

the notice of my colleagues. This is an important step in the recognition and movement toward human rights in Iran. We need to celebrate it.

I yield the floor.

CLASS ACTION FAIRNESS ACT

Mr. DORGAN. Mr. President, I wanted to echo some comments made by my colleague from Connecticut, Senator DODD, on the issue of class action reform.

I believe that we need to do a class action reform bill. Some of us who voted against cloture this afternoon believe that there have been abuses in the area of class action litigation, and that reform is needed.

But class action reform has to be sensible and thoughtful, and it needs to be resolved through negotiation. I am hopeful that this will be accomplished. The minority leader indicated he is willing to negotiate. The majority leader indicated he is willing to negotiate on these issues. It is my hope that these negotiations will be fruitful.

There is no question that there have been instances of abusive forum shopping. There are cases being filed in state court in places like Madison County, Illinois, where there are thousands of plaintiffs, but only a handful are from that area. It's pretty clear to me that cases like that, when brought on behalf of nationwide classes, should be heard in federal court.

I have a long list of such cases here, which on their face involve abuses of the class action mechanism. I think I shall not go through them all today. Suffice it to say that forum shopping is a problem, and we need reforms in this area.

I also believe that there is a problem with coupon settlements. It makes no sense to have settlements where plaintiffs get meaningless coupons that are never redeemed. That, too, in my judgment, can and should be changed.

I have decided to cosponsor the class action reform proposal described by Senator JOHN BREAUX, because I think it takes care of the problems of forum shopping and also coupon settlements. I think it is superior to the bill that was the subject of today's cloture vote, because it will more effectively address the issues of coupon settlements and forum shopping.

With respect to coupon settlements, the BreauX bill is much tougher than the Grassley-Hatch bill, which was the subject of today's cloture vote. The Grassley-Hatch bill simply says that the courts should review coupon settlements for fairness. By contrast, the proposal that is offered by Senator BREAUX, that I am cosponsoring, actually ties legal fees to the rates at which coupons are actually redeemed. So in a case where plaintiffs get meaningless coupons, the lawyers get paid accordingly. That is a much preferable provision, in my judgment, in reforming the class action area.

With respect to forum shopping, let me again point out that the proposal

offered by my colleague, Senator BREAUX, is preferable. It says if fewer than one-third of the plaintiffs are in a State, then it goes to Federal court. If more than two-thirds are in a State, it goes to State court. If it is in between the two, the Federal court shall make a judgment of where it is most appropriate.

The bill that was proposed to be brought to the floor today would have a very different mechanism. It would say that you could not bring a case in state court unless the defendant was a citizen of that state. So, for example, if 1,000 citizens of my State of North Dakota were cheated by a company in Houston, TX, they could not form a class and file an action in North Dakota under North Dakota law. They simply could not do that under the bill brought to the floor of the Senate.

That is not fair. That doesn't make any sense.

Now, I understand that forum shopping is a problem and we ought to deal with it. But there is a right way and a wrong way to deal with it. I think the BreauX approach is the right way. It is a thoughtful, balanced approach. It allows us to stop class action abuses, while at the same time preserving the rights of people to be able to access their own State courts in legitimate cases.

Again, I think it makes no sense to say to North Dakotans, it does not matter if there are two thousand of you who have been injured by an out-of-state company, you cannot access North Dakota State Courts and you cannot have the protection of North Dakota state law. Yet that is precisely what the bill that was the subject of today's vote would have said.

The proposal offered by my colleague, Senator BREAUX, strikes the right balance. It is the right approach. Cases that involve a lot of plaintiffs from around the country would go to federal court. But citizens of a particular state would still be able to band together if they were injured by an out-of-state defendant, and bring a lawsuit in their own state court.

I say to the majority leader, if you are interested in class action reform, then let's work out a solution to the very real problem of class action abuses—but let's do it without depriving the people of any one state of the right to access their state's court, in legitimate cases. I think we can strike that proper balance, and I hope we can do it soon. That is the reason I voted against the motion to proceed.

What we should avoid is a process in which the majority simply says: Here's where the wagon is heading. If you like it, jump on. If you don't like it, tough luck. Don't give us any advice along the way.

I am a conferee on the Energy bill, but I have not been invited to a conference. No Democrat in the Senate has been included in a conference on the Energy bill. In fact, we have been specifically excluded and prevented from

being a part of the conference. If that is the way legislation will be handled in the Congress, it will pervert the legislative process. In the case of the Energy Conference, nearly one-half of the Senate, 49 Members of a body of 100 persons, are being given no voice at the conference. We are told that the majority will make all the decisions.

We are told by the majority: Just let us bring the Energy bill to the floor and we will be fair. Just take our word for it.

Well, I hope and trust that we will follow a different path on the issue of class action reform. The BreauX proposal is a good one. I suggest we begin now seriously negotiating a balanced, responsible solution, that takes care of the problem of class action abuses.

Let me also say parenthetically that there is another issue, in addition to class action reform, that requires meaningful negotiations. That is the issue of asbestos litigation. That, too, is a real problem and we ought to deal with it. It, too, in my judgment, will require negotiation. All sides are going to have to want to do this and be willing to negotiate aggressively. You have a series of stakeholders involved and those stakeholders, in my judgment, need to get together, because the system is broken. We have people who are sick and dying who are not getting help. And we have a huge cloud of uncertainty hanging over the business community.

A solution is going to require, in my judgment, that all the stakeholders be part of the negotiation. Yes, labor is a very significant part of that. So, too, is the business community and others.

