bankrupt small businesses over the Y2K problem. This amendment will waive Federal civil money penalties for blameless small businesses that have in good faith attempted to correct their Y2K problems, but find themselves inadvertently in violation of a Federal regulation or rule, despite such efforts.

Most experts that have studied the Y2K problem agree that regardless of how diligent a business is at fixing its Y2K problems, unknown difficulties are still likely to arise that may place the operations of such businesses at risk. The last thing this government should do is levy civil money penalties on small businesses that find themselves inadvertently confronted with Y2K problems. Many of these businesses will already have had their operations disrupted and may be in danger of going out of business entirely. The Gregg-Bond amendment in the conference report ensures that the Federal government does not push them over the edge. I urge all my colleagues to support the conference report for the sake of our country's small woman- and family-owned businesses and to ensure that the economic health of our nation is not imperiled by the Y2K problem in the coming year and beyond.

Mr. KERREY. Mr. President, as I have stated before, the debate surrounding Y2K Liability is a very important one. The estimated cost associated with Y2K issues vary greatly,

ranging from $600 billion to $1.6 trillion worldwide. The amount of litigation that will result from Y2K-related failures is uncertain, but at least one study has guestimated the costs for Y2K related litigation and damages to be at $300 billion.

With that in mind, Congress has been debating legislation which encourages companies to prevent Y2K failures and to remedy problems quickly if they occur, and to deter frivolous lawsuits. Although I support the goals of the bill that passed the Senate last month, I voted against that bill because I did not feel it provided enough protection for consumers.

I am pleased to see that changes were made in the Conference Report that address my concerns and provide protection for consumers. Because of these important changes, I intend to support the Y2K Liability Conference Report. Many of my colleagues have pointed out positive changes to this bill. I would like to highlight just two provisions that will put consumers in a better position with respect to Y2K litigation.

The first provision concerns proportionate liability. Exceptions to the general rule of proportionate liability were made to ensure ordinary consumers are protected and ''bad actor'' defendants are not rewarded. These bad actor defendants, those who act recklessly, will bear a higher proportion of liability for otherwise uncollectible damage claims. This both protects consumer plaintiffs and provides companies with an incentive to identify and remedy Y2K problems.

The second provision deals with the duty to mitigate. Under the bill, plaintiffs have a duty to mitigate damages, which means that they have a duty to fix computer problems that could have been reasonably avoided. The Conference Report adds an important exception to this rule. Consumers who rely on fraudulent misrepresentations made by defendants about Y2K readiness will be exempted from this duty to mitigate. In other words, if a computer company tells a consumer in bad faith that his computer is ''Y2K compliant'' and that turns out to be false, the consumer will be in a better position to recover damages from that bad faith defendant.

The Y2K issue is a very unique, once in a millennium, problem. Because it is so unique, I agree that legislation is needed. I believe this legislation now strikes a proper balance between consumers and the high tech industry—-computer companies have an incentive to identify and remedy potential Y2K problems, and consumers have important protections when faced with bad actor defendants. Therefore, I will cast a vote in support of the Y2K Liability Conference Report.

Mrs. FEINSTEIN. Mr. President, I am pleased that the long road to enacting this critical legislation is finally coming to an end.

The conference report now before the Senate is the product of more than seven months of tough, complex negotiations between the high-tech industry, the White House, trial lawyers, consumer groups, computer consultants, countless Members of the House and Senate and other interested parties.

The final, bipartisan bill—now supported by the President—will create a once in a millennium, three-year law. Without it, I believe we could see the destruction or dismemberment of America's cutting edge lead in technology.

Mr. President, several well-known consultants and firms, including the Gartner Group, have estimated that Y2K litigation could quickly reach as high as one trillion dollars. This potential litigation flood could prevent companies from solving Y2K defects, and as a result could put the high-tech engine that has propelled our economy to new heights at risk.

This bill is especially important to California, where over 20 percent of the nation's high-tech jobs are located.

And the problem extends beyond high tech companies into the lives of employees, stockholders and customers of a wide range of American business.

We solved part of the Y2K problem last year when Congress overwhelmingly passed legislation to protect companies who make statements about Y2K problems in order to help others predict and solve these problems before they occur.

But we must now take an extra step, in order to encourage companies to work to prevent and fix Y2K problems with minimum delay.

Without this bill, companies may be forced to devote far too many resources to preparing for lawsuits rather than mitigating damages and solving Y2K problems.

And many consultants have come to us and said that they have refused to become involved in helping companies solve Y2K problems, for fear that they will open themselves up to being sued later on. They would rather just not get involved.

