abortion, as we have heard again and again, is dangerous to the health of the mother, more dangerous than other alternatives. We could go on and on with these undeniable medical facts in greater detail, but something larger is at stake, and we speak to that powerfully with this vote today.

Beyond even the ethical practice of medicine, our Nation's charter, the Declaration of Independence, asserts our Creator has blessed us with certain rights—rights from which we, as beings made in God's image and likeness, cannot be alienated.

In destroying the body of a mature, unborn child, we are alienating that child from his or her most essential right; and that is, the right to life.

In doing so, we are violating the very premise of our Republic—that our rights are enduring gifts of God, not privileges to be revoked by human whim.

In Evangelium vitae, Pope John Paul II tells us true human freedom is rooted in a ''culture of life.''

We will reaffirm in this Chamber that human personhood is precious, that doing no harm is still the bedrock of medical morality, and that we have the will to stop a practice we know is evil and morally reprehensible.

I yield back the remainder of the time.

Mrs. BOXER. Madam President, I ask unanimous consent that I be allowed to speak for 2 minutes from Senator DASCHLE's leader time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Thank you.

Madam President, I want to reply to what the good Senator has said, with great respect, when he says this procedure is outside the mainstream. I want to point out, I respect his opinion, but I think doctors who have gone into OB/GYN, if that is their field—I do not believe the American College of OB/GYNs—45,000 doctors—are out of the mainstream. I do not believe the American Medical Women's Association—10,000 female doctors—are outside the mainstream. Nor do I believe the American Public Health Association—thousands of doctors—are outside the mainstream.

So although I totally respect the opinion of my colleague, and I would fight for his right to have it, and his right to believe what he does, I think it is a bit dismissive of the mainstream OB/GYN doctors in this country, all of whom have told us, please do not pass this ban that they have said is dangerous to women. They have said, to use their words, it is risky to women, and they are very upset about it.

I did not want the Senate to believe these organizations back this bill, because they do not. We have put those letters into the RECORD.

I thank you very much.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, obviously we have a strong disagreement in the statements that were just made. Let me finally close by saying this is a brutal procedure. It is a barbaric procedure. It offends the sensibilities of 90 percent or more of Americans. It is outside of mainstream medicine as practiced in the United States of America today.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—64

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Dorgan	Murkowski
Bennett	Ensign	Nelson (NE)
Biden	Enzi	Nickles
Bond	Fitzgerald	Pryor
Breaux	Frist	Reid
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Byrd	Hagel	Shelby
Campbell	Hatch	Smith
Carper	Hollings	Specter
Chambliss	Inhofe	Stevens
Cochran	Johnson	Sununu
Coleman	Kyl	Talent
Conrad	Landrieu	Thomas
Cornyn	Leahy	Voinovich
Craig	Lincoln	Warner
Crapo	Lott	
Daschle	Lugar	

NAYS—34

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Reed
Cantwell	Inouye	Rockefeller
Chafee	Jeffords	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kerry	Snowe
Corzine	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Levin	
Durbin	Lieberman	

NOT VOTING—2

Edwards	Hutchison

The conference report was agreed to.

Mr. MCCONNELL. 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.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. The Senate will resume consideration of the motion to proceed to S. 1751.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, parliamentary inquiry: Is it in order at this point in time for the Senator to speak as in morning business for about 10 minutes?

The PRESIDING OFFICER. The Senator should seek consent for that purpose.

Mr. REID. I could not hear the Senator's request. I am sorry.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The Senator from Virginia simply asked the parliamentary situation, could I proceed as in morning business for 15 minutes?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

REMARKS BY SERVICE MEMBERS

Mr. WARNER. Madam President, the press have reported comments made by a general officer, General Boykin, and those remarks have been the subject of considerable concern. They are also regrettably a subject of great discussion in the Arab press.

I also am concerned, and I rise to advise my colleagues and others of a recommended course of action. I do so by first reading a letter signed by Senator LEVIN and myself dated last Friday. We wrote this letter jointly in the course of the debate on this floor in response to the request by the Commander in Chief, the President, for some $87 billion to support our military and to support our reconstruction efforts in Iraq and elsewhere. I was a strong supporter and was happy to vote for it. Fortunately, the measure has passed and is now subject to the conferees.

It is interesting, at the very time that we were passing this legislation, which are taxpayer funds in considerable amounts, the object was to provide freedom and quality of life for the people of Iraq. The people of Iraq largely follow the Muslim religion in teaching, in tenets, and it is dear to their hearts. At the same time, the coverage in the United States is about comments made by a distinguished officer, a man who has shown great personal courage in the profession as a soldier.

Nevertheless, there are allegations with regard to these remarks that have been reported in the press. Senator LEVIN and I felt it was our duty, as chairman and ranking member of the Armed Services Committee, to make a recommendation to the Secretary of Defense.

I am about to read that letter we sent on Friday, because I think it is a very responsible way to deal with a high-profile situation.

Dear Mr. Secretary:

Enclosed are copies of articles that have appeared in the press recently about public statements allegedly made in uniform by LTG William G. Boykin, U.S. Army, the Deputy Under Secretary of Defense for Intelligence. In matters pertaining to religious beliefs, the practice and expression, the Armed Forces have traditionally permitted as much latitude as possible,

consistent with the requirement of good order and discipline in the military's ability to accomplish its mission. We recognize the right of every American to free speech. However, as is well established, in part—I add, part in law—there are limits on the right of expression for service members. Public statements by a senior military official of an inflammatory, offensive nature that would denigrate another religion and which could be construed as bigotry may easily be exploited by enemies of the United States and contribute to an erosion of support within the Arab world and perhaps—I underline perhaps—increased risk for members of the U.S. Armed Forces serving in Muslim nations. It is the responsibility of the United States Senate to render constitutional ''advice and consent'' with respect to the officer corps. Implicit in this confirmation process is our judgment that officers, especially those of flag and general rank, are persons possessing sound judgment and respect for the rights and beliefs of others. We recommend, therefore, that you refer this matter to the Department of Defense Inspector General for a thorough review of the facts and a determination as to whether or not there has been any inappropriate behavior by Lieutenant General Boykin. Please advise the committee of the results of this review.

I now read from a press account of today, which purportedly carries—and I have to rely on the authenticity of the press reports. I have no reason to disagree with them—an exchange between Secretary of Defense Rumsfeld and members of the press corps. The question: Mr. Secretary, last week here you were referring to Lieutenant General Boykin, you and General Myers said in effect he has the right to freedom of speech and the freedom of expression and yet, as we all know, we are responsible for what we say. How can you keep a man in a senior position on your staff whose views are so diametrically opposed to those of the President and to yours? End of question.

Response by Secretary Rumsfeld: Let me make several hopefully precisely put sentences on this subject. First of all, I appreciate your question because it correctly indicated that the President's views and my views, or the President's views are that this is not a war against a religion. And all I did, despite the columnists and the press reports to the contrary, all I did was precisely state what the President and what I think are—I am having some difficulty reading this but I just have to literally read it as printed. I have not seen General Boykin's comments. I have since seen one of the network tapes and it had a lot of very difficult to understand words and subtitles which I was not able to verify. So I remain inexpert on precisely what he said and I was told he used notes and not text. And so I will stop there.

General Boykin has requested an Inspector General review of this matter, and I have indicated if that is his request, I think it appropriate.

I know that General Pace, who was apparently with the Secretary, has talked to him more recently. You may want to comment as well.

General Pace: Yesterday, Jerry and I were just waiting for a meeting to begin and he just mentioned to me how sad he was that his comments have caused the furor that they have. There is no doubt in my mind, in talking to him, that if he could pick his words more carefully he would. There is also no doubt in my mind that he does not see this battle as a battle between religions. He sees it as a battle between good and evil. He sees it as the evil being the acts of individuals, not the acts of any religion or affiliation with religion. So clearly, in my very short conversation with Jerry, which he instigated, he is sad that this is the way that it is, but he is anxious to have the investigator do the investigator's job.

I commend the Secretary of Defense, and I commend General Boykin. I think Senator LEVIN and I took the proper step. We had the option to put this letter into the public domain on Friday, but purposely I said to my colleague and to others—by the way, there were a number of others, as Senator LEVIN and I just discussed, on his side of the aisle and on my side of the aisle who expressed concern and asked of us, as the chairman and the ranking member, what we intended to do. Well, we made this recommendation and we purposely withheld it from public delivery, public release, as a consideration to the Secretary, such that he might take it into consideration as he dealt with this matter. I just presume he saw it and that he did take it into consideration. But I think at this point in time, while we have young men and women patrolling the streets in Iraq, Afghanistan, and other areas of the world, it is best we try to take this matter, hopefully, off the front pages, with the representation to the American public and others that the proper authorities are reviewing it—the Inspector General of the Department of Defense, and I anticipate my committee and indeed perhaps others here in the Senate will review the matter. But in fairness to this distinguished officer, such that he can devote his full time and attention to dealing with this issue, I am recommending—not calling for, not demanding but recommending, having spent some time in the Department of Defense myself—that without any prejudice this officer be detailed from his present position, a position that deals with the war on terrorism throughout the world, that he be detailed elsewhere temporarily until such time as the Inspector General comes back with his report, at which time we can have further deliberations.

That is in fairness to so many people who are deeply concerned about this issue, and indeed the men and women of the Armed Forces, and indeed the integrity of the military itself. When an officer wears that uniform and he stands before the people of the United States, or wherever he may be, and he makes remarks, people see in that uniform that he has been appointed to that position by the President of the United States of America and confirmed by the Senate of the United States. In that confirmation process we look at the professional credentials, we examine all the material that comes before us, but implicit in our confirmation by this body, the Senate, pursuant to the Constitution, implicit therein is that we feel this individual should be promoted and given the rank to which the President has appointed him because we have confidence in him that he has good, sound judgment—I repeat that: good, sound judgment—in the exercise of his freedom to speak.

That is the question that remains to be answered. He is in a very high-profile position with global responsibilities on the war on terrorism. I think temporarily, without any prejudice whatsoever, asking him to take on another assignment until this matter is fully examined and studied and a report made to the Secretary of Defense and the Senate is in the interests of all concerned and indeed this officer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I want to express my appreciation for the thoughtfulness of Senator WARNER. He has served his country for many years as a marine, a naval officer, as a Secretary of the Navy, and now the Senate chairman of the Armed Services Committee. I know he takes this issue very seriously.

I do believe this officer should be entitled to a hearing, have an inspector general look at these very delicate matters. When we talk about people's personal religious beliefs as to whether one theology is valid and another one is not, we wouldn't expect a person of the Islamic faith to ratify the Christian faith or other faiths to say they validate the faith of someone else. That is just the way we see things, as we deal with matters of personal faith.

But I think it is a delicate matter, particularly when a person is in uniform. I think going forward with a look at this and some thoughtful analysis as to what would be the right procedure would be appropriate. I thank our chairman of the Armed Services Committee for his comments.

Mr. WARNER. I thank my colleague because you formerly served as attorney general. You have full comprehension of the importance of being fair to everyone. This recommendation I have is in the sense of fairness. I think it is in the interest of all, and I thank the Senator for his remarks.

Mr. SESSIONS. I think it would be good for all of us to think a bit about the subject and what would be appropriate to ask of an officer in a church proceeding and whether uniforms make a difference and those kinds of things.

I was going to speak about the class action reform. Did the Senator from Illinois have some comments?

Mr. DURBIN. If the Senator from Alabama would yield for a moment, I would like to address the same issue and then yield back to him to discuss class action reform.

Mr. SESSIONS. Would 5 minutes be sufficient? I am pleased to yield to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I commend the Senator from Virginia. There are times when he and I have come together and I think good things have happened. I think this may be such a moment. I hope it is. I came to the floor to address this issue involving General Boykin, fully cognizant of the great contribution which he has made to this country in his military capacity over many years, risking his life and serving our Nation well, but feeling at this moment in time important questions need to be asked and answered about the things he said and did. I believe the Senator from Virginia—I do not want to mischaracterize his remarks—has suggested he be detailed to another position while these important questions are asked and considered and answers are brought forward. Am I correct in that conclusion?