I know this is a complex issue, but I hope in the concluding days of this first session of the Congress we will see a breakthrough in negotiations, and solve this asbestos issue in a way that works for everyone.

I think they have been close on a number of occasions. My hope is it finally is completed.

THE 9/11 COMMISSION

Mr. DORGAN. Mr. President, I wish to comment on the 9/11 Commission. That is the commission which has been put together by Federal law and asked to look into what happened on 9/11 and get all of the information from everybody to find out what happened leading up to the attack on this country. What did we know? What did the CIA know? What did the FBI know? What did the FAA do during the attack? What happened? Only by knowing what happened can we prevent it from happening again. Were there dots that should have been connected but weren't? Did we have information that could have perhaps prevented that attack had certain people known of it or had been told of it? Are there deficiencies in some of these agencies? Did people drop the ball?

I do not know. But we put together a panel headed by former Governor

Keane of New Jersey. It is a distinguished panel. One of our former colleagues, Senator Cleland, is on that panel. It is called the 9/11 Commission.

I want to read a couple of statements. This statement was made October 10:

In connection with the commission's second interim report issued on September 23, 2003, we discuss the commission's ongoing effort to get prompt access to some key executive branch and White House documents that the commission needs to complete its work on time. Although we can report substantial progress, the commission is continuing to press for necessary access to some key items.

I don't understand why there would be problems in getting information from the CIA, or the FBI, or the White House, or the FAA. What on Earth is happening?

This is the Federal inquiry into what happened on 9/11 and how we can prevent it from ever happening again. I would think every Federal agency would cooperate fully and immediately. But that, regrettably, has not been the case. October 15, a statement by the 9/11 Commission:

Over the past two weeks, as a result of field interviews conducted by our staff, the commission learned of serious deficiencies in one agency's production of critical documents.

The agency in question happens to be the FAA. Now they indicate they are issuing subpoenas. In fact, they say this disturbing development at one agency has led the commission to reexamine its general policy of relying on document requests rather than subpoenas. They have voted to issue a subpoena to the FAA for documents which have already been requested.

I don't understand. We have a 9/11 Commission to investigate the tragedy that occurred as a result of the terrorist attack on this country. That commission has to issue subpoenas to Federal agencies to get cooperation. I would think every single Federal agency, starting with the White House, would open its records immediately to this commission so we can understand what happened.

I am not accusing anybody of anything, nor is the 9/11 Commission. We want to understand what happened. How did it happen? What clues might we have had? What kind of failing existed with respect to our intelligence that prevented us from knowing and, therefore, preventing these terrorist attacks? When I read this, I shake my head and think it is unbelievable that a commission created by this Congress, called the 9/11 Commission, to get to the bottom of what happened on 9/11, has to issue subpoenas to anybody, or has to send out progress reports to say, Well, we have made progress now in our efforts to gain access to key White House documents. The White House has agreed to brief all commissioners on another set of highly sensitive documents. We will seek prompt resolution of the remaining issues regarding access of these documents.

Why is there a problem? Why would not every agency in every part of this

Government provide this information at will and upon the request of the 9/11 Commission?

I hope we don't see these kinds of reports again. I hope the next report from this commission would tell us the President has requested every single agency to turn over every single document requested by the 9/11 Commission immediately. Let this commission do its work and finish its work, make a report to the Congress and to the American people about what happened on 9/11, about what information existed leading up to 9/11, and how we can learn from that to protect this country against future terrorist attacks.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, we have just concluded what for many of us was a tough vote. I simply want to express my thanks to the 58 other Democrats and Republicans who joined me—59 in all—in voting for the motion to proceed and to take up for debate and amendment legislation that would reform the way we handle class action lawsuits in this country.

I am disappointed with the vote, that we fell one vote short, but I am encouraged by some of the conversation that took place immediately following the vote by the leaders of both sides and a number of my colleagues, including Senator DODD and Senator LANDRIEU.

I sense there is a genuine willingness on the part of Democrats and Republicans and that one Independent not to give up on this issue. It is one that we need to address and we can address satisfactorily. My own belief is it is one we can address this year.

I have talked to any number of Senators on our side of the aisle who are prepared to offer what I think are constructive perfecting amendments that would make a good bill much better.

I hope what we will do in the days ahead is to reach across the aisle—Republicans to Democrats and Democrats to Republicans—to find a common ground that I think will exist with respect to many of these amendments and to then move forward together and, hopefully, to get to the end of the day when we can vote on a bill and not have to worry about the kind of partisan divide that in some cases characterized this vote and, frankly, characterizes too many votes we cast here.

I was approached by one of my colleagues following the vote who asked if we lost the war. I said: No, no, maybe today the battle was lost but not the war. There is a realization that the way we handle class action litigation in this country is broken. It can be fixed.

As we like to say in Delaware, "If it isn't perfect, make it better." This bill that came out of committee is not perfect. It can be made better. That is what we are going to do.

I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST— EXECUTIVE CALENDAR

Mr. INHOFE. Madam President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session in consideration of Calendar No. 405, Michael Leavitt, to be Administrator of the EPA; further, that there be then 2 hours for debate equally divided in the usual form. I further ask unanimous consent that following that debate the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; I further ask consent that following the vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Madam President, on behalf of colleagues on this side of the aisle, I am compelled to object, and I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. Madam President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I ask unanimous consent that I be permitted to speak for up to 3 minutes to make an announcement with reference to committee work in the Senate.

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

ENERGY CONFERENCE COMMITTEE MEETING

Mr. DOMENICI. I have an announcement on behalf of myself and Chairman BILLY TAUZIN from the House of Representatives. We have scheduled a conference meeting for Tuesday morning.