As a result, the very people capable of fixing Y2K defects are unavailable to perform those fixes.

I believe we face a real problem, and we have tried to craft a real solution.

And crafting that solution has not been easy. On almost a daily basis, Senate staffers, industry representatives, opponents of the bill and others have met for hours at a time to hammer out differences, clarify language, and make significant, substantive changes to the early versions of these bills.

In fact, even before the Conference Committee met over the last week, the original sponsors of Y2K litigation reform, including myself and Senators HATCH, MCCAIN and WYDEN, made dozens—if not hundreds—of changes to these bills. We addressed every concern we could, we significantly limited the scope of the bills, and we clarified many sections to ensure that plaintiffs and defendants alike will find an even, uniform playing field once the bill passes.

And it is important to remember that nothing in this bill is permanent—rather, it is a three-year bill limited to certain specific cases. The bill applies only to Y2K failures, and only to those failures that occur before January 1, 2003.

This bill contains a number of key provisions meant to deter frivolous suits and encourage remediation, arbitration, and problem-solving.

Most of these provisions have been modified or limited during the negotiations that have taken place over the last seven months. Several changes were made as late as this week, during negotiations with the White House.

The bill provides a 90-day ''cooling off period'' during which time no suit may be filed, so that businesses can concentrate on solving Y2K problems rather than on fending off lawsuits.

Only one 90-day period may be invoked per lawsuit, and the 90-day period does not delay any injunctive relief—a plaintiff may immediately file for a temporary restraining order or any other type of injunctive relief.

The purpose of this section is to give both parties an opportunity to focus on identifying and then correcting any Y2K problems quickly and efficiently.

The bill also provides for proportionate liability in many cases, so that defendants are punished according to their fault, and not according to their ''deep pockets.''

Under our current system of joint and several liability, a defendant found to be only twenty, ten or even one percent at fault can nonetheless be forced to pay 100 percent of the damages.

This system often encourages plaintiffs to go after ''deep pocket'' defendants first, in order to force a quick settlement.

I believe that this system is fundamentally unfair, and I am pleased to say that this bill eliminates joint and several liability in many Y2K cases.

Under the new system, defendants will be responsible only for that portion of damages that can be attributed to them.

However, the bill does have several specific exceptions to the elimination of joint and several liability.

First, any plaintiff worth less than $200,000 and suffering harm of more than 10 percent of that net worth may recover against all defendants jointly and severally. This exception in the bill protects those plaintiffs with a low net worth, but will not unduly injure defendants because the damages recovered will not be great.

Second, any defendant who acts with an intent to injure or defraud a plaintiff loses the protections under this bill and is again subject to joint and several liability. We do not want to protect those acting with an intent to harm.

Finally, the original Senate bill provided a compromise for those cases in

which certain defendants are ''judgement-proof.'' In cases where a plaintiff cannot recover from certain defendants, the other defendants in the case would each liable for an additional portion of the damages. However, in no case could a defendant be forced to pay more than 150 percent of its level of fault. The Conference Committee increased that cap to 200 percent, making it even easier for plaintiffs to recover the fullest possible extent of their damages.

The Conference Committee also inserted provisions in the bill, at the request of the White House, that will allow any individual consumer to recover jointly and severally against defendants for any share of damages that are uncollectible from other, judgment-proof defendants.

And for Y2K class action suits, the bill requires that a majority of plaintiffs have suffered some minimal injury, in order to avoid cases in which thousands of unknowing plaintiffs are lumped together in an attempt to force a quick settlement.

The bill moves many Y2K class actions into federal court for purposes of uniformity, but at the request of the White House the Conference Committee increased the threshold to get to federal court from the one million dollar level found in the Senate bill to ten million now. Furthermore, the number of required plaintiffs required to move a class action to federal court has been doubled from fifty to one hundred.

And the punitive damages section, which has been severely curtailed since early versions of the bill, now caps punitive damages for small businesses only—to $250,000 or three times compensatory damages, whichever is lesser.

Another change made to the bill in Conference exempts most intentional torts from the limits on recovery for economic loss.

Finally, the conference report provides that state laws on unconscionability will not apply to cases in which individual terms within a contract should not be enforced—a move further protecting the plaintiff's right to recover.

Each of the changes made before and during the Conference Committee negotiations has narrowed the focus and effect of the bill, while still maintaining the bill's clear intent to allow companies to prevent, solve and remediate Y2K problems without undue delay stemming from frivolous lawsuits and meritless claims.