Mr. WARNER. Madam President, the Senator is correct, to simply give full and complete opportunity and have him temporarily detailed elsewhere. I think until such time as this thing is resolved factually—what did happen, what didn't happen—as the Secretary of Defense said, he didn't fully have all the facts at his command at this point in time and was asked a question. Although I must say I have read press accounts where the general was trying to explain what he did say, you and I know from experience in public life, when you try to explain what you tried to say, you need time out to do a little study.

Mr. DURBIN. I thank the Senator from Virginia. I do say that is a very judicious and thoughtful approach. We want to be fair to this man who served his country well, but we also understand his remarks were viewed by many in a very negative light at a very critical moment in our history. I think what we should ask of everyone in the service of our country is what the President has asked, and that is to keep it very clear ours is a war against terrorism and not a war against the Islamic faith or people who adhere to it. We could no more expect General Boykin to embrace the Islamic faith and its principles than we would expect someone of the Islamic faith to accept Christian principles or Jewish principles and values. But we can expect every member of our Government to be tolerant and sensitive of other people's values and principles. I think that is a standard we should all live by in public life, whether appointed or elected.

I think what the Senator from Virginia has done today is an important step forward. I would say his extraordinary service to this country in the military and as Secretary of the Navy and in the Senate I think means his recommendation will be understood as a heartfelt recommendation and taken seriously by the administration. I hope they do. I hope they follow his counsel and follow it quickly. The sooner we can defuse this matter the better for all, including the general, and I think the sooner it will be that we can bring some stability and perhaps some coherence to our position so we can fight this war on terrorism in terms all Americans, including the President, agree with.

I thank the Senator from Virginia.

Mr. WARNER. I thank my colleague.

Muslims and Christians and people of other faiths all over this world are united in this fight against terrorism. We must make it very clear of our mutual respect for one another's faith.

I yield the floor.

Mr. DURBIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senators for their comments. I fail, but I attempt to take my faith seriously. I respect followers of the Islamic faith who take their faith seriously, who study the scriptures and act in accordance therewith. We may disagree, but we respect one another. That is the way I was raised as an American, to respect one another's faith. I think respect for one another's faith makes me somewhat sympathetic to General Boykin, who goes to a church and shares some of his insights and beliefs. But then again he is an officer of the United States and has a position in a time of conflict, in a sensitive period, and maybe at one point apparently he may have worn the uniform while he made those remarks.

I think it is appropriate for us to take some time out and look at this. I thank the chairman for that.

Madam President, we are now to undertake and begin debate on the motion to proceed to the Class Action Fairness bill, S. 1751.

Unfortunately, we are seeing a trend in which there are more and more pieces of legislation that deserve an up-or-down vote being subjected to a filibuster and 60-vote procedural hurdles. That is unfortunate. We should proceed with this legislation and discuss it and not be obstructive about going forward with it.

The Class Action Fairness Act represents modest reform. It is a restrained bill that will address a number of very serious problems with the current status of class action lawsuits such as the plaintiff receiving coupons while trial lawyers pocket millions of dollars in fees.

This body has a duty to address problems with the legal system. It is something we are required to do and should not have to overcome 60-vote hurdles. I am disappointed we may have to overcome another filibuster as we move forward.

Obstructionism is always available, but I don't believe there is strong opposition to this bill. There is bipartisan support. If we let the debate go forward and people honestly consider whether it ought to be law or not, we would be willing to accept an up-or-down vote. That is a concern I express.

The distinguished Senator from Delaware is here. He is very thoughtful on these matters. I know he would like to speak for approximately 15 minutes. I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Delaware.

Mr. CARPER. I express my thanks to the Senator from Alabama for his kind words. I appreciate the opportunity to work with him on these and other issues. Tomorrow morning around 11 o'clock, an important vote will occur in the Senate. At the heart of this vote, for me, is to determine whether or not we go forward, Democrats and Republicans, to actually take up and debate the way we allow people who are harmed, hurt, or injured—in many cases, by business—to be compensated.

Most would agree that if you or I, as individuals, are damaged by the actions of another or by the actions of a business, we should be made whole. I believe the same protection should inure to a group of people or a class of people who may be harmed or damaged in some way by the actions or products of some business.

Over time we seem to have lost our sense of balance in the way we litigate class actions. When our Founding Fathers came up with our Federal courts, we did not have class actions. We did not have mass actions. We did not have private attorneys general actions. We did not have any of that. We had a concern on the part of our Founding Fathers that if a group of people in one State were harmed by a business or person in another State, maybe we ought to have a Federal court system, to ensure that the case is not heard by the potentially biased judges in the injured party's home state.

The trial bar gets a bad rap in a lot of quarters, but I believe they play a very helpful and constructive role in this country. They sometimes do not get credit for that. One of the things they do is try to make sure, where people are harmed, they get compensated.

Our system has lost the right kind of balance. Too often today—not always but too often—we end up debating national class action not in a Federal court but in a local court—in some cases, in a court where the judges are locally elected and the defendant is placed at a real disadvantage. I will give an example because this does not make much sense to me.

Say I were poisoned by food we bought from a fast food restaurant. Say I decided to sue. If the amount in dispute were less than $75,000, my case could be heard in State court. If I sue for more than $75,000; it would be heard in a Federal court.

On the other hand, if thousands of people, or tens of thousands of people,

bring a class action against that same restaurant for some alleged sin they have committed—and it may involve tens of millions of dollars—it may well end up in a State court, not in a Federal court. That does not seem right to me.

There has been an effort to try to establish or reestablish the sense of balance in these kinds of cases. It started about 5 years ago, in the 105th Congress. Over time, I believe a more thoughtful approach has evolved and has led to the introduction of a bill this year, S. 274, called the Class Action Fairness Act. That bill has gone through hearings, I think in the last Congress, and hearings in this Congress. It has been through regular order. The Senate Judiciary Committee has had an opportunity to hold hearings, to debate the bill, to vote on amendments to the bill and ultimately to report the bill out.

There are a number of aspects of the legislation that recommend it to me. I am a cosponsor of the legislation, and it enjoys bipartisan support. Among the original cosponsors are Senator GRASSLEY and Senator KOHL of Wisconsin. The bill was reported out on a bipartisan vote. More Republicans voted for it than Democrats, but it had some bipartisan support.

I will discuss how the class action system will work in our country if this legislation or something akin to it becomes law. First, it is not a perfect bill. I have an amendment or two that I want to offer to perfect the legislation. I noticed Senator LIEBERMAN does as well. I have talked to other colleagues, including Senator LANDRIEU, who have ideas for amendments they want to offer. It is a work in progress. It is one that can be improved and should be improved.

In order for us to be able to offer our amendments to the bill to perfect and improve it, we have to go through a vote tomorrow at 11 o'clock on the motion to proceed, which, understandably but unfortunately, is opposed by leadership on my side. The fear, the concern, is we will get on to the bill and the opportunity for those who would like to offer amendments may not end up to be realized; the opportunity for us to offer amendments, to be fairly heard and vote will not occur. Therefore, they are reluctant to go to the bill without some further assurance.

In the end, the only way we know for sure if our amendments are going to get a fair hearing, and have the opportunity to be debated and adopted, is to go to the bill, to take it up. I hope tomorrow, when we vote, that is what we will vote to do.

Let me talk briefly about how I understand our legal system would work a little differently if this were to become the law of the land.

First, the question is, Is this litigation going to be heard in State court or Federal court? Under the legislation, for a matter to be heard in Federal court or for the defendant in the case to be able to argue successfully that a case ought to be in Federal court as opposed to a State court, there would have to be a certain dollar amount at stake, and it would be $5 million. If it is under $5 million, it will be in State court.

Second is the number of people in the plaintiff class. If you have less than 100 people in your plaintiff class, this litigation is going to be heard in a State court.

Third, if a case is filed in a State court, and the defendant says, no, this ought to be in a Federal court, and they go to Federal court to try to get it removed to the Federal court, and the Federal court says, no, this remains in the State court, then it goes back to the State court. And unless the plaintiffs change the plaintiff class, or unless the plaintiffs somehow change their complaint, it is going to stay in State court.

There are no caps on pain and suffering, no caps on punitive damages, no caps on noneconomic damages, no caps on attorney fees. We leave joint and several alone.

In some States they apparently do not have class actions; they have mass actions—a few States such as West Virginia, Mississippi—where they aggregate a number of individual claims. The question is whether those are more properly heard in a Federal court or a State court.

I think Senator SPECTER has negotiated a pretty good compromise in those instances. In some cases, if it were a major incident, such as an explosion or a fire or a catastrophic incident that involves people in one State, then it would basically be handled in State court; if not, it would be in a Federal court.

Senator FEINSTEIN had an issue on these private attorneys general cases, which apparently you or I could stand up or any citizen can stand up and say they represent a group of people on a particular wrong that has been committed. In some cases that is the way they really go about class action. Her amendment was adopted as part of the final agreement. If the bill comes to the floor, the private attorneys general agreement would be within the purview of State courts, not the Federal court.

Senator FEINSTEIN also offered I think quite a thoughtful amendment and one that addresses a concern raised by the Judicial Conference that we heard discussed earlier. My colleagues will recall the Judicial Conference is actually headed up by the Chief Justice of the United States, Chief Justice Rehnquist. But they, from time to time, will opine on things that are before us and maybe share their opinions with us. They suggested, when asked back in March, that there were some real concerns that they had with S. 274, and that it would cause a lot of cases that are now heard in State courts to end up flooding the Federal courts. They suggested that we ought to do something about it, that the Judiciary Committee ought to do something about it.

Well, the Judiciary Committee did something about it. What they did is they adopted the Feinstein amendment in their markup back in April. The Feinstein amendment says basically this. It says: The plaintiff class, the people who are bringing the grievance, if two-thirds or more are from the same State of the defendant, automatically that case is heard in the State court. It says, if fewer than one-third of the plaintiff class are from the same State as the defendant, automatically it is heard in a Federal court. If the percentage of the plaintiff class is somewhere between one-third and two-thirds who are from the same State as the defendant, then it is up to a Federal judge in that area to make the final decision based on criteria. There are five pieces of criteria spelled out in the bill.

So, again, if there are more than two-thirds of the plaintiff class in the same State as the defendant, it is a State matter; if fewer than a third of the plaintiffs from the same State as the defendant, it is in the Federal court; and between one-third and two-thirds are from the same State as the defendant, it is kind of a jump ball. The Federal judge in the area is asked to make the decision based on the criteria spelled out in the bill.

Interestingly, the Judicial Conference came back after this amendment was adopted and the legislation was about to be reported out and they seemed to suggest, in a letter that they sent to the ranking Democrat on the Judiciary Committee, that their earlier concerns had been addressed. I think the Judicial Conference sent a similar letter to the folks in the House of Representatives suggesting the same thing in the month of May.

A concern has been raised, a legitimate concern, about what percentage of cases are now going to end up in Federal court as opposed to State court under this bill. Some pretty smart people actually took the data from the last 5 years in States where they collected this data to look to see—in States such as New York, Massachusetts, Maine, where data is available—what percentage of cases in those States over the last 5 years would have ended up in a Federal court as opposed to a State court. Sixty percent or more of the cases in those states in the last 5 years would still have ended up in a State court. I think that is a good point to be mindful of.

I do not know if any of us going forward could say what the future is going to be, but we should sure look back over the last 5 years and say if this were the law of the land, again, 60 percent or more of the cases would have stayed in State court.

Let me close with this thought, if I could. Senator LIEBERMAN is prepared to offer an amendment, I think a real good amendment, to the bill that addresses an issue for Connecticut. It is

similar to an issued raised for Indiana, and similar to an issue I have heard raised, I think, for New Mexico.

This is the issue that was raised. Let's say in Connecticut you have a river that has been polluted by a plant that damages people in Connecticut under Connecticut law. The plant is in Connecticut but owned by a company in another State. Again, the people who are damaged, the plaintiff class, if you will, are in Connecticut. The damage was in Connecticut and there are two defendants, one in Connecticut—the plant that did the pollution—and the owner of the plant that is in another State.

What Senator LIEBERMAN has come forth with and said is, in a case such as that, it ought to really be in a Connecticut court. I think he is right.

