

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 want 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 BREAU, 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 Breau 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 BREAU, 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 BREAU, 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 Breau 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 BREAU, 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 Breau 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