The ''one trillion dollar litigation headache'' is rapidly approaching, and this Congress can provide some preventative medicine and some anticipatory pain relief in the form of the reasoned, fair, and thoughtful compromise before us.

The bill sets forth clear rules to be followed in all Y2K cases, and the bill levels the playing field for all parties who will be involved in Y2K suits—plaintiffs and defendants.

Companies and individuals alike will know the rules, and will know what they have to do. And most importantly, the stability that will come from this bill will allow companies to prevent Y2K problems when possible, fix Y2K defects when necessary, and proceed to remediation of damages in an orderly and fair manner.

This bill has been through a tortuous legislative drafting process, with criticisms, suggestions and changes made from every side and by every sector of our society.

So let us pass this conference report today, let us send it to the President, and let us show this nation that the Y2K crisis will not cripple our courts, will not disrupt our economy, and will not put a halt to the technology engine driving our progress towards the twenty-first century.

Mr. LOTT. Mr. President, as the Senate prepares to vote on the Conference Report on H.R. 775, the Y2K Act, I want to praise the bipartisan efforts of so many Senate and House Members who have worked diligently to construct an effective, fair bill that will address the important issue of liability as it relates to the possible Year 2000—or Y2K—computer problems. This has been a group effort, teaming members on both sides of the aisle with the private sector. The coalition of high technology businesses, large businesses, small businesses, and others provided the initiative and momentum that pushed this bill across the finish line.

This bill is constructive, positive legislation. It allows companies in the information technology industry to focus their limited resources on solving Y2K related problems in computer software by preventing frivolous litigation. Litigation which would divert those limited resources away from solving Y2K programming deficiencies.

Mr. President, so many Senators and their staffs have worked to insure the success of this legislation, even when faced with difficult hurdles and odds. The efforts of Senator MCCAIN, Senator WYDEN, Senator GORTON, Senator BENNETT, Senator DODD, Senator HATCH, Sentor FEINSTEIN and others, along with the efforts of the House sponsors and conferees, have brought us to this point.

Mr. President, I am pleased that the House has passed this important bill today by a vote of 404–24. With only 183 days left until the globe turns the page on the calendar to a new century and a new millennium, I urge my colleagues to vote for this important bill. I am confident that this Conference Report will pass the Senate by a wide margin, just as in the House, and I urge the President to sign this bill into law when he receives it.

Mr. HOLLINGS. Mr. President, we have some demands on this side of the aisle and some obligations.

I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I congratulate the Senator from South Carolina for his spirited and impassioned defense of his position. It is a great privilege to do combat with him, both in the committee and on the floor. I appreciate his eloquence as always. Since this time I believe we have the votes, I yield back the remainder of my time.

Mr. HOLLINGS. 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. All time having been yielded back, the question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The result was announced—yeas 81, nays 18, as follows:

[Rollcall Vote No. 196 Leg]

YEAS—81

Abraham	Dorgan	Lincoln
Allard	Enzi	Lott
Ashcroft	Feinstein	Lugar
Baucus	Fitzgerald	Mack
Bayh	Frist	McCain
Bennett	Gorton	McConnell
Bingaman	Graham	Mikulski
Bond	Gramm	Moynihan
Boxer	Grams	Murray
Brownback	Grassley	Nickles
Bryan	Gregg	Reed
Bunning	Hagel	Robb
Burns	Harkin	Roberts
Byrd	Hatch	Roth
Campbell	Helms	Santorum
Chafee	Hutchinson	Schumer
Cleland	Hutchison	Sessions
Cochran	Inhofe	Smith (NH)
Collins	Inouye	Smith (OR)
Conrad	Jeffords	Snowe
Coverdell	Kennedy	Stevens
Craig	Kerrey	Thomas
Crapo	Kerry	Thompson
Daschle	Kohl	Thurmond
DeWine	Kyl	Voinovich
Dodd	Lautenberg	Warner
Domenici	Lieberman	Wyden

NAYS—18

Akaka	Hollings	Rockefeller
Biden	Johnson	Sarbanes
Breaux	Landrieu	Shelby
Durbin	Leahy	Specter
Edwards	Levin	Torricelli
Feingold	Reid	Wellstone

NOT VOTING—1

Murkowski

The conference report was agreed to.

Mr. LOTT. 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. The majority leader is recognized.

ORDER OF BUSINESS

Mr. LOTT. Mr. President, I think it is important now we give Members some indication of what the schedule looks like. Senator DASCHLE and I have been talking about how we can move forward.