Senator LIEBERMAN will offer an amendment that says in those cases State law should prevail. They should not be moved someplace else. State law should prevail. He will offer that amendment if we have the opportunity—if we have the opportunity—to actually go to the bill, take it up, and debate it. In order to do that, we have to vote tomorrow for the motion to proceed.

There is a real test that is going to take place here. If we actually vote for the motion to proceed and go to the bill, there is a burden of proof that rests on our colleagues on the other side of the aisle. They need to act in good faith. We need to actually have the opportunity to offer our amendments. We need to have the opportunity for a fair and open debate on reasonable perfecting amendments. If we do, then I think it may act as a confidence builder and maybe establish a measure of trust around here where, frankly, there is not too much. On the other hand, if our Republican colleagues take a different course and seek to cut off debate and reasonable amendments and not support reasonable amendments, perfecting amendments, then that sends a different message.

I think there is more at stake for this body than just whether or not we are going to take up a class action bill. There is a whole lot more at stake. My hope is tomorrow, when we vote, if we vote to proceed, that our colleagues on the other side will keep that in mind and that their actions in the days or week or so ahead will reflect as much.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today to speak on behalf of the Class Action Fairness Act, a bill to stop unfair and abusive class action settlements that ignore the best interests of injured plaintiffs. It tickles the cockles of my heart that this is the first time I can recall that my colleague from the State of Delaware and I have spoken out on the same position on a bill before the Senate. Senator CARPER and I have worked together for many years in the National Governors Association. We have been looking for an opportunity to collaborate and support legislation on the floor of the Senate. It is a particular pleasure for me to follow the Senator from Delaware. We both believe this is good legislation for the people in our districts and for our country.

This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements. It is also needed to reform the class action process which has been so manipulated in recent years that U.S. companies are being driven into bankruptcy to escape a rising tide of frivolous lawsuits and has resulted in the loss of countless numbers of jobs, especially in the manufacturing sector.

I believe that for the system to work, we must strike a delicate balance between the rights of the aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole. I believe that is what this legislation does, and I am proud to be a cosponsor of it.

Since my days as Governor of Ohio, I have been very concerned with what I call the ''litigation tornado'' that has been sweeping through the economy of my State and throughout the United States. Ohio's civil justice system is in a state of crisis. Ohio doctors are leaving the State, and too many have stopped delivering babies because they cannot afford liability insurance. Ohio businesses are going bankrupt as a result of runaway asbestos litigation. Today, one of my fellow Ohioans can be a plaintiff in a class action lawsuit that she doesn't even know about that is taking place in a State she has never visited.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation that became law in Ohio for a while. It might have helped today's liability crisis, but it never got a chance. In 1999, the Supreme Court of Ohio, in a politically motivated decision, struck down Ohio's civil justice reform law, even though the only plaintiff in the case was the Ohio Academy of Trial Lawyers, the personal injury bar's trade group. Their reason for challenging the law: They claimed their association would lose members and lose money due to the civil justice reform laws that were enacted. That is how they got standing in court. It was an incredible situation that I hope we never see again.

While we were frustrated at the State level, I am proud to have continued my fight for a fair, strong civil justice system in the U.S. Senate. To this end, I worked with the American Tort Reform Association to produce a study titled ''Lawsuit Abuse in Ohio'' that captured the impact of this rampant litigation on Ohio's economy with a goal of educating the public on the issue and sparking change. Can you imagine what this study found? In Ohio, the litigation crisis costs every Ohioan $636 per year, and every Ohio family of four $2,500 per year. These are alarming numbers. This study was released on August 8, 2002. Imagine how these numbers have risen in 1 year. In tough economic times, families cannot afford to pay over $2,500 to cover other people's litigation costs. Something needs to be done, and the passage of this bill will help.

This legislation is intended to amend the Federal judicial code to streamline and curb abuse of class action lawsuits, a procedural device through which people with identical claims are permitted to merge them and be heard at one time in court. In particular, this legislation contains safeguards that provide for judicial scrutiny of the terms of the class action settlements in order to eliminate unfair and discriminatory distribution of awards for damages and prevent class members from suffering a net loss as a result of a court victory.

This bill is designed to improve the handling of massive U.S. class action lawsuits while preserving the rights of citizens to bring such actions. Class action lawsuits have spiraled out of control with the threat of large overreaching verdicts holding corporations hostage for years and years. In fact, America's civil justice system had a direct cost in 2001 of $205.4 billion or almost 2.5 percent of GDP. That is a 14.3-percent jump from the year before, the largest percentage increase since 1986. Thousands of jobs have been impacted by that litigation.

I emphasize to my colleagues that this is not a bill to end all class action lawsuits. It is a bill to identify those lawsuits with merit and to ensure that plaintiffs in legitimate lawsuits are treated fairly through the litigation process. It is a bill to protect class members from settlements that give their lawyers millions while they only see pennies. It is a bill to rectify the fact that over the past decade, State court class action filings increased over 1,000 percent. It is a bill to fix a broken judicial system.

I am a strong supporter of this bill, and I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I understand the Senator from Illinois would like to speak on this subject. First, I ask unanimous consent that Senator VOINOVICH be added as a cosponsor to S. 1751, the Class Action Fairness Act.

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

Mr. SESSIONS. I ask the Senator from Illinois how much time he thinks he might need?

Mr. DURBIN. Twenty minutes.

Mr. SESSIONS. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this is an important debate. The average person listening to it may wonder why.

First you have to understand what a class action lawsuit is. I will try to define it in the simplest of terms. It is when not just one person but a group of people believe that they have been wronged, either financially or otherwise, and go to court and bring a lawsuit against a corporation, for example. So you have a large group of plaintiffs bringing the lawsuit, usually suing one defendant, a corporation. And oftentimes, this large group of people who have been harmed don't live in the same State. They may be from across the Nation. And so they have to decide where they are going to file the lawsuit. And that is what this comes down to.

You say to yourself: Why is it so important to understand where you are going to file a lawsuit? Well, when I explain it from my point of view, perhaps you will understand why so much time and so much lobbying is going on behind this whole question about where you can file your lawsuit.

First understand this: In my State of Illinois and virtually every other State in the Union, if you are a business and you want to do business in Tennessee or Illinois or Alabama or South Carolina, you can't just start up your business. The laws of your State will require you to register in that State that you are going to do business in. In my State of Illinois you register so they know you are there, who you are, what your home headquarters happens to be, and where it is located. Then you also have to do something in my State and most other States: You have to say where you can be served process. In other words, if you are sued by someone in the State of Illinois, and you are a registered corporation, you have already told the State of Illinois where they can find you.

Why is that? Because the understanding is, if you want to have the advantage of selling your product in Illinois to Illinois citizens, you also have to submit yourself to the jurisdiction of Illinois law. That law will govern your business in the State of Illinois.

It is very basic. If, in fact, someone believes that your product is defective, or you have done something wrong, they have to know where to find you. You don't want a situation where the corporation is unidentifiable, unapproachable. So every company—major companies in particular—understands the rules. If you want to do business in Illinois, you submit yourself to the jurisdiction of Illinois law.

Now let's go back to the earlier example. This group of plaintiffs, this class, decides they are going to sue XYZ Corporation for something wrong. Where will they sue them? The corporation has already said, by virtue of doing business in Illinois, that we are prepared to be served process. We are prepared to submit ourselves to Illinois laws. We are prepared to go before Illinois courts. That is a pretty simple outcome. If you do your business in Illinois, you submit to that jurisdiction. You submit to those courts. And if people want to sue you, they know exactly where to find you to bring you into an Illinois court and let the court decide whether the plaintiff recovers or doesn't recover.

Now, that is the simplest explanation of jurisdiction that I can remember from law school so many years ago and how it applies to States. In Federal courts it is a little different. If you have a defendant from one State and a plaintiff from another State, if you have a certain amount in controversy—I think it is $75,000—you have diversity of jurisdiction, so you can go into the Federal courts.

In this case, this whole bill is about in which court you can file a class action lawsuit. You say to yourself, why does it make any difference if you are going to go into a State court in Illinois or into the Federal court in Illinois for your class action lawsuit? Why would it make any difference? The substantive law is supposed to be the same Illinois law. Why do you want to go to Federal court?

Therein lies the reason for the bill. The people who are pushing this legislation understand that Federal courts are more conservative, less likely to let people have a lawsuit, to certify a class. When it comes to liability, Federal courts are more restrictive in liability than State courts.

Don't take my word for that. I will tell you about several cases. This one is Birchler v. Gehl. Federal law discourages Federal judges from providing remedies for violation of State law. The Seventh Circuit—where Illinois sits—stated:

> When we are faced with opposing plausible interpretations of State law, we generally choose the narrower interpretation which restricts liability, rather than the more expansive interpretation which creates substantially more liability.

That was a 1996 case. Go to Federal court and it is less likely your class will be certified and you will receive any damages.

Another case is Accord Werwinski v. Ford Motor Company, a 2002 case. A class action was brought by purchasers of Ford vehicles. The cars Ford sold had defective transmissions that cracked prematurely and inadequately lubricated gears that caused numerous car failures such as sudden acceleration or shifts into reverse. Plaintiffs who bought the cars presented evidence that Ford knew about this defect long before it was corrected but continued selling the cars. The case was originally filed in State court, but Ford Motor Company removed it to Federal court which dismissed the claims of the people who bought the Fords. In affirming the court's decision to dismiss the class action, the Third Circuit stated that when faced with two competing interpretations of State law, a Federal court ''should opt for the interpretation that restricts liability, rather than expands it. . . .''

Those are two cases in the Federal law that explain why we are here today. The idea is to move the cases out of State court in the hopes that the defendant corporation that has been sued will have the case dismissed or, if there are damages, they will be reduced. It is not a question of whether they are liable or guilty; it is a question of where they are going to get the best deal.

So the bill before us is an effort on behalf of the corporation defendants across America to push these cases into the Federal court. So for all the good reasons given for this class action reform, the real reason is that defendant corporations don't want to be held responsible for their misconduct. If held responsible, they want to pay less money. That is what it comes down to. That is what this is all about. They want to protect themselves and limit their liability.

Under current law, Federal diversity jurisdiction for a class action doesn't exist unless every member of the class is a citizen of a different State from every defendant, and every member of the class is seeking damages in excess of $75,000.

This bill would create a ''minimal diversity'' standard in two ways. In other words, you can get into Federal court. First, the amount-in-controversy requirement is met if the total amount of the damages at stake exceeds $5 million, notwithstanding the amount of damage suffered by each individual plaintiff.

Second, diversity can be achieved one of three ways: any member of a class of plaintiffs is a citizen of a State different from any defendant; two, any member of a class of plaintiffs is a foreign state or a citizen or a subject of a foreign state and any defendant is a citizen of a State; three, any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

This is what it gets down to. We are trying to find, through this bill, ways to move more cases into Federal court. So what does the Federal court system think of this idea?

Well, the man who is at the top of the Federal court system, Chief Justice William Rehnquist, in a rare, rare occurrence, sent a letter to Congress saying: Don't do this; don't push these cases into Federal court. We don't have the expertise, the judges, or the time to consider the class action cases coming out of State courts into Federal court. It is understandable.

The Federal court's first responsibility is in criminal cases, such as on the war on terrorism, and all the concerns we have about criminal procedure and criminal prosecution. That is their first responsibility.

Then they have their own civil docket, where you have individuals suing one another, and companies suing one another. Chief Justice Rehnquist says: Do me no favors, U.S. Senate; don't push all these class action cases into the Federal courts; we cannot handle them.

You would think, would you not, that some of the Members of the Senate, when coaxed by the Chief Justice of the Supreme Court not to push all these cases into Federal court, might stop. But they will not. The reason they are pushing this bill is they have their eye on the prize. The prize is that the corporate defendants found guilty and liable want to be protected from liability or want their liability reduced. They don't care what the Chief Justice has to say. They certainly don't care what the consumers have to say.

I have some examples of class action cases so you can understand for a minute why these cases should be of concern to everybody. These are not cases that involve large corporations alone; they involve a lot of ordinary citizens.

To give you an example, do you remember the Jack-in-the-Box restaurant scandal a few years back? In that scandal, it was found that Jack-in-the-Box restaurants were selling products which had been undercooked and, because of this, they were adulterated, dangerous, and there were children dying as a result. So a class action lawsuit was brought against the company that owned Jack-in-the-Box, Foodmaker, Inc., on behalf of some 500 victims—mainly children who had been to Jack-in-the-Box and got sick. Those 500 victims came together to hold Jack-in-the-Box, a Washington State corporation, liable. The court decided, yes, it should be held liable to the tune of $14 million for 500 plaintiffs.

Now, what this bill tries to do is to move that case out of the State court in Washington and into a Federal court so the amount of the verdict—if there was one—would be considerably less. That is good for the bottom line of that corporation. Is it fair to the families who went to the Jack-in-the-Box restaurants in States across America and thought they were going to get a wholesome product, safe for their children to eat, and then the parents watched their children die from E. coli, and not have their day in State court, where Jack-in-the-Box said they were submitting to the jurisdiction? I don't think so.

There was a class action lawsuit in California against Beech-Nut Corporation and its parent company, Nestle. They were guilty of selling something they called apple juice which, after being examined, turned out to be nothing more than sugar water. Parents were buying what they thought was nutritious apple juice for their infants, and the company was selling them fraudulently a product marked apple juice but was literally sugar water and a little coloration. Blame went back and forth between companies and suppliers, and the court ultimately decided these two companies, Beech-Nut and Nestle, were liable to the tune of $3.5 million to be reimbursed to consumers across America.

What companies such as Nestle are trying to do with this bill is reduce their liability and make it even more difficult for parents, each of which may have been out only $10 or $20, but each had given a product to their children that was misrepresented and fraudulently labeled. This is designed to help those powerful special interest groups and corporations at the expense of consumers such as those parents whose children were receiving this adulterated product.

Ford Motor Company had a class action to replace defective ignition systems in millions of cars that stalled often on the highways.

Mobil Corporation entered into a $14 million settlement agreement in a class action suit because a fire at a refinery in New Orleans resulted in sending volatile and hazardous compounds into the air and it caused great health damage to the people living around them.

Blue Cross and Blue Shield paid a $14.6 million settlement in a class action suit because they fraudulently billed individuals and failed to pass on savings to consumers. They ended up paying for it.

American Airlines breached a contract with frequent fliers when it retroactively changed rules for redeeming mileage awards.

The point is that each and every one of these lawsuits, for each plaintiff, may seem small. But compounded, they represent a large amount of liability for the corporation and they represent, in fact, a large number of people, each with a small recovery.

Frankly, I think there are things we can and should do to make class action suits better in this country. JOHN BREAUX of Louisiana, who has been a friend of business and has worked with them over the years, has a good substitute bill. Many who have called me from the business community say I urge you, for goodness' sake, to take a look at the Breaux substitute. It is a sensible bill. It will clean up some of the worst abuses in class action lawsuits. But it is not going to get into this game-playing that is suggested in this bill that allows defendant corporations to literally pick the Federal court they want to go into in the hopes they will have reduced liability or no liability. That is what it comes down to.

I think this debate before us is a lot more important than some lead to believe. Some suggest we are merely modifying and reforming tort law in America. It is much more. It is a question of whether the courthouse door is open for the average citizen. It is a question of whether those people, wronged by giant corporations, have an opportunity for a day in court. Those who back this bill want to close that courthouse door and make it difficult to open. They want these plaintiffs to end up in a Federal court where they are less likely to succeed, and if they do succeed, they will have less in compensation. That to me is unjust and that is the reason we should oppose this legislation.

I hope my colleagues will think long and hard before they sign on to this bill thinking it has no impact. It has a great impact on a lot of innocent people who deserve a day in court. Justice is at stake here. I urge my colleagues not to accept the easy argument that this is a simple reform. It goes to the heart of justice in this country, and it does not affect the real abuses in the system which I believe the Breaux bill does.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I want to make one thing crystal clear: I am not here to provide any unfair benefit to any corporation or any defendant. We want fairness and justice in the legal system. But in a major class action case, under the current state of the law, a plaintiff lawyer who represents perhaps potential plaintiffs all over America—let's say it is a national case—can virtually choose any county in America to file the lawsuit. He can choose some counties that have only one judge, and perhaps he knows precisely what that judge thinks about plaintiff lawsuits. Or maybe he thinks that county has a most favorable jury.

Let me state what the Constitution says about it. Sure, a corporation has to register to do business in a State, but the Constitution, in article III, section 2 of the courts' power says this:

> The judicial Power shall extend to all Cases, in Law and Equity . . . between Citizens of different States. . . .

And corporations are considered domiciled in that place of domicile. Fundamentally, what has happened over the years is we have eroded the constitutional protection of diversity by rulings that allow plaintiffs to sue not only the foreign corporation from another State, but to sue some entity also as a defendant in that State, and the courts have concluded you have to have total diversity before you can remove it to Federal court. That has been a problem, allowing the real payor, the real target to be subject to jurisdiction in virtually any county in the country.

I am not here for any injustice. I think we have a pattern of injustice going on in class action lawsuits. We can make them better. They would be better in a more objective tribunal of Federal court where judges have lifetime appointments. They are not so tied to the plaintiff lawyer who may go to church with them or have contributed to their campaign or the jurors might not be buddies with some of the folks, and you have a more objective court. That is just a fact. That is why the Founding Fathers said what they said.

In sports we talk about home cooking. I know the hometown the Presiding Officer is from in Tennessee. It is such a wonderful place. It would treat foreigners just as fairly as local people, but most communities tend to favor the local guy from somebody

from out of town. That is why we have it set up so Federal judges hear these cases and give a little more objectivity, although the judge is from the local community, at least from the State, and the jurors are from the region. That is what we are about.

This bill would also fix some other situations. It would eliminate the coupon settlements. It would eliminate class notices that cannot be understood. The letter goes out to all the class members in language so complex nobody can understand. It eliminates negative awards. We have actually had cases in which the so-called plaintiffs, not even knowing they are plaintiffs, get a bill for attorneys fees and costs. It would protect against high awards for one group because they are from one area of the country, and it would eliminate the payment of bounties for lawsuits and help knock down some of the blackmail that has been going on: Filing these huge lawsuits costing so much money and embarrassing a defendant so they feel forced to pay rather than litigate for years at a very high cost.

Mr. President, those are the remarks I wish to make at this time. I will have some more later. I see the distinguished Senator from South Carolina is here, Senator GRAHAM, who is an experienced litigator in his own right. I know he wants to speak on this subject.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I will be brief. I wish to speak about class actions and echo what my friend from Alabama said. I have tried very hard during my time being a legislator at the State and Federal level to make sure when legal reform is accomplished it is done so in a balanced way.

I am not a big fan—I think many of my colleagues know this—of the Federal Government taking over State legal systems. If you can do it at home, it is better to do it at home. I am not a big fan of deciding what is fair before the jury meets. We have honest differences on some of those issues.

Having said all that, there is a huge need for legal reform. I cannot tell you one system in America that really doesn't need to be reformed, the legal system included. My friend from Alabama is absolutely right. What we are trying to do today is correct an abuse. The Constitution, as he read to us, envisioned a dynamic where we would have two people from different States and we would not want to put one person in the other person's backyard. The Constitution has survived so long and so well, and it spoke to that and said: Let's take that into Federal court, a neutral side.

As the diversity clause of the Constitution has been interpreted, it requires complete diversity of all plaintiffs and all defendants. About 100 years later, maybe 200 years later—I don't know when class action lawsuits came into being—there is another way of suing people. It has its place in our society to bring a bunch of people affected by a similar event in different places to try as a unit rather than doing hundreds or thousands of individual cases. But this class action concept flies in the face of why the Constitution speaks about diversity.

My friend from Alabama is exactly right. It is being abused. We have a situation where you may have many plaintiffs throughout the country with a single defendant, and it allows people to go into an area that is equivalent to home cooking. It really destroys the purpose of the diversity provisions in the Constitution. What we are trying to do is correct that. There are no damage limitations. There are no limitations on anybody making a claim at all. If you buy the idea this is unfair, then you buy the idea that the Federal court is unfair; that you can't get a good hearing by a Federal judge. I think that is absolutely wrong.

Justice Rehnquist has a problem on his hands. He has a lot of cases. He has a lot of overworked judges, and I am going to get to that in a minute. I have a way to help Justice Rehnquist. There are a bunch of people who need to help him, and I will talk about that in a moment.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. GRAHAM of South Carolina. Yes.

Mr. SESSIONS. Is the Senator aware that the letter I believe the Senator from Illinois was referring to is actually a letter from the Judicial Conference, not from the Chief Justice and, in fact, they have written another letter on March 26 of this year in which they actually warm up to this idea, and that the legislation, as we are now proceeding, answers a number of the questions they had originally?

Frankly, I know they don't want any more work. Nobody does, I guess. But I think many of these problems may have been solved.

Mr. GRAHAM of South Carolina. Mr. President, I am more informed than when I began this debate. That is good for me and good for the public. I did not know that. It makes a lot of sense. I find it a little odd that people would be opposed to the level that was being portrayed.

The idea that we should not do this in Federal court, I think we can accommodate it. I am all for having more Federal judges, and we will talk about that in just a moment, but the bottom line, and the reason I am voting for this particular legislation is I think it corrects an abuse. It gets us back to the constitutional model that everyone envisioned where if you have a diversity—and this is what class action is all about, bringing a lot of people together from disparate places and groups to try it at one time, in a place that is convenient to everybody and in a logical way, that one would want a fair forum. I think Senator FEINSTEIN's amendment was perfect. If there are two-thirds of the plaintiffs in any one State, it stays in State court. If there are half the people in one State, the judge can decide whether to remove it. If less than a third are in a particular State, then it goes to Federal court. To me, that is a perfect compromise. It makes a lot of sense.

I have no problem voting for this because we are correcting abuses. This is one way to reform our State legal system.

Let me give a quick statement about home cooking. I am sure, as the Presiding Officer said, in Tennessee people will treat you fairly. I am sure that is true in Alabama, and in South Carolina I am sure that is true. But there are places that one does need to know who they are up in front of. I can remember very well one of the first cases I had as a young lawyer getting out of law school. It involved a speeding ticket of a friend of mine. We were going to go to magistrate's court. I was going to be Perry Mason, and we were going to make this great injustice right.

The highway patrolman was getting ready to testify and he said: Hello. And then he said: How are you doing, uncle?

So the judge was the uncle of the police officer. That struck me as not being quite right, and I said: Your Honor, nothing personal, but do you mind if we have a jury trial?

He said: Well, Lord, no.

He called his wife out, the aunt of the police officer, and she called up some of the cousins and we had a jury trial.

The point is, that was not a good experience. Part of it is true and part of it is embellished, but I do not want anybody to go into a situation, businesspeople or otherwise, where they believe they are being dragged to a place that is unfair, and that is what is going on.

There is a group of plaintiffs attorneys out there and they have a right to use the law to their benefit, and they are using it very cleverly to their benefit but in a way that is unfair and is hurting our economy. I am glad and proud to support this reform measure because I believe it does more good than harm, and that is what we in the Senate are all up here to do.

I ask unanimous consent to go into morning business or speak as if I was in morning business.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. GRAHAM of South Carolina. I am trying to change subjects. May I make an inquiry to the Presiding Officer? Can I speak about Mr. Pryor's nomination as a judge now? Is that appropriate?

The PRESIDING OFFICER. The Senator is free to speak on any subject he wishes.

Mr. GRAHAM of South Carolina. Mr. President, I am liking these rules.

NOMINATION OF WILLIAM PRYOR

When we are speaking about judges and whether or not we need judges, we

really do. There is a backlog in this country in certain courts, and one of the people being nominated by President Bush is William Pryor from Alabama. He has been nominated to a seat that has been declared a judicial emergency by the Judicial Conference of the United States.

All I can say about this case is that my friend from Alabama should be very proud of the nominee who has been put forward by President Bush. Bill Pryor is the attorney general of Alabama. That is a political job, and ofttimes the hardest thing for lawyers to do is to be a good lawyer when politics are involved because the thing I love most about the law is that it is a place to go to where polling does not matter and where the popular cause does not always win out.

Sometimes the unpopular cause has its day and would win in a forum it could never win otherwise. Our Founding Fathers were brilliant in creating a system where popularity meant a lot in the area that we live, but a courtroom is a place where it should be quiet, and there are good men and women who are listening to the facts of one's case and no matter whether someone is rich, poor, regardless of their background, it is a place they can go to be listened to, where maybe the crowd would not listen to them. That is what I love so much about the law. It is a place where people who could not get a fair shake in the popularity world of politics could get a fair shake where people would actually listen to their individual claim, where the unpopular may have its day.

When one is attorney general, they get elected by their people, but they are also required to enforce the law, and the concept of the law is to give people who are not popular their day in court. What I am looking for in a judicial nominee is someone who can be very passionate about life's issues and questions but can also be very fair. President Bush has done us a great favor to send Bill Pryor forward. I have met him. I have talked to him. He is the kind of young man I think most of us would want our child to grow up to be, the son we would love to have. He is academically qualified, rated by the American Bar Association as extremely qualified. People from all walks of life who know him like him. If my colleagues met him, they would find he is a charming young man. He seems to be somebody who is sure of who he is and what he believes.

A lot of this filibustering that is going on now has behind it the issue of abortion. Special interest politics is very strong in America, and it has its place. Groups need to ban together and speak out about things they have in common. I think our job as Senators, when it comes time to look at judges, is not to judge somebody on whether they are just pro-choice or pro-life. I am a pro-life person, and I agree with Bill Pryor. He is a very passionate man. He is a very honest man about his pro-life beliefs.

There will come a day when there will be a Democratic President and maybe I will be in the Senate and that Democratic President may send up a pro-choice person. I think my job is to see whether or not they can take their beliefs on that issue and put them aside when it comes time to be a judge.

All I can say about Bill Pryor is that when he was attorney general he had the obligation to review a statute that the State of Alabama passed—the Senator may correct me if I am wrong—about partial-birth abortion, something we just did today. This is an emotional area. People are very emotional about partial-birth abortion. We are evenly divided on early-stage abortions, abortions in the early stages of pregnancy. It is about 50/50. But when it gets to the seventh, eighth, and ninth month, about 75 to 80 percent of Americans say we should not be having abortions on unborn children at that stage in pregnancy unless the mother's life is at stake.

We had about 60 Senators today vote for that. For 8 years now, we have been voting on that concept. So it is an extremely popular concept. A lot of people buy into it who are not strictly pro-life. There are some pro-choice people today who voted to ban partial-birth abortion. So that is an issue that has a lot of emotion and a lot of momentum behind it.

He read the statute and he issued an opinion that had to make him the skunk of the garden party. He issued an opinion that said: I read the statute and I do not think it will meet constitutional muster.

If anyone has talked to him at all, they know he is a very serious, pro-life person. So I argue to my colleagues, this is exactly the kind of young man or woman they would be looking for to promote, to be able to take the politically popular event, put a good legal analysis on the event, and make a decision that is not going to sell well. That is exactly what I am looking for in somebody to be a judge, and the Senators from Alabama should be very proud they have sent a very noble person forward.

There are other examples of doing things that just are tough. My State of South Carolina had in our constitution for the longest time a ban on interracial marriage. One does not have to be a rocket scientist to figure out how that all came about. Those of us in the South who have grown up in the South have had tremendous struggles to be fair to African-American citizens. There is a legacy there that no one should be proud of, but things are getting better, thank God. When we look into the past—and it is in other parts of the country, but it is particularly true in the South—when that is put into a State constitution, one can only imagine the passion that went into placing something like that in the constitution.

Well, now, later on in life, all of us realize that is unfair, that should never happen, but who wants to be the person to step forward and get that argument started all over again because it really was never used?

Well, Bill Pryor, as attorney general, had the courage to tell everyone, whether they agreed with him or not, that there is no place in our constitution for this kind of prohibition, and he led a charge to get rid of it, something I think tells a lot about the young man.

The bottom line is, we are going to have a lot of time to talk about Bill Pryor because there is a movement to keep him from being on the Federal bench, a movement that is driven by politics, a movement that, if it continues, will change over 200 years of how the Senate and the executive branch work.

The worst thing we could do, in my opinion, is to take the political disagreements we have in the early part of the 21st century and change the constitutional process, probably forever, the consequence being that good young men and women such as Bill Pryor can't become judges because a few special interest groups don't like them.

If Bill Pryor can't be a Federal judge, given his academic background, the way he has lived his life, and the qualifications he brings to the job, then America is hurting because we have let politics get into the judicial process in an unhealthy way.

There will be many more days and many more hours to talk about this. I look forward to talking to anybody who will listen about why I believe so strongly that we should allow the nomination of this young man to be voted on on the Senate floor—he has come out of committee—and why he would make a fine Federal judge.

I, again, let the Senator from Alabama know I am sorry that he and his colleagues from Alabama have to go through this. I am sorry for Mr. Pryor's family, that they have to go through this. But there will be some fighting back going on. I urge my colleagues on the other side of the aisle, if you continue to do this, inevitably here is what will happen.

The next time there is a Democratic President there will be special interest pressure placed on our party over here on the Republican side to do exactly the same thing to some other nominee who may be equally qualified. The next thing you know, we are going to have a situation where good men and women will not put themselves through this. They are going to say it is not worth it.

One of the things that came up in the hearing about Bill Pryor was that he and his wife were going to take their daughters, I believe, to Disney World. Disney World had Gay Pride Day that day, and they made a decision not to go on that particular day.

It is uncomfortable for me to talk about that. I imagine it is very uncomfortable for Bill Pryor to have to talk about things like that. That has no

place in the evaluation process, because what is the purpose of that? ''Yes, we got you now. You must hate gay people because you and your wife decided not to go to Disney World on a particular day.''

His answer was: It was a family decision that my wife and myself made. But I promise you that if anybody comes before me as a judge, that I will honestly and fairly deal with him.

We are getting into areas of people's personal beliefs and family decisions that are unhealthy, that will drive good men and women away if that is what you are going to have to put up with to try to serve your country.

The bottom line is, we are going to have some fussing and fighting about what is right for Bill Pryor and others, but if we don't wake up we are going to ruin 200 years of history that has worked and we are going to drive good men and women away from wanting to serve their country as a judge and all of us lose then.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from South Carolina. I, too, have some very strong feelings about Bill Pryor. He is one of the finest nominees ever to be submitted to this body. I have no doubt about that. He needs an up-or-down vote. If he receives one, he will be confirmed.

We started out the debate tonight talking about the class action reform bill that is before us. We are seeking to consider the bill, but we are still debating the motion to proceed to the class action bill. I see the distinguished chairman of the Finance Committee is here, Senator GRASSLEY, to speak on that legislation. I will be speaking on it further tonight, also.

I am pleased to yield to him.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I would like to address my colleagues, as I did last night, on a bill of which I am the sponsor. It came out of the Senate Judiciary Committee on which I serve with very broad bipartisan support. It is called the class action lawsuit reform legislation. There has been a lot said about that legislation today that I would like to address.

I did listen with great interest, yesterday and today, to speeches made by my colleagues across the aisle, and I fear they greatly misrepresent the bill and the problems facing the class action system, so I will spend a few minutes setting the record straight.

First, my colleagues are trying to characterize this bill as special interest legislation and are suggesting that the President is pushing this as part of some rightwing agenda.

Given that I introduced this bill with my Democratic colleague from Wisconsin 6 years ago, I am surprised that my colleagues think that this President Bush's idea is bad and part of some rightwing special interest agenda because Senator KOHL, a Democrat from Wisconsin, would not be interested in participating in any effort of a rightwing conspiracy.

Anyway, Senator KOHL and I put this bill together because there is unfairness in the current class action system. Lawyers are getting rich while consumers and plaintiffs are getting worthless certificates and coupons. The current system has select State county courts deciding policies and interpreting laws for people that ought to be decided on the Federal level, in the Federal court, when they affect all 50 States. Some county judge in Illinois should not be making a decision that is going to affect consumer law of 49 other States.

That flips, as you know, the Federal system on its head, and it needs to be fixed. Our legislation fixes it. I think that wanting to fix this problem makes sense. It is not part of some rightwing agenda. It is a very key economic issue in our country.

This term ''special interest legislation'' is amusing in several other ways. The real special interest here is the plaintiffs bar; they are fighting this bill with everything they have. Crafty class action lawyers who are making out like bandits by bringing frivolous class action lawsuits and settling cases where they get all the money are the ones with the big special interest in this legislation because, if this bill passes, judges will have to scrutinize settlements to make sure that lawyers are not unfairly getting more money for their professional services than they ought to get.

Also, if this legislation passes, these very same lawyers will not be able to do what we call forum shopping—finding the best county judge someplace in the country who is sympathetic to their cause, before whom they can go and win for sure.

Of course, we have the Judicial Conference. In this bill, it would be required to figure out a way to make attorney's fees more reasonable and settlements more fair. So it looks like the biggest special interest with a dog in this fight is the plaintiffs bar.

I heard a lot of talk on the floor about how critical class actions are, and I would be the first to suggest that there is a place in our legal system for class action suits. They are a great, important tool to help injured people collectively recover for their injuries in cases where it might not be worthwhile for an individual to do that by himself or herself.

Somehow, my Democratic colleagues think this bill is the end of class action suits, and that is entirely wrong. Our bill leaves the important tool of class actions right where it is, in rule 23 of the Federal Rules of Procedure, and similar rules in most of the individual States. But the bill just allows more class actions, those that ought to be nationally viewed and obviously national in scope, to be heard in the Federal courts. In-state class actions will continue right along in State courts and large national class actions will continue right along in the Federal courts. Consumers will still have their day in court. That is very important. Our bill does not take away their ability to sue as an individual or to sue as a class.

Another claim I heard yesterday was that our bill allows defendants to remove a case to Federal court at any time, even on the eve of a trial. Senator BREAUX says he is worried about this problem and his alternative would fix it. The claim is just plain wrong. Our bill does not change the current removal rule. Under that rule, a defendant can remove a case within 30 days of receiving notice that a case is removable. That is a good rule and one we do not need to change. I do not appreciate people saying we are changing it when we are not changing it. Our bill will function under that rule so a defendant can move only a case within 30 days of receiving a complaint or an amended complaint. To say a defendant under our bill can willy-nilly remove a case at any time or even while a jury is deliberating a case is just not true. That is not the case under the current rule. It is not the case with this bill which does not change the current rule.

There are some other potential problems with the proposal by my friend Senator BREAUX that he talked about yesterday, but I will be happy to look at any amendments he has available. One thing he said sticks out in my mind. Senator BREAUX suggested if a class of plaintiffs is all from Louisiana and a class is injured by an out-of-state meatpacker—that was the example he used—they should be able to sue the meatpacker in the State court. He describes a pure diversity case which under the Constitution belongs in the Federal court. He is proposing to turn constitutional diversity jurisdiction on its very head. That does not sound like a very good idea to me. His approach would allow the same rampant forum shopping we currently see in the system. Senator BREAUX's alternative would not fix any of these abuses and, in fact, his alternative plan makes things much worse.

Another misstatement that concerned me is this claim that the bill before the Senate is not the same bill that came out of committee; that the mass action language materialized out of thin air; that we are trying to pull the wool over our colleagues' eyes. Not true, again.

First, the Class Action Fairness Act—the bill before the Senate, the bill I am sponsoring—included a provision dealing with mass actions when it was first introduced. If my colleagues look at the transcript of the committee markup, they would find, and I think they would probably remember this, that Chairman HATCH of the Judiciary Committee agreed to strip the mass action provision in committee on the condition that Senator SPECTER and Senator FEINSTEIN worked on compromise language to be included in the

bill when it got to the Senate floor. It is in the RECORD. Nobody is pulling any wool over anybody's eyes.

Chairman HATCH, Senator SPECTER, and I collaboratively reworked the mass action language, had Senator FEINSTEIN look it over and sign off on it. In fact, we made modifications she requested and then we ran it by all of the original cosponsors of the Class Action Fairness Act. So the claim this bill is somehow unexpected and that we are hiding the ball is an unfair, untrue statement.

I also heard opponents of the bill claim this bill will hurt consumers, will hurt civil rights litigants, will hurt tobacco plaintiffs, and will hurt gun victims. The reality is these class actions will continue to be brought in both Federal and State court after this bill becomes law. I don't understand what the big fear is about the Federal courts deciding some of these cases. In fact, I remind my colleagues many of these cases against tobacco plaintiffs and gun manufacturers and civil rights violations have for years been routinely filed in the Federal courts of America. The claim that somehow taking a big national class action out of State court will hurt these folks just does not hold water.

Another claim we heard yesterday was Chief Justice Rehnquist opposes this bill. For months we have been hearing this claim, that the Chief Justice opposes the bill, and for months we have asked for proof of the claim. There is no proof. Why continue to quote him? Maybe this claim comes from a letter the Judicial Conference sent to the last Congress criticizing certain aspects of the older version of the bill. Justice Rehnquist is the de facto chair of the Judicial Conference. They must be making a gigantic leap to claim he had problems with parts of that old bill. The fact of the matter is, currently the Judicial Conference, which Chief Justice Rehnquist chairs, supports many things about this bill and has publicly thanked the Congress for taking up this issue. It offered a few ideas last spring for determining which cases should stay in the State courts and which ones should go to the Federal courts, and our Feinstein compromise addressed some of those very ideas suggested by the Judicial Conference Chief Justice Rehnquist chairs.

We are going to hear a lot about class actions during this debate. Many of them will be important cases. Two things I ask my colleagues to remember regarding a good, necessary class action: First, it is very possible our bill will not have any effect whatever on the case. Second, the only effect our bill might have is just to make the case eligible for Federal court where the case was filed. In fact, many of the cases discussed yesterday sounded to me as if they would either be unaffected by the bill or could be proceeded to in Federal court.

I know there are Members of this body who will not ever support this bill. They will never go up against the plaintiffs bar. They will never go up against those personal injury lawyers. They would say the present system, even though it gives lawyers millions of dollars and little old consumers a coupon for some product they will never want to buy, or for some part of an airplane ticket for some place they are never going to go, somehow is OK. I hope they will check their facts before they make statements against this bill even though they may never vote for it. They ought to be intellectually correct as they make their points.

I have taken this opportunity to set the record straight. That ought to give us the number of votes it takes to get beyond a Democrat filibuster and move forward on a bill that has passed the House three times in 6 years and ought to pass the Senate and ought to go to the President. We ought to have fairness in our court system. When consumers need to be protected, we ought to have consumers getting the benefit of winning the case, not their lawyer.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the distinguished chairman of the Finance Committee, a senior member of the Judiciary Committee, for his leadership on this legislation for quite a number of years. He is a champion of commonsense fairness in the legal system. That is all we are talking about.

I agree with Senator GRASSLEY. I cannot imagine why somebody thinks that Federal courts, which have been the champion of liberties for Americans for years and years, are somehow now not fit to handle complex interstate class action lawsuits. It just boggles the mind. It is not sound logic. That argument is driven by the objections being made by the plaintiff lawyers who are interested in these cases. They want to be able to file them where they choose. They want no erosion of their ability to do so, and they are calling in their friends on the other side of the aisle, and some of them are responding.

It was referred to earlier that these are big corporations that need to be dealt with and we ought to be able to sue them, presumably, in any county in America you choose to sue them in. I do not believe that is what was contemplated by our Founding Fathers.

Let me tell you about another major industry in this country, the industry that is driving the objections to this bill; the plaintiff trial lawyer industry. A recent Tillinghast—I believe is the name of it—study showed their income last year was $37 billion. The income of the ''Trial Lawyers, Inc.'' is larger than that of Microsoft, Coca-Cola, and other companies of that size. It is a huge industry. They contribute aggressively to political campaigns, and they promote their agenda aggressively. It is a free country, and they have every right to do so. But I would just suggest that those who would argue that the only wonderful people in this deal are the plaintiff lawsuits may not be so correct.

Another study has shown 2 percent of the gross domestic product of this country goes to litigation costs. That is double what the other countries in the industrialized world are paying for litigation costs, and it is an extraordinary figure. It is a figure that is paid for not by just big corporations, it is paid for by every single American when they take out insurance.

I wish it were not so. If someone makes an error in America today, and you sue them, and then you seek punitive damages to punish them, the unfortunate reality is, probably they have insurance or the case would not have even gone forward. The lawyer would not proceed, probably, if they did not have money to pay and did not have insurance. They have insurance, so the punitive damage verdict gets rendered, and the insurance company pays it. What does the insurance company do? They raise the rates on everybody who is paying premiums. Innocent people are paying the penalty imposed by the litigation.

So we really need to think about how this system is working. I want it to work better. This is a modest step. As I noted earlier, the Constitution contemplates that lawsuits between people from two different States would be in Federal court. That is the diversity clause in the Constitution which has been the way things work for a long time. But the way things are working now, if you can name one defendant to be an in-State defendant, then in many instances you can make the case stay in State court. This process is allows a plaintiff to essentially pick the forum they want to pick.

If you are suing McDonald's for a problem in their entire system that affects people all over America, then that case ought to be in Federal court, unless you are located in the State where McDonald's is headquartered. That is what I think clearly was contemplated by the Founders. But by using the device of naming in-State plaintiffs for suing a defendant in the state he does business in, plaintiff lawyers have been able to break the diversity and keep it in State court.

We want people who have been injured to be compensated, and we want to make sure they are adequately compensated and that their compensation is legitimate and fair, and that the attorneys get paid a legitimate fee, and not get a huge fee and little or no compensation to the victims. The ugly truth is, in a lot of these cases, the corporations really just want the lawsuit to go away and have to take the plaintiff lawyer's word for what the plaintiff class wants in a settlement agreement. If the plaintiffs' lawyer says his clients—many of whom, virtually all of whom, he may never have met—would accept a coupon for a Blockbuster video, as long as the defendant pays the plaintiff lawyer's fees totaling $10 million, the defendant may be willing to pay that to get rid of the lawsuit.

So the clients get paid little and the attorney gets paid a lot. There is a conflict of interest and a tension there for people who are sensitive to it. We are seeing that in these cases. That is what Senator GRASSLEY was talking about. We are seeing that as a pattern. This legislation will help deal with that problem, help bring more integrity to the system, allow the courts to monitor it more closely, and ensure more fairness for the victims of wrongdoing.

Don't misunderstand me, class actions can be an effective and legitimate tool. Some people are so frustrated by the abuses that they just want to attack all class actions. That is not what we are doing with this bill. Class actions are effective tools for a large number of people who may have been wronged by a single defendant or by defendants acting in concert. This can happen in a bank. Banks have been known to overcharge people. For example, a bank does not pay proper interest on an escrow account, and they owe each depositor $2 in interest. But there are 1 million depositors, and it has been going on for 5 years. The calculations get worked out. It is appropriate that those people get the interest they are entitled to and often a class action is the appropriate way to get this done. They ought to be paid fully what the law says you ought to be paid on the escrow account. The question is, however, are those plaintiffs always getting the money, and are these cases being handled in a way that is fair and just? How it works is what we are talking about. Certainly, 100,000 lawsuits—and they can be brought that way—each brought individually for a $2 misappropriation in an escrow account is not an efficient way for lawsuits to be settled. That is why we allow them all to be brought in one court. Then all plaintiffs are bound by the result as well as the defendant.

Too often, in recent years, however, these lawsuits have become a vehicle by which some trial lawyers are cashing in at the expense of the plaintiff class. The most troublesome aspect is that in many of these class actions the lawyer does not even know the clients, and in some cases does not even have a client. In these situations a lawyer first discovers a potential claim he or she thinks is a good one, and then runs around and finds a client to be the named client as a vehicle for the lawsuit. The end result is often not justice for the plaintiffs, and enrichment for the attorney. I know of a case in which the client—the named plaintiff—in the case died, and the lawsuit went on with no real party there for months before the attorney discovered his client had died. The attorneys were running the lawsuit, proceeding as they chose, with so little communication with their supposed client that they did not even know the person had died.

Not always. This is not always the case. A lot of these lawsuits are handled fairly and objectively, but we are seeing abuses there on a regular basis.

For some cases they have not even been able to show any damages, yet the lawyers have still received huge amounts of money. For example, the Toshiba case. In this case, a class action suit was filed in Texas. It complained of an entirely theoretical defect in the ''floppy disk controllers'' of Toshiba laptops. There were no allegations that the asserted defect had resulted in injury to any user, and not one customer had ever reported a problem attributable to the defect. Facing potential liability of $10 billion, Toshiba decided they needed to settle this claim. They were willing to pay. The class members received as their payment between $200 and $400 off any future purchases of Toshiba products. In other words, they got a settlement—a discount on future purchases of a Toshiba product—only if they bought products from the defendant again in the future. The two named plaintiffs, the ones who were working with the attorneys, presumably, got $25,000, and the plaintiffs' attorneys received $147 million. That is a lot of money. The fact that most class members only benefitted from the lawsuit if did business with the defendant in the future is not good. It seems to me the company was wanting the lawsuit to be over, they were willing to pay the lawyers whatever fee they asked for, and give some sort of token settlement to the class members, and get out of this thing, just to make the suit go away, even though no real damages had happened to the class members as of that date.

Lawyers are supposed to represent real clients who have been truly harmed. They are ethically bound to represent the clients' interests foremost, far above their own interests.

Class action lawsuits are designed to be available when lawyers realize that an entire class of people have been harmed in the same way that his client has been harmed. However, class actions should not become a feeding trough for attorneys. Class actions should not be a situation where good advocates figure out a way, by adding unrelated defendants, to file actions in friendly circuits or to use other methods to utterly maximize the benefit from their side of the litigation, while ignoring the fairness overall.

I respect lawyers. I believe in them. I have litigated, many cases. I believe lawyers should maximize the ability to protect their clients. In my comments about some of these lawyers that say they are protecting their client's interests but are really protecting their own pockets, I mean to be critical. Some of the lawyers, in fact, deserve no real criticism because they are simply choose to file the lawsuit in the forum most favorable to their client, and they are not supposed to look at whether that forum is fair to the defendant or not. You have to admire lawyers that are genuinely seeking to protect their client's best interests.

But we must, as a legislative body, monitor these cases. We must, as a legislative body, work to make sure that fairness is occurring in our courts.

Let me cite the Bank of Boston case filed in my State of Alabama. I was attorney general of Alabama during part of this time and I heard about some of these complaints. It is a good example of the class action system and how it is broken.

In this case a class action was filed by a Chicago attorney in the circuit court, the county court of Mobile, AL. A Chicago attorney looked all over the country, and decided to file the lawsuit in Mobile. The case alleged that the Bank of Boston, MA, did not promptly post interest to the escrow accounts of its members. The settlement that was agreed to limited the maximum recovery for each individual class member to $9 each. However the class action attorneys received over $8 million in legal fees, an amount approved by the State court. It is shocking that the legal fees the class action attorneys received, were debited from the plaintiff class' bank accounts, averaging 5.3 percent of the balance in each account. Many of the bank members did not even know they were members of the plaintiff class, did not even know that attorneys were representing them, and most of all, had no idea that money would come out of their accounts to pay those attorneys. Imagine not even knowing you were involved in a class action until you realize that money has been taken out of your bank account to pay their legal fees.

What is even worse is that for a number of the accounts, the debit to the account exceeded the credit they obtained from the settlement, meaning that after the settlement, more money came out of their account than went back in.

Dexter Kamowitz of Maine—a plaintiff in Maine that is being bound by a county judge in Alabama—was one of those plaintiffs. He did not initiate the class action against the Bank of Boston. However, he received a credit of $2.19 to his account after the settlement. At the same time, the class action attorney debited Mr. Kamowitz's account for $91.33 in legal fees, producing a net loss of $89.14. Such results, as might be expected, produced outrage from class members in other States.

Judge Frank Easterbrook, reviewing the case as a Federal judge on the Seventh Circuit Court of Appeals asked: What right does Alabama have to instruct financial institutions [headquartered] in Florida to debit the accounts of citizens in Maine and other States?

I do believe that we need to be careful about expanding Federal jurisdiction. We don't want to do this willy-nilly. But we also need to be careful to ensure that State courts cannot unfairly include class members from all over the country and bind them by the verdict they render.

Federal jurisdiction is currently allowed in cases where there is a de minimis interstate commerce nexus. We

know that from civil rights cases and plaintiffs cases and civil cases. If there is a Federal nexus, you can file it in certain cases in Federal court. I believe it is certainly appropriate, when we are dealing with a national corporation, dealing with clients in every State in America.

The bill offered by Senators GRASSLEY and KOHL would help eliminate some of these class action abuses. We have talked about class action problems for a very long time. I believe it is time to stop talking and get moving and pass a bill that will help class action plaintiffs be treated fairly in this entire process. I hope we can have a healthy debate and move this legislation that reforms class action forward.

I am also pleased to see, as I conclude these remarks, the distinguished chairman of the Senate Judiciary Committee, Senator ORRIN HATCH. He has wrestled with the class actions issues from the beginning. As a skilled lawyer himself, he understands the issues ably. He is able to discuss them in a very intelligent way. He understands the history of this entire proceeding. It is a pleasure for me to serve with him on the Judiciary Committee. I know at this time he would like to share some remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am sorry to keep the body a little bit later, but I do think we need to make some points that really need to be made. We should be debating the Class Action Fairness Act of 2003 rather than squandering away the Senate's time debating a motion to proceed to the bill. That has become typical around here. Anything that can delay, anything that can make it miserable, anything that can make it difficult to pass legislation or even consider legislation, we are finding the other side is doing to us.

Yesterday, my colleague from Vermont, the ranking member of the Judiciary Committee, observed accurately that the days remaining in this session are numbered and that floor time is indeed precious. But what puzzles me is if there is such a premium for time, then why in the world are we faced with a Democrat filibuster on the motion to proceed to a bill? Usually, if you are going to filibuster, you filibuster the bill. So we all know what is going on here.

From what I know, based on the remarks yesterday from the ranking member and others, I understand that there is an objection to proceeding to S. 1751 because it has been characterized by some as ''special interest legislation.'' What ''special interest'' are we talking about? Are we talking about the ''special interest'' of millions of consumers throughout the country who are affected every day by class action abuses, or are we talking about the ''special interest'' of the everyday American worker who stands to lose because his or her employer can't increase wages or offer better health benefits because of the commercial uncertainties created by uncontrolled class action litigation, or are we talking about the ''special interest'' of the general American public that is losing faith in the American civil justice system because of the outrageous class action coupon settlements that only benefit the attorneys?

On this whole special interest point, I would like to direct your attention to a recent poll showing that the overwhelming majority of Americans believe that class action lawsuits benefit lawyers at the expense of their clients.

Look at this chart. ''Opinions on class action lawsuits; who benefits most from class action lawsuits.'' Lawyers for the plaintiffs, the public says—47 percent believe the lawyers benefit the most. They are right, especially in these frivolous suits we have been referring to. Buyers of products, 5 percent; companies being sued, 7 percent; 9 percent of the American people think the plaintiffs benefit the most from class action lawsuits—the ones they are bringing the suits for. Only 9 percent of the American public think the injured parties, the so-called victims, are the ones who benefit; 12 percent don't know; 20 percent say the lawyers for companies. So of the total opinion of the American people in a poll conducted, with an error margin of plus or minus 3.5 percentage points, a total 67 percent of the American people believe the lawyers are the ones who benefit from these class action suits; 67 percent believe class action lawsuits are a virtual bonanza for lawyers. The public is not too dumb; they are right.

In stark contrast, the poll shows only 9 percent of Americans believe the class action lawsuits benefit the victims or the plaintiffs themselves. When the public perception of class action lawsuits in our civil justice system is so negatively skewed, I find it difficult to say with a straight face this bill somehow advances ''a special interest.''

Perhaps the ''special interest'' we are really talking about is that belonging to one Hilda Bankston. Who is Hilda Bankston? This is Hilda in the photo. A beautiful woman, a decent person. I can tell you with certainty she is not a tobacco company. She is not a gun manufacturer or somebody who pollutes the environment. Hilda Bankston and her husband Mitch owned Bankston Drugstore in Fayette, MS, a small local pharmacy where Mitch worked as a pharmacist. The Bankstons were dragged into hundreds of lawsuits filed by class action attorneys in the State of Mississippi by virtue of owning the only drugstore in Jefferson County. Their small business became a prime target for forum-shopping class action attorneys in pharmaceutical cases.

The Bankstons' nightmare began in 1999 when Bankston Drugstore was named a defendant in the fen-phen diet drug class action lawsuit simply for filling a prescription written by a doctor—something they were supposed to do. Since then, plaintiffs lawyers have filed hundreds of pharmaceutical lawsuits against Bankston Drugstore. Every time a big drug maker was sued, even if the company was located in New York, or California, the plaintiffs' lawyers added Hilda Bankston and her husband as defendants—this hard-working owner of a single drugstore—just because she sold that drug from her neighborhood drugstore, which was her obligation to do.

Even though Mrs. Bankston no longer owns the drugstore, she continues to be named a defendant in these lawsuits today and is buried under a mountain of discovery requests because of the litigation. On a more personal level, Mrs. Bankston describes to us the toll this ordeal has taken on her both personally and professionally. She testified that, ''no small business should have to endure the nightmares I have experienced. . . . I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it.''

Mrs. Bankston also suffered the loss of her husband when, within three weeks of being named as a defendant in the fen-phen case, her husband died of a heart attack. It is stories like Mrs. Bankston's—an every-day citizen just trying to fulfill the American dream—that makes this bill so compelling. I think to characterize this bill as appeasing ''special interests'' is not only disingenuous but it ignores the extensive mountain of evidence showing otherwise. It is pure, unmitigated bunk and they know it.

I also understand the ranking member expressed surprise and concern over the lone difference between S. 274 as reported out of the committee and the rule XIV version of the bill, S. 1751, that we are now trying to move forward. To set the record straight, we are simply invoking Senate rule XIV, which is procedurally proper, to simply accommodate the revised mass actions provision the committee had removed from the bill during markup on the condition that it would be modified and replaced in the bill before floor consideration. That is what we agreed to do. That is all we did. The rule XIV version of the bill, which is numbered S. 1751, is the identical bill we voted favorably out of committee, except for the return of the revised mass actions provision the members on the Judiciary Committee knew or should have known would be restored into the bill before floor consideration.

Just on Friday, the majority leader asked unanimous consent to bring up S. 274, substituting with the text of what is now S. 1751. There was an objection from the other side of the aisle which forced the majority leader to bring up S. 1751 under rule XIV. To now hear we are somehow not acting in

good faith is, at best, a misunderstanding and at worst a deliberate attempt to mislead. You make the decision, you make the judgment on that. I know what I think.

By way of background, I want to explain what happened with this provision. When the original bill, S. 274, was marked up during committee last April, the committee members agreed to an amendment offered by Senators FEINSTEIN and SPECTER striking two provisions from the bill only with the understanding that the language would be modified and replaced before floor consideration. The first provision defined private State attorneys general actions as class actions within the meaning of the bill. These are statutory actions a private citizen can bring on behalf of the general public. My colleague from California, Senator FEINSTEIN, expressed specific concern over this provision because she believed it would interfere with an existing California statute permitting such representative actions. This provision has remained out of the bill.

It is the second provision that necessitated the rule XIV alternative. This second provision is what we commonly refer to now as the mass actions provision. A mass action is a civil action seeking to try the claims en masse of all plaintiffs and defendants in a single trial, but pursued without the procedural due process prerequisites for litigating such a matter as a class action. Mass actions are used heavily in certain States such as West Virginia and have been used to unfairly consolidate for trial diverse claims of as many as 8,000 plaintiffs from over 35 States against over 250 defendants. These actions are especially problematic because they proceed without satisfying any of the standard class action prerequisites, such as commonality and typicality of claims.

Although the original bill contained a provision that defined mass actions to qualify as class actions, my colleague Senator SPECTER raised a specific concern over the scope of the provision and moved it be stricken. Because the committee didn't have a meaningful opportunity to evaluate the Senator's concerns before markup, I, as chairman, agreed to strike this provision, but only with the understanding that we would modify the provision and replace it before the bill reached the floor, which is exactly what we did.

After the extensive post-markup negotiations and other discussions among my staff and the staff of Senators SPECTER, FEINSTEIN, KOHL, and GRASSLEY, we were able to reach consensus on a revised mass actions provision in early September.

Let me stress there are no surprises here on what we were going to do with the mass actions provision. Everybody who appeared that day in the Judiciary Committee markup was aware the bill sponsors would work with the sponsors of the amendment, Senators SPECTER and FEINSTEIN, to develop compromise language. Indeed, we called specific attention to this understanding in our committee report on S. 274, which has been widely and publicly available since last July.

As for using rule XIV, which is an effective rule in the Senate, a rule that can be legitimately used, and has been used in this case, we gave advance notice to our Democratic counterparts, Senators FEINSTEIN and KOHL, over a month ago that there was a possibility we would have to use this procedural device to ensure the operative text reflected the understanding when the bill was reported out of committee.

I also understand from my staff that these offices then informed, among others, the ranking member on our committee about the potential use of the rule when we introduced S. 1751 last week. Simply put, we were open and above board. We didn't have to be, but we were. We didn't have to be because the rule is the rule. We are entitled to use it. The Democrats have used it time after time, as have Republicans. There are no surprises here. I was the most shocked to find claims that something somehow or another was askew and not properly handled. Again, that is pure bunk, and everybody knows it. But I suppose when we have television in the Senate, we are going to see that type of argument made from time to time, even though it doesn't hold water and can't stand the light of day.

We provided advance notice and opportunity to review the text to our Democratic sponsors and the sponsors of the amendment so they could all verify that no other changes were made. That is good faith, in my view. We gave advance notice of our intended use of this device for a provision we made clear to everyone we intended to modify. So I am particularly baffled as to why the ranking member of our committee is calling this a mystery. This is no mystery. We did exactly what we said we would do when we marked up this bill in committee, and the bill was voted out with a partisan vote of 12 to 7, but, of course, the distinguished Senator from Vermont didn't vote for the bill in committee. That may be what is behind these types of comments. He never has been for this bill.

I suspect all is fair in love and war. This being war, they can say whatever they want on the floor of the Senate, even though it is totally wrong.

I believe rule XIV is the most appropriate way of handling the unique set of circumstances leading to the revision of the class action provisions, especially in light of the limited number of days remaining in this session. Given the number of pressing appropriations issues facing the Senate in the coming months, I think it makes little sense to waste valuable floor time debating as a separate amendment a provision that the key Republican and Democratic members have already worked out in good faith. It is even more absurd to be forced to debate a motion to proceed to this bill.

There is only one reason for that. That is to delay, delay, delay, and hopefully bollix up everything at the end of this session so nothing good gets done. I ask my colleagues to support the motion to proceed to S. 1751, the rule XIV version, the Class Action Fairness Act of 2003.

A Senator got on the floor and made a number of what I thought were outrageous comments as well pertaining to this being a special interest piece of legislation. This is a people's bill. The biggest losers under the current system are the people. Lawyers sue companies and negotiate settlements in which they get all the money. So consumers get ripped off twice: Their lawyers rip them off by taking the settlement money that is supposed to go to them, and then they have to pay for the payoff to the lawyers at higher prices.

How about tax cuts for the wealthy? That was an argument made yesterday. The class action bill would not protect the wealthy. It is the opponents of the bill who are trying to protect the wealthy—the wealthy trial lawyers in this case. Although not all class action lawyers are to be criticized, some actually are good lawyers who actually do what is right within the law in fair class actions that really are brought to help people. We are talking about the ones who need to be reformed. Some of these wealthy lawyers who need reform amass their riches by ripping off consumers in bad settlements. We have shown that throughout this debate.

Senators raised the issue of defective products, protecting gun manufacturers. The only successful class action against gun manufacturers, the only case in which any relief was awarded was in Federal court. That is what we are trying to do here, and they act as if the Federal courts are not capable of handling these cases? This doesn't stop legitimate class actions. It just says there is no longer going to be these phony forum-shopped cases in corrupt jurisdictions where there are corrupt judges and where jurors don't realize they are saddling all of America with these outrageous verdicts that pay off the attorneys but do very little for consumers or for the plaintiffs who are supposedly the real victims.

We heard the argument yesterday that Justice Rehnquist is opposed to this bill. Opponents keep saying Chief Justice Rehnquist opposes the bill, but whenever we ask for a citation to that opposition, we get absolutely nothing. They talk about the Judicial Conference letters, but those letters do not express opposition to the bill that was reported out of committee.

How about forum shopping? Defendants cannot forum shop. The plaintiff always gets to choose where to file the lawsuit. If they file in State court, they can often choose precisely the judge who will hear the case. All the defendant can do is remove to Federal

court where the case will be heard by a randomly selected judge, not a stacked, forum-shopped deal with a corrupt judge or maybe not even a corrupt judge, but one who just believes the plaintiffs should win no matter what the facts are. Again, I think that is corruption. It is nonsense to say defendants can forum shop or that forum shopping is the purpose of this bill. That is nonsense. Yet that is what one of our distinguished Senators was saying yesterday.

How about the scalpel argument? Any suggestion that this class action problem is concentrated in a handful of State courts is wrong. It is a problem in many places, and if you fix it in one place, the party moves to some other court in some other town.

How about Madison County, IL, by the way? We had the two Senators from Illinois speak: One just found Madison County to be the most circumspect county in the world. The other basically called the judges and the lawyers, many of whom never practiced law in Madison County, people who were abusing the system. He even implied some of them were corrupt.

The figures in Madison County do indicate a problem. Look at the dramatic increase in the number of class actions, virtually all of which were nationwide class actions over a short period, an increase from 2 in 1998 up to over 75 last year. Why are all these people, all these attorneys from other States flocking to the middle of nowhere to file lawsuits in which none of the claimants and none of the defendants are from the area? Do we really need to ask why? We know why. Because of corruption—corrupt judges, or should we say misconceived judges, to be nice about it, or judges who always find for the plaintiffs or steer everything in favor of the plaintiffs or always find class actions to exist when they really shouldn't. That is corruption.

We hear statistics indicating half of the class actions have been certified, but what the distinguished Senator from Illinois should have said was ''certified so far.''

What I find curious is that the distinguished Senator from Illinois didn't give the number of class actions that were denied. What happens in Madison County is that the case is filed, and when the lawyer decides he wants to put the squeeze on the defendant to settle, he starts moving toward getting a class certified, but sometimes it takes a while.

By the way, just moving to get a class certified in Madison County where it is almost granted at will is enough to scare any corporation because once that happens, that corporation is in real trouble, and so are that corporation's employees who are likely to lose their jobs, their income, their health care, and their pensions if the company gets thrown into bankruptcy.

We have heard allegations that under the class action bill, a defendant can remove a case at any time, even on the eve of trial. The current removal statute, 28 USC section 1446(b), provides that a case must be removed to Federal court ''within 30 days after the defendant's receipt . . . of a copy of the [complaint] in the action.''

This class action bill would not change that rule. The allegation that a class action bill would allow a case to be removed to Federal court at any time is ridiculous. But that is what we are getting used to from those who argue against this issue.

Now why do they do that? Why can they not see these simple, easy to see facts of life? Well, I hate to say it but I think it comes down to the fact these trial lawyers are the biggest hard money funders of many of these people who will vote against this bill. They get whatever they pay for. They can rely on their friends in the Congress to ignore what really should be ethical and good changes in the law and to stand in the way of those changes. That is what is happening here.

That is taking the sugar coat off, but that is what is happening. The fact is that we have people in this body who will vote for the trial lawyers no matter how wrong they may be.

Now, when I say trial lawyers, I am speaking about this select group of trial lawyers who really are giving the legal profession a bad name, who are in it for the money so they can support their own political candidates, live in high style, be influential in their respective communities, most all of which are outside of Madison County, by the way, and who can just about afford to do anything they want to do and are used to doing anything they want to do.

I happen to know a lot of good trial lawyers who are honest and decent, who really fight hard for their plaintiffs, for people who were wronged, for victims, and who are disgusted with these trial lawyers who are taking procedural advantage, monetary advantage, of forum shopping in this country. It is coming to the point where even the American Trial Lawyers Association is starting to get split on these types of issues because they realize that some of these people are giving trial lawyers who are good, honest, decent, hard-working trial lawyers a bad name, because they are getting lumped into the term ''trial lawyers'' all the time with these people who are bad actors, who are in it for the money.

Now, they paint a very big picture about how they are in it for the little consumers, but look at the coupon settlements. Look at the amount of money they are getting in fees. Look at the way the consumers have been ripped off. Look at the cost to society. Look at the companies that are in shambles and can no longer employ people. Look at the unfairness of forum shopping. Look at the unfairness of corruption.

I commend trial lawyers who are honest and decent and who bring decent class actions. They know they can win in Federal court just as much as they can win in State court, but they also know they cannot forum shop as well in Federal courts.

Now, one can still forum shop but not nearly like they can in a number of jurisdictions in this country in certain counties where, as I say, judges are owned lock, stock, and barrel by various political interests.

Well, I have kept us long enough, but this is an important bill and to filibuster even the motion to proceed to the bill, at this late date, leads only to one conclusion and that is unfairness, delay, win at any cost, fear to debate this bill straight up and down, fear to have votes straight up and down. The reason they are afraid is because they know if Senators were permitted to vote their consciences this bill would pass overwhelmingly, if it were not for the untold influence of big class action money.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. If the Senator will yield, based on his experience, it is indeed an unusual thing that we have a filibuster of a motion to proceed to a bill that has this kind of bipartisan support. Is it not?

Mr. HATCH. No question that we usually do not have a filibuster on a motion to proceed, because if any of my colleagues are going to filibuster, they should filibuster the bill. By filibustering the motion to proceed, they can delay a vote on that for 3 days. Then they can filibuster the bill and delay that for another 3 days, which eats up 6 days at a crucial time of the year when we are trying to do all of the appropriations bills, a prescription drug benefit and Medicare reform, asbestos reform, judges, a whole raft of other very important issues, including the Energy bill. So by eating up all this time it makes it difficult to pass any of these matters, and it makes one wonder what in the world is behind all of this.

Mr. SESSIONS. I think it is particularly telling, I say to the Senator, because this is not like the circumstances we had when the Democrats were in the majority and Senator DASCHLE called up the entire Agriculture bill, or the entire Energy bill, which were huge bills, under rule XIV, that had not been addressed in the committee. This bill had hearings in committee and we voted for it 12 to 7. There was only one basic change to the bill.

Mr. HATCH. It was a bipartisan supported bill. Democrats and Republicans support this bill. It will pass if Senators are permitted to vote their consciences and are permitted to vote up or down without the phony delays of a filibuster, especially a filibuster on the motion to proceed.

By the way, rule XIV is an effective rule of the Senate. Both sides have

used that in order to expedite consideration of matters and everybody understands that, and everybody can then debate.

Mr. SESSIONS. I just recall when Senator DASCHLE was the majority leader, he brought up huge legislation outside of the committee that could not have been passed in the committee. We were forced to debate that legislation on the floor under rule XIV. To say there is some procedural problem here, when Senator HATCH has managed the bill through the committee process, when we have debated the bill, and when we have voted on the bill in committee, it came out 12 to 7, is baffling. As far as rule XIV is concerned, everybody was given notice of what would happen, this is just pure obstructionism. This is just an excuse to delay, delay, obstruct, obstruct.

We are coming to the end of this legislative session. We have a lot of things to do. One of the things we absolutely ought to do is to move this bipartisan bill to fix class action litigation in America. It is the right thing to do. It has the overwhelming majority support of the Members of this body. Yes, it has the opposition of a small but powerful little group of trial lawyers who put a lot of money in the political campaigns, but it is the right thing to do, and we ought to move forward with it.

I think there is every reason for those who believe in improving the legal system to be upset at the obstructionism that we are facing by a majority leader who has approved this. I think if we had some leadership on the other side by Senator DASCHLE, we could move this bill. To lay back is to allow the trial lawyers to control this matter.

There are a lot of reasons why we ought not have a single state judge in Madison County, as the Senator said, trying cases that have impact all over America. That is not good. A Federal court, with a Federal judge, with a quality group of law clerks, a fine staff, and by far a smaller caseload than most State judges have—I would say on the average, in my experience, that the State judges would carry maybe 10 times as many cases on their docket as a Federal judge has on the Federal court docket. The Federal judges give more attention to the cases and they have more ability to focus on a case. There is the ability to issue subpoenas nationwide and make things happen in ways that are more difficult in State court. So a major class action involving millions of dollars and thousands of plaintiffs from different states ought to be tried in Federal court when there is a majority of the people involved who are out of State.

This reform fixes some of the problems associated with class actions. It sets up legislation that gives special scrutiny for those abused coupon-related settlements, where the victims get coupons and lawyers get big fees.

It guarantees that notifications to class Members to be in plain English. It scrutinizes against a negative awards, where plaintiffs who may not have even known they were plaintiffs end up having to pay attorney's fees in a case they never authorized to go forward. It provides protection against unwarranted higher awards for certain class members, just because they are in a certain area of the country. And there are prohibitions on the payment of bounties.

It makes it more difficult, when you are facing a fair judge who you believe will rule on the law and give you a fair shake, not in a county that has a reputation of just hammering defendants in favor of the attorneys who file the cases. That allows defendants to litigate with integrity, and not feel they must just pay up, almost in the form of blackmail, to get the matter away so they can go on about their business. This is not a fair way to do business.

This bill has a lot of good things in it that will make this area of the law, class actions, better, more fair, and more objective.

I thank the chair and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO BRECK WALL

Mr. REID. Mr. President, I rise today to express my congratulations and best wishes to my longtime friend and fellow Nevadan, Mr. Breck Wall.

Born in Jacksonville, FL in 1934, Mr. Wall has lived an interesting and exciting life. As an entertainer, he has known many talented and famous people in the world of show business. He has also crossed paths with well-known people in other walks of life. In the early 60s, he performed in the Dallas nightclub owned by Jack Ruby, the man who shot Lee Harvey Oswald.

The Las Vegas Sun has called Breck ''one of the most durable performers in Las Vegas,'' and that is no exaggeration. This year he is celebrating the 45th anniversary of a show called ''Bottoms Up,'' which he created in 1959 at the old Adolphus Hotel in Dallas.

Breck based this show upon slapstick vaudeville comedy, which explains its long-running appeal. The show is very Las Vegas, therefore, is enjoyed all over America.

After producing ''Bottoms Up'' in Dallas and Houston for several years, Breck brought the show to Las Vegas in 1964 . . . and he has never left.

The show is now a Las Vegas institution. It has played at many of the finest hotels in town, including Ceasar's Palace and the old International Hotel where Elvis used to perform—now the Las Vegas Hilton. It is currently enjoying a run of several years at the Flamingo.

Breck has done more than 15,000 performances of this show, but he never gets tired of it . . . and neither do the audiences. The secrets of his longevity are a strong work ethic, and the kind of good nature that brings a smile and laughter to everyone who meets him.

I first met Breck in 1977 when I was chairman of the Nevada Gaming Commission. We were introduced by some mutual friends at an event, and we exchanged a few jokes. I could immediately sense Breck's warmth and his sharp wit.

We really became good friends a few years later, when I ran for Congress and Breck helped me with my campaign. Breck has produced shows for my campaign that have been exciting, entertaining and fun.

Helping other is typical of Breck Wall. Despite the demands of his travels and his work, he always finds time to contribute something to his community.

Most recently, he participated in the Golden Rainbow's 17th annual ''Ribbon of Life'' AIDS benefit at the Paris hotel in Las Vegas. This summer show helped raise more than a quarter of a million dollars for an organization dedicated to helping the men, women, and children living with HIV and AIDS.

I ask all my colleagues to join me in sending our good wishes to Mr. Breck Wall as he celebrates the 45th anniversary of ''Bottoms Up,'' a Las Vegas entertainment tradition.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a horrific crime that occurred in West Hollywood, CA. After hugging a male friend outside of his home in September 2002, actor Treve Brody was beaten with a baseball bat. Mr. Brody was in a coma, and spent 10 weeks in the hospital after being struck in the back of his head. He suffered memory loss and impaired vision that prevents him from reading or driving.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement