

passed. Let's get the highway bill through. And let's keep doing the things we are doing. Let's make permanent the Bush tax cuts that increase particularly the low and middle class, the per-child tax credit, get rid of the marriage penalty, make sure we make permanent the expansion of the 10-percent bracket, do those things that put money in the pockets of moms and dads so when moms and dads spend that money, the economy grows.

If we do that, if we keep moving forward and we get some stuff done, and put the politicking aside, we put the election-year politics aside, and we put the doom and gloom and negativity aside, this country can be all that it is and all we know it to be: the greatest country in the world, the economically strongest country in the world.

But we have to keep moving in the right direction. We are committed to doing that. Let's stop the pessimism. Let's stop the gloom and doom. We have a job to do, and I hope we can work it in a bipartisan way, to finish the work we need to do.

With that, Mr. President, I yield the floor.

Mr. HATCH. Mr. 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. REID. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. REID. Mr. President, how much time, if any, remains in morning business?

The PRESIDING OFFICER. There is 1 minute 45 seconds.

Mr. REID. Mr. President, if my distinguished friend, the chairman of the Judiciary Committee, would yield that back on behalf of the Republicans, we could get to the bill.

Mr. HATCH. Mr. President, I would be happy to yield it back.

Excuse me, let me withhold that.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### CLASS ACTION FAIRNESS ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2062, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2062) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, we are on the Class Action Fairness Act of 2004.

Smart progrowth fiscal policy is helping lead job creation in the Nation, and I am optimistic we will continue to see the improvement we have seen over the last 6 months of last year. Economic reports show the economy is continuing to experience growth but not in a manner that would create an unsustainable boom/bust-type scenario. Indeed, employment growth has been positive for the 10th straight month with that report from June. In fact, 1.2 million jobs have been created since the 1st of the year and almost 1.5 million jobs since a year ago.

As we all know from recent reports, consumer confidence is high. Last Tuesday the conference board reported the largest monthly gain in consumer confidence in years. Confidence has not been this high in over 2 years.

In spite of all this positive economic growth and job creation, there are structural problems this body needs to address if we are to make sure our Nation remains competitive in the global economy. One of those critical areas is the bill we are considering today. The focus of that bill is class action reform. Over the last decade, class action lawsuits have grown exponentially. One recent survey found State court class action filings skyrocketed by 1,315 percent over the last 10 years.

The result of this glut of claims is to clog State courts, to waste taxpayer dollars, to inhibit the innovation and entrepreneurship that is so crucial to job creation in this country. Often all the purported victims ever get in this sordid process is a little coupon. That is one example. There are numerous examples we heard on the floor last night and yesterday. We have heard it in the past as we brought this to the floor.

In Alabama, the court approved a class action settlement against a bank on the grounds they overcharged their clients. The settlement granted \$8 million in fees to the plaintiffs' attorneys, but awarded only \$8.76 to each plaintiff. Worse, the settlement deducted up to \$100 from many of those plaintiffs' accounts to pay for the attorney fees, leaving some plaintiffs with over a \$90 dollar loss versus the \$8 million in fees to the plaintiffs' attorney. We have had numerous examples that have been brought to the floor. It is not only large business; it is small business as well.

Why do the small businesses get dragged into all of this? In order to avoid going to Federal court, the class action legal team in many cases will rope in a number of small local businesses as codefendants to get the case

decided in a favorable county or favorable State. Once that window during which the real class action target can remove the case to the Federal court closes, that unlucky mom-and-pop small business that happened to be in the wrong town at the wrong time is dropped from the case, but not until they have spent considerable money defending themselves.

These frivolous lawsuits are hurting the economy. They are hurting taxpayers. They are hurting the justice system, and they are hurting the practice of the law.

The Class Action Fairness Act of 2004 is a remedy to this problem. For the sake of our Nation's economy and faith in our system of justice, I do encourage my colleagues to act in a bipartisan nature and pass commonsense, meaningful class action reform.

As I mentioned this morning and yesterday, I want the debate to be fair and full on this bill. Over the last week a whole slew of unrelated, nongermane amendments have been brought forward. It has been written about. People have called the floor saying they want the opportunity to offer an amendment which has absolutely nothing to do with class action reform.

We only have about 33 legislative days left. We have the appropriations bills to do and a whole range of issues to address. That is why when we take up a bill such as class action, we need to stay on that particular bill and handle relevant amendments and debate them in a fair and timely way. Relevant amendments can improve the underlying bill. I want this full and fair debate to occur, to achieve this goal, and to have the appropriate management tool by which we can consider the relevant amendments. I will be offering a unanimous consent request at this time.

Mr. President, I ask unanimous consent that, with respect to the pending class action bill, there be five relevant amendments to be offered by each leader or his designee; provided further, that they be subject to relevant second-degree amendments. I further ask that, in addition to the relevant amendments, it be in order for each leader or his designee to offer an amendment related to minimum wage, again subject to relevant second degrees; provided further, that following the disposition of the amendments, the bill be read the third time and H.R. 1115, the House companion measure, then be discharged from the Judiciary Committee and the Senate proceed to its consideration, all after the enacting clause be stricken and the text of S. 2062, as amended, if amended, be inserted in lieu thereof; provided further, that the bill be read the third time, and the Senate then proceed to vote on passage of the bill, with no intervening action or debate.

Finally, I ask that the Senate then insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will object to this request.

We have only been on the bill now for a matter of a couple of minutes, literally. We just went to it this morning. The bill has only been laid down. This legislation has not been the subject of one hearing, one amendment in committee. There hasn't been any thoughtful, careful committee consideration on this legislation whatsoever.

I am surprised and very troubled by the unanimous consent request made by the majority leader. He knows the minority has been very open in expressing our interest in having a full debate about this legislation, indicating from the very beginning that we will have relevant and nonrelevant amendments. We have been the ones who have attempted to keep the majority on track with regard to committing to bringing the bill before the Senate at all.

As people may recall, there have been a number of occasions where the majority has chosen not to bring up the bill, even though that was the regular order, and it was at our insistence time and again that we bring this bill before the Senate because we made a commitment to a number of our colleagues, even though I don't particularly support the bill, and I will get into that in a moment.

We would be denying the right of every single Senator to offer amendments, in the truest tradition of the Senate, to say that now, even though this bill has not been the subject of any hearings, has not been the subject of a markup, even though this is the very first moment we have had an opportunity to amend the bill, we are already going to say to all Senators that you have to limit yourself to relevant amendments.

We have said from the beginning—in fact, I said it on the floor and at a news conference again yesterday—that it is not our intention to filibuster this legislation. It would be our intention to work with the majority to complete debate on this bill, with the understanding, of course, that we would have an opportunity to offer amendments.

This is not the way to get this legislation passed. In fact, I would argue that this is probably an absolute guarantee that it will never get passed, because we will never get cloture on a bill that denies Senators their right to offer amendments regardless of the subject matter. So I strongly object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, to clarify—because I know the unanimous consent request was long—what was objected to were five relevant amendments on our side, five relevant amendments on the other side, plus addressing the minimum wage issue on both sides, plus going to conference.

In light of that objection, I will modify the unanimous consent request to

allow for 10 relevant amendments on our side and 10 relevant amendments on the other side, again, in addition to the minimum wage issue.

Mr. DASCHLE. Mr. President, the distinguished majority leader knows that it is not the question of numbers that matters; it is the question of relevancy. He is already violating his own request by suggesting that we can do nonrelevant amendments on minimum wage. If we can do that, why have any conditions about relevancy at all? We have already indicated our willingness to work with the majority to complete the work on this bill. Nobody has any desire to filibuster, to artificially extend debate for an indefinite period of time.

The majority leader made a comment recently about the dwindling number of days. If he wants to finish this legislation, the only way we are going to do that is by working together.

The Senator from Idaho and the Senator from Massachusetts have a very important amendment having to do with temporary workers in this country. I think it is a critical debate. We have already agreed to a very limited time. Why the majority leader would preclude the Senator from Idaho and the Senator from Massachusetts from offering this amendment with an expectation that we can resolve it in a very short period of time is a question I cannot answer. But the majority leader himself has said that, obviously, nonrelevant amendments have their place on this bill. He is advocating two nonrelevant amendments as it is.

Let's get beyond relevancy and just recognize the importance of allowing Senators the opportunity to debate. I will commit to him an effort to try to resolve this legislation in a meaningful way and in a period of time I think could accommodate Senators, but also would accommodate his goal of completing work in the regular order.

I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, the purpose of the unanimous consent request is simply to address the issue of class action reform, a bipartisan bill that does have support—not overwhelming but more than 60 votes of support on the floor of the Senate, but to do it in such a way that we can consider one amendment at a time—a relevant amendment on class action with the objective of taking this bill on class action, which we absolutely know will have an impact across this great country, in a positive way that addresses fairness and equity and improves the economy indirectly, but in a fairly great way creates jobs—to stay on it and be focused on it.

I have offered 5 amendments on either side and then 10 amendments on either side, both with minimum wage. I would be happy to propound a request without minimum wage, if that would accommodate people.

I will keep it in for now. I will propound one more request to drive home

the point that we want to stay on class action with relevant amendments that can improve or modify the bill. Right now, I am not requesting any limitation on the debate. We can stay on it and consider each one. That is up to the managers. Let's have the relevant amendments come through, but let's have an unlimited number of relevant amendments on class action and finish this and get it to conference and also include minimum wage.

Therefore, I ask the other side if they would be agreeable to an agreement allowing for unlimited—unlimited—relevant amendments, in addition to the minimum wage issue, and an agreement to go to conference.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, I will simply offer a counterproposal. I ask the majority leader if he would be prepared to allow the Senate to consider this legislation with 5 nonrelevant amendments and 10 relevant amendments. I make that request.

The PRESIDING OFFICER. Objection is heard, and it is your serve. Objection is heard in the Senator's capacity. Is there objection to the majority leader's unanimous consent request?

Mr. DASCHLE. Mr. President, I object, but I repeat the request that the Senate consider 10 relevant and 5 nonrelevant amendments.

The PRESIDING OFFICER. The majority leader has the floor. Will the majority leader modify his request to accommodate the minority leader's recommendation?

Mr. FRIST. Mr. President, I would be happy to modify the request, and I object to the request. The purpose is to stay on the class action bill, to stay focused on it. I have already offered unlimited amendments as long as they are relevant amendments, and that has been objected to.

I am disappointed by my colleague's refusal to accept what I consider a fair offer if our goal is to complete the bill. I do think we may well be able to reach an agreement on the terms for debate on this bill. In the meantime, I will be sending amendments to the desk.

AMENDMENT NO. 3548

Mr. FRIST. Mr. President, I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 3548.

Mr. FRIST. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end, add the following:

**SEC. 10. FURTHER EFFECTIVE DATE.**

The amendments made by this act shall apply to any civil action commenced one day after or any day thereafter the date of enactment of this act.

Mr. FRIST. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3549 TO AMENDMENT NO. 3548

Mr. FRIST. Mr. President, I now send a second-degree amendment to the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 3549 to amendment No. 3548.

Mr. FRIST. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On line 3 of the amendment, strike "one day" and insert: "two days".

MOTION TO COMMIT WITH INSTRUCTIONS

Mr. FRIST. Mr. President, I send a motion to commit with instructions to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit the bill, S. 2062, to the Committee on the Judiciary with instructions to report back forthwith.

Mr. FRIST. Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3550 TO THE INSTRUCTIONS TO THE MOTION TO COMMIT

Mr. FRIST. Mr. President, I now send an amendment to the instructions to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 3550 to the instructions to the motion to commit S. 2062 to the Judiciary Committee.

The amendment is as follows:

In the motion to commit before the period, insert, "with the following amendment".

At the end of the bill add:

**SEC 10. FURTHER EFFECTIVE DATE.**

The amendments made by this act shall apply to any civil action commenced three days after or any day thereafter the date of enactment of this act.

Mr. FRIST. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3551 TO AMENDMENT NO. 3550

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 3551 to amendment No. 3550.

The amendment is as follows:

On line 3 of the amendment, strike "three" and insert four.

Mr. FRIST. Before I yield the floor, Mr. President, I want to make clear where we are. We are prepared to consider relevant class-action-related amendments. We are willing to set aside the pending amendments in order to make progress on the bill. However, we are not prepared to have this bill become a magnet for every unrelated issue that is brought to the floor. I encourage Members to come forward with their relevant amendments. We can work on time agreements on those relevant amendments, and we will allow the Senate to work its will on the issue.

Mr. President, I ask unanimous consent that the time between now and 2 p.m. today be equally divided between the two leaders or their designees.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

Mr. FRIST. Mr. President, I modify that unanimous consent request to, instead of 2 p.m., 2:45 p.m. today.

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

Mr. FRIST. Mr. President, I yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I ask, what is the majority afraid of? This clearly is not a question any longer of time because the majority leader, in one of his many unanimous consent requests, proposed an unlimited number of amendments, as long as they are relevant. We can come up with 100 relevant amendments to a bill this controversial and of this complexity.

Let's understand what we are doing. This is a sham. This is a sham. The majority leader, for some reason, wants to deny his own caucus and the minority the right to offer legitimate amendments in the Senate. This may be the first time this majority leader has acquiesced to pressures within his caucus to do this, and that is unfortunate. This happened on many occasions in previous years, and I think if anyone talks with those who have served in his capacity before, I think the lesson learned is that it was to no avail, and it was actually counterproductive. It did exactly the opposite of what the majority attempted to do.

For us now to find ourselves in this situation seems a little bit to me like *deja vu* all over again. We have tried this, and it is going to backfire on this majority and this majority leader, just as it has in past circumstances.

So let's be clear, this has nothing to do with finishing this bill. Why, given

all of our cooperation to get to this point, the majority would try to shove this down our throats is unclear. But that is exactly how I perceive it. It is a sham. This almost guarantees this bill will not get done, and why they would want to do that is unclear to me.

We were prepared, as I said, to limit the number of nonrelevant amendments and the time to debate in the interest of time. No one on this side has a desire to extend debate indefinitely, but let's make sure everybody understands: I have to go home and explain to the people of South Dakota, if this legislation passes, why if in a case where 98 percent of the people who are adversely affected are from my State, the action occurred in my State, and was taken by, let's say, a corporation that may be in violation of South Dakota law cannot go to court in South Dakota. That is basically what this bill does. Why should the people harmed in my State, if 98 percent of those adversely impacted are from South Dakota, and if the law was violated in South Dakota, be forced to go to Federal court, a court that could be located in some other State, to resolve a serious legal question?

I find it amazingly ironic that those on the other side who claim to be advocates of States rights would say, no; not in this case. In this case, we are going to take away the rights of the States; we are going to put them at the Federal level.

There is a new trend happening on the other side. When it is inconvenient for States to have the power, they seem to find it just fine to move to the Federal level. That is what we are going to be telling the people of this country. Forget about States rights, forget about civil rights, forget about workers' rights.

This is special interest legislation at its worst, and it deserves a full debate in the Senate, not the sham that we are going to have under these circumstances filling trees. We have been through that. We have learned the lesson the hard way. We ought to have learned it this time, too. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, my good friend, the Democratic leader said: What are we afraid of? Let me answer the question.

Back on May 21, the distinguished majority leader was trying to make progress on the Defense authorization bill, which we began on May 17, and our good friend from Nevada, the assistant Democratic leader, said on May 21: I would say that we take about 10 days on this bill normally. We don't think this bill will take that much time.

That was the Defense authorization bill, and on May 21, having been on the bill five days already, our good friend from Nevada said it takes typically about 10 days to finish the bill. We finished the bill on June 23, almost a month later, having spent 18 legislative

days on it. Clearly, what the majority leader is concerned about is that this bill not only be taken up but that it be finished.

It is absolutely clear from the observations of our good friend, the Democratic leader, he does not want the bill to pass in any event. In fact, he said on several occasions and repeated several times this morning he is against the bill. It is clear what he would like to do is structure a way of dealing with this bill that allows his party to get the vote on all of its favorite issues and we never pass the bill in any event.

So the majority leader, to his credit, is trying to structure a way to proceed on this bill on the Senate floor that does two things: No. 1, guarantees that it be brought up, and No. 2, guarantees that it will be finished by structuring it in such a way that the amendments we deal with are related to the bill. That is not an unusual request. It is not an outrageous request and not an unprecedented request—in fact, a normal request.

So it is perfectly clear, it seems to me, that there are those on the other side and maybe even a few on this side who would like to use this bill for other purposes. The majority leader is right on the mark in offering this perfectly reasonable way, a game plan for taking up and finishing this important legislation. I am sorry that at the moment, at least, it looks as if there is not a will. Even though we keep hearing there are over 60 Senators who are in favor of this bill, there have to be 60 Senators in favor of the bill who are willing to also support a procedure that guarantees we can finish it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we have watched an unusual process this morning that a good many of us in a bipartisan spirit are reacting to, and I am one of those who do not appreciate what the majority leader has now just done. I understand why he has done it. I support the underlying legislation, S. 2062, but I also recognize that Senators, unless effectively blocked by a procedural action that has just occurred, do have the right to offer amendments, germane, relevant, and nonrelevant.

I am bringing to the Senate floor one of those amendments. It is bipartisan. It has 63 Senators as cosponsors, and it is widely received by not only this body but by all of the communities of interest at large.

I have approached the leadership time and again, been as courteous as I should be to my leader but assuring him that I and the Senator from Massachusetts would limit the time, that this was not to drag the bill out, that we would expedite it because we believe, with 63 Senators, Democrat and Republican, that this bill's time has come. It deals with immigration. It deals with a near crisis in American agriculture at this moment that now finds itself having to employ nearly 80

percent of its workforce as illegals, undocumented foreign nationals, in order to get the crops out of the field.

We should have learned our lesson post-9/11 that we have failed mightily at the border, that we have not effectively built immigration laws that work. In a post-9/11 environment, we have learned there may be between 8 million and 12 million undocumented—in other words, illegal—foreign nationals in this country. We ought to be expediting every way possible to identify them, to do background checks on them, to control them first at the border and those who are in country in-country, and to build effective law enforcement tools, as some Senators and I are working on, to build a total package.

The reason I am bringing this amendment to the Senate floor is that its time is ready. Our time is limited because we have mighty few days remaining until the end of this session.

There are now 400 organizations and groups across America supporting the legislation I bring to the Senate floor as an amendment today. It is S. 1645. We call it "ag jobs," and it only deals with a small segment—1.4 million to 1.5 million—of that total universe of nearly 12 million undocumented, illegal foreign nationals in our country. We have worked on the House side and the Senate side, Democrat and Republican alike. We have spent 5 years crafting this legislation, and I am extremely disappointed this morning that we do not have the opportunity to offer it, that my leader has blocked me from doing so.

As kindly as I can say to my leader, ag jobs will be voted on this year. As our side has recognized the need to offer the other side the opportunity to vote on minimum wage, this issue's time has come, and this is an issue that I will stay on the Senate floor with and I will offer it unless the leader proposes in every legislation that comes to the floor the strategy he has just handed out. That is not a way to allow this body to work and work effectively, and we know it.

He has been reasonable and our discussions have been substantive, but there are some who do not want immigration as an issue voted on this year. This bill is ready to be voted on. This bill has 63 cosponsors. It has 26 Republicans, 37 Democrats. It is vastly bipartisan. It has been worked on for 5 years, and 9/11 now emphasizes the importance of us doing substantive immigration reform. This is a small piece of the total picture but a critical piece to a very important segment of America's economy: agriculture. Yet we are suggesting now, by controlling our borders as tightly as we must, that we are creating a circumstance that is driving some agricultural employers and producers out of business because they cannot find the workforce.

This fall, harvest should not rot in the fields of America, but in some instances it might if a viable workforce

cannot be found, or if it is not this body's will to send a message to the American agricultural community that we are going to solve this problem and solve it timely, responsibly, and appropriately.

We are not going to be allowed to do that today. Maybe tomorrow or maybe the next day or maybe next week, but I say to my leadership as kindly and as responsibly as I can, before we sine die the 108th session of the U.S. Congress, we will deal with this issue. Its time is now. Its time is ready.

Let us—the Senator from Massachusetts and I—bring this to the Senate floor, get a limited amount of time to deal with it and adequate time for those to come to the floor of the Senate to discuss it, to oppose or to support it. That is what a responsible, deliberative body does, and that is what we must do in this instance.

So I hope that at some point the message I am delivering at this moment registers with my leadership that we will vote on this issue this year. It is important that we do so and send a message to the most critical segment of our economy that we are going to work with them to get legal employees, that we are going to legalize a process, control a process, do the background checks, get the bad actors out of the system instead of simply turning our back again and again.

Our President wants reform. He has spoken openly and boldly about it. It is important we bring this reform. I agree with my President. Its time has come. Let us deal with it.

I will be back on the Senate floor today, tomorrow, next week, or the balance of this month, until this issue is debated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to this debate, and I would first like to respond to the concerns raised by some of my colleagues on the other side of the aisle about the majority leader's decision to fill the amendment tree. First, I commend the leader for taking this unfortunately necessary step because it significantly minimizes the mischief that will in all certainty occur if this bill is left open to amendments that have absolutely nothing to do with the subject of class action.

These are amendments that are offered to score political points in an election year and that, at the end of the day, will obliterate any chances that class action reform will become law. That is exactly what is involved, and we all know it. We know that if some of these amendments are added to this bill, it will kill the bill.

We thought we had an agreement last November, of 62 people. As I have always interpreted it, when you get an agreement to support a bill, that means support it against all amendments unless those who made the agreement agree otherwise. My colleagues on the other side say that was

not the agreement. That has been the agreement every time around here, where you know that mischief is going to occur and we just continue on and on.

By filling the tree, the leader has effectively protected key bipartisan legislation from the same procedural pitfalls that faced the DOD authorization bill, FSC/ETI, and the Internet tax bill, just to name a few.

To be sure, the current move to protect the bill from nonrelevant or nongermane amendments is nothing new, as former majority leaders have invoked this prerogative with other important pieces of legislation in the past. The ranking member from Vermont even admitted on the floor last night that S. 2062 was probably the last amendable vehicle to be considered by the Senate this year. While this bill has legs to move out of the Senate—that is why it is the last amendable bill in his eyes—I can assure you it will go nowhere if it is bogged down with extraneous amendments that peel votes in the Senate.

That is the game here and everybody knows it. Everybody on the outside should know it, too. We made a deal; we had 62 people agree to the language in this amendment. Now we have people peeling off from the language in this amendment by wanting to be able to vote for nongermane and nonrelevant amendments which will kill the bill.

Assuming the bill goes out of the Senate with controversial amendments, what is going to happen in the House after they alter the bill? I seriously doubt we will have enough time this year to resolve differences in conference. Indeed, I think the chances are pretty slim, especially since the minority leader has threatened to oppose the appointment of conferees for the rest of the year.

How do we get it done if we put nonrelevant amendments on this very important bill that we have worked on for 6 years to get to this point? A lot of decent people on both sides have worked very hard, but we know we are going to have to have 60 votes to vote on this bill.

The minority leader himself has threatened to oppose the appointment of conferees for the rest of the year. How do you get this bill if these nongermane, nonrelevant amendments are added? It is apparent some of them might be. Even if you could, how do you get it by the House? Even if you get it by the House, how do you get it by the conference?

Then, when those amendments are taken off, also if they were taken off in conference—assuming we would be given the privilege of being able to hold a conference, something that has not been denied to my recollection before this year—we may not have time to get this bill done anyway.

S. 2062 embodies the bipartisan deal we reached in good faith last November, Democrats and Republicans, 62 of

us reached in good faith. We reached a compromise because I thought the end goal was to get a class action bill passed into law. I can say, in all certainty, that my agreement to further moderate this bill was certainly not premised on letting it become a Christmas tree for unrelated measures so people can score political points on the floor of the Senate—people who never would vote for this bill to begin with.

If the supporters of the underlying bill really want class action reform, I see no reason why they should not support the leader's action. No one is denying Members from offering amendments that are germane to the bill, although I would recommend we even vote those down unless the people who agreed in a bipartisan way agree to allow those amendments to pass. That is what we usually do on legislation around here. But now we have all new rules here that suddenly spring up.

No one is denying Members from offering amendments that are germane to the bill, amendments that Members, in their view, believe will improve the bill. If they will, we can agree on those. I see no reason why we cannot give these amendments an up-or-down vote. In fact, the leader explicitly made this offer to the other side when he tendered a time agreement to consider several key amendments, including a vote, a vote on a nongermane, nonrelevant amendment, Senator KENNEDY's amendment on the minimum wage measure which he has been trying to get up for quite a while. That is how far the majority leader went. But, no, they want a lot of other buzz amendments that are political in nature, that they think they can pass, that will kill this bill. Anybody with brains knows the game.

This was a good-faith offer by the leader. We have heard for some time how important a minimum wage amendment is to my colleagues and to the country. I don't know of anybody on our side objecting to consideration of the minimum wage amendments and any amendment also to it. What we do object to is a never-ending moving of the goalposts where more and more amendments are added, especially nongermane and nonrelevant amendments.

Because the Democrats objected to this very generous unanimous consent request, the leader had no choice other than to protect the class action bill from this open season of political amendments that will kill it anyway.

That is what it comes down to. Either we are going to vote for this class action bill, the 62 of us who have agreed it should pass—and I think more would vote for it in the end—or it is going to be killed. Because that is the choice. We made a deal last November to pass class action reform and that is the direction our leader is taking us today.

When it comes to nongermane amendments that appear to be offered to score political points in an election year, I want no part of that on this bill,

and neither does the leader, and for good reason. We know the games around here.

There are a significant number of Democrats who do not want this bill under any circumstances because the No. 1 hard money funder to Democrats happens to be the personal injury lawyers in this country. The No. 1 funder of the Presidential campaign happens to be personal injury lawyers in this country, for the Democrats. The No. 1 opponents against this bill happen to be some of the personal injury lawyers. Not all, because the really good lawyers can go to Federal court and get big verdicts. They don't have to have false mechanisms to be able to get good verdicts on behalf of their clients. They don't have to play games with magnet courts that are, if not corrupt, so close to being corrupt in some of these special jurisdictions in this country where they have had a field day.

Regarding the jurisdictional test in S. 2060, the minority leader made the point they cannot get their cases tried in South Dakota if this bill passes. That is total poppycock. You know, the jurisdictional test in S. 2062 moves only larger interstate class actions to Federal court, including large cases where there are more than 100 class members and more than \$5 million in amount in controversy.

If they fit that jurisdictional category, then they will have to go to Federal court. But as somebody has tried a lot of cases in both Federal and State courts, I have to say we used to love to get to Federal court because people know it is a more important case. The reason some of these attorneys want to go to some of these State courts, such as Madison County, is that is where it is a field day for plaintiffs' lawyers whether they have a good case or not—and they know it, and they have been milking this system and hurting people all over this country in ways that are unseemly and, frankly, wrong. S. 2062 also has exceptions to keep local controversies in State courts. We have these exceptions.

To make a long story short, I have heard my colleagues on the other side—some of the people who have agreed to be cosponsors of this bill, who have agreed to be in the 62 who have supported this bill which would make up enough to be able to invoke cloture on this bill—now moaning and groaning they want a right to bring up nonrelevant, nongermane, political amendments to score points. That is not the way I have operated around here, and that is not the way most Senators have operated around here, but that is what we are faced with here.

Either we are going to invoke—probably we will have to file cloture in order to end another filibuster. I hope the 62 people who said they would be for this bill will vote for cloture. If they are not, then this bill is going to be dead and 6 years of honest work, 6 years of bipartisan effort, is going to go right down the drain.

We all know what the game is around here. It is by those who have never wanted this bill to pass anyway, some who want to play both sides on this thing, who basically want to have the right to foul up the bill with amendments they know the House won't take and they know if we have to go to conference we are probably not going to be able to get conferees.

That is what is involved, and it is a game. It is a bad game at that. I have been known to stand up for the trial lawyers when they are right. I have taken a lot of grief for it from some people on our side who are wrong, too. I am going to stand up for them when they are right because trial lawyers do a lot of good in our society when they stand up and fight for those who are downtrodden and not treated properly in our society.

What has been going on for years in this area is the abysmally dishonest forum shopping to local areas where they can get huge verdicts that shouldn't be gotten because they don't get them in their own jurisdiction. That is wrong. I think a lot of trial lawyers are starting to get upset about it because it is giving all trial lawyers a bad name because of the few who milk the system like this to the detriment of consumers, to the detriment of the little people, to the detriment of those who can't make it. That is what is involved, and everybody knows it.

To play this political game and bring up nongermane and nonrelevant amendments that we know will kill this bill is a terrible thing.

All I can say is there comes a time when you have to vote. There comes a time when you have to stand up and do what you said you would do. If you do not do it, then shame on you. All I can say is, that is what is involved, and anybody who says otherwise, it seems to me, is wrong.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Nevada.

**Mr. REID.** Mr. President, my distinguished friend, the senior Senator from Kentucky, who is my counterpart, indicated that on May 20 or 21—I indicated at that time publicly that we could finish the Defense authorization bill in 10 more days. He didn't go on to say that is what we did. That really is not quite true. We took 11 days. So my statement was 1 day off. Of course, it was interrupted by President Reagan's funeral and a few other things. When we came here and we told the majority they could finish the Defense authorization bill in 10 days, we were 1 day off. So no one should make a big deal out of the fact that the time was more than 10 days because, unfortunately, President Reagan died.

I want the record to be spread with the fact that I am a trial lawyer. I am a proud trial lawyer. I graduated from law school, and I went back to Nevada and tried lots of cases. I have had over 100 jury trials. I have tried murder cases, and I have tried robbery cases.

There was a period of about 4 years of my life where I defended insurance companies. I have tried cases as a plaintiff's attorney in slip-and-fall cases. I have tried automobile accident cases where some people were injured severely and some were killed. I have done liability litigation. I did an anti-trust case, and I didn't know enough about it. Shell oil company drowned me with depositions all over the country. I settled for a fraction of what it was worth. That was the last antitrust case I took. But I took one in San Francisco with cocounsel who knew what he was doing in my first antitrust case.

I have never done a class action lawsuit. But there are attorneys who specialize in class action lawsuits. Are these people who specialize in these lawsuits a bunch of bums who are cheating the system and doing illegal things?

As my friend from Utah has said, it may not be fraud, but it is close to it—or words to that effect.

Lets talk about a few issues that I know of which were class action lawsuits. A lot of us have had the experience of receiving a telephone bill when we didn't sign up with AT&T, but they are on our bill. It is called "slamming." They put their product on your bill without your permission. People had to pay these bills. We didn't do anything legislatively to stop it. An attorney filed a class action against AT&T saying don't do that. Why? Because people were being charged \$8 to \$10 a month for a product they didn't ask for. This was stopped as a result of a class action lawsuit. They were enjoined from doing it and had to pay the people they cheated with actual dollars.

One of the great movies I watched—because it was true—was called "Erin Brockovich." Erin Brockovich—just to recount what she did, for lack of a better word—was a paralegal but not one who was really trained to be a good paralegal. But she was trained and wanted to go help people. She went around and dug up information like one of the sleuths you hear about in a good mystery novel, or watch on television—a private detective. She went around and did some sleuthing and came out with the fact that the ground water was being contaminated with pollutants from a company. She got a friend, a lawyer of hers, to file a lawsuit, and sure enough they won. They found the ground water was being contaminated.

As a result of this class action lawsuit, Erin Brockovich became a hero. People had been killed as a result of this company, and no one else had to die or become sick.

That was a class action lawsuit. Is there anything wrong with that? I think not.

We all know all about the big tobacco cases. A lot of people do not know about a tobacco company that started advertising a light cigarette, and you

smoked as much as you wanted—no problem. That was the advertising. They were lying. They were cheating. It wasn't true. How was that resolved? We didn't stop it here in the National Legislature. It was stopped as a result of a class action that was filed. Sure enough, light cigarettes were gone.

Lots of environmental cases have been decided by class actions. Companies were doing awful things to the environment, and people asked about the detriment being created. They went to the Government, and the Government did nothing. As a last resort, who do you go to? You go to a lawyer.

We have a big class action pending now—Wal-Mart, big, fat Wal-Mart. The initial evidence indicates that they have been discriminating against women from the day they became a company. There is a big class action lawsuit against Wal-Mart. We didn't do anything about it here legislatively. But this class action lawsuit, I have been told, is almost a slam dunk—that Wal-Mart is going to lose that and the women they have discriminated against will be made whole.

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

**Mr. REID.** Not right now. I will finish my statement. I know my friend is an avid supporter of this legislation. I admire him. We came to Congress together. I am going to finish my statement. I have been waiting 2 days to do this, and I want to finish my question.

**Mr. CARPER.** Will the Senator yield for a question?

**Mr. REID.** I yield for a question.

**Mr. CARPER.** The Senator raises the question of the issue of the class action case against Wal-Mart. The class action has been certified so it can go forward. Does the Senator know whether it was certified in Federal court or State court or county court?

**Mr. REID.** I don't know. I talked to some attorneys today involved with the case. I did not ask them that.

**Mr. CARPER.** It has been certified in Federal court in California.

**Mr. REID.** I ask a question to my friend, certified in State or Federal court?

**Mr. CARPER.** Federal court.

**Mr. REID.** Mr. President, I appreciate my friend asking the question which, as far as I am concerned, at this stage is meaningless.

Class action is an important part of our legal system. It has done a great deal to help people work their way through the process. The fact that I as a trial lawyer have not taken a class action lawsuit does not mean I didn't like class action litigation. It is a specialty. As with the example I gave dealing with antitrust litigation, you better know what you are doing before you get into the class action litigation.

We all know what took place with tobacco litigation. Attorneys general from all over America joined in that. The State of Nevada has benefited from that class action litigation dealing with tobacco. We have a program a Republican Governor in the State of Nevada initiated that is very popular. It

is called the Millennial Scholarships. If you graduate from a Nevada high school—any place in Nevada; there are 17 counties—with good grades, you get to go to school with your tuition paid for by tobacco.

That is what this is all about. It is about people having the opportunity to go forward with litigation, when normally these people would be totally unprotected. When we do things legislatively, it is rare that people who have been harmed get their money back. That is an effect of class action.

As we speak about attorneys general, I received in my office yesterday a letter from the attorney general of the State of New York. I have never met Eliot Spitzer. I know him by reputation. He is one of America's great attorneys general. The State of New York has been—I don't want to say "blessed," but for lack of a better word, New York has received a great deal from that man who has taken on big companies, to his detriment on many occasions. We have a letter from him sent to Senator FRIST and Senator DASCHLE. The letter is three pages long. I ask unanimous consent it be printed in the RECORD.

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

STATE OF NEW YORK, OFFICE OF THE  
ATTORNEY GENERAL, THE CAP-  
ITOL,

*Albany, NY, June 22, 2004.*

Hon. BILL FRIST,  
Majority Leader, U.S. Senate, Dirksen Senate  
Office Building, Washington, DC.

Hon. TOM DASCHLE,  
Minority Leader, U.S. Senate, Hart Senate Of-  
fice Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia, we are writing in opposition to S. 2062, the so-called "Class Action Fairness Act," which reportedly will be scheduled for a vote in the next few weeks. Although S. 2062 has been improved in some ways over similar legislation considered last year (S. 274), it still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 2062, almost all class actions brought by private individuals in state court based on state law claims would be forced into federal court, and for the reasons set forth below many of these cases may not be able to continue as class actions. All Attorneys General aggressively prosecute violations of our states' laws through public enforcement actions filed in state court. Particularly in these times of state fiscal constraints, class actions provide an important "private attorney general" supplement to our efforts to obtain redress for violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in state and federal courts have resulted in substantial attorneys' fees but minimal benefits to the class members, and we support targeted efforts to prevent such abuses and preserve the integrity of the class

action mechanism. However, S. 2062 fundamentally alters the basic principles of federalism, and if enacted would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL-CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. Class Actions Should Not Be "Federalized".

S. 2062 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need for such a sweeping change in our long-established system for adjudicating state law issues. Indeed, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. The federal judiciary faces a serious challenge in managing its current caseload, and thus it is no surprise that the Judicial Conference of the United States has opposed the "federalization" of class action litigation.

S. 2062 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a "citizen" of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state. While the amendments made last fall give the federal judge discretion to decline jurisdiction in some cases if more than one-third of the plaintiffs are from the same state, and place additional limitations on the exercise of federal court jurisdiction if more than two-thirds of the plaintiffs are from a single state, even in those circumstances there are additional hurdles that frequently will prevent the case from being heard in state court.

2. Many Multi-State Class Actions Cannot Be Brought in Federal Court.

Another significant problem with S. 2062 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the law of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

3. Civil Rights and Labor Cases Should Be Exempted.

Proponents of S. 2062 point to allegedly "collusive" consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received "coupons" towards the purchase of other goods sold by defendants. If so, then this "reform" should apply only to consumer class actions. Class action treatment provides a received "coupons" to-

wards the purchase of other goods sold by defendants. If so, then this "reform" should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

4. The Notification Provisions Are Misguided.

S. 2062 requires that federal and state regulators be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against "collusive" settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. In addition, class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 2062 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia oppose S. 2062 in its present form, we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms while maintaining our federal system of justice and safeguarding the interests of the public.

Sincerely,

ELIOT SPITZER,  
Attorney General of  
the State of New  
York.

W. A. DREW EDMONDSON,  
Attorney General of  
the State of Okla-  
homa.

Mr. REID. Mr. President, this letter Eliot Spitzer wrote, joined by the attorneys general of California, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia, says the legislation now before this body right here today, now before the Senate, is inaptly named Class Action Fairness Act.

I will begin by reading excerpts from a letter the Senate Republican and Democratic leader recently received from Attorney General Spitzer. The letter was sent by Spitzer, as I have said, in opposition to this legislation. Joining in the letter are the attorneys general I mentioned from other States.

There are a number of Members of this body who have been attorneys general in the past. The one that comes to my mind is Senator BINGAMAN. Senator BINGAMAN is representative of the people who become attorneys general. He went to undergraduate school at Harvard College, he graduated from Stanford Law School, two of the finest educational institutions in the world, and

he was an attorney general. He understands, as well as any, that special weight should be given to the authors of the letter. It is an attorney general's job to prosecute violations of the law.

These attorneys general begin by stating:

We strongly recommend that this legislation not be enacted in its present form.

The letter goes on to explain that under the bill:

... almost all class actions brought by private individuals in State court based on state law claims would be forced into federal court . . . and many of these cases may not be able to continue as class actions.

I say to the distinguished chairman of the Judiciary Committee, the example he used with the State of South Dakota, 100 plaintiffs and \$5 million, there is not a class action case that you would not have at least 100 plaintiffs and at least \$5 million in damages. That is pretty easy to do. As Senator DASCHLE said, that case would likely not occur in South Dakota.

The reason attorneys general say almost all class actions brought by private individuals in State court based on State claims would be forced into Federal court, and many of these cases may not be able to continue as class actions, the reason this is important, the letter explains:

All attorneys general aggressively prosecute violations of our states' laws through public enforcement actions filed in state courts. Particularly in these times of state fiscal constraints, class action provides an important "private Attorney General" supplement to our efforts to obtain redress for violations of state consumer protection, civil rights, labor, public health, and environmental laws.

That is, class actions help ensure that violations of these important laws do not go without punishment. The threat of such enforcement helps ensure compliance with these laws.

The authors of this letter note that some reform may be appropriate, an argument I do not disagree with. They find that:

However, S. 2062 fundamentally alters the basic principles of federalism, and if enacted would result in far greater harm than good.

Joining in their opposition to this bill are the AARP, AFL-CIO, Consumer Federation of America, Consumers Union, Leadership Council and Civil Rights, NAACP, and Public Citizen, to name a few.

The attorneys general letter also spells out the particular problems which arise from this legislation's broad expansion of Federal court jurisdiction.

This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own laws and will impair their ability to establish consistent interpretation of those laws.

They go on to say:

There is no compelling need for sweeping change in our long-established system for adjudicating state law issues.

Most importantly, the attorneys general note that:

... by transferring most state court actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens.

This is the case, they note, because the class actions this bill will stop are important "mechanisms for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions."

They conclude their letter by reminding this body, the Senate:

Equal access to the American system of justice is a foundation of democracy. S. 2062 would effect a sweeping reordering of our nation's system of justice. It will disenfranchise individual citizens, while retaining redress for harm and thereby impede efforts against corporate wrongdoing.

In recent months, events here and abroad should remind us of the importance of this last remark and the consequences. Our justice system is fundamental to sustaining our democratic values as a nation. This bill takes too broad a strike at the heart of the system and undermines these very values.

I know the majority leader has a very difficult job. He has to balance what we do and what we do not do. I don't in any way denigrate the difficulty of his job. But I also remind my distinguished friend, the Senator from Tennessee, the Senate is going to be ongoing long after he leaves this body and long after I leave this body. We have had approximately 1,750 Senators who have served in this body. During those periods of time, there have been some who have done things that delayed pieces of legislation. We have done things over the years that have made this body appear not to be as coordinated, as efficacious as the House. That is right. That is the way we are. The Senate is that way. We will continue to be that way.

We are not a House of Representatives that has absolute dominance with the party that rules. The party that is in power in the House is like the British Parliament. The distinguished Presiding Officer served in the House of Representatives for a time, as did I.

That Rules Committee is an aggravation. They determine on every piece of legislation how long the debate will be, if they are going to allow amendments, and how long you can debate those amendments.

But the chairman of the Rules Committee and the members of the Rules Committee are chosen by the Speaker of the House of Representatives, and they do what he wants done. I accept that system. That is the way the House works. It is a large body of 435 people. They can work more quickly than we can. If they did not have the Rules Committee, they would not get anything done.

The Founding Fathers, in their wisdom, set up this system of the legislature where you have one body such as the House of Representatives that is in touch with the people every minute of their 2-year existence, and they can

rush things through that body now as they did 200 years ago.

The Founding Fathers wanted, as we have been told numerous times, a saucer that would cool the coffee. That is what we are. And no matter how inconvenient the Senate is to that party in power—and we have been in power on occasion—no matter how the Senate rules slow us down, cause us problems, we have to be the Senate.

I respectfully suggest to the majority leader he is making a big mistake here in not allowing the Senate to be the Senate. We have only a few days left—32 days left—and some of those days are Mondays and Fridays, and we do not get a lot done around here anymore on Mondays and Fridays. Thirty-two days.

We have a lot to do, and I recognize that. That is why the Senator from Idaho and the Senator from Massachusetts have every right in the world to offer this nonrelevant, nongermane amendment because, as the Senator from Idaho said, we have a season coming, farm season. Crops are growing now. Crops are going to have to be taken from the ground in a few weeks.

This legislation is so important, during the Fourth of July Members of Congress were working on this amendment, and I received calls at my home in Searchlight, NV, of legislators interested in this legislation, seeing if there was something I could do to help them move it along. I said: We have a piece of legislation coming up. The debate on your amendment is not going to take very long. This is an appropriate vehicle to do it.

That is what the Senate is all about. We should not fill the tree. What this means is for the legislation now before this body, no one else can offer an amendment. They cannot offer a relevant amendment. They cannot offer a nonrelevant amendment. They can do nothing because it has been filled up. We on this side are not going to allow that.

I know the distinguished senior Senator from Connecticut likes this legislation. I am sure it is not perfect. I know he has worked on it for years. But I have every confidence—he being a more senior legislator in the Senate than I am—I have no doubt that he does not like what took place here in a parliamentary fashion today. He believes in the Senate. He believes the Senate should work as the Senate and that we should not bring a piece of legislation here—no matter how important the majority feels it is, you cannot bring a piece of legislation before this body and say: This is more important than other things and we are not going to allow any amendments on it. That is wrong, absolutely wrong.

I know my friend from Connecticut. I do not know of anyone in the Senate who is a better orator than the Senator from Connecticut. There is no one in the Senate who can better express himself than the Senator from Connecticut. But I say that even someone



who is a proud sponsor of this legislation cannot go along with what the majority leader is trying to do. I have talked to him. I know the Senator from Connecticut. We cannot allow this to happen. We may have some disagreements on this legislation, as I have outlined how I feel about it. I do not think it is necessary. I think it is improper. I think we need to do some things to improve class action, but this isn't it.

But the majority has shot themselves in the foot. This is foolishness. We have wasted all day. We could have a couple, three amendments already debated.

So I say to my friend, the manager of this bill, I am no neophyte here. Cloture is going to be filed today and we will have a vote on cloture on Friday morning, and we will have to see how the cards stack up Friday morning. But if I were a betting man—and I do not bet on anything—I would say cloture will not be invoked on this legislation Friday morning.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Utah.

Mr. HATCH. Madam President, I know some of my colleagues on the other side want to speak. I have much more to say about this issue, and especially after the distinguished minority whip has chatted.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, my good friends have been waiting all morning to speak. I wonder if the Senator from Utah would allow a unanimous consent agreement that they could speak next in order, the two Senators from Massachusetts and Connecticut.

Mr. HATCH. That would be fine. Do we know how long they would speak?

Mr. REID. I do not know how long they would speak.

Mr. HATCH. Can we get some idea?

Mr. KENNEDY. Ten minutes at this time. And I see my colleague, the Senator from Connecticut, in the Chamber.

Mr. REID. It is my understanding the Senator from Massachusetts needs about 15 minutes and the Senator from Connecticut about 30 minutes; is that right?

Mr. HATCH. I have no problem with that.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Massachusetts be recognized for 15 minutes, followed by the Senator from Connecticut for up to 30 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, before I leave the floor, I express my appreciation to the Senator from Utah. I know he would like to respond to what I said and he will want to respond to what the Senator from Massachusetts says, but I appreciate his courtesy here, as usual.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, first of all, I commend our distin-

guished Democratic leader, the Senator from South Dakota, for the way he has addressed the Senate earlier today on the proposals by the majority leader to limit the debate on this very important subject matter.

As the Senator from South Dakota pointed out, this legislation is broad, wide sweeping. It affects not only the business community, but it affects, in a very important way, workers, workers' rights, environmental rights. It affects the issues on civil rights. It affects the rights and the needs of many of our fellow citizens. It is an extremely serious piece of legislation that deserves debate.

We have a set of rules in the Senate, and if the majority leader and his colleague from Kentucky want to alter or change those rules, let's have a debate on altering or changing the rules. But, effectively, what the request and the action of the majority leader today is, is to basically circumvent the rules of the Senate. Those are rules that have been accepted. They are rules that have been altered to some extent—most significantly, the rule on cloture, since I have been here for 42 years—but they have worked pretty well for this institution historically. They work pretty well.

Part of the rules of the Senate are if a bill is authorizing legislation, we have an opportunity to bring amendments on that authorization bill. If those who are opposed to it are able to vote against it, that is the way the process works.

The majority has both the right and the privilege to raise the priorities they believe are the most important. A number of us have serious differences with the priorities our Republican colleagues have raised. They have raised the issue of class action.

I support the efforts of the Senator from Idaho, Mr. CRAIG, who is trying to focus on a particular problem that may not make a great deal of difference in many parts of the Nation, but makes an extraordinary difference to this country because it deals with an agricultural issue that has been a painful one for this Nation for the 40-odd years I have been in the Senate.

When I first came to the Senate we had what was called the bracero issue, where many temporary workers came to the United States, and they were exploited in the most dehumanizing way that we could possibly imagine. Articles were written about it. In a bipartisan way, we freed this Nation from that particular issue.

But there has been, obviously, tension between those individuals who perform the hardest work in America and those who are working in the field of agriculture and are paid the least, which happen to be these workers. A great percentage of them are undocumented workers who put the food on the table which benefits American families. It is a national tragedy that is taking place. Seventy percent of the over 1 million workers are undocumented.

The Senator from Idaho, myself, and 63 Members of the Senate in a bipartisan way are reflecting an expression of the workers and agribusiness, which is the first time that those groups have come together to help solve a very important issue that affects hundreds of thousands of individuals and their families and to do it in a very brief time period. There is strong support for this over in the House of Representatives as well. We could do it in a bipartisan way and get something done for justice and fairness that has been a thorn in the side of this country for some time.

The Senator from South Dakota talked about maybe even having five amendments. There are many of us who, with all due respect to the majority leader and the Republican leadership, feel if we could get that done in a short period of time, that would be a major step for progress. That would be a major step for progress and justice and fairness for so many of these families who have been exploited over time.

There are probably several other issues. I know Members on their side have their choice issues. But the idea that we don't have mental health parity here in the United States is a greater priority at least for me and I would say for millions of families in this country—I know it is for the Senator from New Mexico—than having the class action legislation that is before us.

We have seen an expression where we have had in excess of 60 votes. I believe it was close to 70, 72 votes in the Senate. Why not have a short time period on something that has strong bipartisan support and can make a difference to families and try to work out a time limit? That certainly seems to me to be a matter of importance. It seems to me to be a matter of consequence, something we could do in a bipartisan way in the Senate.

They have mentioned the minimum wage. For 7 years we haven't given an increase in the minimum wage to the hardest working Americans at the lowest rung of the economic ladder. They say: We will permit you to vote on it. That is all well and fine. After 7 years and after the fact that we have seen the Senate increase its own salary five different times, it won't increase the minimum wage for hard-working Americans, the majority of whom are women, a great percentage of them are Americans who are working hard, trying to provide for their families and falling farther and farther behind on the economic ladder. Now we are saying, as sort of a gratuity, we will let you have a debate. Don't get all so excited about that. We will grant you that. That is not the U.S. Senate I know. That is not the U.S. Senate our Founding Fathers fought for.

Those are just three. We could go on. We could go on to try to deal with the issue of prescription drugs. There is not a family in this country who doesn't have a senior member, a parent or grandparent, who is not today

thinking about the cost of the increase in prescription drugs, 50 percent in the last 4 years. And they are wondering today whether they can afford the next batch of prescription drugs. It seems to me that could be on a list of four. We have bipartisan support on the issue on reimportation. That seems to this Senator to be more important. It could make a difference in the lives of people if we passed it today, if we were able to get the House of Representatives to go along with that. That seems to be a higher priority.

We are not even asking that we make it a higher priority. All we are asking is for our day in court and an accounting on the floor of the U.S. Senate on the people's agenda.

We have been closed out by the majority from getting action on those matters until now. If you want to make a unanimous consent request, we can make it and let you object to it about getting a time definite to vote on each and every one of those. We know what the answer would be because we have made the requests. The majority leader is not here, and I would not do so now without notifying him, but we know what the answer is.

We want to be able to express the people's view in a short time limit on a series of issues that have strong bipartisan support, and we are being told no.

We are also being told that we should pass this legislation. The Chief Justice of the United States has told us not to pass this bill. The National Association of State Chief Justices has told us not to pass the bill. And we are being denied to even debate these kinds of expressions by the Chief Justice, who is not known to be a Democrat, a liberal, or any of the other names. He is cautioning us. But no, we can't. No, no, we know better. The other side says: We know better. We are not going to let you debate it or offer any amendments to it. We may let you, if we want, if we make up our mind, let you have a particular amendment if we decide that it is OK.

That is not the Senate I was elected to. That is the expression that was said so well by our Democratic leader. That is my concern with the legislation. I would certainly follow those who feel that with a fair opportunity to have an expression on the kinds of proposals that our Democratic leader had proposed, which was the 5 nongermane, the 10 other kinds of amendments, and then go to final passage. Even though I have reservations about it, I would support that proposal and move ahead. That was not an unreasonable request. We should not diminish the role of any Member of the U.S. Senate by agreeing to anything less.

I will address the underlying issue in terms of class action, particularly as it affects issues on civil rights, particularly as it affects workers' rights. There has been no case that has been made in the Judiciary Committee that there needs to be this action to deal with the abuses in terms of the work-

place, in terms of workers' wages; yet they are included. There has been no case that has been made that we ought to try and change the whole approach in protections for civil rights, although it has been included. That case has not been made. And you will deny under this legislation the opportunity for States such as my own that have passed genetic antidiscrimination legislation so that you cannot discriminate in the workplace based upon your genetics—the great protection of that is for women because under the DNA now there are so many kinds of tests that would indicate the possibilities of women developing breast cancer. We have prohibited that in Massachusetts, and effectively you are wiping that kind of protection out.

Maybe it will be heard in some distant Federal court, but why should our citizens in Massachusetts who have taken a position on this have to rely on that? We have issues of substance on this, and we will have a chance, hopefully an opportunity to debate these matters and to come to some conclusion on it.

I thank our Democratic leader for his courageous action. It is one I support completely. I think if our majority leader followed his admonition, we would make progress in advancing the interests of this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I want to take some time to describe what was a very lengthy and worthwhile effort some 10 months ago to come up with a compromise proposal which is the substance of S. 2062, the legislation now before the Senate. I will do that in a moment.

Before doing so, I want to express my great disappointment at the process which the majority Leader has chosen. As my colleagues know, we worked very hard last October and November trying to come up with a compromise to give the class action reform bill an opportunity for consideration before the Senate. It is now the middle of July. In fact, this bill initially was to be brought up as the first item of business in January. For one reason or another, over the past number of months, this bill has not been brought forward until now.

I regret that deeply. Having served here for over a quarter of a century, I know that in a Presidential election year, the likelihood of getting something done becomes less and less. So those who set the agenda have to bear some responsibility, in a sense, for the situation we now find ourselves in procedurally.

Having worked on this very hard for a long time, and now finding myself in a situation where we are being told at this hour that the only amendments we can consider are ones that will be approved by the majority, is highly offensive to me and it ought be to any Member of this body.

This measure is very important. There are a lot of other important measures that the Senator from Massachusetts mentioned, all of which I support and with which I agree. But in this legislative body that the Framers founded some 220 years ago, the idea that we are not going to even agree to a process that would allow for a limited number of germane and non-germane amendments to be offered, is to in effect deny the Senate the opportunity to work its will.

Even before a single amendment has been offered, the Majority Leader has decided to fill up the amendment tree. In effect, he has precluded all Senators from offering amendments unless he deems them worthy to be offered. That includes, of course, Republican Senators as well as Democratic Senators. I also add that the Majority Leader has done this without any basis. As I have said, not a single amendment has yet been offered. This tactic is like a doctor prescribing a remedy for a perfectly healthy patient.

Last evening, I looked at the number of amendments filed. There were some 13 amendments filed. Most of them are germane amendments. There were several nongermane amendments. The Democratic leader offered a proposal of 10 germane amendments and 5 nongermane amendments on either side, with time limits. I am quite confident the authors would be willing to agree to a time agreement. I suspect that with a universe of 30 amendments, about half of them maybe would fall even before being offered. But the idea that we could not set parameters around the consideration of a bill this important I find rather breathtaking. After all, this how the Senate operates.

I floor managed with the Senator from Texas a number of years ago the securities litigation reform bill, which was another so-called tort reform bill. We spent 11 days on the floor of the Senate. Numerous amendments were offered to that piece of legislation. The then-majority leader, Senator Dole, threatened on a couple of occasions to file a cloture motion but never did. He allowed the Senate to work its will on that legislation. That is what ought to be done here as well. The fact that there has been an offer to limit the amount of time and the number of amendments ought to be embraced by the Majority Leader, not rejected by him.

I am a cosponsor of this bill and I care about it. If I am going to be confronted with voting on cloture Friday and cutting off debate, then take me off the bill right now. If you want to kill the bill, you can do it today, if that is the intention of the majority. I spent almost a year helping to write this bill, but I will not stand here today and deny Members of this body, under limited time agreements, to offer some ideas that the Senate can either accept or reject and move forward.

This is an important piece of legislation, but it is not so important to this

Member that we would deny this institution the right to be able to do its business under the rules and procedures that have been provided for more than two centuries ago.

Obviously, there are problems. Some of these nongermane amendments may be adopted. Maybe germane amendments would be adopted that would cause some of us not to be able to support the bill. That is the risk you run in a legislative body. There are 100 of us, as coequals, who have the right to offer our ideas to legislation. Unlike in the other body down the corridor, nongermane amendments can be offered in the Senate. That is how the Senate functions.

There is a risk, obviously, that this bill will get complicated. But the idea that we are going to shut off the possibility of these ideas being offered ought to be offensive to every Member, even those who support the legislation. If it can happen here, it can happen on a bill you support or oppose for one reason or another.

I am terribly disappointed that I am looking at a procedural situation that I warned about, which is that if you didn't provide adequate time for Members to be able to offer amendments—even amendments not particularly helpful in the eyes of some of my colleagues—you run the risk of undercutting the legislation. Maybe that is what the majority wants to do anyway, on the assumption that those groups outside who support the underlying bill will blame those of us who are willing to shut down the debate and, if not, give us an opportunity to let the Senate work its will. That is a false hope. I believe people are much smarter than that. They understand that if you don't let the Senate work its will, even under time constraints and amendments that are being limited in number, you do a great bit of damage to this institution.

It is late in the year, but I believe we have a good bill here. I want to describe it briefly, if I may. We have worked on an excellent compromise that a majority of colleagues here can support.

First of all, I am a very strong supporter of class action as a procedural device. Class action lawsuits have provided individuals of modest means the ability to band together to achieve systemic change when they could not have done so individually. In fact, important legal developments in such areas as civil rights, sex discrimination, and environmental protection have been the result of class action lawsuits.

But there is considerable evidence from courthouses across the country that class actions are being abused. Procedural rules that are designed to decide fair and just outcomes for individual plaintiffs and defendants are not being followed in too many cases. As a result, the class action system is not working, in my view, the way it was intended, and justice is not being served.

Madam President, I am also one who has supported and opposed various tort

reform measures. I suggest that what we are talking about here is more court reform than tort reform.

For example, I opposed medical malpractice reform, not because I don't think we ought to do something about it, but it was a poorly crafted bill.

I also opposed liability protection for gunmakers. By the way, most manufacturers of firearms reside in my State, but the idea that we are going to exclude an entire industry from litigation was highly offensive to me.

I opposed liability protection for manufacturers of the so-called MTBE, which pollutes ground water. I supported a patient's right to sue their HMOs and insurance companies, which are a major industry in my State. Obviously, I helped write and helped to support the securities litigation reform, uniform standards, Y2K legislation, and the terrorism insurance bill.

So I don't fall into a category here of being for whatever is titled "tort reform," supporting it or opposing it. I have a record that I believe is one of balance and support of those ideas and efforts that truly were designed to try to improve a litigation system. That is the background of my own voting record.

I will give you a history in terms of this compromise. On October 22 of last year, the Majority Leader sought to proceed to an earlier class action measure, S. 1751. The vote on that motion to proceed was 59 to 39, which is 1 vote short of the required number to invoke cloture.

At the time of that legislation, I voted no on invoking cloture, and I did so with some reluctance. I noted that, while I supported some reform of class action procedures, I could not support S. 1751. I also expressed concern about whether there would be any meaningful opportunity for Senators to negotiate changes in that bill in a bipartisan fashion.

I told colleagues in October of last year that reaching an agreement on class action reform required us to roll up our sleeves to get it done. Many long hours of painstaking negotiations were ahead of us. As an author of the securities litigation reform bill, the uniform standards legislation, terrorism insurance, and the Y2K bill, I know that principled compromise could be reached on class action reform as well.

I argued at the time, and my sentiment still holds true today, that "the American people deserve better. We are not working together as often as we should on critical questions. If we do not do it, then we do a great disservice to the American people."

Subsequent to the vote in October 2003, I joined with three of my colleagues in sending a letter to the Majority Leader on November 14. In that letter, we outlined the specific policies that we believed needed to be addressed in a class action bill that would garner the necessary votes to pass in this body.

In November of last year, Senators SCHUMER, LANDRIEU, and I entered into discussions with Senators FRIST, HATCH, and GRASSLEY. Those negotiations resulted in the compromise that is before us today.

I do believe this legislation is a significant improvement over the earlier bill considered by the Senate last year. When Senator SCHUMER, LANDRIEU, and I sent our letter to the Majority Leader, we asked for five changes in that legislation:

No. 1, we wanted to ensure that the jurisdictional provisions keep truly local cases in State courts.

No. 2, we wanted provisions on mass tort actions to be as precise as possible.

No. 3, we wanted to prevent the potential for repeated removal and remand between State and Federal courts, the so-called "merry-go-round effect."

No. 4, we wanted to provide appropriate compensation to those plaintiffs who take the risk of coming forward.

And No. 5, we wanted stronger provisions on abusive coupon settlements.

We got those changes and more. In fact, we asked for those 5 changes, and yet we got 12 improvements to the bill as originally proposed.

I am pleased to say that the compromise we reached last year is a measured, bipartisan response that fixes many aspects of our broken class action system. In addition, it strikes the appropriate balance between protecting Americans' access to the courthouse while ridding the class action system of its most egregious abuses.

I want to emphasize at the outset that this bill is a fragile, carefully-crafted compromise. There are some who will argue the bill goes too far, and others will tell you it does not go far enough. I happen to believe it achieves the right balance. It may not be perfect, but I think it is a good balance overall.

Having entered into a good-faith agreement with my colleagues on both sides of the aisle, I want to see the compromise preserved both on the Senate floor and in conference. No statement has been made by the Democratic leader that he is opposing the appointment of conferees on this bill. Part of the agreement was that the compromise we reached in the Senate would be the one approved by the House in conference. If that was not the case, then those of us who agreed vote on the motion to proceed would reserve the right to filibuster the conference report. We certainly continue to hold that view.

S. 2062 reforms the current class action system in a number of meaningful ways. Let me go through them if I can rather quickly.

First, it addresses the issue of coupon settlements which constitutes one of the greatest abuses in our courthouses today. Here the plaintiffs receive coupons, or a token payment, for a discount off their next purchase while

their attorneys pocket millions of dollars in fees.

It is not only the plaintiff attorneys who benefit from these coupon settlements, but the defendants benefit as well. For example, the average redemption rate in a settlement involving food and beverage coupons have been between 2 and 6 percent. As a result, the purpose of these coupon settlements has changed. They no longer serve class members but defendant and plaintiff attorneys instead.

The original class action bill brought to the Senate last year in October only provided for greater judicial scrutiny of such coupon settlements. Senators on the Judiciary Committee who opposed the bill rightly argued that "reforms with real teeth were needed to end worthless coupon settlements in class action cases."

We agreed with their view. The compromise does a much improved job of reining in these coupon settlements by pegging the lawyers' fees to the value of the coupons actually redeemed by class members or on the reasonable value of the legal work actually performed by the counsel in the litigation. As a result, there will be a strong incentive to resist easy settlements and fight for an outcome that is truly fair and equitable to the plaintiffs.

Another important consumer protection enshrined in the compromise bill concerns the payment of so-called bounties. The earlier legislation included a provision that prohibited settlements that allow one member of a plaintiff class from receiving a higher settlement award than other members of that class.

On its face, such a provision might seem innocuous. After all, it appears to confirm the notion that all plaintiffs should be treated equally and fairly. However, the bounties provision in the original bill would have unintentionally created a significant problem. While it makes sense for all plaintiffs' class members to be treated equally in many cases, in some other instances it is more appropriate for some class members, particularly class representatives, to receive larger awards than others in the same class. For example, in a class action designed to prevent the wrongful discharge of employees, it would be appropriate for those who have already been fired, for instance, to receive larger settlements than those who are merely threatened with being fired.

Furthermore, in many cases, the named plaintiffs—the people whose names appear on the papers filed with the court—are subjected to harassment, angry phone calls, hate mail, even death threats. Anybody who has seen Julia Roberts' movie "Erin Brockovich" or the earlier Meryl Streep movie about the life and death of Karen Silkwood will recall that being a named plaintiff in a lawsuit against a company that employs many people can be a very unpopular thing to do. It often takes courage to stand up

for what one believes is right, and unfortunately those who have the courage to do the right thing are sometimes attacked, ridiculed, and ostracized.

If the bounty provision in the earlier bill were to have remained in the compromise, it would have simply stripped away any incentive for individuals to come forward and protect the rights of the class. Under current Federal law, a class representative in a successful class action can be rewarded for taking the initiative to fight unlawful discrimination. Most class members choose to sit on the sidelines and reap the benefits of the case when it is finished. Class representatives, on the other hand, take an active role in their cases, and they do so not only for themselves but to obtain justice for others in similar situations. Under the earlier bill, the courts would not have been able to recognize the special efforts or contributions made by class representatives.

We have listened to the civil rights community which was strongly opposed to the bounties provision in the original bill. The compromise deletes this provision, which will ensure that the courtroom doors remain open for those plaintiffs willing to serve as class representatives.

The compromise bill also responds to the concerns of the Federal Judicial Conference and others about the class settlement notice provisions in the earlier measure. The provision in the original legislation was intended to provide clear and simpler notices to class members regarding proposed class settlements. However, we heard from the Federal Judicial Conference that the notice requirements, while well intentioned, would have actually been too burdensome and too complicated to implement.

According to the Judicial Conference Rules Committee, these notice requirements would have "undermined the bill's stated objectives by requiring notices so elaborate that most class members [would] not even attempt to read them." In addition, they would have conflicted with the December 1, 2003 amendments to Rule 23 of the Federal Rules of Civil Procedure, which are similarly intended to guide the form and content of settlement and certification notices provided to class members. The compromise, therefore, deletes the confusing notice provisions in the earlier bill and simply enacts the recommendations of the Judicial Conference. Yet another compromise in this legislation.

At the very heart of the compromise are provisions concerning when interstate class actions can be removed to Federal court. Under Article III of the U.S. Constitution, out-of-State litigants are protected against the possibility of prejudice of local courts by allowing for Federal diversity jurisdiction when the plaintiffs and the defendants are from different States.

Title 28, section 1332(a) of the United States Code specifies the current re-

quirements that must be met for an out-of-State litigant to claim Federal diversity jurisdiction and have his or her case heard by a Federal court. First, every member of the class must be seeking damages in excess of \$75,000, including interest and costs. Second, there must be complete diversity; that is, every named member of the class must be a citizen of a different State than every defendant in the same litigation.

Walter Dellinger, the former Solicitor General during the Clinton administration, noted that when Congress first drafted the diversity jurisdiction statute, the class action system as we know it today did not exist at all. In the years since its enactment, however, the law has been interpreted to exclude most nationwide class actions from Federal court.

For example, Dellinger remarks that the requirement for complete diversity can easily be avoided by the simple expedient of including at least one named plaintiff and defendant that share a common State citizenship.

With regard to the amount in controversy requirement, Mr. Dellinger contends that a class action can easily be configured to ensure that at least one class member does not satisfy the minimum amount, or by seeking \$74,999 in recovery on behalf of each and every plaintiff and class member.

As a result, attorneys bringing class actions can manage to avoid Federal court all together, and have the case tried in a State court, often in the county of their choosing, even though the total amount at stake might exceed hundreds of millions of dollars and have true multi-State national implications. This practice is commonly known as "forum-shopping." While it is in concept a long-standing part of our law, it has become a growing problem in the United States.

Under S. 2062, the bill now before us, the current rules for diversity jurisdiction are carefully adjusted so that certain large multiparty cases, namely, those that are truly nationwide in scope, affecting many or even all States at once, will be litigated in the Federal courts rather than in the courts of just one State or county. In other words, the compromise would bring the class action process closer to the Framers' intent by allowing cases that are multi-State or national in scope, where the risk of local biases are the greatest, to be heard in Federal court and not in State court.

Specifically, the Federal district court will have original jurisdiction over any class action with more than 100 members if the following two requirements are met. First, the aggregate claims must exceed \$5 million, rather than each and every class member must exceed \$75,000 in alleged damages. Second, rather than requiring every member of a class be a citizen of a different State than every defendant, S. 2062 allows for Federal jurisdiction if any class member is a citizen from a

different State from any defendant. Again, the purpose of these changes is to ensure that more substantial multi-State class actions are heard in Federal court.

Mr. DURBIN. Will the Senator yield for a question?

Mr. DODD. Could I finish? I only have a limited amount of time, and I apologize, and I will get through this statement.

These moderate changes to the Federal diversity statute were included in the original legislation that came before the Senate last October. Under the compromise, however, we further refine these provisions to address two important concerns that were not fully taken into account in the earlier bill. I want to especially commend Senator FEINSTEIN of California for her leadership in helping to clarify these issues, both during the Senate Judiciary Committee's consideration of the earlier measure and in the discussions that led to this compromise.

First, the compromise responds to concerns that the original bill did not adequately address the handful of small, rural State courts that have increasingly become a magnet for more and more nationwide class actions. Such "magnet jurisdictions" have tended to have lax class certification requirements, and have been less than rigorous in reviewing proposed settlements. In fact, one of the most flagrant abuses of the current class action system occurs when lawyers "forum shop" that is, invent an injured class and then file a national class action in a "magnet jurisdiction" where the judges are more likely to lend a sympathetic ear.

Perhaps the most famous of these so-called "magnet jurisdictions" is Madison County, IL. According to a 2001 study in the Harvard Journal of Law and Public Policy, the per capita rate of class action filings was almost twice that of the second-ranking jurisdiction in the United States. In recent years, the study found that class action filings in Madison County increased by 1,850 percent during the period between 1998 and 2001.

Although the population of Madison County is only 250,000, it ranks third nationwide in the number of class actions filed each year, behind only Los Angeles County, CA and Cook County, IL.

Mr. DURBIN. Would the Senator yield for a question?

Mr. DODD. I am limited on time, I say to my colleague. When I get through this, I will be glad to respond.

Mr. DURBIN. The Senator is talking about Illinois. I wanted to ask a question or two about Illinois.

Mr. DODD. I will come back to the Senator.

Even more astounding is the data reported in the January 11, 2004 St. Louis Post-Dispatch, which discovered that in anticipation of Congress reforming class action procedures, the number of class actions filed in Madison County Circuit Court rose to an all-time high.

Yet it is not only the sheer numbers of filings in Madison County that is so astonishing. What is so surprising is that many of these class actions have little connection to the county. In fact, sometimes only a few class members actually came from that particular jurisdiction. Even the Illinois Supreme Court has noted the congested dockets in this court and declared "the congestion is aggravated by the presence of [nonresident] cases that have little or no connection to Madison County."

For example, a recent case that found its way to Madison County involved a purported class action on behalf of 30 million customers who claimed to be injured by Sears in connection with an allegedly deceptive tire balancing service. Only one plaintiff, a Madison County resident, was named, and only one Sears automotive repair shop was actually located in Madison County. The class action, however, sought to certify a nationwide class, allegedly subject to the Illinois Consumer Fraud Act, despite the fact that the vast majority of class members and the vast majority of Sears locations have no connection to Illinois at all, much less to Madison County.

Madison County has especially been a magnet for asbestos cases. In fact, Madison County led the Nation 2 years ago in the number of mesothelioma cases filed. In most of these cases, however, the plaintiffs did not live in Madison County, were not exposed to asbestos in Madison County, and were not treated for any asbestos-related illnesses in Madison County.

For example, in a recently decided case, an Indiana resident claimed that he was exposed to asbestos at the U.S. Steel plant in Gary, IN. He sued U.S. Steel, which is based in Pennsylvania, in Madison County. Despite the total lack of connection to the local forum, the case proceeded to trial and a Madison County jury awarded him \$50 million in compensatory damages and \$200 million in punitive damages.

Clearly, such practices need to be curtailed in any meaningful reform of the class action system.

Again, I emphasize I am a strong supporter of class action. Class action litigation is critically important, but when these things get out of control, then we have to get them back on track again.

There are many more examples of national class actions implicating hundreds of millions if not billions of dollars being decided by Madison County judges because of its reputation as a magnet court. That means that the laws of Madison County, Illinois on everything from insurance policy to consumer fraud to environmental protection are being imposed on the residents of the other 49 states, despite the fact that many of those States have adopted different legal views.

The compromise bill specifically addresses this serious problem. It includes language not in the earlier bill

to clarify when a Federal court can exercise its jurisdiction if between one-third and two-thirds of the proposed class members and all primary defendants are citizens of the same State.

Specifically, the compromise authorizes Federal courts to consider any "distinct nexus" or connection between the forum where the action was brought and the class members, the alleged harm, or the defendants. The purpose of this provision is to require Federal judges to consider whether the interstate class action has any relationship to the jurisdiction where it is brought. If there were no such connections, as in the case of many of the class actions filed in Madison County, the Federal judge would then have the discretion of moving the case to Federal court. Such a provision would therefore rein in the blatant forum shopping that is so prevalent in Madison County and other magnet jurisdictions today.

The other improvement to the Federal diversity statute that the compromise bill makes concerns the so-called "local class action exception." The purpose of this exception is to ensure that State courts can adjudicate class actions that are truly local in nature, and they should have that right.

Under the original bill, Federal jurisdiction would not have been extended to those cases in which two-thirds or more of the members of the plaintiff class and the primary defendants were citizens of the State in which the suit was filed. Such cases would have remained in State court, since virtually all of the parties in such cases would have been local, and local interests therefore presumably would have predominated.

There were concerns raised in the earlier bill, however, that class actions with a truly local focus may be moved to Federal court because of the presence of an out-of-State defendant necessary to prosecuting the action.

The compromise responds to these concerns by further refining the criteria as to when a class action is to remain in State court. First, under our proposal, there must be a primarily local class—that is, more than two-thirds of the class members should be citizens of the forum State. Second, there must be at least one real local defendant. Third, the principal injuries resulting from the alleged conduct or related conduct of all of the defendants must have occurred in the forum State. Finally, there must be no other class actions having been filed in the previous 3 years based on the same or similar allegations against any of the defendants. Again, these provisions respect State sovereignty by ensuring that class actions of a truly local nature are kept at the State level, while complex class actions with nationwide implications are heard in Federal courts.

I want to briefly respond to some of the concerns raised about the jurisdictional provisions in the bill. Critics of

this legislation have claimed that the measure would sweep most if not all State class actions into Federal court, where overburdened and unsympathetic judges would let them wither and die.

I believe that such concerns are largely misplaced. First, as I noted earlier, we included provisions in the compromise to ensure that State prerogatives are respected. These provisions—namely, the “local class action exception” and the “distinct nexus” language—are intended to keep truly local cases in State court.

In fact, the compromise leaves in State court a wide range of class actions, such as those in which all the plaintiffs and defendants are residents of the same State; those with fewer than 100 plaintiffs; those involving less than \$5 million; those in which a State government entity is the primary defendant; those brought against a company in its home State in which two-thirds or more of the class members are also residents of that State; and shareholder class actions alleging breaches of fiduciary duty.

What the compromise does target for Federal jurisdiction, however, are those nationwide or multistate class actions that are filed in magnet courts such as Madison County, IL. While I respect the views of those who assert that State courts are appropriate forums for such cases, I must respectfully disagree. In my view, such large, multistate or nationwide class actions are precisely the kinds of cases that are most appropriately tried in Federal court. I believe that the provisions we included in the compromise are quite discriminating about which class actions will be removed to Federal court and which will remain in State court.

Second, critics of the legislation have argued that Federal courts are so overburdened that they do not have the resources to handle class actions formerly assigned to State court judges. Again, these concerns are unfounded. The real workload issues are not in the Federal courts but in the State courts, where the average State court judge is assigned three times as many cases as his or her Federal counterparts. According to the Court Statistics Project, State court judges are assigned over 1,500 new cases each year. In contrast, the Administrative Office of the United States Courts finds that each Federal court judge was assigned an average of 518 new cases during the 12-month period ending September 30, 2002.

Third, I also want to be perfectly clear on one further matter. There is absolutely nothing in this legislation that would alter any individual’s right to seek redress for his or her injury. It does not grant defendants any new defense. Consumers can bring the same exact claims as they are bringing now. Civil rights, environmental, and employment claims are in no way precluded. The only issue that this bill would address is whether it is more appropriate for a State or Federal court

to adjudicate those same rights, and I believe that we have struck the appropriate balance in making this determination.

I want to now return to the other provisions in the compromise that represent significant improvements over the earlier legislation.

We have clarified the date when the plaintiff class could be measured. The compromise makes clear that citizenship of the proposed class members is to be determined on the date plaintiffs filed the original complaint. If there is no Federal jurisdiction over the first complaint, however, citizenship is to be determined when plaintiffs serve an amended complaint or other paper indicating the existence of Federal jurisdiction.

The original bill had been silent on when class composition could be measured, which caused some concern that a court would have to constantly reconsider jurisdiction as the contours of the class changed. I believe that the compromise has adequately addressed this matter, and has provided much needed clarity to determining class composition.

Another provision in the earlier bill that caused great difficulty would have required Federal courts to dismiss class actions if the court determined that the case did not meet Rule 23 requirements. The bill provided that the class action complaint may be amended and refiled in State court, but that the new complaint would be subject to removal again if it met Federal jurisdictional requirements. Thus, even if a State court subsequently certifies the class, it could be removed again and again, creating a judicial merry-go-round between Federal and State court.

The compromise stops the merry-go-round altogether. It eliminates the dismissal requirement, giving Federal courts discretion to handle Rule 23-ineligible cases appropriately. Potentially meritorious suits will therefore not be automatically dismissed simply because they fail to comply with the class certification requirements of Rule 23.

The original bill would have also allowed the removal of a case at any time to Federal court even if all other class members wanted the case to remain in State court. In June 2003, 106 professors of constitutional law and civil procedure wrote to Majority Leader FRIST and Minority Leader DASCHLE expressing their concerns over this provision. They argued that:

[It] would give a defendant the power to yank a case away from a state-court judge who has properly issued pretrial rulings the defendant does not like, and would encourage a level of forum-shopping never before seen in this country. Moreover, this provision would allow an unscrupulous defendant, anxious to put off the day of judgment so that more assets can be hidden, to remove a case on the eve of a state-court trial, resulting in an automatic delay of months or even years before the case can be tried in Federal courts.

We listened to the concerns of the law professors and deleted the provision in the original bill allowing plaintiffs to remove class actions. We also retain current law permitting individual plaintiffs from opting out of class actions. The compromise would therefore make a real difference in curbing abuse of the removal process by various counsel.

Two further improvements in the compromise are also worth mentioning.

First, we responded to concerns that the “mass actions” provisions in the original legislation were too broad. The earlier bill would have treated all mass actions involving over 100 claimants as if they were class actions.

Under the compromise, only more substantial claims in a mass action—namely, those that would meet the normal jurisdictional amount requirement of \$75,000 for individual actions—will be subject to Federal jurisdiction.

In addition, we change the “single sudden accident” exception to exclude from Federal jurisdiction mass actions in which all claims arise from an “event or occurrence” that happened in the State where the action was filed and that allegedly resulted in injuries in that State or in a contiguous State. The purpose of this change is to allow a much broader range of truly local cases to remain in State courts.

The compromise also clarifies that there is no Federal jurisdiction under the mass action provision for claims that have been consolidated for pretrial purposes.

Second, the original bill would have allowed defendants to seek unlimited appellate review of Federal court orders remanding cases to State courts. If a defendant requested an appeal, the Federal courts would have been required to hear the appeal and the appeals would have taken months or even years to complete.

The compromise would obviate the potential for workload problems and long delays in two important ways. First, it would give the appellate courts the discretion to conduct reviews at their discretion. Presumably, Federal courts would refuse to hear an appeal unless it presented novel issues or where a district court has clearly abused its discretion. Second, it requires such appeals to be heard on an expedited basis by establishing tight deadlines for completion of any appeals so that no case can be delayed more than 77 days, unless all parties agree to a longer extension.

Finally, the compromise is in no way retroactive—that is, it will not upset or alter in any way cases filed before enactment, should in fact the bill be signed into law. Unlike other litigation reform bills considered by this Congress on guns, medical malpractice, and MTBE, the compromise does not shut the courtroom door on anyone. Instead, it will just direct them to a Federal rather than a State courthouse.

These changes I have discussed represent a fair and a balanced compromise. They constitute a significant improvement over the earlier class action reform legislation brought before the Senate last October.

I want to reemphasize my long-held view that a strong class action system can ultimately serve as a force for good. It can be used to hold companies accountable for significant violations that may result in a small monetary charge for one victim. It can also be harnessed to allow large groups to seek redress for civil rights and other harms where they could not have done so individually. In short, the class action system is the great equalizer in the American judicial system.

Yet nobody can deny that the class action system is being seriously abused. As *The Washington Post* editorialized last year:

No area of the United States civil justice system cries out more urgently for reform than the high stakes extortion racket of class actions.

In addition, an excellent *Newsweek* article published last December entitled "Lawsuit Hell: How Fear of Litigation is Paralyzing our Professions" noted that such lawsuits are:

... changing and complicating the lives of millions of American professionals in ways that confound common sense and cast a shadow over a system that can, at its best, offer people relief and redress from legitimate grievances.

Even former Solicitor General Walter Dellinger commented that such evidence of class action abuses in State and county courthouses:

... gives me great concern that the rights of truly injured individual plaintiffs, as well as the rights of corporate defendants, have fallen victim to manipulation, and even evasion, of settled rules—rules that, no less than financial disclosure laws, are intended to ensure openness and accountability, as well as fundamental fairness, in the judicial resolution of major disputes with national consequences.

Ultimately, the real losers of a broken class action system are not businesses or consumers. Rather, it is the American public's overall confidence in the legal system that will suffer unless a sensible class action reform package, such as that contained in the compromise, is enacted into law.

Bipartisan legislation addressing the class action system's most egregious abuses is long overdue. This carefully balanced compromise that is now before the Senate will make a real difference in reducing the abuse and manipulation of the class action system. It would restore class actions to their original noble purpose as a force for positive change in society, and I urge my colleagues not to let this golden opportunity be squandered.

I know time is getting short. My colleague from Illinois was here, and he would like to be heard on this matter.

Let me return to where I started. I spent a lot of time on this measure. I think we have written a very good bill. I would not claim that this bill is per-

fect. There are some colleagues who fundamentally disagree with me on this issue, and I respect their views.

What I cannot tolerate, however, is the procedure under which this bill is going to be considered. I say to my friends on the other side of the aisle with whom I worked very closely, if you constrain this institution's ability to offer either nongermane or germane amendments to this bill, then this Senator will not be able to support the motion to invoke cloture.

We failed to invoke cloture by only one vote last October. Although I care about this bill very much, I care far more about the Senate and how we do our business. It is going to disappoint me terribly to have to vote against cloture. But if you constrain the ability of Members of this body to offer specific amendments, then this Senator is going to have to wait for another day to fully consider this measure.

There are many people across this country who believe we put together a good compromise, but I am not going to vote for a compromise that doesn't allow the Senate to work its will on this important matter.

I realize my time has expired.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Did the Senator have enough time? Is the Senator finished? I would certainly grant him more time.

Mr. DODD. I am.

Mr. HATCH. Madam President, I appreciate much of what the distinguished Senator from Connecticut has said with regard to this bill. He is right on. I do not agree with him that he should not vote for cloture on this matter because he knows, we all know, if we do not get cloture, this bill is not going to make it.

The Senate is used to having nongermane, irrelevant—nonrelevant amendments foreclosed in order to get legislation passed. We all know unless we foreclose that, this legislation is never going to see the light of day. That is what we have been putting up with now for 6 years.

To come on the floor today, as some have, and indicate that the Senate is going to be broken if we proceed on this bill in a way that permits only germane amendments and with one nongermane amendment which those on the other side have wanted for months, and which I think the majority leader was willing to give them, is not shooting straight, as far as I am concerned. As everybody knows, we have worked 6 years on this bill; 62 people signed off on this bill as prime sponsors. We lost on cloture by one vote last time, one solitary vote. If we get only one of the three who agreed to go ahead with this bill, knowing it would cut off the extended debate or the filibuster, which is what we agreed to, then this bill is going to go forward and we will only have to deal with germane amendments and not a whole proliferation of nongermane, political, politicized amendments, which is what

the majority leader would like to foreclose.

All of the holier than thou "we must preserve the Senate" comments are meaningless in this context. If this were the first time this bill had ever been considered, if it had not had extensive debate through at least four hearings through the years, if it hadn't had an extensive internal debate as we agreed to accept a whole raft of amendments by the three who came on this bill back in November of last year with the understanding that we are going to invoke cloture—if we had not gone through all that, then I might see some reason for the comments made here today, but those comments should not see the light of day if you look at the facts and you look at what has gone on here.

Let me mention my support of S. 2062, the Class Action Fairness Act of 2004. I appreciate Senator REID's impassioned defense of trial lawyers. It is a profession I proudly belong to and share with him. But this bill is not about attacking trial lawyers. It is about correcting certain grotesque abuses of our judicial system by a handful of class action lawyers who are giving all the other trial lawyers a bad name. On this point the evidence is clear and undeniable.

Furthermore, I would like to note that the Erin Brockovich case, which my Democratic colleague from Nevada mentioned, would have remained in State court. There is no question about that. The suit of *Anderson v. PG&E*, known as the Erin Brockovich case, was brought in California by California residents against a California company.

There is no question that if they wanted to stay in State court they could. Under this bill, the case would not have been eligible for removal under diversity jurisdiction principles. Our concern is to remove truly national actions to Federal court and not local controversies like this one.

The evidence is clear and undeniable. The well-documented abuse of the class action litigation device victimizes plaintiffs—the very people that class actions are supposed to benefit. These abuses cheat millions of consumers who unwittingly have their legal rights adjudicated in local courts thousands of miles away. They deny the due process rights of defendants who are relentlessly hauled into a handful of small county courts where the playing field is unfairly tilted in favor of the plaintiffs' bar. And if that were not enough, class action abuses are eroding public confidence in our civil justice system.

To give the class action problem some perspective, I want to consider the effect of this litigation in just one locale—Madison County, IL, which the Senator from Connecticut mentioned. There we find a case study in the rampant misconduct within the class action system, its corrupting effect on the courts, and the desperate need for reform. This small town in the southwestern part of that state provides all

the evidence necessary to convince anyone that the legal system is currently being exploited by shameless and self-seeking plaintiffs lawyers.

Madison County, IL is a rural county. I imagine that it is the type of place where Abraham Lincoln first got his start as a young lawyer and advocate for justice. In some notes taken in preparation for a Law Lecture around 1850, Lincoln set the ideal for his profession, a profession practiced by many in this Chamber.

No. 1: Discourage litigation. Point out how the nominal winner is often the real loser in fees, expenses, and waste of time.

No. 2: Never stir up litigation. The worst man can scarcely be found than the one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defective titles and stirs up strife to put money in his pocket. The moral tone ought to be infused into such a profession which should drive such man out of it.

No. 3: An exorbitant fee should never be claimed.

That was Abraham Lincoln. These words were uttered during a time when being a lawyer carried a title of honor, integrity and trust. Unfortunately, these words no longer carry such meaning for the lawyers who descend on Madison County. In the "Land of Lincoln," the rule of law has been corrupted almost beyond recognition by self-interested personal injury lawyers, plaintiffs, and public officials without any sense of shame.

Unscrupulous personal injury lawyers go forum shopping to find friendly jurisdictions such as Madison County. Then the judges in those jurisdictions are frequently compromised by campaign contributions from the very same law firms arguing in their courtrooms and certify these cases with the proverbial rubberstamp, even though they don't deserve certification.

Finally, sympathetic local juries trying out-of-state corporations bestow unjustified and sometimes outrageous awards.

This pattern of behavior is not only an affront to the due process right of the defendants, but it breeds disrespect for the rule of law itself.

Let me refer to this chart. "Honest Abe" would be ashamed, and I would say anyone else would be ashamed who studied his life. The "Land of Lincoln" has become the land of lawsuits. Madison County has become the principal place where they bring these frivolous lawsuits and where they bring them because they are forum shopping. They know they can take unfair advantage. It is easy to see. They hire the attorneys right there in Madison County who have helped to support the judges who sit on the bench. The juries in that county don't care what the rule of law is or what reasonable approaches to the law really may be.

The courthouse in Madison County, IL is now described as "magnet court,"

always on the lookout to find suitable venues for enriching itself. Entrepreneurial plaintiffs' lawyers or personal injury lawyers, many who practice in the field of personal injury, are sucked into its orbit.

The numbers alone tell the story. Over the last 5 years, the number of class actions in the county has increased by 1,000 percent.

Let me repeat that so this astronomical figure can sink in: a 1,000-percent increase. It almost defies logic. In 1998, there were only two class actions filed in the county. In 2000, that number rose to 39. In 2001, there were 43 new class actions.

One year later, the bridges leading to the riches of Madison County were clogged with carpet-bagging lawyers as word hit the street that the local court there was giving away money like it was Christmas Morning. Enterprising plaintiff's lawyers looking to make a quick buck knew that Madison County was the place for business. This includes millions of people. In 2002, 77 class action suits were filed. In 2003, there were another 106. Between 1998 and 2003, the number of class actions in the county rose from 1 to 106.

In the classic American musical *The Music Man*, a con man came to take advantage of a small Midwestern town. In today's revival, a marching band of lawyers has descended on Madison County, with tall tales of jackpot justice and the dream of getting something for nothing. Only this time the judges of that Midwestern town have joined hands with the con-men to take all of America for a ride. Even when the purveyors have law degrees on their walls, snake oil is still snake oil.

Just in the last 3 years, the lawyers who flocked to Madison County succeeded in having the following classes certified:

All Sprint customers in the entire Nation who have ever been disconnected on a cell phone call in a suit in Madison County; every RotoRooter customer in the country whose drains might have been repaired by a non-licensed plumber; and all consumers who purchased limited edition Barbie dolls that were later allegedly offered for a lower price elsewhere.

Those are just three examples of how ridiculous this was getting. If it were not so tragic, it would almost be easy to laugh at these cases. We laugh at the thought of small county courthouse in Illinois adjudicating cases against national companies, involving various State and Federal regulations, and involving millions if not billions of dollars in settlements—but where neither the plaintiffs nor the defendants are typically residents of the county. These locally elected judges, with the close assistance of interested plaintiffs' attorneys, merrily continue to set policy for the entire nation, defying the principles of self-government on which our Federal system is based.

This situation is a mess and a few plaintiffs' lawyers are exploiting it to

the hilt. The same five firms appeared as counsel in 45 percent of all cases filed between 1999 and 2000. Of the 66 firms appearing in these cases, 56 of them—85 percent—had office addresses outside of Madison County.

In this small county, with a population of 259,000, there are somehow more mesothelioma claims from asbestos exposure than in all of New York City, with its population of 8 million. On 9-member firm with an office in Madison County claims to handle more mesothelioma cases than any firm in the country.

And who benefits from all this litigation? One Madison County judge approved a \$350 million settlement against AT&T and Lucent for allegedly billing customers who leased telephones at an unfair rate. What did the lawyers get? Forty-four lawyers from our firms will split \$80 million for legal fees and \$4 million for expenses. And the customers? They actually lost money. After their legal fees, the average class member got hit for \$6.49. That is outrageous.

Lincoln's example is a distant memory in Madison County and clearly something is rotten in middle America. The *Washington Post* has succinctly described the situation. "Having invented a client, the lawyers, also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country." And those lawyers are picking Madison County. They're picking it because it is what some call a magic jurisdiction.

Dickie Scruggs happens to be a friend of mine. He made this comment. Dickie is one of the most wealthy and successful trial lawyers in the country. But he said this regarding Madison County and the "magic jurisdictions."

What I call the "magic jurisdictions" . . . is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're state court judges; they're populists. They're what got large populations of voters who are in on the deal, they're getting their [piece] in many cases. And so, it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you are a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with the amount of money. The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is.

This was Dickie Scruggs talking to Asbestos for Lunch, in May 2002. I think Dickie Scruggs has been very honest and accurate. I don't think anybody can deny what he is saying.

What makes it so magical? In a magic jurisdiction, the supposedly objective judge and jury both stand to gain from the settlement. Madison County is, the *Chicago Tribune* noted, a jackpot jurisdiction where local newspapers "sport advertisements looking for the local plaintiff who can provide a convenient excuse to file."



This choice of venue might have something to do with the fact that the elected judges of the circuit court of Madison County receive at least three-quarters of their campaign funding from the lawyers who appear before them in these class action suits. Unbelievably, since it so obviously smacks of corruption, this is an increasingly common occurrence all over the country. It is all enough to make an honest person cringe.

As a fellow attorney, who has taken an oath to support justice and the law, this story of juries and judges in the back pockets of those arguing before them, turns my stomach. Magic jurisdiction? Judicial black hole is more fitting.

In a simpler time, a State court would only certify a class if there was a substantial local connection. The judges of Madison County have created an environment, however, where a lifetime resident of Washington State, who worked in Washington, was allegedly exposed to asbestos in Washington, never received medical treatment in Illinois, and had no witnesses in Illinois to testify on his behalf, actually thought it was worth a shot to bring suit in a strange town halfway across the country. What was his connection to Madison County? He vacationed in Illinois for 10 days with his family nearly 50 years ago.

In this case, the court did the right thing and refused to certify this man's claim. But that a lawyer would even consider bringing it shows how far gone Madison County is. So far that the Illinois Supreme Court took the extraordinary step of rebuking it. As legal ethics Professor Susan Koniak of Boston University School of Law explains, "Madison County judges are infamous for approving anything put before them, however unfair to the class or suggestive of collusion that is."

This isn't justice. This is a travesty. The St. Louis Post-Dispatch, one of this Nation's great newspapers, has followed this epidemic of litigation closely, and they describe the run on the Madison County courthouse as resembling "gleeful shoppers mobbing a going-out-of-business sale." Due process itself is corrupted by this circus. What is going on in Madison County too closely resembles blackmail for my taste. The deck is stacked against these companies hauled to Illinois to answer these charges. The cases are heard on an expedited basis that barely gives the defendants a chance to respond. Under these pressures, they are typically given an offer they can't refuse, and they settle regardless of the merits of the case. These ultimatums offered by lawyers in cahoots with judges are better suited to an episode of *The Sopranos* than to a supposedly impartial justice system.

Let's be clear. These are not local disputes. S. 2062 does nothing to remove local suits from local courts. These are suits brought on behalf of a nationwide class of clients against cor-

porations that do business in every state. Madison County is not chosen as the venue because of its quaint scenery. It is chosen because it is a sure thing, a sure bet. The fix is in. If it was a sport, we would say the game was thrown. Defendants in these class actions do not get a fair shake in Madison County.

This is not a triumph of federalism and local decisionmaking. It is the evisceration of federalism. One of the bedrock principles of a Federal government is that states are largely free to regulate their own particular affairs. To allow one State to legislate for another is to violate an important principle of self-government that this country is built upon. In the case of Madison County, a trial bar that knows few limits, coupled with a ready and able courthouse, is in fact imposing the will of a small few on the entire Nation. Madison County has been flooded with class action claims and now the Nation is drowning in them. This is a classic case for Federal intervention. In fact, this is a case study for the type of intervention in Federal affairs the Constitution was meant to allow.

Let me refer to what happens in Madison County and how it affects the whole country. As this chart shows, the white dot in the middle is Madison County. The overwhelming majority of class actions filed in Madison County are nationwide lawsuits in which 99 percent of the class members live outside of Madison County. As a result, decisions reached in Madison County courts affect consumers all over the country. The county's elected judges effectively set national policies on important commercial issues. They do it in a way that is basically dishonest.

There is a place for personal injury law in the American justice system. Americans have a sacred right to take their case to court when they are harmed by a person or a product. I will stand up for those rights against anybody and everybody, if necessary. Yet this right is endangered by a seriously compromised class action regime, not just in Madison County but in other jurisdictions throughout this country. To help resecure it we must enact this reform.

Today's lawyers do not take cases that come to them, they invent cases. They behave like entrepreneurs who find an issue before they find a plaintiff. They act like businessmen, the CEOs of Trial Lawyers Incorporated.

The problem is their business plan makes hash of our system of impartial justice and mocks our Federal arrangements. Much of this has occurred once the Supreme Court allowed attorneys to advertise. The great lawyers never advertise. It is only those who are in business to rake off the top of the crop. To be honest, I personally would be ashamed to advertise. If I was not good enough to get clients without advertising, I would be ashamed. Now, it is legal under our system, but since that happened, this is what is happening throughout the country.

It simply defies belief that the small county courts are the proper venue, much less a capable one, for complex multijurisdictional litigation. The plaintiffs bar has put its business model into motion in Madison County. First, find sympathetic judges, then bankroll their campaigns, and to seal the deal rush defendants into court without giving them an opportunity to investigate the claims against them. Justice demands fairness, but our system of decentralized class action litigation is fundamentally unfair to defendants, to plaintiffs, and the average American who ends up footing the bill for the unjustified billion-dollar settlements.

I thought we would compare this to Monopoly. Let's play Class Action Monopoly. Go. Come up with an idea for a lawsuit. Find a named plaintiff to pay off. Make allegations, no proof is needed. Get out of rule 23—which is an appropriate rule—get out of rule 23 free. Convince your "magnet" State court judge to certify the "class," even though it is not certifiable. File copycat lawsuits in State courts all over the country. Sue as many companies in as many States as possible, even if they have no connection to the State.

Who gets the money? Columbia House case: \$5 million for lawyers, discount coupons for plaintiffs. Blockbuster case, \$9.25 million for lawyers, free movie coupons for plaintiffs. And they were not very many of those, at that. Bank of Boston case, \$8.5 million for lawyers. Some plaintiffs even had to pay out of their own pockets to pay for this, even though they were the ones for whom the suits were allegedly brought.

You ought to ask yourself, What happens to me? Your employer takes a hit, maybe lays you off. Your health and car insurance premiums go up dramatically, which we have been seeing. The lawyers win; you lose.

Almost everything in society goes out of sight and goes up in cost because of what is happening in these jurisdictions and in these cases that really should never have been brought to begin with. The Class Action Fairness Act is a modest reform. It is not a great big change. It does not deprive substantive legal rights to any American in this country. All it does is make it easier to put these national cases where they belong; that is, in our national courts. According to one study, 98 of the 113 class actions filed in Madison County from 1998 to early 2002 could have been moved to Federal court under this legislation.

Justice demands that we act. Those who are injured will get their day in court. By voting for S. 2062 we will help make sure they get it in a court where justice can be dispensed.

I yield the floor.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Hawaii.

Mr. AKAKA. Mr. President, I thank you very much for recognizing me.

I rise today to express my extreme disappointment, along with the Senator from Idaho, Mr. CRAIG, with the actions of the majority leader in preventing the consideration of amendments, including amendment No. 3547, the Native Hawaiian Government Reorganization Act of 2004. Senator INOUE and I filed this amendment in an effort to have our legislation considered by the Senate.

We have been working to enact this legislation now for the past 5 years. The Senate Committee on Indian Affairs has favorably reported this bill for the past three Congresses. Our legislation enjoys widespread support in Hawaii, and nationally also. We consider this a bipartisan measure. Our Governor supports it, our State legislature supports it, and a majority of our constituents support it. For 5 years we have worked to enact this bill which has effectively been blocked from Senate consideration by a few of our Senators who refuse to acknowledge native Hawaiians as indigenous peoples.

We have the votes to pass this legislation. In fact, I am confident that we have the votes to succeed on a motion to proceed to S. 344. I must at this point say that S. 344 has been cosponsored by my colleague who preceded me, my colleague from Utah, who is cosponsoring S. 344 as a freestanding version of my amendment.

Because of the kind of support we have here on both sides of the aisle, we are trying to have it considered. This is why we sought to have our legislation considered today—because we knew we could debate it quickly and pass it. I join my other colleagues in expressing my disappointment, again, with the procedural maneuvering that has occurred today.

Thank you, Mr. President. I yield back my time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, first, I salute my colleague and friend from Hawaii. I am honored to be a cosponsor of his bill. Senator AKAKA and Senator INOUE are two of our very best Members in the U.S. Senate. It is rare, if ever, that they ask their colleagues for a helping hand. In this situation, Senator AKAKA and Senator INOUE have shown extraordinary leadership to make recognition of a situation in their home State that deserves our help. I am more than happy to join the Senator.

I am disappointed, as Senator AKAKA is, that we are not going to have a chance, apparently, to vote on this amendment. As I understand it now, Senator FRIST has come to the floor of the Senate and has used a procedural device called "filling the tree," which means he has filed so many amendments that no one else can file an amendment. So we are just stopped.

The underlying bill, the class action bill, is an important and controversial bill, and now Senator FRIST has stopped any amendments to it. Among

those that have been precluded is the amendment by the Senator from Hawaii, which has bipartisan support, a good amendment, and I hope we can get to it and get to it soon.

I see our Democratic leader in the Chamber, Senator DASCHLE. I know he has spoken to this issue many times. I would like to address the class action bill, but I will at this point yield to the minority leader and then ask to be recognized after he has spoken.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I thank the distinguished Senator from Illinois.

As I was on the Senate floor, I noticed he was calling attention to the amendment that was contemplated by the two Senators from Hawaii. They both spoke powerfully and eloquently about a month ago before the caucus and at that time expressed the hope that the caucus could support their efforts to deal, once and for all, on the issue of Hawaiian recognition.

This is a very important issue for them. I think I can say without equivocation or concern for contradiction that our caucus was ready to stand unanimously in support of their effort. But it is the amendment offered by the Senator from Hawaii that illustrates the point we were making earlier today.

There is, I am told, one person in the entire body who has an objection to the amendment offered by the Senators from Hawaii—one person. One person is holding up the effort made by the two Senators from Hawaii courageously and persistently to deal with this question. And they came to us for advice: What do you think we should do? My suggestion was: Well, given the fact that we are in this situation, offer it as an amendment to the next vehicle.

This happens to be the next vehicle. They said: We don't need a lot of time. We could probably resolve this matter, given the fact there is overwhelming support for it, in a few minutes. I said: I will tell you this: Once we get on the bill, you will have the first amendment on our side. And that is exactly what the case was going to be.

We heard already from the Senator from Idaho. He, too, has been working diligently with the Senator from Massachusetts. He, too, said: This is not going to take a lot of time, but there is a very critical question of temporary workers and their status today, legally, and if we don't address this problem, we are going to be facing increasingly difficult legal questions. And it is a crime that this—he did not use the word "crime." That is my word. It is a crime. It is a shame that we are precluded from addressing the temporary worker issue.

But that goes to the heart of the situation we find ourselves in right now. In the first instance I can recall, the majority leader has now done something I thought we would never see under his leadership. He has filled the

tree. He has precluded all Senators from offering amendments. We recognized in those dark days in the late 1990s, when this was done with some frequency, what a counterproductive effort that was. Now we find ourselves in exactly the same situation.

Well, I was told this morning. I was very troubled by this action. Now I am told that maybe one of the reasons it was done is because there are those on that side who do not want this version of class action passed. So in an effort to preclude this version of class action being passed, they knew if they filled the tree they would never get to final passage and they could, without fingerprints, kill this version of class action, knowing there would be unanimous opposition to this procedural approach, just as there has been on every occasion when it was done in the past.

So whatever the motivation was, it is counterproductive, it is a real disservice to the Senators of Hawaii and Idaho and others who simply want their day in court, their opportunity to present their issues, who have not had that opportunity, with the calendar pages turning and the clock ticking and the time running out.

It is very unfortunate. I had told the majority leader that we would be willing to work with him and I offered to have a limited number of nonrelevant amendments—five. He objected. So given our circumstances, we are left without recourse.

But, again, I thank the Senator from Illinois for his kindness in yielding the floor for me to make a couple comments.

I tell the Senator from Hawaii that we will continue to find an opportunity for him to present his case to the Senate, and we will support him when his legislation reaches a vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Democratic leader, Senator DASCHLE, for explaining the situation. Perhaps I am mistaken or maybe even naive, but it strikes me that the business of the Senate is to debate and amend and consider important legislation. When we reach a point where there is an effort to stop the process, to stop the debate, or to stop an amendment, it is pretty clear the underlying bill is not likely to pass. I don't understand Senator FRIST's strategy, but I leave it to him to explain.

I would like to speak for a moment to the merits of the bill before us. It has a title anyone would fall in love with, "Class Action Fairness Act of 2004." Probably most people following this debate wonder why we are debating it and what it means. If you ask people if they are a member of a class, they will say: Not since I graduated from school, unless you mean the middle class. But this is different.

These are lawsuits that are brought by more than one individual in a particular complaint against a certain

company, for example. It might be all the people who did business with a certain company who believe that they have been wronged, that they are entitled to some sort of compensation. It might be all the people living in a community who have been victimized by the pollution of air or water by a certain company. So instead of filing individual lawsuits against the company or the individual responsible for the wrongdoing, they come together as a class, a group of plaintiffs, and bring many lawsuits into one.

Of course, this is a challenge to bring together a class of people who have a common interest. It is also difficult many times to have these classes certified. In most lawsuits when you file, the first thing the court asks is, Do you have the right to file this lawsuit under the laws of the State or jurisdiction in which you are filing?

When it comes to a class of plaintiffs, a group of people filing a lawsuit, the first thing the court asks is, Is this a legitimate legal class under the law? It is the first step in the process.

My colleagues from Connecticut and Nevada have come to the Senate floor to talk about one county in my home State of Illinois, Madison County, about the incidence of class action lawsuits in that county. They have told interesting stories but not the complete story. We have done an analysis of class action files in Madison County. We started in 1996. Since 1996, through February of this year, there have been 306 class actions filed. Some have said this sets a national record. It may. It certainly is near the top in terms of the number of cases filed in this 8- or 9-year period of time. But it doesn't tell the whole story.

The next question is, How many of these cases in Madison County, IL, have been certified; that is, approved by the court to go forward? Remember the earlier reference I made. You file the complaint, a class action, and then the defendant says to the judge: I challenge the class. I don't think it is a legal class under Illinois State law or the law that is being applied. Then the judge has to look at the plaintiffs, look at the complaint, and make the decision whether he will certify the class.

So of the 306 class actions filed in Madison County over this 8-year period of time, how many have been certified; that is, gone forward with the lawsuit, over 8 years? Mr. President, 39 certified cases in 8 years, fewer than 5 cases a year.

It is because of this county, obviously, that we have decided we need to amend the law of America because five class action cases are filed and certified on average each year in one county in Illinois. That strikes me as curious, that we would respond with a national law because five cases a year on a class action basis are being filed in Madison County, IL. The Senators from Connecticut and Nevada, time and again, say this is the reason.

Let me say in all honesty, there are some cases filed in Madison County, IL,

that I don't think should be certified, some that are nothing short of harassment. But that is what the court system is for. The court system is for a judge—in some cases, a jury—to decide that question. Is there a legitimate class action? Could there be a class action lawsuit filed on behalf of a group of people in America that should be heard in a State court? That is the underlying question because if this bill passes, sadly, we are going to make it difficult, if not impossible, for State courts to try lawsuits involving classes, class action lawsuits.

Let's use an illustration. Let's assume I own a company that I have decided to incorporate in the State of Delaware, which is a common thing, and that I sell a product. Let's assume I sell a pharmaceutical product, a prescription drug. I want to do business in Illinois. Although I am incorporated in Delaware, I want to sell my prescription drug in Illinois.

One of the things I have to do is register my corporation in Illinois. In my State you have to go to the Secretary of State's office, Index Division, and register—Corporations Division today—the name of your corporation, where it is located, and who can be served with process.

In other words, I have to identify a person in my corporation who will accept a subpoena if my pharmaceutical company is ever sued. That is one of the laws in Illinois. Almost every other State has the same law. You want to do business as a corporation in Illinois, you comply with the laws of Illinois. The laws of Illinois require this filing so you know who is doing business, and it is also an acknowledgment that you are bound by the laws of the State in which you are doing business.

Now, let's assume the pharmaceutical my Delaware corporation is selling in Illinois causes a serious problem. Let's assume many people get sick after they have taken my drug, and instead of each individual person wanting to file a lawsuit against my pharmaceutical company, the customers who purchased this pharmaceutical decide to come together as a class and bring a lawsuit against my company.

So all of the Illinois consumers and customers who bought my pharmaceutical drug and were injured by it decide to file a lawsuit against my company because I have sold a dangerous product in their State.

Do you know what this class action fairness bill says? This bill says that customers of my company—registered to do business in Illinois, having acknowledged the fact that it is bound by the laws of the State of Illinois, selling its product in Illinois, having injured consumers in Illinois—cannot file a class action lawsuit in the State courts of Illinois. Why? Why would we say in that circumstance all of the injured parties, residents of the State, the product is sold in the State by a corporation licensed to do business in the State, can't be sued in the State of Illi-

nois or any other State for that matter with similar circumstances?

This legislation says the lawsuit must be brought in the Federal court system. We have two different court systems, two major court systems. There are other courts but two major court systems. Each State has a court system, and then there is the Federal court system which, of course, applies to us as a nation with its district and circuit courts, and the U.S. Supreme Court.

Why would the people who wrote this bill want to take that case that I have just described out of the courts of Illinois and put it into a Federal court, even in Illinois? Why?

I think the reason is obvious. First, they are trying to create an environment and circumstance where that group of people who bought that product and were injured by it cannot bring a lawsuit. They want to make it more difficult for them to bring a lawsuit as a class of customers who have been wronged and injured. They put it in Federal court because they know Federal courts are already extremely busy with criminal prosecutions and existing civil cases, so the likelihood that the Federal courts will take on a new class action case is limited. They also know that these Federal courts, when it comes to figuring out which laws to apply, are very strict, much stricter than many State courts.

So those who are arguing that we are changing this law, moving cases from State court to Federal court so we can get a more efficient outcome, I don't think are being candid with the people following this debate.

The underlying reason for this bill, the so-called Class Action Fairness Act of 2004, is to limit and restrict the number of class action lawsuits that can be brought across America. That is why the business interests in this town have spent not a small fortune, but a large fortune, lobbying for passage of this bill. They are not looking for reform of class action; they are looking for repeal of class actions in many areas, to stop people from filing these lawsuits.

Those who are following the debate may say: Why should I even care about that? I am not going to file a lawsuit or join a class filing a lawsuit, and I don't care if anybody else does either.

I wish people would step back and take into consideration some of the class action lawsuits that have been filed. I think you will get an idea about why this is an important part of our legal process. We have three branches of Government: legislative, Congress; executive, the President; and the court system at the State and Federal level. We say to Americans you have a right to elect the President, you have a right to elect Members to Congress, and you also have a right to go into your State and Federal courts and be represented and to plead your case and to receive justice.

What this underlying bill will do is to restrict individual American citizens

in their rights to come together as a class and file lawsuits in State courts against corporations doing business in their States, selling goods and services in their States.

Let's look at a few examples of class action lawsuits which I think illustrate these are not cases that should be easily dismissed or restricted, as the bill does. Here is a product made by Warner Lambert, a drug company. Warner Lambert made a product known as Rezulin. They prescribed it for type II diabetes and started selling it in 1997. They told the people it was as safe as a placebo, extraordinarily safe, and not harmful to consumers.

There was a couple living in Granite City, IL, which happens to be in Madison County, and the man who lived there was suffering from diabetes. He was an older fellow who served in the Navy. There are many people like him in those blue-collar neighborhoods in Granite City. He was on oxygen at age 71. He got along pretty well, but he had heart problems and bypass surgery. Unfortunately, he had to take some medications. He took nitro tablets and about 15 medications a day, two of which were insulin. He was diagnosed with diabetes 20 years ago and had very few complications. He went to his doctor and the doctor prescribed Rezulin, which is made by Warner Lambert. He remembers when the prescription was given to him because when he went to the drugstore, he found out it was very expensive. He told the doctor he could not afford it. The doctor gave him samples to take home.

Three years after this drug, Rezulin, came on the market, the FDA asked Warner Lambert to voluntarily remove the drug from the market because it was causing too high an incidence of liver failure and many other deadly side effects. Then this individual was taken off the drug because of that warning. They gave him another drug.

A class action lawsuit was filed by people who purchased this drug in Illinois. The case they brought said the pharmaceutical company violated the New Jersey consumer fraud statute, which is the State in which Warner Lambert was incorporated. They violated the New Jersey consumer fraud statute by pricing the drug much more in excess of the price the drug would have been. If anybody had known the side effects, nobody would have taken it, anyway. So not having disclosed the side effects, Warner Lambert was still charging more than they should have been charging for the drug. It turns out many insurance companies came to the same conclusion. They thought they were paying too much to Warner Lambert for a drug that wasn't that good and had deadly side effects.

The case was certified by the Illinois State court as a class action on behalf of all of the purchasers of this drug in Illinois, and the case would apply New Jersey law as the violation of the consumer fraud statute. Shortly after the class was certified, the parties agreed

to a settlement, and here was the settlement: Class members, those who bought the drug Rezulin, would receive up to 85 percent of their out-of-pocket expenses related to the prescription drug.

While Warner Lambert's liability for concealing the true dangers is clear, look what happened when you see the same lawsuit brought to a Federal court, which this underlying bill would try to achieve, as opposed to Illinois State court. When this lawsuit was brought in a Federal court in the Southern District of New York, that Federal court denied class certification and basically came to the conclusion that if the drug was dangerous, there would be an awful lot of personal injury cases filed. Therefore, this class action wasn't necessary.

The Illinois trial court disagreed. As a result, the victims in Illinois received compensation. It turned out they were going to receive up to 85 percent of their out-of-pocket expenses for this drug. That is an example of a class action lawsuit.

You go to the doctor tomorrow. He prescribes a drug. You find it was overpriced or dangerous and an effort is made to say to the pharmaceutical company you cannot benefit from these ill-gotten gains, you must pay back to the consumers what you overcharged. A class of consumers who brought the drug came together and they received the money back from the pharmaceutical company, as they did in this class action case. This is an illustration. In Illinois, the case went forward. Consumers had money come back to them. In the Federal court, the case was basically stopped.

Here is another one. This involves a New York State court certifying a class of over 200 nursing home residents living at Barnwell Nursing Home in Valatie, NY.

In the process of certification, it was found the Barnwell Nursing Home residents potentially received substandard care, violating the public health laws of the State, which protect nursing home residents from the deprivation of basic necessities like heat, good food, privacy, and socialization.

The plaintiff died of septic shock because she was neglected by nursing home staff. Following her death, the New York Department of Public Health issued a 24-page statement of deficiencies at the Barnwell home. The reason I raise this is to give you an idea of the variety of class action cases. Here, 200 residents of a nursing home were not receiving what they were required to receive under State law. One died from neglect in that nursing home. They came together as a class to say the nursing home was not treating them fairly. Some would argue, why didn't they file individual lawsuits? How likely is it your grandfather or grandmother who is in a nursing home will look for a lawyer to fight a lawsuit in court, when in fact they have been treated wrongly? But as a

class they stand together, bring the lawsuit, and they can recover.

There are so many other cases. Here is one. On July 26, 1993, the chemical Oleum, a sulfuric acid compound, leaked from a railroad tank car at General Chemical's Richmond, CA, plant. General Chemical, based in New Jersey, is one of the largest manufacturers of sulfuric acid in America. The leak caused a cloud to spread over North Richmond, CA, a heavily populated community. Over 24,000 people sought medical treatment in the days following the leak. General Chemical entered into a \$180 million class action settlement with 60,000 northern California residents who were injured or sought treatment from the effects of the release of this dangerous gas. While only California residents were injured and the harm occurred only in California, this case would have been removed from California courts under the bill we are considering to a Federal court. Why? Because the company, General Chemical, was based in New Jersey. All of the injuries were in California, all the victims were in California, the actual harm occurred in California, the company was doing business in California, transporting its chemicals. Yet under this bill they could not be sued in a California court.

We talk about dangerous drugs. Postal workers were given Cipro after the anthrax attacks of 2001. We remember that on Capitol Hill. Many of them were from New Jersey. The postal workers filed a class action in New Jersey State court for damages and harm arising from the drug's side effects. The suit was filed against Bayer AG—you have heard of Bayer Aspirin; it's the same German company—and its U.S. subsidiary that is based in Pennsylvania, as well as against several New Jersey hospitals. The side effects listed in the suit include joint and tendon injuries; neurologic, cardiologic, or central nervous system disorders; and gastrointestinal disorders. Bayer sold the drug. The people who used it were largely from New Jersey. Bayer was a company based in Pennsylvania, but doing business in New Jersey.

In this case, while several named defendants are New Jersey hospitals, the case would have been removed to Federal court. The reason behind this is not only to move them to Federal court, but to make it less likely the cases could be successfully filed. We have seen, when cases are brought to Federal court, they favor less liability. We have seen that the Federal courts are less likely to certify class. We have seen that Federal law discourages Federal judges from providing remedies under State laws.

The people who brought this bill to the floor understand that. Whether it is because of a dangerous gas leak in California or a drug that is sold in Illinois or New Jersey, they want to limit their liability and exposure. So they are basically closing the courthouse door to hundreds, if not thousands, of American citizens.

Whether we are talking about environmental pollution that is dangerous to our families caused by an out-of-State company, or about a dangerous gas leak here, the purpose of this bill is to make it more difficult for injured individuals, injured customers, and injured families to recover.

Why in the world would we do this? We do this because the businesses that are being sued by these class action lawsuits do not want to be exposed to these lawsuits. By having less exposure to these lawsuits, they will be able to keep more money. They will not pay out as much to those who have been injured or aggrieved. That is a natural business reaction. They want to maximize profits. Businesses want to do that. But is that the right reaction of the Senate to ignore the victims in these lawsuits, to ignore the people who come together because they have been hurt, damaged, or lost money, and to say instead we are going to protect these corporations from these lawsuits?

There are ways of tightening up the laws when it comes to class actions. I would support them. I think there are frivolous class actions that should not go forward. I think some of these coupon settlements as part of these class action lawsuits border on the ridiculous if not cross the border.

There is a lot we can do to tighten up the law. But why is it the only thing this Senate has been about in its debate over the last several years is limiting the opportunity of an American citizen to have a day in court? Why is it that is what is driving the Senate agenda?

It is important for us to understand that when it comes to the priorities of this Nation, we need to establish one priority over all, and that is the priority of equal justice under the law.

If a resident of Nebraska or Illinois or New York were injured by a product sold in their State by a company licensed to do business in their State, I believe they should be able to go to their State court and file a class action and ask that it be certified. This underlying bill says they cannot, and I refer to page 15, subsection 2, and I will read it:

The district courts—

Federal courts—

shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant. . . .

If a corporation is incorporated in Delaware or any other State and does business in your State, this is an automatic pass. This means your class action lawsuit goes automatically to Federal court.

Chief Justice Rehnquist across the street does not give us much advice—separation of powers, two different branches of Government—but he has

given advice on this issue: Please do not pass these bills. Please do not send these class actions to Federal court.

Those of us who sit on the Judiciary Committee know many of our Federal courts are extremely busy. They are dealing with cases involving criminal law, terrorism, and a very crowded civil docket already. What this bill would do is send these same complex class action lawsuits, now in State courts, off to the Federal courts in large number. Chief Justice Rehnquist has advised us that the Federal court system is not ready to receive these cases.

What does that mean? It means the people who are in the classes will not get their day in court. Justice will be delayed and ultimately denied to them, and that is part of the strategy. The strategy is to make it extremely difficult to bring a class action lawsuit, to limit the opportunities for those who have been injured, either in body or in monetary loss, from having their day in court.

This bill has bipartisan sponsorship. There are 10 or 11 Democrats who support it. I am sure they will speak on behalf of it, but from where I am standing, I think this goes far beyond class action reform. This is an effort to close the courthouse doors. For some, that is fine. They say, fine, don't let them go to court because it means they will have lawyers and lawyers will be paid fees and we do not want to see that sort of situation.

Time and again, when we tell the stories of the individuals who have been harmed or injured, who are looking for someplace to turn, they cannot find a law that has been passed by Congress that gives them a fighting chance, they cannot find an agency of the Government that is going to protect them. Their only recourse and final recourse is to go to court. The purpose of this Class Action Fairness Act of 2004 is to close the courthouse door to hundreds, if not thousands, of Americans who buy defective products, who are exposed to dangerous pollution, who are buying drugs that, frankly, are unsafe and believe the pharmaceutical companies should be held accountable. This bill will close the courthouse door and make it extremely difficult, if not impossible, for them to pursue their legal course of action.

I think that is the wrong way to go. I know the business community and the special interests behind them think the fewer lawsuits filed against them the better. I assume if my job in life were to maximize profits in these companies, I would think the same thing. But that is not our job. Our job is to provide equal access under the law to all Americans.

This bill, the class action fairness bill, is going to restrict, reduce, and deny access to the court system for Americans who have been injured.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask to be recognized for 10 minutes.

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

Mr. SCHUMER. Mr. President, I rise today to express my support for S. 2062, the Class Action Fairness Act. Until this morning, I was very hopeful we would finally have the opportunity to discuss this important issue and move the bill forward.

As is well known now, last fall I joined with my colleagues, the Senator from Connecticut, Mr. DODD, and the Senator from Louisiana, Ms. LANDRIEU, to help craft a compromise that now constitutes the bill before us. Because I have worked long and hard to move this bill forward, I was very disappointed at the turn of events earlier today.

We have two strains going on here that are sort of colliding, and I do not think they should necessarily collide. One is the desire of a majority in this Chamber—62 at last count—on both sides of the aisle to move the class action bill forward, and that desire remains. That burns brightly in my breast. I think we should move this bill. There has been a lot of work put into it. There have been compromises along the road. It strikes a fair balance, and I will talk more about that in a minute.

We also have the workings of the Senate, and that always is grafted on top of whatever legislation we have. We all know the majority party is allowed to set the agenda, and next week, for instance, we are doing a constitutional amendment against gay marriage, which no one thinks will come close to the two-thirds vote, but it is the majority's right to set that agenda. That is fair. But just as it is the majority's right to set the agenda, it is the minority's right to offer amendments—some germane, some not—on whatever is before us. That is what has always kept the balance in this Chamber. The majority does not have complete control of what is on the agenda because of our nongermaneness rule. That is what distinguishes us more than anything else, at least procedurally, from the House of Representatives where the Rules Committee can block off all amendments, and the majority can have iron-tight control.

To me, this fits the Founding Fathers' basic conception of the Senate as the cooling saucer. When the majority has certain rights, it slows things down, there is no question about it.

That delay—delay is the wrong word—but that sort of more careful rendering of the process often makes better legislation. As we know, the Founding Fathers were afraid that legislation would move too quickly through the body, and the Senate embodies that.

This morning, I thought the offer of the Senator from South Dakota, Mr. DASCHLE, was extremely reasonable. He said let us do four or five nongermane amendments and then proceed to the

germane amendments. I do not recall if he said it on the Senate floor—I did not hear his whole speech—but he has said to all of us on the Democratic side who want to move class action reform that we would not take hours and hours and days and days on each of the non-germane amendments; that the debate would be done rather quickly. Well, that is the minority's right. That is what it is all about.

When Senators DODD, LANDRIEU, CARPER, KOHL, and I, all of whom have worked so long and hard on this bill, met with the majority leader and others, we made it perfectly clear about the right of the minority to offer a limited number of non-germane amendments, not one but a number. When Senator DASCHLE said five, that seemed perfectly reasonable to us, and that was rejected by the majority leader. This puts us and the whole class action bill at risk.

Make no mistake about it, if we cannot work this out, we will not have a bill. Even if we do work it out, it is going to be difficult enough to get a bill. The kinds of abuses I have worried about and why I was willing to step forward and support this bill as modified will be lost.

So the first thing I will do today is make a plea to our majority leader, who I believe does operate in good faith—I realize he has a fractious caucus behind him and there are different opinions within that caucus, but I urge the majority leader to reconsider his rejection or objection to Senator DASCHLE's offer, which I thought was fair and reasonable. I know that my colleague from Connecticut, Senator DODD, thinks that because I heard him speak on the floor earlier today. I think it would be seen as reasonable as well, if I am not speaking out of turn, by most of my colleagues on this side of the aisle, the 10, 11, or 12 of us who support class action reform.

So make no mistake about it, if the bill does not move forward, it is because the majority was unwilling to allow the Senate to proceed as usual, which is to allow some non-germane amendments.

For many on our side of the aisle—not me because I support it—this is a bitter pill to swallow. To then add insult to injury saying no non-germane amendments are allowed will be the straw that breaks the camel's back. Even allowing one non-germane amendment would not be enough.

So, again, I renew my plea to the majority leader—and I want to underscore, again, I met with him numerous times on this legislation, and I believe he is functioning in good faith and he wants a bill—to reconsider Senator DASCHLE's offer. It will not take much time. My guess is we can consider those amendments quickly.

Of the five that I have heard about, two are Republican amendments. We all heard the good Senator from Idaho who seems to want to be able to offer his amendment, an amendment that I

support on the floor, and I think one of the others is from the Senator from Arizona, Mr. MCCAIN. So it is hardly that the non-germane amendments are a Democratic wish list. If there are five, and two are Republican and three Democrat, that seems to be a pretty fair division.

I renew my plea to the majority leader to accept Senator DASCHLE's offer, which I think was fair and reasonable. If not, we risk having no bill, despite the efforts of many of us.

I want to discuss for a minute why I support this legislation. I have been concerned for some time that lawsuits have gotten out of control in America. I am not one of those who think lawsuits have no use. I think they have plenty of use and they are needed. Often those without power, it is their only bit of power to get redress. There is no question about it.

At a time when we are pulling back from governmental regulation—I would much prefer to see government regulate, whether it is pollution, health care, or other things, than have lawsuits do it. Lawsuits are sort of a hit-or-miss way. But the impetus for lawsuits increases as the impetus for government regulation decreases, and obviously in this administration it has.

Having said that, I still believe we need lawsuits, but they should be done fairly. One of my big beefs is that for some time now too many lawsuits have been filed in local State courts that have no connection to the plaintiff, the defendant, or the conduct at issue. This allows forum shopping. Forum shopping is something that undercuts the basic fairness of our justice system.

Certain courts in certain places—and people have talked about it earlier today—have become magnets for all kinds of lawsuits. Some of these lawsuits are meritorious; some are not meritorious. In either scenario, my strong belief is that if the case affects the Nation as a whole, it should be heard in Federal court. One should not have a judge in a small county make law for all of America. Maybe that judge will make good law, but the odds are that parochial concerns will be too strong in that type of decision.

For that reason, I agreed with my colleagues who support this bill that something needed to be done to rein in forum shopping and abusive class action litigation tactics. When consumers allege that a product sold nationwide to consumers in all 50 States is defective, it ought to be a Federal court to decide that case. Actually, my belief is that probably there should be Federal law to decide those kinds of cases, and eventually we will probably move in that direction, but at the very least it ought to be the Federal court.

This bill does not take away anyone's right to sue or his or her ability to bring a suit as a class action. I oppose such legislation. I would not want to eliminate class actions. Instead, the bill ensures that consumers, employees, and all citizens have an oppor-

tunity to have their class action heard in court, but it is a Federal court.

We worked hard to improve the bill. The agreement that we have struck on class action lawsuits preserves the ability of Americans to bring lawsuits in a fair and responsible way, while doing away with forum shopping and other abusive tactics. This is why the three of us, Senators LANDRIEU, DODD, and myself, were willing to stick our necks out a little bit and work on this compromise with Senator KOHL, who has been a leader on this issue on the Judiciary Committee, and Senator CARPER, who has championed the proposal for so long. We want to see the bill move forward.

The bottom line is that it will not unless the Democratic leader—and I want to salute the Democratic leader. He does not like this.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. I ask unanimous consent for an additional 3 minutes.

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

Mr. SCHUMER. I salute our Democratic leader. I know, because he has expressed it to me in very clear terms, how much he dislikes this bill. Instead of trying to delay, he has come up with a reasonable proposal.

As I said, the bill is a bitter pill for many to swallow. They have a different view on class action lawsuits than I do or my good friend from California, who just came into the Chamber, but they are willing to do it because they know there is a majority of 61 or 62 who basically support this proposal.

So the bottom line, again, is the Senator from South Dakota has made a reasonable proposal. He is not offering dilatory tactics, and I hope that proposal will be accepted.

I have not been a Member of this body as long as many of my colleagues, but in my 6 years, I have come to appreciate that the Senate is designed to be a deliberative body. Sometimes the Senate lives up to this grand tradition of debate and process very well, but at other times, and that is what it looks like is happening up to now today, we fail. We have to let the deliberative process of the Senate take its course if the Class Action Fairness Act is to become law.

Mr. President, I yield the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to speak on this bill.

The PRESIDING OFFICER. The time on the minority side has expired.

Mrs. FEINSTEIN. I was going to speak in favor of the bill.

The PRESIDING OFFICER. The time on the proponent's side contains 55 minutes, so the Senator is recognized.

Mrs. FEINSTEIN. I appreciate that.

Mr. President, I wish to speak in favor of the bill, but I also wish to say that I very much hope some accommodation can be reached so this bill can

come to a vote. It is an important bill. It is a bill that deals with a very real problem, and I would like to challenge every Member of this august body to read this bill. I have read it twice. It is easily understood. It is in very plain English. It essentially provides a guide to consumers as to the protocols and regulations that govern what has been a murky area of class action lawsuits. It is legislation that is long overdue.

I very much appreciate the position of my leader, Senator DASCHLE, in wanting to protect our minority rights, in wanting to have an opportunity to have a debate on bills that Members on this side think are extraordinarily important, as do Members on the other side. In the past, a fair way has been found, so I hope that will be the case.

As I said, I believe the way class actions are conducted is, in fact, a real problem. I have spent a considerable amount of time on the issue through Judiciary hearings, many personal meetings with those on both sides of the issues, plaintiffs and defendants, and a lot of time and energy on research and analysis. I eventually came to the conclusion that the supporters of this bill have clearly identified this problem and have come up with a reasoned solution.

More than identifying the problem, the supporters of this bill—Senator KOHL, Senator GRASSLEY, Senator CARPER, and others—have worked diligently over the course of the last few years to answer criticisms and concerns, to address real issues, and even to make significant changes in the original legislation, changes that made this bill better at every single turn. The bill before us, then, is the result of many changes and compromises, both in the Judiciary Committee and more recently changes made after further negotiations with Senator SCHUMER and others pending floor action. Simply put, the legislation in its current form is more moderate, more reasoned, and will be more effective than past versions of the bill.

I thank Senators HATCH, GRASSLEY, and KOHL for so diligently working with me and others throughout this process to correct a number of potential problems or areas of confusion that were within the original bill. I know they have many forces pulling on them from all sides, and I appreciate the time they spent in addressing these concerns.

Let me talk a little bit about the legislation and what it does and how I became involved in it. I will never forget a hearing before the Senate Judiciary Committee 2 years ago. At that hearing, we heard from a woman by the name of Hilda Bankston. She owned a small pharmacy with her late husband, in Mississippi. Since that time, Mrs. Bankston sent a letter to us, and she summed up her testimony before the committee. I want to read it to you.

My name is Hilda Bankston and I live in Fayette, Mississippi. I am a former small business owner who was victimized by law-

yers looking to strike it rich in Jefferson County and I write to you today to tell you that our legal system is broken and that the Class Action Fairness Act will help fix it.

Over the next few days, et cetera, et cetera, we will be debating this legislation. This is the important part, this is what she said in committee, and this is the overarching need to stop forum shopping:

For thirty years, my husband, Navy Seaman Fourth Class Mitchell Bankston, and I lived our dream, owning and operating Bankston Drugstore in Fayette, Mississippi. We worked hard and my husband built a solid reputation as a caring, honest pharmacist.

But our world and our dreams were shaken to their foundation in 1999, when Bankston Drugstore was named as a defendant in a national class action lawsuit brought in Jefferson County against one of the nation's largest drug companies, the manufacturer of Fen-Phen, an FDA-approved drug for weight loss.

Here is where it gets difficult, and now I am speaking, not quoting Mrs. Bankston. Fen-Phen certainly had problems. The reason for litigation can be very clear. However, the rationale for forum shopping and, more importantly, how forum shopping is conducted, is what this letter and what Hilda Bankston's story is all about.

Though Mississippi law does not allow for class action lawsuits, it does allow for consolidation of lawsuits or mass actions as long as the case involves a plaintiff or defendant from Mississippi.

Here it is:

Since ours was the only drugstore in Jefferson County and had filled a prescription for Fen-Phen, a drug whose manufacturer is headquartered in New Jersey, the plaintiffs' attorney named us in their lawsuits so they could keep the case in a place already known for its lawsuit-friendly environment. They could use our records as a virtual database of potential clients.

So not only was she not involved, they just happened to fill a prescription and they became a source for litigation.

Mitch had always taken the utmost care and caution with his patients. As the Fen-Phen case drew more attention, he became increasingly concerned about what our customers would think. His integrity, honor, and reputation were on the line. Overnight, our life's work had gone from serving the public's health to becoming a means to an end for some trial lawyers to cash in on lucrative class action lawsuits.

Three weeks after being named in the lawsuit, Mitch, who was 58 years old and in good health, died suddenly of a massive heart attack. In the midst of my grief, I was called to testify in the first Fen-Phen trial.

I sold the pharmacy in 2000, but have spent many years since retrieving records for plaintiffs and getting dragged into court again and again to testify in hundreds of national lawsuits brought in Jefferson County against the pharmacy and out-of-state manufacturers of other drugs. Class action attorneys have caused me to spend countless hours retrieving information for potential plaintiffs. I've searched record after record and made copy after copy for use against me. At times, the bookwork has been so extensive that I have lost track of the specific cases. I had to hire personnel to watch the store while I was dragged into court on nu-

merous occasions to testify. I endured the whispers and questions of my customers and neighbors wondering what we did to end up in court so often. And, I spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it. Today, even though I no longer own the drugstore, I still get named as a defendant time and again.

This lawsuit frenzy has hurt my family and my community. Businesses will no longer locate in Jefferson County because of fear of litigation. The county's reputation has driven liability insurance rates through the roof.

No small business should have to endure the nightmares I have experienced. I'm not a lawyer, but to me, something is wrong with our legal system when innocent bystanders are little more than pawns for lawyers seeking to win the "jackpot" in Jefferson County—or any other county in the United States where lawsuits are "big business."

This is really the point. I heard the distinguished Senator from Illinois make a very important point about the different kinds of cases that are involved. But what we are talking about is forum shopping. It is specifically setting up a class action to be able to get that case into a specific place, a friendly county.

The Bankstons were actually sued more than 100 times for doing nothing other than filling legal prescriptions. The pharmacy had done nothing wrong. They were the only drugstore in the county, a county that was so plaintiff friendly, I am told, that there are actually more plaintiffs than residents.

Because of the arcane and problematic rules now governing class actions in U.S. courts, the plaintiffs' lawyers shopping for a friendly court just needed to name a local business in order to file their national lawsuit in that county. That is all it took. Before they knew it, the Bankstons were defendants in dozens of essentially frivolous suits against their small pharmacy.

This was a family torn apart by litigation. I use this case because, of all the hearings that have been held in the Judiciary Committee in 12 years, this woman made a profound impression on me as I sat there hour after hour and listened to the testimony.

Let me hasten to say that this abuse comes from just some class action lawyers—not all of them but some—who forum shop national class action lawsuits and file them in States and counties where they know the court will approve settlements favorable to them without concern for class members.

What does this bill do? The amended Class Action Fairness Act goes a long way toward stopping forum shopping by allowing Federal courts to hear national class action lawsuits that involve plaintiffs and defendants from different States and which involve more than 5 million in claims. I think the original bill was 2 million. We amended it in committee to make it even bigger so we could be sure as to the kinds of cases that would be affected.

The Framers of the Constitution wanted Federal courts to settle disputes between citizens of different

States. They wanted Federal courts to settle disputes between different citizens of different States. The Constitution itself states that the Federal judicial power "shall extend . . . to controversies between citizens of different States."

Historically, this meant that when one person sues another person who lives in another State, or sues a company headquartered in another State, the suit can be moved to Federal court with some limitations.

Class actions involve more citizens in more States, more money, and more interstate commerce ramifications than any other type of civil litigation. It only stands to reason that many of these cases should be heard in Federal courts. Yet an anomaly in our current law has resulted in a disparity wherein class actions are treated differently than regular cases and often stay in State court. The current rules of procedure have not kept up with the times, and the result is a broken system that has strayed far from the Framers' intent.

This bill does a number of things. First, the bill contains a "consumer class action bill of rights"—and it is important, and you will really see it is understandable—to provide greater information and greater oversight of settlements that might unfairly benefit attorneys at the expense of truly injured parties.

Let me give you some examples. The bill ensures that judges review the fairness of proposed settlements if those settlements provide only coupons to the plaintiffs. What is wrong with that? Coupons are a real problem. They are a way by which a plaintiff actually receives very little or something that is very difficult to recover.

Second, it bans settlements that actually impose net costs on class members. I could read letters from individuals where they actually came out the losers in these suits.

Third, it requires that all settlements be written in plain English so all class members can understand their rights. How can anybody fault that? Write it so people who read them can understand what they say.

The bill also provides that State attorneys general can review settlements involving plaintiffs from their States so the consumers get an extra level of protection from someone elected to serve—not just plaintiffs' attorneys who may be trying to get the best settlement for their own interests.

Second, and of greater impact, the legislation creates a new set of rules for when a class action may be "removed" to Federal court.

These new rules are diversity requirements modified in committee and again since then make it clear that cases which are truly national in scope should be removed to Federal court. But equally important, the rules preserve truly State actions so those confined to one State remain in State courts.

Since I have offered this amendment in committee, the so-called diversity amendment, I believe it made it much better, more narrowly tailored. I think my amendment went right to the heart of the bill and its purpose. So I would like to spend a few minutes to talk about these amendments, how it changed the original bill and the ways in which I believe it is more clear, more fair, and more workable.

I offered one amendment, cosponsored by Senators HATCH, KOHL, and GRASSLEY, that was meant to do two things. First, it simplifies the diversity jurisdiction section of the bill. Second, it narrows the scope of the bill by reducing the number of cases that automatically go to Federal court. This will allow Federal courts to focus on the cases that are truly national in scope rather than cases that really belong in State courts.

This amendment only addressed the jurisdiction issues. It did nothing to change the rest of the bill which contains very important protections for consumers, and it makes the whole settlement process much more fair. Let me explain it.

The original class action bill essentially moved all class actions of a certain size—I think more than 2 million—to Federal court unless "a substantial majority of the members of the proposed class and the primary defendants are citizens of the State in which the action was originally filed."

The case will be governed primarily by the laws of that State.

The original bill says that all class actions where a substantial majority of the members of the class and the defendants are citizens of the State would be moved to the Federal court.

We changed that. The standard was vague and it was prone to moving some truly State class actions into Federal court.

My amendment, which was accepted by the committee, changed the law in this section to split the jurisdiction into thirds. Now there is less ambiguity about where a case will end up, and more cases remain in State court.

Let me explain that. If more than two-thirds of the plaintiffs are from the same State as the primary defendant, the case automatically stays in State court—it is clear; it is defined in the bill—even if both parties ask for it to be removed to Federal court. It is very different from the original bill. If we have two-thirds of the plaintiffs and the defendant company in a State, the case stays in the State.

If fewer than one-third of the plaintiffs are from the same State as the primary defendant, the case may automatically be removed to Federal court. Remember, this happens if one of the parties asks for removal. Otherwise, these cases, too, stay in State court. This may have escaped a lot of people. So even when there are fewer than one-third of the plaintiffs from the same State as the primary defendant, the case remains in State court unless one of the parties asks to remove it.

Now we are talking about the middle third in this diversity. We have a third, a third in the middle, a third on the end. In the middle third of cases, where between one-third and two-thirds of plaintiffs are from the same State as the primary defendant, the amendment gives the Federal judge discretion to accept removal or remand the case back to the State based on a number of factors. In determining whether one of these middle third cases would go to Federal or State court, the amendment directed the Federal judge to consider these facts:

First, the judge must examine whether the case represents primarily a State issue or whether it is of national impact. There are strong arguments to be made that State judges should not be making national law. This provision is meant to reach into that issue.

Second, the judge must consider whether the number of plaintiffs from the defendant's home State is much larger than the number of plaintiffs from any other State. In other words, there may be a case where 40 percent of the plaintiffs from California and no other State has more than a couple percent of the class. California law would apply. So even though the California plaintiffs do not make up an absolute majority of a class, they would clearly be the predominant portion of the class. If it is a State issue, such a case would remain in State court. The Federal judge would also look at whether the case was filed in State court simply because the plaintiffs are trying to game the system, perhaps by forum shopping for the best court, even when the case would better be tried elsewhere.

Finally, the judge is directed to look at whether this is the only class action likely to be filed on the same subject—this is important—or whether there are likely to be others with the same facts at issue. This factor has been even further refined to provide that a judge need not consider whether similar class actions may be filed but only whether similar class actions have actually been filed in the last 3 years. In order to avoid duplication, the judge would look at whether there were other like actions filed in the last 3 years.

Considering duplicative class actions is important because the Federal courts have a system in place to consolidate multidistrict litigation. It may therefore be better to have all duplicative class action cases move to Federal court simply to save time and make the process more efficient. If a case stays in State court it cannot be consolidated with similar cases out of State. Therefore, we might end up with 50 State judges deciding 50 cases involving exactly the same defendant and exactly the same fact pattern. That does not make much sense. It is something that the judicial conference has recommended we fix. And we do.

The amendment also raised the minimum amount of money that needs to be at issue before a class action can



make it to Federal court. The original bill set that amount at \$2 million. My amendment raised it to \$5 million to further limit the number of cases that move to Federal court and to assure that it is only truly big national cases that do.

The effect of this amendment, I hope, will be to make the system more transparent so that plaintiffs and defendants know where a case will go when it is filed, and it will force truly State cases to stay in State court while allowing truly national cases to go to Federal court.

Under current law, an attorney can avoid Federal court simply by making sure that at least one plaintiff is from the same State as at least one defendant. This allows for cases to be shopped to whatever forum may have the most sympathetic juries, no matter where the case should truly be heard. Under this modified bill, this forum shopping would be eliminated.

The second amendment I offered in committee, which was also accepted and has been only slightly modified, was designed to deal with a provision that was added to the original class action bill apparently to specifically target a California law. That law allows individuals in California to sue on behalf of the general public in lieu of the attorney general. Other States have or are considering similar legislation, but California is on the forefront of this issue, so it was California law, more than the law of any other State, that was targeted by this provision in the original bill.

The so-called private attorney general actions allow groups such as the Sierra Club, local district attorneys, government officials, or even individual consumers, to sue large corporations on behalf of the people of the State. In California, these suits are generally to recover illegally gained profits or to enforce State law against companies that do business there. These are not true class actions. The original bill essentially deemed these suits to be class actions and therefore would have moved many of them to Federal court even if all the plaintiffs were in California.

This was a concern to me and to many in California who are concerned these citizen suits would be so dramatically affected by a bill that was supposed to be about class actions, not private attorney general suits. My amendment and subsequent clarifications of that amendment worked out between myself, Senators HATCH, GRASSLEY, and SPECTER, simply clarify that in any case in which an individual pursues one of these private attorney general suits on behalf of members of the general public, or members of an organization, unless those suits are actually filed as class actions, the bill does not apply. I want to make that clear.

If, for instance, a California consumer sued Enron on behalf of the general public in an attempt to force Enron to disgorge ill-gotten profits and

return this money to the Government of California, this bill would not change anything. The case would stay in California court.

I know there will probably be several amendments, and I have comments about some of those comments, but I would like to hold that until the amendment is actually presented.

Let me sum up and then yield the floor. Again, a simple reading of this bill is very demonstrative because it is easily understood. Unlike most bills, it is written in simple English. Probably the most complicated part is what I just went over, the diversity issue. One-third, one-third, one-third, with the Federal judge having specific areas where that judge must make a judgment regarding the middle third as to whether this is truly a case national in scope and belongs in Federal court or whether it should remain in State court, offers a viable way of settling what has been a process that has been grossly criticized, and that is forum shopping, and I think with some considerable justification.

A lot of people have worked very hard on this bill. I am hopeful we will be able to pass it. I believe the bill in itself provides a remedy to what is wrong with the present class action law, and I support it with great pride. I urge my colleagues to support it as well.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The journal clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, I have come to the floor momentarily on account of a headline in the Financial Times, on page 3, U.S. business hits a choice of running mate. It quotes Tom Donohue, the president of the U.S. Chamber of Commerce, in stating that he attacked Mr. EDWARDS in an interview in the Wall Street Journal. He warned if Mr. EDWARDS were chosen, the group might abandon its traditional neutrality in Presidential elections and dedicate the best people and the greatest assets to defeating the Democratic ticket.

This is unfortunate. Since I know a little bit about the Chamber of Commerce, and I know even more about my friend Tom Donohue, I want to admonish that they not take that course and begin to try to work for "Main Street" America rather than "Main Street" Shanghai.

I speak advisedly of the Chamber of Commerce. As a young Governor, I was the first Governor to take a trip to Latin America to develop economically our little State of South Carolina. I reasoned the Port of Charleston was 300 nautical miles closer to the Port of Ca-

racas, Venezuela, than New Orleans, and New Orleans was always getting the Midwest business. But there was no reason why we could not bring it to Charleston.

So I went down to Caracas, and to the Ports of Santos and Montevideo, Buenos Aires, Santiago, and we started building up industry there.

Incidentally, in June of 1960, I made a trip to Europe, following my friend Luther Hodges of North Carolina. We called on the various Dusseldorf, Frankfurt, Hamburg, and other towns in Germany, and the little State of South Carolina now has 126 German industries.

We had gone to France in June of 1960. I called on Michelin. Michelin Tire of Paris, France, now has four large production facilities and their North American headquarters and more than 10,000 employees in my State.

We are proud. We are business Democrats. That is my friend JOHN EDWARDS. He is a business Democrat. If there was one leader in this industrial development, it would have been the State of North Carolina with its then-Governor Luther Hodges.

Hodges had been the president of the New York Rotary Club. He had been the vice president of the Marshall Field chain before he was Governor. So he knew all of those businesspeople. I had to compete with him, follow on board, so to speak, and try to get the jobs and develop businesses.

One thing we know upfront; that is, you have to have a sound fiscal policy. We raised taxes in South Carolina. And I got the first triple A credit rating.

So it is nonsense for the Chamber of Commerce to call JOHN EDWARDS a "wide-eyed liberal" and JOHN KERRY a "wide-eyed liberal."

Incidentally, I can tell you when I had Gramm-Rudman-Hollings on the floor of the Senate, I was opposed by the Democratic leader, who voted against it; I was opposed by the Democratic whip, who voted against it; I was opposed by the chairman of the Budget Committee, my late friend Lawton Chiles of Florida. And in spite of that opposition, on 14 different votes, up and down, we got the majority of Democrats to support cutting spending and working for a balanced budget. It was hailed at that time. Everybody talks about President Reagan, and I can talk about him advisedly because he was outstanding in international trade. But let me stick right to this particular point.

In order for Gramm-Rudman-Hollings, I had to go to many so-called liberal friends in the Northeast, and I got Senator CHRIS DODD and Senator JOHN KERRY, who had just been elected to the Senate, to vote for fiscal responsibility. Yes, my friend Senator KERRY laid his life on the line in Vietnam. He immediately, when he came to the Senate, laid his political life on the line.

I know Tom Donohue well. I used to work very closely with the American

Trucking Association, and I was their loyal supporter, still am their loyal supporter. I, under Tom Donohue, was their man.

I am telling you, I got every financial support and every assistance and what have you. I know Tom Donohue, and he knows trucking all right, but I never have seen him go out and develop an industry. Yes, he got on the boards. He went big time, just like joining the country club. He immediately started getting on the boards of all these multinationals and changing the national Chamber of Commerce into the international, multinational Chamber of Commerce. That is my resentment. That is why I take the floor.

I have worked with the Chamber of Commerce. Go back home to the State of South Carolina and you name a county or a city that I hadn't gotten the Chamber of Commerce award. That is how I met my friend, Robert Kennedy. I was 1 of the 10 men of the year back in 1954, 50 years ago. We met on the TOYM program. And, yes, bring it right on up to 1992. In 1992, they had a fellow named Bob Thompson. He was the national president of the U.S. Chamber of Commerce, and I was his boy. I was the toast of the town and got all kind of help because I had held up labor law reform on eight up-and-down cloture votes. We defeated that initiative. We believed in the right to work and we didn't need labor law reform.

I only have to harken to the 8 years of President Clinton when we had the strongest economy in the history of the United States, with all the taxes that they are trying to cut. Even with all those taxes, we had the 8-year record of economic outburst and production.

So what have you. Now comes the Chamber of Commerce being admonished by Tom Donohue that we can't have this wild, crazy Senator from North Carolina, which is a bellwether of industrial development. That is where he was grown and that is where the people who sent him know him best. And now we are going to have him depicted by Johnny-come-lately to business over at the Chamber of Commerce after heading up the trucking association for years and totally skew trial lawyers.

You know, I have tried to go quietly, and I have stayed off the floor a good bit this year. I have had my time. But I still struggle. I can't keep quiet when I hear all of this lawyer talk. I practiced law on both sides of the aisle. I represented the electric and gas company and the bus system. If you want to represent a defendant, represent the local power company buses. I can tell you, come November, everybody slips on a green pea in the aisle; everybody gets their arm caught in the door; everybody gets their head bumped or whatever else it is. And do you know what. They bring these little claims. When I say little, in those days they were relatively little—\$5,000 claim, \$10,000 claim.

And the corporate lawyer was lazy. They didn't try the cases. So they settled them out of court and they just paid. You see, corporate lawyers are the most lazy group in the United States. So I backed up all those claims and took them to court all during the month of December and the Christmas holidays and into January. And I won my bet with Arthur Williams who was president of the electric and gas company. I saved them over \$1 million at that particular time.

The only reason I mention this, you don't brag but you have to talk to the record. And what happens is that I have been on the side of the corporate practice as well as the plaintiffs practice in punitive damages. I know all about them. I have had a hard experience with them. I have had a hard experience with every Chamber of Commerce in my State and with the national group. When Tom Donohue starts this talk about lawyers, if he wants to really save corporate money, I wish he would go to the corporate lawyers. They talk about frivolous claims. Who in the Lord's world as a trial lawyer can afford to be frivolous?

They have rules of court that get you out. Tomorrow you can file, if you assume all the facts alleged in the complaint as being true. You still don't have a cause of action or, if it is a frivolous charge, you can take it up under rule XI and have it done up. The courts take care of these things, but the pollsters are like used car salesmen and kill all the lawyers and go after trial lawyers who have to work for a living.

What does the trial lawyer do? The trial lawyer says: Poor client, haven't you been offered anything for this particular injury? They said no. Or sometimes they said yes, but they only said \$200 or \$2,000 or \$20,000, and that is not going to take care of my medical expenses for more than a year.

We don't get cases as trial lawyers. Talking about ambulance chasers, I don't know how you chase an ambulance, to tell you the truth. I have been in practice now for—well, I got in in 1947—over 50-some years. I practiced law up here. It is just like making a jury argument. The only thing about it is, you can serve on the jury and you can vote. I like it better.

But the point is that we usually get the client, once his incident, his accident, his claim has been totally investigated by corporate America. I know them. I represented them. They have investigators. All you have to do is tell them, go see this, go see that. When you have investigators to go out and check the jurors: Go around, by gosh, in a particular neighborhood and ask questions. What kind of fellow is John Adams? Is he liberal or conservative? Has he ever had a law case before? They have all the resources in the world. But the trial lawyer gets it after the cake is done and you can't hardly rise it. And it is done falling flat, and the poor client is disconcerted and disillusioned and finally gets to you.

The last case I tried I said, Did you go to so-and-so? He knows this kind of case better. And I went to another one and another one and everything else of that kind. And it was an antitrust case. I had to brief myself, antitrust work. Finally I tried that thing.

But what I am trying to say is, get off of this ambulance chasing issue. No trial lawyer, all the ones that you read about—Fred Baron, in one of the articles, an eminent attorney, head of the American Trial Lawyers Association from Texas. They work. They know what they are doing. And they take on all the expenses, the investigations, the making up of all the models that have to be made, pay the photographers who have to take the pictures. In some instances, they pay the medical bills going along. They take a risk and take that case on as their own. Why? Because they don't get one red cent until they win. They have to win all the way through, taking the expenses of all the interrogatories, all the depositions, all the motions, all the delays, all the frivolity of corporate America because that corporate American is sitting up there on the 12th or the 25th floor, and the clock is running.

The biggest cancer we have in the law practice is billable hours. This crowd down here on K Street is nothing but billable hour boys. They don't try cases. They fix you and me. And they are the ones who have the unmitigated gall to come and talk about frivolous claims. They never go to work. They take you to a dinner, take you to a movie, take you to a weekend down to the golf course, take you out to Alaska fishing, take you anywhere you want to go.

They never try cases, but the trial lawyer does. He has to get prepared, and he has to work, and he has to not only try that case that might take a day, might take a week—some cases take several weeks and months—but as they try that case, they are carrying those expenses all that time. But the corporate lawyer is trying to delay it. It pays them because their clock is running. It pays the trial lawyer to get on with the business of trying the case and bringing it to a conclusion. I know, I have been there on both sides.

What do you have to do? He has to get all 12 jurors—all this about run-away juries. There are some exorbitant verdicts. I have seen in the headlines. When we get to debating this thing, maybe on legal fees, or class actions, or medical malpractice, or whatever it is—if the doctors policed themselves as the lawyers, they would not have any medical malpractice.

There was a headline down in my own backyard how nationally they had about 100,000 injuries and deaths last year as a result of medical malpractice. It would be 200,000, or 300,000, or 500,000 if we didn't have medical malpractice.

What do you think the purpose is of being able to recover for somebody else's wrongful act? Heavens above, we

have to get all 12 jurors. I can tell you now, that defendant, all he has to do is get one. Just like they had one on a recent criminal case of some kind. They held that thing up and held it up, and that one juror said he just wasn't convinced.

The jury system is the fundamental of not only the British but the American system of jurisprudence. We have many sayings of not only Winston Churchill and Alexander Hamilton, the forefathers about the importance of trial by jury, because when you get a group of your peers together, they will listen to the facts and make an honest judgment about it. Sometimes if they do go extreme, the trial judge can set it aside, or give them an entire new trial, or just no verdict at all.

One of the last cases I had, I had over \$40,000 in costs and expenses—not time, no. I didn't have any clock. I never heard of billable hours. Senator, I have never practiced law for a billable hour. It means if you send the case or dispose of the case and everything else like that, you lose.

The corporate lawyer wants to keep all the cases going. He has all the hours. He just goes to the club, and on the weekend he is off with the chairman of the board, and that is all he has to do. They keep delaying things.

You talk about my friend, JOHN EDWARDS, is a liberal, some kind of nut and some kind of frivolous nonsense here. He has worked hard, and the Chamber of Commerce ought to know that.

Let's talk a minute about trade itself. It is the fundamental duty of Congress to protect—we take an oath to preserve, protect, and defend, and we have Social Security to protect us from the ravages of old age. We have a minimum wage to protect us from slave labor. We have Medicare and Medicaid to protect us from ill health. We have clean air and clean water to protect us from those environmental poisons. You can go right on down the list. We have the Army to protect us from within.

The fundamental of us is to protect jobs and the fundamental of us is to create jobs. You know what the multinationals have to do? They have to move the jobs out because it is cheaper. Why? Because of you and me. We say that before you can open up in manufacturing, you have to have clean air, clean water, Social Security, Medicare, Medicaid, minimum wage, plant closing notice, parental leave, safe working place, safe machinery—I can go down the list. But you can go to Shanghai, China, for 58 cents an hour with none of that.

I called up Walter Allison Dreeny. He was an executive of Pirelli. We brought him to South Carolina in the Lexington County area. I helped him get connected with water and sewer lines. He made a heck of a success in the fiber glass section of Pirelli. He went out on his own and organized what is called Avanex on the big board, and he was doing good. This was about 5 years

ago. I learned a lesson. I called Walter and I said: Walter, I see where you are doing good and we don't have a plant of yours in South Carolina. If you continue to do well and you expand, I would like to get your expansion somewhere in Columbia, where you still have a home, or somewhere in our State.

He said, Fritz, I don't produce anything in this country.

I said: You don't?

He said: No, I have my research and sales here.

He sells the innards of computerization and communications, fiberoptic stuff.

He says: I produce in China. When you go to China, they will build a billion. You have a year-to-year contract. They have a good and capable workforce. You got a guarantee. You put a quality man there; you get a young BYRON DORGAN and say you go to Shanghai and oversee this thing—somebody you can trust who knows the business. He watches it for you. You sit on the Internet and you watch it every day as to what they have done. You visit three or four times a year to see how it is going. If the national trend goes big, you get an additional contract in China. If it goes bad, you don't have to renew the contract. You have no obligation to the labor at all.

That is what we are competing with. That is the reality. Yes, the Chamber of Commerce has to understand why their task is to make a profit for the stockholders. Our task is to build jobs. We are not interested in profit. We are interested in building the economy, in education, in health care, safety, law enforcement, yes, and we are interested in the economic strength of this country.

The security of the United States is like a three-legged stool. You have the one leg of our values, our stand for individual freedom, unquestioned the world around; you have the second leg of the military, unquestioned, the superpower; the third leg, the economic leg, has been fractured intentionally.

I say intentionally fracture because after World War II, we had to rebuild freedom and capitalism the world around us, and we had to more or less give up the store. We not only had the Marshall plan, the expertise, the money, and the equipment, but we gave a good part of our own production.

I had a hearing with President Kennedy in 1961 when he put out his famous seven-point program showing that it was injurious to the national security of the United States for us to import more than 10 percent of our consumption in textiles clothing. I am looking around and everywhere I look, I can tell my colleagues that 70 percent of the clothing is from offshore, imported into the United States. Yes, 84 percent of the shoes on the floor of this Chamber are imported. We are out of the shoe business. We are out of my textile business.

Yes, we are going to go out of the computer business, and we are going

out of the semiconductor business. Ronald Reagan was the best of the best. He saw that during his 8 years. And do my colleagues know what President Reagan did? He got what they called VRAs, voluntary restraint agreements, on semiconductors, automobiles, steel, and machine tools, hand tools. Ask Andy Grove of Intel. If President Reagan had not put protectionism, a voluntary restraint agreement, on semiconductors, we would not have had an Intel. We put that program in SEMATECH. It was assistance to equalize high technology development that was about to go out.

As I see it, we are about to go out not only of textiles but semiconductors, automobiles, and other products. We have to have basic production. That basic production has developed the middle class, the strength of America. If you want to do away with it, Mr. Chamber of Commerce, and move everything to China all for a profit and no country at all—it is scandalous what corporate America has been doing, running over to Bermuda, evading and avoiding taxes.

I saw one report the other day that in corporate America, something like only 20 percent pay taxes. About 80 percent of them do not pay taxes at all. And they talk about high corporate taxes. They have more experts on how to evade and avoid and change and cancel out. So it happens.

Yes, Senator EDWARDS has worked not only on the Intelligence Committee, knowing foreign policy for 6 years now. In one of the stories, they said if something happened to JOHN KERRY, we would have a President with no experience again. The only thing is, this President, EDWARDS, would be interested in being President. President Bush is only interested in being Candidate Bush. He goes out every day to some military or some police or other particular situation, gets that 7 o'clock news photo, makes his little statements, and he does not keep up with any of the legislation. He is not proud of any legislation. We do not have any leadership from the White House on getting anything done. We are getting little nagging spitballs of class actions and—what is that other thing—a constitutional amendment on marriages.

One can get a common-law marriage in South Carolina. Are we going to put that in the Constitution? Come on, a big national problem. He has more funny bunny things to think of and bring up and waste our time. It is the worst administration I have ever seen.

My point is the Chamber of Commerce.

Mr. REID. Will the distinguished Senator yield for a question?

Mr. HOLLINGS. Yes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I thank the Chair.

Mr. President, I want the Senator to comment on this statement. Here is a good-faith effort to move a bill—I do not like the bill. OK, I do not like the

bill, but we have a few Democrats who like it, so we decided not to stand in the way of this legislation.

I have a letter from Jerry Jasinowski who is the president of the National Association of Manufacturers. Here is what he said yesterday, and I want my friend, the distinguished Senator from Wisconsin, who supports this legislation and others to hear what this plan has been. This is not something that came up this morning.

He writes on this card to one of the Members:

I urge you to vote in favor of cloture.

There was never any intention of this being a fair deal out here; will the Senator agree with that?

Mr. HOLLINGS. That is right. They know their scheme. I tell you, our Republican colleagues know what they are doing when it comes to running campaigns. We know how to run the office once we get in, but they know how to run for the office. We saw President Bush was already in Raleigh, NC, and they called for, of all things, class actions so they can lambaste our Vice Presidential choice. That is what is going on. The campaign is going on on the floor, and I am joining in on the campaign. I have tried to stay out of it, but I am happy to join it because when we get about protectionism—and this is what this article says, we are going to lose out on everything and regressive—what are all those funny words they use?

Here is yesterday's Financial Times: "China vows to use anti-dumping and trade measures to protect its markets."

I ask unanimous consent to print the Tom Donohue article and this article about China in the RECORD.

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

[From the Financial Times, July 6, 2004]  
U.S. BUSINESS HITS AT CHOICE OF RUNNING MATE

(By Edward Alden and Alex Halperin)

The choice of John Edwards as the Democratic running mate has triggered an unusually harsh reaction from U.S. business, which fears his selection will tilt the Democratic ticket sharply against tort reform and trade liberalisation.

Tom Donohue, president of the U.S. Chamber of Commerce, the country's largest business group, attacked Mr. Edwards in an interview with the Wall Street Journal before John Kerry made his announcement yesterday. He warned that if Mr. Edwards were chosen, the group might abandon its traditional neutrality in presidential elections and dedicate "the best people and the greatest assets" to defeating the Democratic ticket.

Mr. Donohue said the issue of curbing costly lawsuits was "so fundamental to what we do here at the chamber that we can't walk away from it". He was lobbying the Senate yesterday for passage of a bill to restrict such lawsuits.

The National Association of Manufacturers, which is leading a coalition of companies fighting what it says is ruinous asbestos litigation, was equally harsh. "The prospect of having a trial attorney a heartbeat away

from the presidency is not something we relish," said Michael Baroody, executive vice-president.

The NAM tracks the votes of senators on issues deemed important for manufacturing companies, and in the current Congress Mr. Edwards has supported the NAM on only one of 16 votes, the same as Mr. Kerry. "It's not auspicious," said Mr. Baroody.

While U.S. trial lawyers have long been an important source of funding for the Democratic party, Mr. Edwards' ties are unusually close. He made his own fortune as a plaintiffs' lawyer in North Carolina before running for the Senate and trial lawyers are by far the largest contributors to his political career. Of his top 25 career patrons, 22 are fellow trial lawyers, according to the Center for Public Integrity, which tracks political contributions.

The American Tort Reform Association, which represent companies opposed to class-action suits, yesterday accused Mr. Edwards of favouring "a pro-litigation, anti-civil justice reform agenda that puts his wealthy personal injury lawyer patrons ahead of the American people".

U.S. companies are also worried about Mr. Edwards' stance on trade liberalisation. In his run for the Democratic nomination, he was an outspoken opponent of the North American Free Trade Agreement with Mexico, and helped make the "outsourcing" of U.S. jobs overseas into a key issue for the Democrats. North Carolina is among the states hit hardest by the loss of manufacturing jobs. But he has also cast several votes in the Senate in favour of trade liberalisation.

The president of a business group representing U.S. multinational companies, who asked not to be named, said that while Mr. Edwards' rhetoric on trade during the Democratic primary was not encouraging, "he has not been by any means one of the worst on the Democratic side".

He said Richard Gephardt, the former Democratic House leader who has voted against all the main trade agreements of the past decade, would have been a much worse choice in terms of future trade liberalisation.

[From the Financial Times, July 6, 2004]

CHINA VOWS TO USE ANTI-DUMPING AND TRADE MEASURES TO PROTECT ITS MARKETS

(By Mure Dickie in Beijing and Guy de Jonquières in London)

China plans to step up its use of anti-dumping and other trade measures to protect its market, saying its economy and industries need to be able to adjust to tougher competition since it joined the World Trade Organisation in 2001.

China has been the biggest target of anti-dumping actions by other countries. As well as signalling more awareness of the potential for using such measures, the decision is a pointed reminder to trade partners that the country is now the world's fourth biggest importer.

The shift in policy also coincides with intensive, but so far unsuccessful, efforts by Beijing to persuade the US and European Union to grant it "market economy status". That would make it easier for Chinese exporters to defend themselves against anti-dumping cases.

The official China Daily newspaper yesterday quoted Gao Hucheng, vice-minister of commerce, as calling for "concerted efforts" by industrial associations and legal agencies to help Chinese companies compete with foreign rivals. "It is an imperative task for governments at all levels to resort to legal means that are enshrined in the WTO pact, such as anti-dumping, anti-subsidy and other

protective measures," it quoted Mr. Gao as saying. China has long been among the fiercest critics of U.S. and European anti-dumping actions, saying they discriminate against its exports. However, its use of such measures has increased since joining the WTO.

Last year, it initiated 22 anti-dumping investigations, more than any WTO member except India and the US. Though lower than the 30 cases brought the previous year, the figure was sharply higher than the six China opened in 2000.

Anti-dumping investigations can lead to steep duties being imposed on imports that are found to have been sold below cost and to have harmed producers in the importing countries. Many trade experts criticise the methodology used to determine dumping, saying it is opaque and open to official manipulation.

Beijing recently caused concern in Washington by imposing preliminary anti-dumping duties of as much as 48 per cent on optical fibre imports from the US, Japan and South Korea.

The China Daily quoted Wang Qinhua of the commerce ministry's bureau of industry injury investigation as saying that government officials were watching closely "to see if some of the industries are hurt by unfair foreign competitors".

The newspaper said the government was also seeking to shield Chinese exporters from foreign anti-dumping actions by providing advice and information on international prices.

According to the WTO, other countries opened 45 investigations into imports from China last year. The total number of anti-dumping cases brought worldwide fell last year to 210 from 311 in 2002 after a peak of 366 the previous year.

Although industrialised countries were for a long time the most active users of anti-dumping measures, developing nations have accounted for most of the investigations since the mid-1990s.

Mr. HOLLINGS. Mr. President, the reason I had the China article printed in the RECORD is because China is following Japan. We have yet, in 50 years, to get into the downtown market, Main Street, Tokyo. We cannot sell in Tokyo what we sell in the United States. No. They have total protection. They not only have MITI with the financing and the refinancing and keeping even bankrupt entities going, but they control that market so they go for market share. They are not worried about profits the way the government runs things. We have antitrust, they have pro-trust.

That Lexus I have sells for, let's say, \$35,000. It will sell for \$45,000 in downtown Tokyo. They pay at the local market way more for that camera, way more for that television set, way more for that automobile because we are talking about profit, and they keep on getting more and more market share.

So we have to understand not only the thrust of their competition, but that they are competing. They are as protectionist as can be on anti-dumping. We get into WTO and say: Oh, no, it is WTO violative; you cannot enforce any antidumping statutes in the United States. That is why we have that funny tax bill over there that they loaded with all these extra tax cuts for corporate America. It is a disgrace. Everybody has written about that.

Warren Buffett, two days ago, said that tax bill is a disgrace. But the reason we got the tax bill started was to try to equalize the situation where we have been taking care of our particular businesses and industries, and if we are going to have the U.S. Chamber of Commerce join the other side, this is like joining Saddam in Iraq.

If my colleagues want to see a business-oriented State, come to North Carolina where JOHN EDWARDS is a Senator. I can say right now, they talk now about the two most liberals. That is the biggest bunch of nonsense I have ever heard. I resent it, particularly respected entities like the National Chamber of Commerce taking business away from America. Tom Donohue is just adamant on doing that. He has been taken over by the multinationals. His main membership is the Business Roundtable. They are not for your stores, they are not for the Main Street merchants anymore.

That is why the Chamber of Commerce—by the way, I was a member of the oldest Chamber of Commerce in the United States, so I speak with some authority. I have seniority in something. I have been around here for so long, I have been looking for it wherever I could find it.

In any event, what we have to do is sober up. The business leadership has to quit this race to China, quit this tax race avoidance to Bermuda, quit this Chamber of Commerce nonsense about who is liberal and who is conservative, and understand that our jobs are here to build up this market so they can sell what they sell here, not dump. If we do not have any jobs, they cannot buy, they cannot sell.

We have the richest market in the world, but we are vastly developing into the poorest market. That is why I have my job. I see some other Members. But they talk about a wonderful economy, we have 5 percent growth. Baloney. I have 56,800 manufacturing jobs lost since President Bush took office, and they have not come back as of last night. This is from the Bureau of Labor Statistics. That is manufacturing. Do not tell me about growth, growth, growth. I am not getting all of this growth.

We have a lot of Government jobs. The Government is growing, the law practice is growing, health care is growing, but business is not growing. Production is not growing in America. The middle class is diminishing.

It is shrinking. We have to worry about that. We cannot go along with these labels about, we have the Chamber of Commerce now which has already said he is the most liberal. He could not be a Senator—he could not have won any election in the State of North Carolina if he had that character.

I say to my colleagues, he believes in hard work, he believes in justice, he believes in trying his case, and 12 jurors and the presiding judge and the appellate court all agreed with JOHN EDWARDS. Tell Tom Donohue to bug off.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. DORGAN. Mr. President, will the Senator from Wisconsin yield for a unanimous consent request?

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. My understanding is the Senator from Wisconsin is going to speak for about 5 minutes. I ask consent to be recognized following his presentation.

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

The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I rise today in support of the Class Action Fairness Act of 2004. Class action lawsuits serve an important role in our court system. They permit consumers to address their injuries collectively and hold the wrongdoers accountable, often when a lawsuit would have been too costly for any one individual to bring it alone.

Most of these cases proceed exactly as we would hope. Injured parties, represented by strong advocates, get their day in court or reach a positive settlement that is good for the parties and handled well by their attorney.

Unfortunately, this is not how it always works. Rather, some are taking advantage of the system and consumers are getting the short end of the stick, recovering coupons or pocket change, while the real reward is going to others. The Washington Post put it clearly, “no portion of the American civil justice system is more of a mess than the world of class actions.”

This legislation addresses the mounting problems in class action litigation in a fair and balanced way. The bill is not a panacea, but it will stop many of the unfair and abusive class action settlements that plague our court system and short-change consumers.

Let me provide just a couple of examples of these abuses. In a large class action suit against Blockbuster video, consumer plaintiffs received coupons for \$1 off their next rental as their only compensation for a successful settlement to their legitimate claims. Their lawyers received \$9.25 million.

Or consider Martha Preston of Baraboo, WI, who was a member of the Bank of Boston case. It was Mrs. Preston's experience that demonstrated for many of us that we needed to take a serious look at changing the class action system. When her class action suit was over, Mrs. Preston had technically won the case, but ended up owing \$91 to her lawyers and defending a lawsuit that her own lawyers filed against her in State court.

Studies show that these are not isolated examples. Rather, certain State and county courts welcome the sort of unfair class action suits that lead to the embarrassing settlements that we are trying to end. Anyone who follows this problem can say that class action cases brought in Madison County, IL or

certain counties in Florida or throughout most of Mississippi will succeed regardless of the merits of the case and regardless of how poorly any truly injured consumers make out in the settlement.

Our bill stems the abuses in the class action system. While we change the location where some lawsuits are heard, the bill recognizes the essential role class action cases play in our legal system. We can say without reservation that not a single merited case will be deprived of its day in court under this bill.

We stop the coupon cases that are far too prevalent. We ask the State attorneys general to review the settlements that affect their constituents in an effort to add another layer of protection for consumers. Finally, we move some cases to Federal court where the judges have more resources and expertise to devote to these complex cases.

We look forward to debating this bill and all of the amendments that promise to be offered to in the coming days. We have worked on this bill for many years, crafting significant changes in response to constructive criticism. Indeed, today we can say proudly that a strong bipartisan coalition supports this legislation.

This project that we started with Senator GRASSLEY several years ago has matured through numerous committee hearings, multiple markups, countless favorable editorials, and a general educational campaign that has taught Members that the class action device is in dire need of repair. We have garnered broad support through repeated compromise and negotiation and have now reached a point where a large majority of the Senate supports this bill.

I would particularly like to thank Senator GRASSLEY with whom I have worked for many years on this bill as well as Senators HATCH and CARPER for all of their diligent efforts in support of class action reform in the last couple of years.

The changes that we have made to the bill responded to the criticism that we moved too many cases to Federal court and that local cases should remain in State court. We addressed that first in a major compromise with Senator FEINSTEIN during the committee markup last year. We addressed that the other concerns at the end of last session with a second compromise with Senators DODD, SCHUMER, and LANDRIEU.

The changes we made to the bill were good ones that did a better job of tailoring our bill to address only the sort of cases that are the worst abuses. Cases that belong in State court will stay there under this bill. Cases of national importance will be heard in the Federal system.

We have told the Republican leadership repeatedly that there must be a reasonable amount of time for amendments to be offered to this bill and voted upon. We understand that the

minority leader offered a maximum of 5 non-germane amendments and 10 germane amendments to the bill this morning. This would certainly qualify as reasonable under any definition. We know that many of us, both Republicans and Democrats, want to offer amendments, both related, and unrelated to this bill. There must be an opportunity to do that. Unfortunately, so far we have not had that chance.

We are eager to see the Senate work its will and pass this bill. That would be an important step designed to protect consumers injured by these abusive class action settlements.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I was inspired by my colleague from South Carolina. Senator HOLLINGS comes to the floor to speak, among other things, about international trade issues and does it in a way that is not only right on point but also very colorful. I would like to follow on that a bit and talk about a couple of other subjects.

I know we have the class action reform bill on the floor of the Senate, but that bill apparently is going nowhere at this moment. My understanding is the majority leader has "filled the tree," which is a fancy way of saying he is blocking everything. He puts a bill down, blocks everything, and creates a little gate in the majority leader's office saying: Show me your amendment. If I like it, you can offer it; if I don't, you can't. That is where we are. Because of that action, I assume very little is going to happen at the moment.

While I think that class action reform is an important issue and we should get to the amendments to the bill, there are other things we also need to be doing. There is a lot of unfinished business in this Chamber. We are doing very little on any of it, regrettably.

On appropriations, we had some subcommittee markups scheduled this week that have been canceled. We need to get the appropriations done.

Writing a new highway bill, we were supposed to have written the highway bill last year, and it is not done this year. Now they are talking about extending it until next year. There is no better job generator for those who are concerned about new jobs in this country than having a highway bill because that puts people to work right now with contractors and workers all across this country. Yet the highway bill was supposed to have been rewritten last year. It wasn't. It was supposed to have been rewritten this year. It isn't. So there is a lot to do in this Congress that is regrettably not getting done. There is a lot of unfinished business.

My colleague from South Carolina talked about trade, the trade deficit, the shrinking employment base in manufacturing and the shrinking man-

ufacturing base itself in this country. He also spoke of the Chamber of Commerce that was critical of our colleague, Senator EDWARDS.

That was one of the things I was going to talk about today. The head of the Chamber of Commerce, in a speech just within recent days, said people who are affected by off-shoring should "stop whining." Again, the head of the Chamber of Commerce says those people who are affected by outsourcing, by the movement of jobs overseas, by offshoring, ought to "stop whining."

I don't know of the head of a corporation who has had his or her job moved overseas. I don't know of a Member of the House or Senate, I don't know of a politician who has had his or her job moved overseas. I don't know of one journalist who has had his or her job moved overseas. But there are plenty of folks who work in manufacturing in this country who have been the victims of offshoring, outsourcing, moving jobs overseas.

I have pointed this out on numerous occasions, but it is worthwhile to do it again, just because it is, I think, such a good illustration of what is happening in our economy.

This is a bicycle I have spoken of often in the Senate, a Huffy bicycle. Most Americans know of a Huffy bicycle. It has 20 percent of the American market. Many Americans have ridden a Huffy bicycle.

This used to be made in Ohio, by the way, by one plant with over 900 proud employees who made Huffy bicycles and did a good job by all accounts. They came to work one day and discovered they were all fired. Why were they fired? Because they made \$11 an hour plus benefits and that was too costly.

The manufacturing plant in which these bicycles were produced was moved to China. It was moved to China because they could hire somebody for 33 cents an hour in China and work them 12 or 14 hours a day, 7 days a week. So that is why Huffy bicycles are not made in this country any longer.

Those who say to those 900-plus workers who lost their jobs, "stop whining," apparently don't understand the anguish of being told, in this country, that making \$11 an hour is too much money. You can't compete with a Chinese worker who makes 33 cents an hour.

The American people don't need to be told that. We can't compete with 33 cents an hour. We can't compete with someone in Indonesia who is making shoes for 16 cents an hour. We understand we can't compete with that. Nor should we be required to.

This country, for one century, has fought over the issues that are important to a good life in this country, issues of abolishing child labor, in which we were sending kids into factories and down into mines. So we have child labor laws. There are issues about plants that dump effluents and poisons into the air and water, and so we have environmental laws. We have issues

about safe workplaces, so that workers can expect to go into a factory that is safe, and so we have laws dealing with safe workplaces. There are issues about fair wages, so we have minimum wages in this country.

There are issues about the right to organize. People died on the streets in this country for the right to organize as workers, and so we have labor unions with the right for people to organize.

In one fell swoop, a company wishing to pole-vault over all of those issues can simply decide it wants to be an American company for purposes of incorporation, but it would like to be a foreign company for purposes of production. Whether it is a Huffy bicycle or a little red wagon, the Radio Flier wagon which for 100 years was made in this country and now is gone, they can decide to move the production of those products somewhere in the world where they don't have to worry about child labor laws, environmental laws, about a labor union, because they can move it to a place where labor unions are not permitted, workers are not permitted to organize, where there are no requirements with respect to fair wages.

What is happening, as we know, is more and more companies are engaged in outsourcing. It is not just bicycles and little red wagons, the Radio Fliers; it is not just that. It is now white collar jobs as well, where there is outsourcing into Indonesia and China and elsewhere. And they are told stop whining. By whom? By people who have never lost their jobs and are not about to. They are not going to lose their jobs to outsourcing. To them, this is all theory.

By describing all of this, I am not suggesting we build a wall around this country because I don't believe we should or could. I believe in expanded trade and I believe in expanding opportunities for Americans through trade. But I do not believe in the kind of trade agreements that have been brought to this Senate for approval.

I don't intend to support the Australian-United States Free Trade Agreement, which will come to the floor of the Senate soon, because it, again, in my judgment, undercuts the interests of this country.

I am perfectly willing to support trade agreements that are fair to this country, fair to America's workers and require us to engage in competitive and fair trade. If we can't win in fair trade, then that is our tough luck. That is our fault. But let me give some examples of what our trade negotiators have done, time after time after time. If there are people who want to defend this, I wish they would come to the floor of the Senate. None have and none will. I will give just one example and then go on to several others.

About 2 years ago, we did a bilateral trade agreement with the country of China. In that agreement our trade negotiators said this to China: You produce automobiles and ship them to

the United States. We will charge a tariff of 2.5 percent on any automobiles that you ship into the United States. But we agree that any U.S. automobiles, any automobiles produced in the U.S. that we would ship to China, you can charge a 25-percent tariff. In other words, our negotiators said: I will tell you what we will do. You have a very large trade surplus with us, China. We have a \$130 billion trade deficit with you. But I will tell you what we will do. We will set up an agreement with respect to automobile trade, and you can charge a tariff on U.S. automobiles going to China that is 10 times higher than any tariff we would impose on Chinese automobiles going to the U.S.

I would like to find the softheaded negotiator who decided that this is something that is fair to America, fair to America's workers or fair to America's producers.

I don't come from an automobile State. I will give you one more example of automobile trade—that is, automobile trade with Korea.

We have a circumstance with Korea where we ship about 2,800 automobiles every year to be sold in Korea. That is how many automobiles we get into Korea. What does Korea ship to the United States? Somewhere over six hundred thousand vehicles come into our marketplace, and 2,800 we get into Korea. You know why? Because our marketplace is wide open and the Korean Government doesn't want U.S. cars in Korea, so they set up dozens of impediments to our shipment of U.S. cars to the Korean marketplace.

The list goes on and on and on. If you are an American rancher and believe you ought to get beef into Japan—after all, we have a deficit with Japan of \$50 billion to \$60 billion every year, year after year, so the Japanese market ought to be open to U.S. beef—you find that years after the United States-Japan beef agreement, there still remains a 50-percent tariff on every single pound of beef that is sent from this country into Japan. Unfair? You bet your life it is. Anybody care about it? No. Our trade negotiators are off busy negotiating new agreements with Singapore, Australia, Morocco, Honduras, Costa Rica—all of these new agreements that create new unfairness in trade law—before they will even talk to you about the old trade laws that aren't working.

We have the largest trade deficit in history—not just our history but in the history of the world. Someday it will have to be repaid. It will regrettably be paid with a lower standard of living in this country, and nobody seems to care about it.

Let me talk about that trade deficit for a moment. On May 13, we see headlines that the U.S. trade deficit grows unchecked—a \$46 billion trade gap in March—1 month, a \$46 billion trade deficit. How about the next month, June 15, when we learn that the U.S. trade deficit sets another record in April—

\$48.3 billion in a single month. Up and up and up goes this trade deficit, with American jobs leaving, outsourcing, offshoring. That is not a way, in my judgment, to strengthen our country and strengthen our economy. No country will long remain a world economic power without a strong, vibrant, growing manufacturing base, and our manufacturing base is being decimated month after month. These are not circumstances of fair trade. We ought to be debating them on the floor of the Senate with respect to legislation. But we will not. Instead, we will debate the United States-Australia Free Trade Agreement, and will be unable to offer a single amendment because of fast track rules.

While I talk about some of the circumstances of trade, one of the problems, of course, is that U.S. companies are setting up foreign subsidiaries—not for the purpose of producing in a foreign country for sale in another foreign country, but for the purpose of producing in a foreign country for the sale into the U.S. marketplace. And in fact, another reason they are setting up foreign subsidiaries is to avoid paying taxes to the U.S. Government.

Here is an interesting statistic. In a recent year, of the 100 largest publicly traded companies that do business with the Federal Government—I am talking about Federal contractors, the biggest companies that build things, airplanes, tanks and all of the things they sell to the Federal Government—59 of them had created subsidiaries in tax-haven countries. Why? Because they want to move production plants to tax-saving countries? No. Because they don't want to pay taxes.

Halliburton Corporation, the subject of a couple of hearings I have had, had 17 subsidiaries, 13 in the Cayman Islands. This is all about running a corporation through a mailbox, not for the purpose of producing anything but for the purpose of trying to avoid paying taxes.

What you have is companies that decide they want to be American citizens, they want to do business in this country, they want to sell into our marketplace and contract with the Federal Government, but they do not want to pay taxes. Second, to the extent they can, the production which they want to contract to the Federal government they want to move offshore. Why? Because it is cheaper to produce offshore.

Once again, anytime someone gives a speech, as my colleague from South Carolina did or as I do from time to time, about trade and requiring and demanding fair trade rules, the institutional press and others will say this is just uninformed nonsense from a bunch of xenophobic, isolationist stooges who can't see over the horizon.

You can't have a thoughtful debate about trade. We have now a \$48 billion monthly trade deficit. Nobody wants to talk about it. Nobody will talk about it. Will there be anything brought to the floor of the Senate to deal with

this? No. We talk a lot about the fiscal policies and budget deficits, and we have a reckless fiscal policy that is out of control. No question about that. But this trade policy is something nobody talks about, and these trade policy deficits are way out of control. They are affecting our economic base, our manufacturing base, and our productive capacity in this country. We will pay a heavy price for that unless we decide at some point that our trading partners are required to engage with us in fair, competitive, and open trade.

My colleague talked a little bit about the effort through the WTO and the allegation by some that we must remove our antidumping provisions that exist in law. Antidumping provisions are provisions that protect a country against another country that would try to dump into that marketplace at a price well below the price of production and injure or demolish an industry in your country. The trade ambassador said those are on the table for negotiation. We are willing to negotiate and we will negotiate in the WTO negotiations our antidumping provisions and get rid of them potentially. So we will get rid of the only protection that exists for producers and workers in this country against unfair competition. I don't understand that. Is there some notion that we shouldn't stand up for this country's interests?

I come from a State that must find a foreign home for a substantial amount of its agricultural production, and I am the last person in the world to want a trade war or to shut down opportunities for fair trade. But I will give you some examples of things that bother us.

We produce a great deal of wheat in my State. So we do a bilateral trade agreement with China. The Chinese say: Well, under this agreement we will set a tariff rate quota of 8.5 million metric tons. I didn't believe that, but I especially didn't believe it when I saw the South Asia Post one day and the Agriculture Minister from China was traveling down there speaking in an interview in the South Asia Post. He said to the Chinese: This 8.5 million metric tons of wheat, that is just theory. That is just theory. That doesn't mean we are going to buy it. And sure enough, they didn't buy it. Now, finally, they have made some modest purchases. But we didn't have any substantial quantity of wheat going into China for years after the agreement because they didn't have any intention of making those purchases. Our farmers deserve the opportunity to compete in these markets and yet were denied that opportunity.

Probably the most obvious hood ornament on foolishness here in Congress in terms of public policy and in the White House is our attempt to sell goods into Cuba. Talk about a political odd couple. John Ashcroft and I, when he was a Senator, actually got legislation passed which is now law, and it opens just a bit the embargo with Cuba

so that we could sell agricultural commodities into Cuba. After 40 years of an embargo, we finally, because of the bipartisan work here in the Congress, passed a law that opened that market just a bit so we can sell some agricultural products into Cuba. Cuba has to pay cash. They have to run the transaction through a European bank, a bank that is not in this country. But, nonetheless, we have been selling agricultural products to Cuba. But the State Department and the administration are doing everything they can, every conceivable thing they can to shut down even that small amount of export of agricultural commodities to Cuba.

I don't understand this effort to injure ourselves. Public policy that hurts our country, that is believed to be sound and good policy, whether it is at the White House or by some in Congress, is something that makes no sense to me at all.

On a related subject but somewhat off of trade, in addition, with respect to Cuba, we have a travel ban. That travel ban, incidentally, is an attempt to slap around Fidel Castro, someone for whom I have no use at all, a Communist dictator that Cuba does not deserve. In an attempt to punish Fidel Castro, our Government has decided we shall prohibit Americans from traveling to Cuba, so we have a travel ban. We do not ban people from traveling to Communist China. We do not ban people from traveling to Communist Vietnam. But they cannot go to Cuba.

At a time when we are beset by terrorist threats in this country, we have a little organization down in the U.S. Department of Treasury that ought to hang its head these days. They have, I understand, 20 people in an organization called OFAC, Office of Foreign Assets Control. Their job is to track financial movements of money to the terrorist organizations.

Twenty of them are tracking Americans traveling to Cuba. They are accusing them of trying to take a vacation. A woman named Joan Scott went to Cuba. Joan Scott went to Cuba to distribute free Bibles on the streets in Cuba with a missionary zeal and a religious sense of making a difference. She went to Cuba to distribute free Bibles. Guess what. Boy, the Treasury Department got hold of her recently and is going to fine her \$10,000.

There is a fellow from near Seattle, WA. His dad died and was cremated. His dad's last wish was to be buried on the church grounds where he ministered in Cuba. This young fellow took his dad's ashes to Cuba. They tracked him down, the people who are tracking down terrorists. They tracked down a young man taking his dad's ashes to Cuba.

Or Joan Slote. They are supposed to track terrorists; they tracked Joan Slote down. Joan Slote is a '76-year-old grandmother who rides a bicycle all over the world. She joined a Canadian bicycle club and bicycled to Cuba. She

did not know it wasn't legal. She had a good time, a 76-year-old grandmother bicycling to Cuba. They tracked her down right quick and slapped a big fine on her. It was all a mistake because she was not even home when they sent her the first letter. She was gone because her son was dying of a brain tumor. She was not there, did not get the letter, so they slapped her with a bigger fine. After she paid part of that fine, they tried to attach part of her Social Security check.

These are people who are supposed to be tracking terrorists, but they are going after people distributing free Bibles in Cuba, retired grandmothers who are taking bicycle trips, and a young fellow trying to bury his dead father's ashes.

It is embarrassing what is happening in this administration dealing with this issue of the travel ban. We have, on repeated occasions, on a bipartisan basis, with Republican support and Democrat support in the Senate, voted to lift that ban. Yet, somehow, in the end, the White House always wins. That ban is in place and we are using precious resources that are supposed to be tracking terrorists who are now tracking American citizens accused of taking vacations in Cuba and slapping them with \$10,000 fines.

I digress. That was not the point of raising the Cuba issue. The Cuba issue is about trade and the foolishness of what we are doing to inhibit our family farmers from fully exploring the opportunities of trade in Cuba. We have a natural advantage over Canadian and European farmers with respect to that marketplace.

Incidentally, they are required to pay cash for the food they buy in these trades and yet the administration is making it more and more difficult for our farmers to access those marketplaces.

I started by saying the Senator from South Carolina was talking about the Chamber of Commerce and, as I said, the President of the Chamber of Commerce said people should stop whining if they are affected by offshoring or outsourcing or moving jobs overseas.

I don't think people who have been hurt by this should stop speaking up at all. I don't think they are whining. But you could certainly see the anguish on the faces of people who are proud to go to work in the morning and make a good product, only to discover their employer felt \$11 an hour was excessive and they would sooner get that product made by Chinese workers at 33 cents an hour. You can certainly see the anguish in the faces of those people who had to go home some night and tell their loved ones: Honey, I lost my job. It was not my fault. I worked here for 15 years. I lost my job today because I make \$11 an hour and my employer wants to go offshore and find somebody who will do it for 33 cents an hour, and who will be prevented from joining a labor union, and who will work at a plant that may not necessarily be safe,

and who will work in a plant that will put poisons into the air and the water, and who will work in a plant where there are no child labor laws.

That is a hard thing for people to do, to go home and tell their families. It is not whining. These Americans deserve better than that. This country was built by people who take showers after work. This country was built by people who work hard, do their best, expect a fair deal, expect there is some connection between effort and reward in this country. And regrettably, these days, when we see this avalanche of outsourcing and offshoring and decisions that this is not about workers being part of the country, workers are like a pair of pliers or tools; when you are done with them, get rid of them. That attitude on the part of business is wrong.

I visited with a CEO of a corporation recently. He said, I am one of the few companies in my industry that has not offshored or outsourced a portion of the servicing of my customers. He said, Everyone else has done it and I have not. It costs me more and it makes me a little less competitive because I have not done it, but I have resisted it because I have not wanted to lay off workers in the United States and to outsource that to China or India.

I applaud him. But there are precious few companies which have that attitude.

In short, we need trade laws that stand up for this country's interests. Why is it embarrassing for someone to say, I support this country's interests? Why has that become something no one will talk about? I am not talking about advantage; I am talking about fair trade. Why is it not fair for us to say we stand for requirements of compensation that are fair? Yes, with China, with Japan, with Korea, with Europe.

Why do we allow Korea to have a 300-percent tariff on potato flakes from our country? Why do we allow the Koreans to decide they will keep out our American automobiles to the extent they can, or keep out American pickup trucks to the extent they can, while boats pull up at our docks with Korean cars?

I say to Korea, that is fine, bring your cars to our marketplace. Our consumers want the opportunity to shop for them. But there is a condition for that. Then your market must be open to American vehicles. It must. We ought to have the strength and the assertiveness to say that to all of our trading partners.

This country needs to get a backbone. This country needs to have a spine that says, look, we believe in trade and it should be mutually beneficial. We also are not going to apologize for standing up for this country's interests. This country has interest in a growing economy and expanding economy and jobs. There is no essential program we will vote on in this Congress that is as important as a good job



that pays well with good benefits. There is no social program that is any more important than that.

It is time, it seems to me, to turn to important things in the Senate. First and foremost, perhaps the majority leader should come to the Senate and stop blocking amendments so we can finish the class action bill. If we do not finish the class action bill, it will be because of one reason, and that is because the majority leader decided to block amendments.

If he wanted to offer amendments, I assume our side could have offered a number of the amendments we were prepared to offer today, work through tonight, tomorrow, tomorrow night, and finish the class action bill. In my judgment, in all the discussions I have been in, and I am part of the leadership on our side, there was no desire to block class action. There was an acknowledgment and an understanding that this bill was going to get done—until this morning when the majority leader came to the Senate and used an unprecedented maneuver to block all amendments except those with which he would agree.

The first thing we ought to do is unhinge that problem, move forward on class action, and then deal with a range of other issues we know are important for this Congress. It is surprising to me how little this Congress has accomplished and how much it should be required to accomplish.

The highway bill, which is so important, as I indicated earlier, is last year's business. It was not done last year and now apparently will not be done this year.

What are we doing? Standing around here in the Senate. We will not vote today, apparently, and probably will not vote tomorrow, I don't know why. Why? Because we have these unusual procedures of blocking amendments because someone is concerned, apparently, that someone else is going to offer an amendment that somebody else does not like.

I do not understand. We probably should be required to retreat someplace in a room and read Senator BYRD's history of the U.S. Senate. Maybe that would be helpful, and we can read about some of the great debates in this Congress—tough debates, sharp debates. But they went on and they had votes and they resolved them and got through them.

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

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

SUDAN

Mr. McCAIN. Mr. President, I come to the floor today to discuss the mass

human destruction unfolding in the Darfur region of Sudan. The stakes in Darfur are extremely high and the death toll could exceed the number killed in Rwanda 10 years ago.

Both Secretary of State Powell and U.N. Secretary-General Kofi Annan have visited Sudan in recent days. Their attempts to promote an end to the killing in Darfur are admirable. The Sudanese Government has agreed to contain the janjaweed militias and allow human rights monitors into Darfur. Yet it is not at all clear that the Government of Sudan is serious. The Sudanese Foreign Minister continues to blame the militias alone for the violence in Darfur, and before Kofi Annan's visit, local authorities cleared the squatter camp he visited.

Now, I have been around for a fair number of years. I have never heard of a situation where the Secretary-General of the United Nations was going to visit a refugee camp—actually it was a squatter camp—and the government comes in the night before and evacuates the whole place. I can imagine how insulting that is to the Secretary-General of the United Nations. And it certainly may give us some insight into the seriousness or lack of seriousness on the part of the Sudanese Government.

Government officials have said that reports of humanitarian catastrophe are overblown, and Sudan's Ambassador to the United States says that despite widespread reports that the Government is using Antonov bombers to attack villages and water wells, that this is false and "part of a smear campaign against Sudan."

Mr. President, I received a letter from the Ambassador of Sudan that I ask unanimous consent be printed in the RECORD.

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

REPUBLIC OF SUDAN,  
THE AMBASSADOR,  
Washington, DC, June 23, 2004.

Hon. JOHN McCAIN,  
Senate Russell Office Building, Washington, DC.

DEAR SENATOR McCAIN: In reference to your article today, Wednesday, June 23, 2004 in the op-ed section of the Washington Post, concerning the situation in Darfur, a western region of Sudan. First of all, I would like to express my respect and appreciation for your sincere concerns about the plight and suffering of my fellow citizens who are affected by the rebellion that began in February 2003. This rebellion began in response to an erroneous assumption that the peace between the northern and southern parts of Sudan would come at the expense of other regions in the country.

Militias affiliated with the two rebel groups in Darfur, the Sudan Liberation Movement and the Justice and Equality Movement, are numerous. These rebels call themselves Tora Pora after a place in Afghanistan and Pushmanga in Kurdistan. The Tora Pora, the Pushmanga and the pro-Arab Janjaweed are all outlaws and bandits that burn, rape, and loot. President Al-Bashir is working to disarm all of them and bring these criminals to justice. Attached you will

find the full text of his decree concerning this matter.

In regards to the Antonov bombers that you mention attacking water wells, this is not the case and is in fact part of a smear campaign against Sudan. This Russian aircraft does not even possess the technical capability of undertaking such a task. I would like to assure you that in the end the Government of Sudan is determined to resolve this conflict as quickly as possible. We hope that the U.S. Congress will help.

Sincerely,  
Ambassador, KHIDIR HAROUN AHMED,  
Head of Mission.

Mr. McCAIN. I think this letter may give my colleagues an idea of how Orwellian the situation is because the Ambassador basically denies that any human rights abuses are going on.

The fact is, the Sudanese Government has teamed with the janjaweed to slaughter civilians in a systematic, scorched-earth campaign designed to ethnically cleanse Darfur of black Africans. The Government and its militias have bombed villages, engaged in widespread rape, looted civilian property, and deliberately destroyed homes and water sources. The Government does not oppose the militias, as they suggest; the Government and the janjaweed are on the same team.

How do we know that the Government is lying about its role and the scale of the crisis? Numerous press reports, victim accounts, and other evidence paints a tragic picture. The numbers are shocking: at least 1.1 million people driven from their homes and up to 30,000 already dead. And 320,000—I repeat, 320,000—people may die by the end of this year, and a death toll far higher is easily within reach.

But numbers do not tell the whole story. The National Geospatial-Intelligence Agency has produced a number of satellite images that depict what is going on in the Sudan.

This map I have in the chamber of western Sudan and eastern Chad shows the large number of damaged and destroyed villages across the Darfur region. Each orange fire with a black center, as shown on the map, represents a village that has been completely destroyed—each one of these areas shown in orange with the black in it.

At least 400 separate villages, most of which were stable black-African farming communities, have been partly or completely burned by military forces. This number reflects only those villages where there was a clear intent to damage or destroy these villages. The total number of damaged and destroyed villages could be considerably higher.

Also, on this map, you will see pink triangles that represent U.N. refugee camps inside Chad.

Now, this is very widespread. Remember, this country of Sudan is very large, about the size of the State of Texas.

Where have the people living in these villages gone?

The pink triangles on this map show U.N. refugee camps located 50 kilometers inside the Chad border. Yet

some are still unsafe because the militias are launching cross-border attacks. Those who are not in camps have settled in dry riverbeds, and the rainy season is approaching. These people will soon be unreachable.

The next picture shows the village of Karraro, a farming community destroyed within the past few months. The village consisted of approximately 250 huts. By May, they were all gone. This image shows healthy vegetation in red. There is very little left, and this was a farming village. The blues and grays show areas that have been destroyed.

It is remarkable.

This slide shows El Geneina, the capital of Western Darfur State. The town is under the control of the Sudanese Government—I repeat, is under the control of the Sudanese Government—and has not been attacked by militia forces.

In the upper right-hand corner of the slide, you can see a government airfield, one of three in the Darfur region. Sitting on the ground are M-24 HIND attack helicopters, as shown right here. According to eyewitness accounts, the Government has used these attack helicopters to target the civilian population. It is not a matter of counterinsurgency techniques; the Government is deliberately attacking civilians and their villages.

The Government of Sudan may argue that the ethnic cleansing is being carried out only by militias over whom the Government has no control. But look at this image: These white arrows, right here, point to craters which the imagery analysts conclude are consistent with aerial bombing.

This is the Forchana Refugee Camp. As I mentioned earlier, there are upwards of one million internally displaced persons in Darfur today. In addition, over 100,000 Sudanese have sought refuge in camps inside eastern Chad. The U.N. has erected eight camps in Chad, and they continue to grow. This image shows the Forchana refugee camp in Chad and they continue to grow. Since this image was acquired in mid-April, this camp has increased to over 10,000 residents. Many residents fled when their homes and crops were burned. You can see approximately 1,700 tents, and it had a population of 7,000 on 19 April and is now well over 10,000.

These satellite images together paint an appalling picture—a picture of ethnic cleansing of the worst sort, of mass killing and untold human suffering. To bring this picture into even sharper relief, I would like to share some photos taken on the ground.

I would like to thank Nicholas Kristof of the New York Times for his permission to reprint and use the following four slides.

This photo is of a 19-year old named Hussein. Hussein was in a group of men attacked by the janjaweed, and he suffered gunshot wounds to the neck and mouth. In this image you can see the

scarring on his face—he still cannot eat solid food. His brother, who was also shot in the attack, discovered Hussein still alive when he returned to the village to bury the dead.

This second photo shows a shelter set up under a tree along the Chad border. The woman who lives here lost her husband and sons when they were murdered by the janjaweed. As the region enters the rainy season, many of the refugees are forced to live like this, without adequate protection from the flooding and storms.

It is hard to adequately express my disgust at this photograph. This 35-year-old woman is pregnant with the baby of one of the 20 janjaweed raiders who murdered her husband and then gang-raped her. Now she lives in Bamina, a remote border village where aid agencies have been unable to provide any help.

The current situation in Darfur is orphaning many children. This photo shows two children whose parents, uncle and older brother are all dead or missing. The girl, Nijah, is 4 years old, and she is carrying her malnourished 1-year-old brother. Many orphans, such as these two, are alone and face starvation.

I could go on, but I think the picture is clear. The world cannot let the situation in Darfur continue. The international community is getting the message, and the administration has taken some needed steps. But we must do more, and we must do it immediately.

The United Nations Security Council should issue a demand to the Sudanese government: stop immediately all violence against civilians, disarm and disband its militias, allow full humanitarian access, and let displaced persons return home. The test of the government's commitment must be what happens on the ground. If we do not see tangible evidence that the government and militias are meeting these demands, the leadership of both should face targeted multilateral sanctions and visa bans.

Peacekeeping troops should deploy to Darfur to protect civilians and expedite the delivery of humanitarian aid, and we should encourage African, European, and Arab countries to contribute to these forces. The African Union has announced that it will send 300 peacekeepers, but this is just a start. The United States should help provide financial and logistical support to countries willing to provide peacekeeping forces. We should also initiate our own targeted sanctions against both the janjaweed and government leaders, and consider other ways to pressure the government.

Some Americans, understandably preoccupied with events in Iraq, Afghanistan, and elsewhere, may think that these steps are too difficult or too expensive. Dealing with ethnic strife is never easy, and it is tempting to turn our heads. In a recent Washington Post op-ed by Senator DEWINE and myself,

we quoted a survivor of the Rwandan genocide named Dancilla. She said, "If people forget what happened when the U.N. left us, they will not learn. It might then happen again—maybe to someone else." All Americans should realize one terrible fact: It is happening again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, let me first congratulate and thank my colleague from Arizona for his very eloquent statement and also his great leadership in regard to Darfur. Not only his comments but those unbelievable pictures really tell the story about what is going on in this very tragic region of the world. The world is beginning finally to wake up and pay attention to what is going on.

During the Fourth of July recess, the crisis in Darfur, Sudan, made headlines with the visit of Secretary of State Powell and U.N. Secretary Kofi Annan. I applaud them for going there and for taking the spotlight of that office that their office commands—the bully pulpit, as Theodore Roosevelt would say—and bringing the world's attention to that region. I applaud them for bringing this much needed attention to the genocide, the humanitarian crisis in Darfur.

Our colleague Senator SAM BROWNBACK and Representative FRANK WOLF also visited Darfur over the Fourth of July break. I had the opportunity to talk to Congressman WOLF about this visit, and Congressman WOLF is someone who, along with Senator BROWNBACK, has traveled to regions of the world before. He has seen grave humanitarian crises before, so nothing really shocks him. But when I talked to him on the phone the other day, he told me that what he saw in Darfur really defies imagination. He said: I am just so upset, so pessimistic. Of course, the pictures that Senator MCCAIN showed us make us understand.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. DEWINE. I certainly will.

Mr. MCCAIN. I thank Senator DEWINE for his involvement in this effort and his commitment to trying to see some rapid addressing of an unfolding tragedy.

My question to Senator DEWINE is, Did you happen to see that the Secretary General of the United Nations travels to Darfur and is scheduled to go to what they call a squatters camp, which is where displaced persons are, understanding from news reports that there is kind of a show camp where the Sudanese Government takes their regular visitors to cycle through. The staff of the Secretary General of the U.N. visited this camp. It is in deplorable condition the day before. The Secretary General of the United Nations shows up the next day, and it is empty. The Sudanese Government has evacuated every living soul. I can't recall anything quite as insulting to the Secretary General of the United Nations.

I wonder if Senator DEWINE had a comment on that.

Mr. DEWINE. If I may respond to my colleague, it shows the arrogance of this government. We have seen what they have done to these individuals. The other thing it indicates to me is that, even now, when the world is paying attention, they still are thumbing their nose at the world, thumbing their nose at the Secretary General, thumbing their nose at the Secretary of State. They really will not let people in to see what the circumstances are.

So when we hear some people say: Senator DEWINE, they promised they were going to take care of these people and they promised they were not going to encourage the continuation of this genocide; why don't you believe them? The answer is because of what my colleague pointed out. It is that type of attitude.

I think we know that if this was occurring in other parts of the world, such as in Europe, let's be candid, the world would have paid attention a lot earlier. That is the truth. The world would have paid attention. Something would have been done about it earlier. Finally, now, the world is paying attention.

The imperative to act in Sudan is clear. As my colleague from Arizona pointed out, there are steps that must be taken; steps such as sending in a U.N.-authorized peacekeeping force and planning tribunals that punish the guilty are steps Senator MCCAIN and I have called for in the past. I think the first time I talked about them was back in May. Yet we are still waiting for the international community to act. This delay, let no one make any mistake, is costing lives.

The U.S. Government and the Senate have taken other steps several weeks ago, such as providing more humanitarian aid funding. I thank my colleagues for that vote. The House did the same. Yet much more needs to be done.

Let me go through, if I could, a list of what needs to be done. First, the U.N. should authorize peacekeeping forces and monitors to guard the region of Darfur, and particularly the displaced persons camp. Again, as we discussed, I know the Sudanese Government already promised to protect the people of Darfur. They have made the same promises for months.

I want to show this picture of Darfur and show why the Government of Sudan has been stalling. Satellite photos that are available from USAID confirm the destruction of nearly 400 villages and 56,000 houses. Here is a picture from the ground. Here is what it looks like after they are done. Here is what is left of the village. The stories are terrible. A villager described it best. She said:

The Janjawid arrived and asked me to leave the place. They beat women and small children. They killed a little girl, Sara. She was two years old. She was knifed in her back.

We need to send peacekeepers in for Sara, and for the tens of thousands like her who have been killed because they were Black. That is why they were killed—because they were Black. These people have no reason to trust a government that has done this to them, and neither do we. I would trust African Union monitors and peacekeepers. We need to help them with logistical planning and support, and I hope we will help them as they prepare their troops. We have been calling for this for a number of months, and maybe now people will start to realize it is the only step. The wolf cannot be expected to guard the sheep, and the Sudanese military, which includes former militia members, cannot be expected to guard and help the people of Darfur.

Furthermore, 300 peacekeepers is just a start. There are too many camps, too many people, all in a region the size of Texas, for 300 people to be the answer; 300 is only the first step. I expect other countries to follow the African Union's lead.

Second, we need to classify what is going on in Darfur as genocide. I know with the use of that term comes a legal obligation under the Convention on the Prevention of Punishment of the crime of genocide, but we should not refrain from using the term simply to avoid acting. If it is genocide—and it is—we should call it that. It is my understanding that the litmus test for using the term "genocide" is a matter of intent. Is there intent to commit genocide? Let me tell you, when men on horseback and camel kill men, women, and children, and then go 50 miles to Chad to complete the task when they fail, I don't know what other term to use. It is genocide and we should call it that.

Third, we need to name names. This is a list of 7 of those responsible for orchestrating the atrocities within the militias of Sudan. We should share this information and publicly identify these people so the world knows that those who aid in genocide will not be able to hide in the shadows.

Fourth, we should impose targeted sanctions on Government of Sudan officials who are responsible for aiding the militias. It is not enough to target the militia members who are little more than thugs on camels; we need to target sanctions at government officials, including travel bans. It is not enough to say we are going to do travel bans against these militias. They are not going anywhere. We need to get the people to whom it will really matter, and that is the people in the government. We need to go after their assets and deny them the freedom and rights they have denied to those in Darfur.

Fifth, we need to prosecute the war crimes in competent international tribunals. Dog and pony show trials are no substitute for justice, and a lasting peace in Darfur and in the rest of Sudan will require that justice is served. This is particularly important for the militia members who were

counting on slipping back into the Sudanese military or back into the villages after all this is done.

The only future for those guilty of war crimes should be the inside of a courtroom and then the inside of a jail cell.

Sixth, we will need peace talks in order to address the deep roots of this conflict. This is not just about skin color; this is about a systematic policy of the Government of Sudan to deprive outlying regions the resources they need to develop. There are other regions of Sudan that are also suffering from neglect, and unless the Government of Sudan changes its attitude and starts to treat its people with respect, it will face more insurgencies in the future. The Government of Sudan needs to understand that.

Finally, I close with a word about the humanitarian situation in Darfur now. According to the World Health Organization, 10,000 people will die this month in Darfur if nothing is done. Today, it is projected that 100 to 200 people will die. By the end of the week, an additional 1,000 people will die, not just from disease but from inaction. The crisis will require more than just contributing money, although money is important. According to the World Health Organization, military logistics are needed immediately to distribute the aid. According to the United Nations, at least 50 camps are currently receiving no aid at all. That is only going to get worse as the rainy season intensifies, washing out all of the roads.

We know the Government of Sudan likes to deny that this is a crisis, as Senator MCCAIN pointed out, but we all know this is the worst humanitarian crisis in the world today. People are counting on us, counting on our action. Tens of thousands of lives hang in the balance.

I encourage my colleagues to join the growing chorus of voices demanding action in Darfur. I thank all those who have supported our efforts so far. We cannot rest upon our past laurels, but instead we must continue to move forward, pushing the international community to do more. After Rwanda, when we said never again, we meant it.

I thank the Chair. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Mr. President, I rise today to talk about the critical need for class action reform. The class action fairness bill that is before us, S. 2062, seeks to guarantee that plaintiffs in a class action, the people who have actually been harmed and who have a right to be compensated, are the actual beneficiaries of class action and not only attorneys.

The Class Action Fairness Act provides, one, the ability to remove actions to Federal court in cases where the aggregate amount in question exceeds \$5 million and the home State plaintiffs are no more than two-thirds of the class. In other words, class actions that are essentially State court matters will remain in State court, but matters that involve major amounts of money and large numbers of plaintiffs in multi-State regions, which frequently occurs, ought to be in Federal court. Why should a single county in a single State, a State judge, decide a matter that affects all 50 States and perhaps hundreds of thousands of individuals?

It will provide special scrutiny for the abused coupon settlements. That is something we have heard a lot about and is not right; that the victims get coupons for the product and the lawyers get paid millions of dollars. It provides protections against unwarranted higher awards for certain class members based on geographic location.

The bill is responsible, it is restrained, it will curb class action abuses, and produce a more productive class action system.

As I understand the situation today, the majority leader wants to proceed to this bill, and I hope we can do that in short order. The bill passed out of the Judiciary Committee, of which I am a member, in June of 2003 by a 12 to 7 strong bipartisan support. Since passing out of committee, the bill has been through two major substantive periods of negotiation, each one bringing on more Senators in support of the legislation. Currently, 62 Senators have either voted for cloture on the previous version of the bill or have publicly expressed their support for this version.

It is time to proceed to the bill, to debate the substance of the bill, and have an up-or-down vote on class action reform. But I am concerned, I must say, that many of the people who say they are for it, my Democratic colleagues who in the past have been reluctant to sign on, but they studied it more and said they are for it, that they may not really want to move to this bill. One way we can do that—and all Members of this body understand how it works: Add amendment after amendment to legislation, and they draw out the debate on issues nonrelated, non-germane to the legislation and, in effect, they can kill legislation through a filibuster by amendment.

The majority leader has a lot of things we need to do. We need to pass this bill. We have strong bipartisan support for it, but he has a lot of other legislation that needs to be done. The majority leader has propounded a series of proposals that would provide an opportunity for Members on the other side to offer minimum wage amendments and other amendments, unlimited germane amendments, amendments related to this bill, unlimited, and they have been rejected.

So what that suggests is there is not a serious commitment, that this bill is

being obstructed and being blocked from even having an up-or-down vote by a device that does not give any limits on the amount of debate. That is very unfortunate. It is not the right thing to do. As I indicated, it is a device that allows a group of Senators to block the passage of the bill even if they say they are for it. But if we try to cut off and limit debate and have a definite time for a vote, they say, no, they will not support that; I am for the bill, I just will not give this time limit; I will not agree to how many amendments we can put on.

The majority leader goes to it, we spend a week to 10 days on it and we still have not passed it. Then what can he do? So he cannot move to a bill under those circumstances. We need to have an agreement.

I hope Senators will reevaluate those circumstances so we can reach an agreement and move forward with this legislation that is very important. If not, everybody needs to know it was blocked again, obstructed from being able to be brought up, debated, and amendments offered to it.

I know the Presiding Officer served on the Texas Supreme Court and also as attorney general of Texas. He understands the legal issues perhaps better than any other Member of this body. I think we would agree, and most lawyers would agree, class actions are not evil in themselves. In fact, they are good tools to deal with litigation in which there is a single type of cause that injured a whole host of people, where perhaps hundreds of thousands of people were injured or wronged by the same act or series of acts. So as the matter of proof gets to be unjustifiable, if the amount of loss is \$100 or \$200, 100,000 people in America have to hire a lawyer to file 100,000 lawsuits, so a person can file a class action and a lawyer can represent the whole class to determine how much that group of people were damaged and get them checks, pay them and get them recompensed. I think that is a good procedure, and I am all for that. It is a real good procedure. It is something we ought not to believe is bad in and of itself.

State courts are being overwhelmed by these actions. I saw the numbers from 1988 to 1998. The number of class actions pending in State courts increased by 1,042 percent while the number in Federal courts increased only 338 percent during that period.

State courts have often been unable to give class actions the attention they need, and abuses have occurred too often under those circumstances. It has hurt class members sometimes to the benefit of attorneys. Make no mistake about it, an attorney in a class action is in a delicate position. That attorney's interest, when the settlement negotiations come around, can be in conflict with the interest of the people he represents.

So what happens sometimes in these negotiations is that lawyers demand from the big companies, or whoever

they are suing, big fees to be paid to the lawyers, millions of dollars, and then acquire only token benefits for the members of the class. That is not good, and I will talk later about some of the cases where this has happened. Lawyers in such cases have lost their perspective and have not handled the interest of their clients with integrity.

This bill would crack down on that. It would give more power to the judge to make sure those kinds of abuses do not happen.

Sometimes these class action cases are being used as judicial blackmail, forcing defendants to settle cases that are basically unjustified, even frivolous, rather than spend millions of dollars in litigation and the risk of loss of a whole customer base maybe because of bad publicity. So the defendants are compelled to pay even if they are really at fault, and sometimes they will pay the lawyers more than they will pay the people who have been victimized.

Other examples of class action problems include what has been referred to as "drive-by" class actions where the class is certified even before the defendant has notice. There are "copy-cat" class actions where the actions are filed in multiple jurisdictions to see which court will certify the class first, or they are filed by another lawyer to try and steal what appears to be a lucrative claim from the person who filed the first class action; get in a race to the courthouse.

This is a matter of significance. Lawyers are supposed to have fidelity to their clients. In some cases, the fidelity to their clients leads them to do things that are lawful and proper under the law but are really abusive. This is one of those examples. Class action lawyers are known to forum shop by naming irrelevant parties in class actions in order to destroy diversity and to agree to settlements that pay bounties for someone discovering a class action, awarding the original plaintiff more than any other member of the class.

It is hard to criticize a lawyer for forum shopping. If he looks all over the United States of America, he has a complaint that involves everybody, maybe it is a MasterCard that in every county in America somebody has one, and there is a complaint about that, he can pick the best jurisdiction in America, the best county. Maybe he knows the judge who is very favorable to his theories. He can file it in any county in the United States that he chooses. There are some counties in Alabama that are known for this. He gets total choice of where to file the case. I cannot say that is morally bad for the lawyer to do that, but those of us who set the laws, who set the policy for class actions, we ought to review that. We ought to create laws that make it more difficult for a lawyer to be able to pick the single most favorable jurisdiction in the whole United States in which to file an action.

Let me talk about this situation in the Toshiba case. A class action suit was filed in Texas, complaining 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 defendant. However, Toshiba faced potential liability of \$10 billion, and they decided to try to settle the claim. The class members received between \$200 and \$400 in a coupon off the purchase price of Toshiba products. The two named plaintiffs received \$25,000, and the attorneys received \$147 million. The class members in this case only benefitted from the lawsuit if they purchased additional products from Toshiba and used the coupons. This is not the way the legal system is supposed to work.

Class action reform is also needed so that people who are not injured do not receive compensation. If members of a class are unable to demonstrate damage, they ought not to be paid.

Lawyers are supposed to represent real clients with real problems. They are ethically bound to represent the interests of their client foremost beyond their own interest.

Class action lawsuits are designed to be available when lawyers realize that an entire class of people has been harmed in the same way his client had been harmed. Class action should not become a way for creative lawyers to gain excessive fees. It should not be a situation where good advocates figure out a way, by adding unrelated defendants or otherwise, to file actions in friendly circuits or to use other methods that maximize the benefit to their clients while ignoring the rest of the class members.

Another case touched on my home State of Alabama, the famous, or infamous, Bank of Boston case. In this case, a class action was filed by a Chicago attorney in the circuit court of Mobile, AL. The case alleged that the bank did not properly post interest to its clients' real estate escrow accounts. The class settlements limited the maximum recovery to individual class members at \$9 each. That \$9 was the maximum amount anybody could recover.

After the State approved the settlement, the bank disbursed more than \$8 million to the class action attorneys in legal fees and credited most of the accounts of the victims with sums of less than \$9. The legal fees which were automatically debited from the class members' bank accounts total 5.3 percent of the balance of each account. It was bad enough that a lot of these people did not even know they had been in a class action or that they owed an attorneys' fee for the \$9 recovery that had been won for them, the worst part is that many accounts were debited for amounts that exceeded the credit they obtained from the settlement, meaning that the attorney fee that came out of

their account far exceeded the \$9 benefit they received from the class action.

For example, Dexter J. Kamowitz, of Maine, a case which a Chicago attorney filed in Mobile, AL, and the plaintiff, who is supposed to be winning a verdict, who lives in Maine, who did not initiate the class action against the Bank of Boston—he just happened to be declared a member of the class—but he received a credit of \$2.19 on the settlement. At the same time, the class action attorney debited his account for \$91 in legal fees, producing a net loss of \$87.81. Such results, as might be expected, produced outrage from class members in other States affected by the action.

Judge Frank Easterbrook, circuit judge of the seventh circuit, asked:

What right does Alabama have to instruct financial institutions in Florida to debit the account of citizens in Maine and other States?

So we need to be careful about these matters. We need to be careful that these cases are handled fairly. This bill takes steps forward in that regard. That is why it received strong support throughout the Nation, and that is why so many Senators have committed to supporting it, Republicans and Democrats.

S. 2062, offered by Senator GRASSLEY and passed out of the Judiciary Committee last summer, will help eliminate many of these abuses. I think I have noted those. I will just note it will eliminate forum shopping, keeping State judges of a case of less than one-third of the member class who are members of that State from dictating the fate of plaintiff members in 49 States.

I hope we will have a healthy debate on this process and that we can move forward and get this bill before us and confront a problem that is jeopardizing America. We have a lot of members here who say: We believe in jobs, we want to see the economy grow, they are not creating enough jobs in America. But when you have huge, multi-million dollar, sometimes virtually extortionate lawsuits filed against businesses on a regular basis—they go up more than 1,000 percent in State court in 10 years, 300-something percent in Federal court in 10 years; these lawsuits are gaining momentum all over the country—it does impact our productivity as a Nation.

No nation carries the kind of litigation cost that the United States does. When we export a product outside our country, the total value and cost of producing that product, which has to be competitive in prices in the world market, that cost is created and added to by litigation costs. Much of that is just insurance premiums. The more these cases are filed, the higher insurance premiums go.

So it is a real problem for us. It has hurt our job creation, it has hurt our economic growth. It is time for this Nation to get in sync with the rest of

the world and bring some containment to the abuses in litigation.

I believe in litigation. I believe in the court system of America. I believe many of these lawyers are not improper or immoral; they are just using the existing legal system in every way they can to maximize the benefit they can obtain for their client. So what happens then? It is up to us to deal with it.

A lot of people have talked about this question of federalism, States' rights, how we ought to handle this and why should the Federal Government involve itself in class actions or why are we dealing with it. Over the last 30 years, we have had a host of pieces of legislation that poured through this body, many of them driven by our friends on the other side of the aisle, that impact States' rights. Now all of a sudden they are claiming States' rights will be violated by class action reform. Let me just say a few things about that question because it is very important. It is one we should think about and analyze honestly.

First, there is no doubt whatsoever that the kind of cases we are talking about ought to be or can be handled in Federal court. That is perfectly constitutional. The Constitution provides for the litigation between citizens of different States to be in Federal court to begin with. It is only through the device of undermining diversity by suing a local defendant that Federal jurisdiction has been avoided in many of these cases. The intention of the Framers of the Constitution was, in these interstate lawsuits, jurisdiction should be in Federal court. So it is not unconstitutional for these cases to be tried in Federal court. I don't think there is a single Senator in this body who would argue that making these a Federal case somehow violates the State's rights because they are interstate cases. They involve plaintiffs from more than one State. That really was always thought to be appropriately handled in Federal court. I know that.

The next question is: Should we do it? Is it proper that we put more of these cases in Federal court? I think so. I believe it is proper because we are seeing abuses of state court jurisdiction and because Federal courts have a better ability to handle multi-state litigation issues. Let's take this practical example. Let's say there is a lawsuit—I think there was one filed a number of years ago involving the construction of seatbelts for automobiles. It was filed on behalf of the class of everybody in America who had automobiles, and virtually every county in America had one of those automobiles and so they go to a certain county in the Midwest where thousands of these class action lawsuits are being filed and they filed it there, the result of which could be an order and financial judgment that would impact the way seatbelts are handled throughout America.

If you appealed any verdict from that county, where would it go? It would go

to the supreme court of the State that handled it. But it is going to affect everybody in America. So if you file this lawsuit in Alabama or Texas or Illinois, and you get a verdict that impacts the whole United States and you appeal it, a single State gets to decide whether it was properly tried and whether the order was appropriate. But if it is tried in Federal court, the appeal would be to the U.S. Supreme Court, which handles the jurisdiction of the whole United States of America, where it ought to be if the verdict is going to impact a multitude of States. So I think that is perfectly logical and a good policy reason for us to do it in that way.

We are seeing a problem in which litigation is impacting adversely our ability to create economic growth and impacting adversely our ability to create jobs. It adds to the cost of products that we want to export around the world. It adds to the cost of products produced here and sold in America making them less competitive against imports that come into this country. If we can reduce the cost of litigation on businesses in America, they will be more effective about their business.

We do not want to deny people who are wronged fundamental rights. In no way does this legislation do that. It says the litigation ought to be tried in Federal court if it involves these kinds of situations and it contains some provisions to limit abuses.

Frankly, let me say this: I was a Federal prosecutor in Mobile, AL, for 15 years, and 12 years as U.S. attorney. I have tried cases in State court and in Federal court. I know the Presiding Officer knows that by and large Federal judges have a lot fewer cases than State judges. The fact is, in our State, Federal judges probably carry on their dockets one-fourth or less the number of cases in State court, or maybe one-tenth the number of cases. State court judges have thousands of cases. Frequently, State court judges have fewer law clerks—sometimes no law clerk—when the Federal judges usually have one or two law clerks to help them do their work.

Where would a big, complex multi-state, multimillion-dollar lawsuit be better filed? Which court is best able to handle these cases? Which ones were designed by the original founders to handle interstate cases to begin with? It is clear to me that it is in Federal court. That is where these cases ought to go.

Frankly, I could see taking more class action cases than this legislation provides for in Federal courts. I think it would be justified.

But because of the objections of some of my colleagues, we negotiated and worked out concerns that some lawyers had, these negotiations will keep more cases in state court than the bill originally intended, but I am willing to live with that.

Article III of the Constitution vests the Federal courts with jurisdiction

over “controversies between citizens of different states.” When you have a bank in Miami, a lawyer in Chicago, victims in Maine and Alabama and other places, that is a controversy between citizens of different States. It is only through the reinterpretation of the diversity rule that these cases have many times been able to be kept in the State court system rather than to be allowed to go through the Federal courts. I think this is right way for us to go. I think this is a logical, fair, restrained, professional response to a problem of the abuse of class actions in America.

It is important for our economy. It is important for our business in America. I believe we need to pass it. I hope our colleagues who are holding up this bill today will reevaluate and reach an agreement with majority leader Bill Frist to have some amendments or all the amendments that are relevant to the bill they want but not an unlimited number of amendments on any subject they want to offer amendments on. That won't work. That is not right. Let us move this bill forward. Let us pass it. Let us do what at least 60 Senators in this Senate believe is proper.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

#### COST OF GOVERNMENT DAY

Mr. SESSIONS. Madam President, I would like to talk today briefly about an important matter.

As many of you may know, today is Cost of Government Day. Not that we need to celebrate it, but it is an important day.

What is Cost of Government Day, you ask? It is the day on which the average American worker has earned enough money to cover his or her share of the Federal, State, and local government. That means that our government is so large and spends so much money that we must work our poor citizens 189 days a year before they can break even with spending.

Think about it like this. Say you go out and buy a house and the monthly mortgage you have to pay for your house is one-half of your monthly salary. That is a huge amount. One-half of the money you earn—one-half of your salary—has to go to pay your house mortgage. Say every month you get your paycheck and about half of it is written off to the bank to cover your mortgage.

That is the same way our government works. The cost of government consumes 51.6 percent of our national income. It is taking more than the hypothetical mortgage payment of half your salary. I cannot help what someone's mortgage payment is but we in

this body can have some impact on the cost of the government.

I say to those here today, that spending is getting out of hand. Since 1977, the earliest Americans have paid off their cost of government was June 28. Now it is July 7. The United States prides itself in being a frontrunner in human and civil rights protections. We come together under the values of life, liberty, and the pursuit of happiness, those values that the Founders declared to be the basis of this great Nation.

But there is a dragon in the midst, a burglar in the basement, sucking Americans dry of their hard-earned money. The perpetrators are right here among us. Our government is being burdened with cumbersome and unnecessary legislation and regulation for which the American citizens also pay the bill. In this season of budget and appropriations bills, we need to think about who we are representing and the sacrifices they are making for each bill we pass.

We are not celebrating Cost of Government Day, a day 189 days into the year. I am here to celebrate America. The strength and vitality of this Nation is its belief and its investment in individual American citizens, entrepreneurs, people working hard, giving their very best every day. They do not mind paying a reasonable amount in taxes. But we need to fight every day. We need to analyze the situation with every bill and ask ourselves: How much more can we expect the American people to pay? How much burden can we expect them to carry? How can they carry a dynamic and growing economy that creates jobs and allows higher pay, where people work and save and invest and do well economically with these burdens?

We do better, slightly better, somewhat better than the Europeans. Their taxes are going through the roof. I notice that the leadership in Germany cited the U.S. tax cuts that have spurred our economic growth in recent months, something we are definitely celebrating. They are discussing whether they need to do that. The Europeans, though, are further down the road in social welfare, in burdens economically, than even we are.

We need to watch what we are spending. We need to indelibly imprint in our mind that the cost of Federal, State, and local government is the work of American citizens for 189 days this year, 51.6 percent of the income earned. That is more than we need to allow. We do not need to see those numbers increase. They need to start going down. It is something we ought to work on.

We must remember every day there is a limit to the burden that the American citizens can carry if we expect them to be competitive in the world market.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I rise today to speak on behalf of the Class Action Fairness Act, a bill to stop unfair and abusive class action lawsuits that ignore the best interest of injured plaintiffs. This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements. It is 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 the rising tide of frivolous lawsuits that have resulted in the loss of thousands of jobs, especially in the manufacturing sector.

Unfortunately, not enough Americans realize we are in a global marketplace and businesses now have choices as to where they manufacture their products. Many of our businesses are leaving our country because of the litigation tornado that is cutting through the economy and destroying their competitiveness. The Senate must start taking into consideration the impact of its decisions on this Nation's competitive decisions in the global marketplace. Too often, we think about things in the United States for Americans and forget the fact that we are in a global marketplace. Today, manufacturers and consumers worldwide have many choices about where to do business.

I believe for the system to work we must strike a delicate balance between the rights of 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 this is what this legislation does. I am proud to be a cosponsor of it.

Since my days as Governor of Ohio, I have been very concerned with what I refer to as a "litigation tornado" that has been sweeping through the economy of Ohio, as well as the Nation. The Ohio 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 the liability insurance.

From 2001 to 2002, Ohio physicians faced medical liability insurance increases ranging from 28 to 60 percent. Ohio ranked among the top five States for premium increases. General surgeons pay as much as \$75,000 and OB/GYNs pay as much as \$152,000. Comparatively, Indiana general surgeons pay between \$14,000 and \$30,000 and OB/GYNs pay between \$20,000 and \$40,000.

Further, 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 does not know about, taking place in a State that she has never even visited.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation into law—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 4-to-3 decision struck down the Ohio 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—this is incredible—they claimed their association would lose members and lose money due to the civil justice reform laws that were enacted.

The bias of the case was so great that one of the dissenters, Justice J. Lundberg Stratton, had this to say:

This case should never have been accepted for review on the merits. The majority's acceptance of this case means that we have created a whole new arena of jurisdiction—"advisory opinions on the constitutionality of the statute challenged by a special interest group."

From this, it is obvious to me the way we currently administer class actions is just not working.

While we were frustrated at the State level, I am proud to have continued our fight in the Senate, a fight for fair, strong, civil justice.

To this end, I worked with the American Tort Reform Association to produce a study entitled "Lawsuit Abuse and Ohio" that captured the impact of this rampant litigation on Ohio's economy, with the goal of educating the public on this issue and sparking change.

Can you imagine what this study found? In 2002 in Ohio, the litigation crisis cost every Ohioan \$636 per year. For every Ohio family of four, the cost was \$2,544. These are alarming numbers. This study was released August 8, 2002. Imagine how high these numbers have risen since that time.

In tough economic times, families cannot afford to pay over \$2,500 to cover other people's litigation costs. Something needs to be done. 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.

The 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 total, America's civil justice system had a direct cost to taxpayers in 2002 of \$233.4 billion. That is 2.23 percent of our gross domestic product. That is \$809 per citizen and equivalent

to a 5-percent wage tax. That is a 13.3-percent jump from the year before—a year when we experienced a 14.4-percent increase, which was the largest percentage increase since 1986. These lawsuits cost billions of dollars and are putting a crimp in the budgets of every American.

Now, some of my colleagues have argued that this bill sends most State class actions into Federal court and deprives State courts of the power to adjudicate cases involving their own laws. They argue that the bill, therefore, infringes upon a States' sovereignty. However, there is no evidence for this assertion, and, in fact, it is the present system that infringes upon State sovereignty rights by promoting a "false federalism" whereby some State courts are able to impose their decisions on citizens of other States regardless of their own laws.

Another argument against the bill is that it will unduly expand Federal diversity jurisdiction at a time when courts are overcrowded. However, State courts have experienced a much more dramatic increase in class action filings and have not proven to be any more efficient in processing complex cases. In addition, Federal courts have greater resources to handle most complex interstate class action litigation and are insulated from the local prejudice problems so prevalent under current rules.

We all know that so many of these class action lawsuits are filed in jurisdictions—two or three of them—because they know the results of those cases if they file them in certain jurisdictions. We have a certain jurisdiction in Illinois. We have another in Mississippi. As a result, there is no fairness to the defendants.

I emphasize to my colleagues that this is not a bill to end all class action lawsuits. We will have plenty more class action lawsuits. Rather, it is a bill to identify those lawsuits with merit—with merit—and to ensure that the plaintiffs in legitimate lawsuits are treated fairly throughout the litigation process. It is a bill to protect class members from settlements that give their lawyers millions while they see only 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.

Madam President, I am a strong supporter of this bill and I urge my colleagues to do the same. I hope that the Holy Spirit enlightens us so we can have a vote on this legislation which is so important to the future of America's economy.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, before he leaves the Senate floor, I commend my colleague from Ohio for his excellent statement.

I agree with him that this is an important piece of legislation. I have spent a good part of a year, along with

my good friend and colleague from Delaware, and others—the Senator from California, Mrs. FEINSTEIN, the Senator from Wisconsin, Mr. KOHL, and the Senator from New York, Mr. SCHUMER—working to try to put together a responsible bill on class action reform. We have done that with this proposal.

I regret the fact that nearly eight months after we forged a compromise on class action reform, we have just begun to deal with this issue. I had hoped the legislation would have come up earlier in the year when there would have been more time available to consider it.

I was pointing out to my colleagues earlier, as someone who managed and wrote the securities litigation reform bill, that we spent almost 3 weeks on the floor of the Senate debating that bill. At the time, Bob Dole was the majority leader of the Senate. We had countless amendments that were offered, both relevant and nonrelevant amendments. Never once was cloture invoked. Never once did someone fill up the amendment tree so as to limit who could offer what amendments. You didn't have to get permission, in effect, to offer your amendment. It was a contentious debate from time to time, but ultimately the will of the Senate prevailed. The legislation was adopted.

But I also point out, interestingly, the securities litigation reform was the only bill that President Clinton vetoed that was ultimately overridden by both the House and the Senate. It became the law of land.

It was a lengthy process, but it was a good process. I think the debate was healthy. It was complicated, but nonetheless I believe the legislation ultimately proved to be worthwhile.

I cite that example because here we are now in a situation where before any amendments were offered—and we went on this bill almost 24 hours ago—we were told last night by the majority there would be no votes last evening. We have been in session since about 9 o'clock this morning. There have been no amendments offered one way or the other because we have an amendment tree that is filled up, and you must get permission to bring up an amendment.

Madam President, this is the U.S. Senate. I have served here for a quarter of a century and I have rarely seen this kind of procedural tactic being used on a bill that enjoys a strong majority of support. I believe we have at least some 62 supporters of this bill. The idea that we are not going to allow amendments to be brought up unless approved by the majority runs counter to everything this institution stands for.

Now I know that some of these nongermane amendments are uncomfortable. There are people who are against them, although in several instances they have strong bipartisan support. For example, the legislation dealing with immigration reform has been offered by Senator CRAIG of Idaho and Senator KENNEDY of Massachusetts. Also the reimportation issue on drugs.

I will be the first to admit it, but I think an overwhelming majority of our colleagues are either cosponsoring or supporting that legislation. Even in the other areas, we have had a limited amount of time to bring up some of these issues.

But I believe we can get time agreements on some of these amendments if we stay in today, if we stay in tomorrow, if we stay in Friday, if we work longer hours, and if we come back on Monday or Tuesday. I believe we could adopt this important legislation, and we would either accept or reject a number of these other nongermane amendments. But to go through now the second day with nothing being done on a bill that many would argue is one of the most important pieces of legislation from the business community perspective is inexcusable. I want the business community to know what is happening here because I am sure the allegations are going to be made that somehow the minority is trying to stop this legislation. That is anything but the case.

We probably could have dealt with five, six, or seven amendments on the floor of the Senate today. I am told there are only 13 filed amendments on this bill. In effect, we probably could have almost concluded action on this legislation instead of stonewalling to make sure some amendments are not going to be debated and heard. We stop everything from happening so a good piece of legislation that a lot of people have worked long and hard on to get right may be denied an opportunity to be heard. That is wrong, Madam President.

Now, again, I know voting on nongermane amendments is not something we are terribly excited about here. It is the U.S. Senate though. In the U.S. Senate, we allow nongermane amendments—absent a unanimous consent agreement or filing cloture—to be considered by this body. So even before a single amendment is debated here, the majority is now invoking rules and procedures that limit the ability of this institution to be heard. I regret that deeply.

I was fearful this would happen. I am sort of mystified as to why it is happening. The majority, at least among their members, are more supportive of the class action reform bill.

There are a number of Members on this side who are supporting this legislation, but the bulk of the support comes from the majority side. I am mystified as to why the majority would not be pushing us to bring up our amendments, agree to time limits, and then vote on the amendments one way or the other and move the bill forward. But that is not the case.

So we find ourselves now at the close of business on this day. We voted on one judge yesterday, and that is it. Now we are about to go into Thursday. We will be leaving, I presume, sometime around noon on Friday and probably won't come back until next Tues-

day. We have about 30 legislative days left around here to consider all matters before the elections of the fall. If my colleagues sense some frustration in this Senator's voice, it is because I am frustrated.

I regret having spent as much time on the bill only to find out in the end we can't even get amendments to be brought up to debate. Instead, we have to agree ahead of time what amendments are going to be brought up. Those rules exist in the House of Representatives. The rules of the Senate are very different. This body is the antithesis of the House of Representatives, and for good reason. That has been the way this institution has functioned for two centuries.

On important legislation such as this, to invoke House rules to apply in the Senate is unfortunate. As important as this bill is, how this institution functions, in my view, is far more important. Senators have the right to be heard. Because one day, not too distant in the future, the very Senator who today is trying to stop a debate may be the one seeking one. And so be careful what you wish for when you set precedents or establish procedures that may be repeated at times when you may find yourself on the other side of the political equation.

For all of those reasons, I am frustrated that this important bill many of us have spent a lot of time on may be close to death. We may not be able to enact it. That is unfortunate that we are getting to that point with this bill, despite all the efforts that have been made, where we may not get a chance to even debate it, much less act on it.

I hope the leadership will listen to those who want to bring up some amendments, and see if we can't work out some time agreements and move forward. If that is not the case, the idea that somehow the Senate as an institution would have to take a back seat to some procedural hurdles the majority would want to impose on the minority is not worth giving up. As important as this bill is, how the Senate operates is more important to this Senator. I will be most reluctant, but nonetheless I want my colleagues to know if it comes down to making a decision about supporting a bill I have helped write or abandoning procedures in the Senate, I will protect this institution over this bill, as much as I would like to see this bill enacted.

I am not going to sit here and support a set of procedures which deny my colleagues an opportunity to be heard. I wouldn't support an unlimited right that goes on for days with endless amendments. I know when I am being gamed. I know when I am being taken advantage of. That is not the case at this point at all, not even close to being the case.

My hope is wiser heads will prevail, that voices who care about this legislation would be heard, and that we could move to consideration of this legislation in the normal course of business,



on how we normally function when matters such as this emerge, where there is a division of thought and there are differences of opinion.

There are those who feel strongly about not adopting this legislation. I understand that. But there are also those in the majority who would like to see it adopted. To suggest somehow we are going to prohibit those who would disagree with the bill an opportunity to be heard on other matters on this legislation is a wrong set of procedures to be followed.

Despite the fact my name is on this bill and I am proud of the fact it is—I think it is a good bill and we did a good job writing this compromise—and as much as I would like to see S. 2062 become the law of the land, I am not about to turn my back on an institution that allows Members to be heard and their ideas to be debated. As important as this bill is, it is not as important as maintaining the integrity of the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, before the Senator from Connecticut leaves the floor, I want to say how much I have enjoyed working with him on this issue. I appreciate the wisdom and experience he brings to the matter.

We had a press conference today around noon, those of us Democrats and Republicans who support this compromise on class action. The real stars of the press conference were three guests: A woman from near Charlotte, NC; another from Wisconsin; and a third lady who, along with her husband, for many years ran a pharmacy down in Mississippi. They shared with us how they had been involved in class action legislation.

In the case of the Mississippi lady whose pharmacy down there in this little county had been named in over 100 lawsuits, not because they had done anything wrong but because it was a way to be able to try to get a class action certified in that particular county of Mississippi, really the defendants were the big pharmaceutical company.

Another lady talked about being a plaintiff in a class action involving the Bank of Boston and the issue was escrow accounts. Apparently somebody took umbrage at the way the Bank of Boston was handling escrow accounts and money going in and out of escrow accounts, and they filed a class action lawsuit. In the end, the folks on whose behalf the class action had been filed ended up losing moneys. Their accounts were actually debited in order to be able to help pay the attorneys' fees which were rather substantial.

The other lady was a lady from Charlotte, NC. She talked about late fees by Blockbuster. She didn't like the fact that they had a late fee that was unfair. Over the course of time, because of the family and this sort of thing, they paid a fair number of late fees, and she didn't appreciate it, so there

was this class action lawsuit. She apparently got named as a plaintiff because she had shopped there, and she was included in the lawsuit.

In the end, the agreement that was worked out enables her to get—I will paraphrase: Out of this, maybe I am going to get a couple of coupons for rentals, for two videos. And I will get a dollar-off coupon. I could do as well clipping coupons from the newspaper from Blockbuster. She was not pleased, particularly when she mentioned how much the attorneys were going to get in the litigation.

The point I am trying to make is, they were the really interesting people who spoke at our press conference. What they had to say reinforced my belief that we are trying to do the right thing.

Again, I realize it is not something everybody agrees upon. We are trying to find some balance in this legislation which says when people have a legitimate beef, they have been harmed by a product or service or been taken advantage of, even people who don't have a lot of power, the little people, they would have an opportunity through a class action to join together and to hold accountable the big companies that have harmed them or at least treated them unfairly.

I had hoped we would have a chance today by this time to have debated and voted on a couple of germane amendments, maybe a nongermane amendment or two, and even work into the night. From what I am told, we may be wrapping up here fairly soon. It is not even 6 p.m. I hate to see us waste the day.

We had some exchange earlier today between our leaders where Senator DASCHLE had suggested maybe an approach where we agree to offer five nongermane amendments to the bill and maybe 10 germane amendments. Senator FRIST countered with the ability for either side maybe to offer 1 nongermane amendment and maybe 10 or more unlimited germane amendments. If you look at the numbers between one and five in terms of nongermane amendments, there is a number between one and five that is probably more than two, maybe five, maybe four, but there is probably a number there we could agree on.

Our side is not going to go along with the idea of the Republicans telling us what nongermane amendments we can offer. But I am encouraged that if the two leaders will take some time later today, maybe as early as this evening, and sit down, they can hopefully work out among themselves how many nongermane amendments and maybe even work out the ones that would be offered.

There are a couple of amendments the Republican leader indicated he would not want to see offered as nongermane. And to the extent that is a concern he has, I respect that concern. I had hoped maybe he would change his mind. But if there is something he

doesn't want to see offered as an amendment to this bill, it is not germane to this bill, but it might be germane to another freestanding bill that would be offered later, let's go ahead and make a commitment to offering that nongermane amendment, not on this bill but at a later point in time to another bill.

So the proponents of that measure would know for sure that they are going to have a chance to debate their issue and get a vote on it in the Senate. I am not discouraged. Somebody asked me earlier—and it may have been the Presiding Officer—if we were going to make any progress this week on this bill. I think we are. I am encouraged. If our leaders will sit down and talk it through between the two of them, they can work this out. It is important they do that. Nobody on our side wants to be seen as obstructionist. A number of us have worked very hard on this proposal. Most of the folks on the other side are acting in good faith on this bill, too. Whether you happen to be a company out there that wants to just get a fair shake when you are taken to court, or if you are a consumer who wants to make sure you are not being ripped off by some company, there is a way to meet the legitimate concerns of both interests.

The more I learn about this bill and the more I hear about the germane amendments that will be offered, frankly, the more I am pleased with the work that has been done. I think Senator BINGAMAN has a germane amendment or two he would like to offer. I think Senator BREAUX has a germane amendment. I think maybe Senator PRYOR has an amendment to offer that is germane. Maybe Senator KENNEDY has a germane amendment to offer, too. There may be germane amendments on the other side. They are thoughtful amendments. Each of them bring some concern. They, frankly, need to be debated on the floor and we need to have a chance to vote.

Mr. REID. Will my friend yield for a question?

Mr. CARPER. I am happy to yield for a question.

Mr. REID. I want the record to reflect that I know how deeply the Senator from Delaware feels about this issue. There are not many issues where the Senator from Delaware and I disagree. This is one of them. I know how strongly he feels. Also, I know how strongly the Senator from Delaware feels about other issues. For example, even though the Senator from Delaware feels extremely strong about this bill, when there came a time a few weeks ago when the majority leader made a tentative decision to move off the very important Defense authorization bill, I called my friend from Delaware and I said: Don't you agree that we should finish the Defense bill before we move to class action? Without any hesitation, the Senator, being a veteran himself, who has hundreds of hours in an airplane for our country, said yes.

As a result of that, Senator DASCHLE and I gave the Senator from Delaware our word that we would do everything we could, as soon as the Defense bill was completed, to move to this bill. In fact, we made a unanimous consent agreement that the minute we finished the Defense bill we would move to the class action bill.

I am disappointed, but not that the bill is not going to go anywhere because I don't like the bill; I am disappointed in the way the bill was disposed of. This is like having a football game and the football field is only 90 yards long. It is not fair to either side. I want the record to be spread with the fact that the Senator from Delaware has been fair in all his dealings in the Senate. The example I just made was the Defense authorization bill. That was a prelude to the question. I am terribly disappointed because it appears to me that this has been in the minds of the majority for some time, at least in the minds of the majority yesterday, July 6. We have a card that was sent to one Senator from the National Association of Manufacturers, dated yesterday, July 6. Today is July 7.

Dear Senator: On behalf of the 14,000 member companies in the National Association of Manufacturers, including more than 10,000 small and medium-size manufacturers, I urge you to vote in favor of cloture on this bill.

This was planned yesterday. So I am disappointed because we are playing on a football field that is not quite long enough. That is too bad, not for the end result that I see, but I believe, as the Senator from Connecticut so well described, in this institution. Having served in the Congress of the United States for 22 years, as I have, I believe in the institutional integrity of these bodies. When you see something such as this, it means there is not a fair hand being dealt. He is someone who believes strongly in legislation.

Frankly, I think people have taken advantage of the Senator from Delaware. He is a very hard person to take advantage of because he has a lot of experience in government. This has not been fair. It is not good for this body and it is not good for individual Senators.

I thank the Senator for yielding. I was supposed to ask you a question, but I didn't do that. I hope the Senator understands. I wanted to make sure he was on the floor.

Mr. CARPER. Madam President, Senator REID and I came to the House together in 1982. We worked on a lot of issues together. He is a straight shooter and a real good leader on our side. I appreciate his words.

Let me close with this: I have said any number of times to my Republican friends, when we are talking about how to bring this bill to the floor, the one sure way to kill it is to not permit the minority to have a reasonable opportunity to offer amendments, germane and nongermane. I was troubled this morning, after having tried to drive that message home again and again in

the past months, for us to end up on the floor today with a motion to invoke cloture and to limit amendments to one nongermane amendment and a number of germanes.

That was the wrong way to get started. We need to get back on the right track. We can do that. The people who can get us back on the right track are the majority leader and the minority leader. While the minority leader is not a proponent of the bill, he has been fair in terms of making sure those who are proponents can have our day in court on the floor and not be obstructionist. I am grateful for that. I hope that maybe even while we are speaking, or shortly thereafter, the two leaders will get together and have the kind of discussion in private that they need to have, and maybe later in public on the floor, so we can have a day that is more productive tomorrow than today was.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, I wish to take an opportunity to make a few comments and respond to some of the statements that have been made by individuals on the other side of the aisle who are opposed to this bill. I know a lot of people on the other side of the aisle favor this bill and that is why we have been able to get to the place where this legislation is coming up again. So my remarks are made toward and in response to those who oppose this legislation, not those who have been helping us move it along.

For instance, I heard there were claims that the Class Action Fairness Act has never been considered before, that there have not been any hearings or markups on this legislation. Clearly, these Members have not been talking to the Senator from Wisconsin, Mr. KOHL, who has worked hard with me since the 105th Congress. Clearly, critics didn't pay any attention to what I had to say last night in my opening statement or, for that matter, many of the statements made by my colleagues on the long history of this legislation.

To the contrary, Congress has been considering this Class Action Fairness Act for several years. Small businesspeople who are paying for this irresponsible tort system we have in America would tell you they have been paying dearly too long and that this legislation is long overdue. One might even find some big companies saying that. But there is no free lunch in America. Somebody is paying when there are frivolous lawsuits. Somebody is paying when lawyers are getting paid too much and when consumers are getting too little. It is a cost to the economy, and we ought to do something about irresponsible costs to our economy.

My colleagues may remember—or they may not remember or we would not have heard these comments today about this legislation—as I indicated in my opening statement last night, both

the House and Senate have convened hearings on class action abuse and the need for reform. Are we hearing there have never been hearings held? On what planet are those Senators living?

The House has passed similar versions of the Class Action Fairness Act since the 105th Congress and have done it, by the way, with very strong bipartisan support.

In the Senate in the 105th Congress—this is the 108th Congress. We can go back to the 107th, the 106th, and the 105th Congresses when there was work done on this legislation. At that time, I held hearings on class action abuse in the Judiciary Committee's Administrative Oversight and Court Subcommittee. In the 106th Congress, my subcommittee held another hearing on class actions, and the Judiciary Committee marked up and reported the Class Action Fairness Act, two Congresses ago.

In the last Congress, the 107th, the Judiciary Committee held a hearing on class action abuse. And in the 108th Congress, the Judiciary Committee marked up the bill.

Any Senator who says we have not had hearings on this legislation has not been in the Senate very long or they do not have very good staff helping them or they are not doing anything themselves.

The bill we are considering is also compromise legislation that we worked out in a bipartisan way, a continuation of the bipartisan spirit of this legislation that is exemplified by the work of Senator KOHL now for over four Congresses. We did this with Senators SCHUMER, DODD, and LANDRIEU since the cloture vote failed last October.

While the bill numbers may have changed for the Class Action Fairness Act, we have been working on it now for the fourth Congress. If people think just because we change the title of a bill we ought to have another hearing, that is just an excuse for stalling. If they do not like the bill, vote against it. But let's move something along that needs to be moved along, and there is a consensus in this body that it ought to be done.

I heard this morning claims that the Class Action Fairness Act would deny people the ability to file class action lawsuits. That is just plain not true. We do not take away claimants' ability to file in State court. All we do is modify the rules to allow removal to Federal court for class actions that fit certain criteria within this bill, and most often that is when there is a national implication of the class action suit, or it is not limited to a single State. It is in no way mandatory in our legislation that these cases need to proceed to the Federal court.

Moreover, the claims that we have heard this morning and this afternoon that the Federal courts do not certify class actions are not true either. The Federal courts certify class action cases all the time, and the claimants win their suits in the Federal courts

and it is often seen as a forum of preference.

A recent Federal Judiciary Center study found that it was more likely for a class action to be certified in Federal court than in State court. There simply is no foundation, then, for the allegation that Federal courts are less capable of deciding these kinds of cases than State courts. Simply, that does not meet the commonsense test.

It also is not true that it will take longer for Federal courts to decide class actions. The Federal courts have more resources to decide these cases than State courts. In fact, we have the same Federal Judicial Center study indicating that State courts are much more likely than Federal courts to sit on class action lawsuits.

Also, I want to restate that we have made significant changes to the bill to ensure that truly local class actions stay in State court. This is the local controversy exception that was worked out to bring on other Democratic Senators who did not like certain aspects of the bill but wanted the bill to pass and said they would help us get it passed. Those Senators who wanted that local class action exemption, that the class action stay in State courts, were Senators SCHUMER, DODD, and LANDRIEU.

Earlier, some of my colleagues indicated that local issues, such as the PCP leak made famous in the Erin Brockovich case, or suits brought by nursing home residents would be required to be heard in Federal court. Again, this is not true because of the compromise that we crafted with these other Senators and included in the bill that is now before us.

So it is not true that if you have your case heard in Federal court, you will get no justice. That is an outrageous statement and, quite frankly, an insult to the Federal judiciary. The Class Action Fairness Act does not close the courtroom door to anyone. Congress has studied this issue, and Congress has found that there are many problems that need to be considered. That is why we have been working on this steadily for so many Congresses.

A number of studies have come out indicating there are serious abuses of the class action system. There have been numerous editorials and articles that support this bill. It is a bipartisan bill. So I think we ought to move on. The Senate is functioning as the Senate ought to function. As I said last night, nothing gets done in the Senate that is not bipartisan, and when it comes to an issue of partisanship, if 41 Senators stand against it—and that is quite a minority in this Senate—nothing gets done.

We had that vote last October, 59 votes, 1 short of the supermajority to move on, but enough to bring a halt to the consideration of this legislation, because nothing happens in this body unless there is strong bipartisan support. After that cloture vote, we spent

last fall working with Senators on the other side of the aisle to get above that 60.

So if there is a situation where one Senator is still not satisfied, do we shut down the whole Senate, or where we maybe even have 10 Senators not satisfied? What more do we have to do to get over that customary rule in the Senate of 60 votes to stop debate to get to finality?

For sure, if we get to a cloture of 60 votes and end up with 70 votes or 75 votes, are not the people trying to stall this legislation somewhat embarrassed by wanting to shut down the whole legislative process? So we have worked to get over that magic hurdle, and when we get over that we will have plenty of votes.

Remember the vote we had through April and May on what we call the FSC/ETI bill, or the JOBS bill, the bill I called creating jobs in manufacturing? We took 15 days over about 2 months to get that legislation passed. It passed 92 to 5.

There were all sorts of games being played with it on matters totally unrelated to the underlying legislation, all in the interest of preserving minority rights. Well, I think this bill has met that test, and we ought to move on. We still have a few people who do not want to move on, and that is a sad commentary, because when one plays by the rules of the game, it seems to me that people who do not get their way have to quit crying in their beer and suck it in, suck it up and move on. That is what I am asking my colleagues on the other side to do, suck it up and move on.

Let the Senate work. It has worked. This legislation is proof that it is working.

I yield the floor.

Ms. MIKULSKI. Mr. President, today I rise to oppose the Class Action Fairness Act.

This bill is anything but fair to the millions of consumers who will have the courthouse doors slammed on them.

Class action lawsuits are the only way a large number of people can get justice for a harm done to them by a consumer product, a corporate practice or an environmental harm. It is often not possible or practical for an ordinary individual to go to court against powerful corporations when they have only have a small amount of damage from a dangerous product. These cases help Americans, who can not bring a lawsuit on their own behalf, get their day in court. We cannot close the courthouse door on them.

I do believe that there are problems in the tort system that we need to address, and I have supported reform efforts to do that. But this bill goes too far. It throws the baby out with the bath water, removing virtually every State class action to Federal court.

Yesterday's New York Times called this bill "A mischievous bill masquerading as . . . reform." In fact,

this bill does little to reform the tort system and does much more to benefit the special interests who are supporting it.

Supporters of this legislation have claimed that they are making the system fairer and that they have improved on the original bill. But creating a system which moves virtually all class action cases to federal court is not fair to consumers, workers and victims of discrimination, who stand to benefit from strong State laws on consumer and environmental protection, civil rights protections and labor rights.

In our federalist system, these individuals look to their State courts and State judges for justice and this bill would undermine those rights.

This bill will also cause many of these cases to be dismissed once they reach Federal court. It is a bait and switch game. Get the cases out of State court and into Federal court where there are more hurdles for a class to be certified and then the case is thrown out. That is not fair either.

Finally, this legislation means delay and denial for injured consumers. Our Federal courts are already overburdened. Adding a significant number of cases to their dockets will only create further delay, both for the cases that this bill removes to those courts and for the cases that are already there. Judges will have more complex cases, with no additional resources, and plaintiffs will wait longer and longer for relief, if they get relief at all. Federal judges have even said that they don't want all these cases sent to them.

Instead, it is the special interests who will benefit. They will be able to take cases out of State courts where they belong, even if most of the plaintiffs live in the State and the issue involved purely matters of State law. Corporations will be able to move these cases to Federal court where it is harder to certify a class, where courts often won't certify a multi-State action, and where business interests have an advantage over the little guy. That puts special interests above the interests of working Americans.

Supporters of this bill claim that consumers will benefit from the provisions they have added to the bill. They say that the bill will safeguard consumer rights and make sure that the lawyers don't get all the money. But what this bill really safeguards is a good outcome for corporations, for drug companies, and the tobacco industry, by changing the case to a forum known to be better for business and, once its there, not even guaranteeing that the Federal court will allow it to proceed. That means State and Federal courthouse doors all over our Nation will be slammed on those seeking to hold business accountable for harmful practices. That is not fair and that's not what our legal system is all about.

As I travel through my State, I hear about problems with the legal system. Most often people are concerned about

policies that restrict access to the courts and not with abuses of the tort system. Yet I know that there are problems out there, and I have been on the record saying let's fix the problems.

But this bill doesn't do it. This bill does not deal directly with the problems. This bill is a one-size-fits-all solution to a complicated legal problem. Instead, let's look directly at the problems that are impacting consumers, workers and communities and where there are abuses in legal fees or trial awards they should be fixed. Many States have led the way, fixing their own systems to prevent some of the abuses that proponents of this bill talk about. More work needs to be done and the Senate should be looking at doing that instead of supporting this overbroad bill.

But I believe in fixing the problems. That is why I supported Senator BREAUX's alternative the last time we debated this bill and why I will vote to support his and Senator BINGAMAN's amendments if they are able to offer them this time around. That is why I was optimistic when members of the Judiciary Committee were debating this issue, and I wish that we had given them more time to conduct hearings to get the root of the concerns and provide a specific solution.

Yet today we find ourselves faced with a bill that goes too far. I came to the Senate to fight for the little guy when his or her rights were trampled. This legislation threatens those rights, and I urge my colleagues to reject it. We should go back to the drawing board and come up with a proposal that gets at the heart of the abuses but doesn't undermine the rights of consumers and others looking for a fair day in court.

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

Mr. DAYTON. Mr. President, I arrived to hear the final comments of my very respected colleague from the neighboring State of Iowa. With all due respect, I am surprised, at least as I heard it, that my colleagues and I on this side of the aisle are being vilified for the status of this legislation. I was curious because the Senator, of course, knows, as chairman of the Senate Finance Committee, about the fate of the legislation that he saw through in his own committee to which he just referred, the FSC/ETI bill.

From my understanding of that legislation, what happened to that after it left the Finance Committee, to the point where it reached the Senate floor, and not always with the chairman's concurrence, what was added to it as part of the process and what has been done to it over in the House, if we want to talk about legislation that has had measures added to it where there is no connection to the public interest—and I see no connection to the bill at all which is called the JOBS Act; in the House it was called the Jobs in Amer-

ica Act—and then provides the kind of tax breaks that it does in the Senate bill for \$39 billion worth for outsourcing American jobs and expanding businesses and their subsidiaries in other countries, it is hard for me to see how we are the sole culprits in wanting to add measures to this bill.

I believe there are members of the other caucus who also desire to add measures to this bill because there are not many bills that are likely going to be passed and conferred and signed into law. We have our genuine interests in seeing that some of these important measures receive at least an up-or-down vote in the Senate, and then either proceed or not accordingly.

The Senator said we devoted 15 days to that corporate tax bill. I do not know why there is this rush to close the door on this legislation which is before us now. I do not support this bill, but I do support dealing with it and having an up-or-down vote on it, but only after all of us on both sides of the aisle have had the opportunity to bring forward our amendments and have them acted upon. That is the tradition of the Senate. That is the spirit of the Senate. Those are the rules of the Senate. I do not see anybody on this side who is trying to be an obstructionist. I see people on this side who thought that was our understanding and agreement and want to proceed on that basis.

I do rise to oppose this underlying legislation, which is truly a wolf in sheep's clothing. Its proponents claim, as a top U.S. Chamber of Commerce official is quoted in yesterday's Washington Post, that it is strictly process, that it does not affect anyone's substantive rights.

That is nonsense. If that were true, we would not be debating this bill on the Senate floor yet again and it would not be the third time that this issue has been brought before the Senate in this session. That same Chamber of Commerce official also said: There are a number of juries on the State level where a lot of abuses are going on.

What are those abuses that we hear about over and over by the proponents of this legislation to justify the actions that it would take? Well, the people who are pushing this legislation are unhappy with the decisions that juries are making. Too often the U.S. Chamber of Commerce and other proponents claim juries are deciding for the plaintiffs, for the groups of people who have claimed that they have been wronged, and against the defendants, which are usually large and wealthy corporations.

So that is the abuse: Juries, comprised of qualifying citizens agreed to by the attorneys for both sides, are deciding too many cases for the people who have been harmed and then are awarding financial settlements more costly than the convicted defendants would like. Well, our country's judicial system has a long roster of defendants who are unhappy with the verdicts and

their punishments, but Congress is not considering changes that benefit all of them.

This present judicial system is not perfect—nothing ever is—but it works better than most systems in our country. In fact, it may be the last place the people without money have a fair chance against people who do. People without money cannot afford to hire a full-time lobbyist to influence Congress or State legislators or Federal and State administrations. They do not make big campaign contributions or hold fancy receptions at party conventions. Many Americans cannot even afford to hire a lawyer to assert their rights in a court of law. They do not have the hundreds or thousands of dollars needed to pay for the preparation of complex cases and all the time required to go through the judicial process. They cannot afford the special consultants that many legal defense teams use to select the juries that are most sympathetic to them. Thus, many Americans have to join together with other alleged victims in order to be able to afford all together to seek justice, to have their day in court. They might win; they might lose, but at least they have their day in court. They do lose, many times, in State courts as well as in Federal courts. But of course we don't hear any complaints from the Chamber about those juries. The only "abuses" are when the people win, and the moneyed interests lose. So the moneyed interests have come to the Congress to get the special favors they want in order to have the world their way.

Tragically for this country, it is likely, it appears, that Congress is going to give the powerful, moneyed special interests what they want at the expense of everyone else in America. Hundreds or thousands of the people we are supposed to represent will be hurt by this legislation. Most of them do not realize yet that they are in the process of being harmed; they are too busy working, raising their families, going about their lives, until something bad happens to them and they need to seek justice.

This legislation would hurt their chances to get that justice. This bill would move many of their cases to Federal courts where the delays are greater, where the waits for justice are much longer, and where, evidently, the rich and the powerful win more often. That is why this bill's proponents want us to pass it. To me, that is exactly why we should reject it.

There are other reasons to reject this bill. The Chief Justice of the United States has asked Congress not to shift cases from State courts to Federal courts. In 1998 he said:

In my annual report last year I criticized the Senate for moving too slowly in the filling of vacancies on the Federal bench.

That was back in 1998.

I also criticized Congress and the President for their propensity to enact more and more legislation which brings more and more

cases into the Federal court system. If Congress enacts and the President signs new laws allowing more cases to be brought into the Federal courts, just filling the vacancies will not be enough.

More recently, the Judicial Conference of the United States, the policymaking body for the entire Federal judiciary, wrote Chairman HATCH on March 6, 2003, of their opposition:

... based on concerns that the revisions would add substantially to the workload of the Federal courts and are inconsistent with the principles of federalism.

So this bill ignores the advice of the Federal judiciary and the Chief Justice of the United States, and it ignores the best interests of most Americans in order to further advantage the rich and the powerful. Proponents say the judicial system is broken and needs to be fixed. I say what needs to be fixed is this legislative system, whereby the rich and the powerful get special legislation passed that helps them and hurts everyone else. I have seen it tried time after time in my 3½ years here. I have seen the rich and the powerful win most of those times, and the people who are not rich and powerful abandoned. It looks like that will happen again. What a tragedy for the Senate. What a tragedy for America.

I urge my colleagues to reject this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I come to the floor this late afternoon to stand in support of the Class Action Fairness Act of 2004. I thank my colleagues, especially CHUCK GRASSLEY, chairman of the Finance Committee, and a Senator who has been a champion of the reform of this particular provision of law in our country for a good number of years.

When working properly, class action lawsuits are an important part of our civil judicial system. The whole idea behind class actions is to promote the efficient, effective administration of justice by allowing for the consolidation of numerous, but identical claims brought against one defendant. When working properly, these lawsuits provide relief to a large number of people who have been victimized—when working properly. But our current class action system is not working properly.

The class action system is uniquely ripe for abuse. In normal litigation, plaintiffs who have been injured seek out an attorney to redress their grievances. In class action litigation, this process is reversed—lawyers are appointing themselves as counsel to a group of people who may or may not feel victimized. This designated victim may not only be unaware he or she is even part of a lawsuit, this person might be perfectly satisfied with the product or service that is the subject of the litigation. Even when a large group has suffered an injury, the lawyers are often the real winners, as they are able to secure large fees while their clients

receive coupons of little or dubious value.

A serious need for this legislation has also resulted from the actions of a few rogue State courts. Diversity jurisdiction was established to facilitate commerce by ensuring that claims brought against interstate businesses would be heard in Federal court, so as to avoid local biases. The Framers foresaw the potential chilling effect that could occur on commerce if out-of-State businesses were forced to defend themselves in front of State court judges, who have a greater potential to “play favorites.”

The Framers realized this in 1787. Today, we live in an advanced technological age, where interstate business occurs at the click of a button, 24 hours a day, 7 days a week. Certainly, the Framers’ efforts to ensure the fairness of claims brought against out-of-State defendants is no less important today; and, at the very least, commerce still deserves the amount of protection our Constitution already provides.

However, under current law, a class action involving thousands of residents from all 50 States and millions of dollars does not qualify for access to Federal court. The Class Action Fairness Act resolves this problem by ensuring that truly local disputes will be litigated in State courts, while interstate class actions, involving national issues, will be heard in Federal court.

S. 2064 will go a long way toward ensuring the intent behind the establishment of class actions is followed. S. 2064 will do this by reforming the diversity rule applicable to class actions in order to provide greater protections for consumers by curbing class action lawsuit abuses, which are enriching lawyers at the expense of consumers.

S. 2064 is in line with our idea of justice and fairness. As set forth in Article III of the Constitution, the Framers established diversity jurisdiction to ensure impartiality for all parties in litigation involving persons from multiple jurisdictions, particularly cases in which defendants from one State are sued in the local courts of another State. Interstate class actions—which often involve millions of parties from numerous States—present the exact concerns diversity jurisdiction was designed to prevent: the potential for local prejudice by the court against out-of-State defendants or a judicial failure to recognize the interests of other States in the litigation.

This act is not about protecting “big business,” as some critics claim. Rather, it is about protecting the rights of workers and consumers. I come from the great State of Idaho, where the need to attract new industries is important to our largely rural economy. If a business cannot be sure of the liability it might face in the event of litigation, it will be more reluctant to leave its State of incorporation. And, when litigation costs become too unpredictable, the effect will be to dis-

suade investment. Or, worse yet, businesses will converge on a few select States, whose laws are most favorable to corporate interests—not only clogging the dockets and slowing down justice in those courts, but providing business opportunities in only a few select areas. This is not good for anyone.

Under the Class Action Fairness Act, the exact type of cases that should be heard in Federal court—cases involving issues of national importance—will be heard in Federal court. While, a case between two citizens from different states, with no national significance, will be left to the State courts. For these reasons, I encourage my colleagues to support this important legislation.

Finally we have a bipartisan bill on the floor of the Senate and it is ready to be debated, ready to receive amendments, ready to be voted on. It is exciting when work of this kind reaches that, if you will, supermajority status that finds both Democrats and Republicans in support of it. There are some 60 cosponsors, I understand, of this critical legislation.

Much has been said about it this afternoon, both pro and con, but the reality is we have a system that has been largely abused and misused and clearly one our Founding Fathers put within the construct of our judicial system to provide a fairness element to all of those in the broad context that class action addresses, not to be victimized by the system but to be served by the system. I hope we can find ourselves a way, through the course and process of the Senate rules, to allow an amendment, amendments, and ultimately final passage on this important legislation.

I was on the floor earlier this morning when our majority leader was attempting to work out a satisfactory process by which we could debate and bring resolution to this important legislative agenda. But I was one of those who had an amendment on the floor, ready to go, that was not specifically germane to class action. Strangely enough, it is in itself a bipartisan piece of legislation, having now garnered the support of some 63 Members of this Senate. It deals with some element of immigration reform, specifically in the area of agriculture, dealing with substantial reform in the H-2A designated immigrant, or I should say worker, as it relates to agriculture.

Here we have two pieces of legislation worked on for many years by our colleagues here in the Senate, one the class action legislation with 60-plus cosponsors, my agriculture jobs legislation with over 63 cosponsors, and somehow we can't seem to get the process working in a way that would allow us to vote on these up or down.

I was certainly willing to offer my amendment and to seek a time limit of 4 or 5 hours to debate it, to allow Members to come to the floor and possibly amend it or to offer amendments and

withstand the judgment of their colleagues as to whether those amendments were worthy in shaping or reshaping or transforming legislation that 62 other colleagues and I wanted on the floor for the purpose of debate and consideration.

That is also true of the class action legislation. We have heard a great deal today about the pros and cons of the legislation, S. 2062, that is before us. The great tragedy we are now facing is the process and/or the procedure may disallow an up-or-down vote on class action. There is a strong effort on the part of my leadership to block my effort in coming to the floor with a strongly developed bipartisan piece of legislation to address that also.

Does the public become confused by this effort? I suspect they might, and that is difficult as we attempt to work out the differences and allow these kinds of issues to come to the floor. I am prepared to vote on class action. I am prepared to support the legislation, the underlying bill that is now on the floor.

I also hope my colleagues will seriously consider that a time is necessary to deal with an immigration reform policy. Although it is not a whole cup, although it does not address the universe of undocumented foreign immigrants in this country, it deals with a very critical part of America, American agriculture, that now finds it must seek its workforce in a way that allows it to become nearly 80 percent undocumented because the law is so restrictive and prohibitive and cumbersome and bureaucratic that the average agricultural producer simply cannot identify with it in an appropriate timeline to harvest his or her crops.

They seek employment from people who want to come here and work. Not American citizens. American citizens don't do that kind of work anymore. They are, if you will, an economic cut above it. Or they have a social program that simply allows them a sustenance or a lifestyle in which they don't need to seek that kind of employment.

But there are now about 1.5 million undocumented workers in this country who are employed by American agriculture, who harvest our crops, who bring them into the process, and who ultimately help get them to the supermarket shelf. Yet we cannot in a responsible, legal fashion deal with them. That is why I spent the last 5 years working with a vast array of people, both House and Senate, to fashion this legislation. That is why it now has 63 sponsors. It is why it now has over 400 groups nationwide, from the National Farm Bureau to the United Farm Workers Union to the AFL/CIO to the National Nurseries Association, that say it is critical this legislation pass.

We have producers, agricultural producers in our country today who are finding it so difficult to gain the necessary employees to do the work in the field or in the processing sheds that

they are contemplating—and some have already made the decision—to go out of business.

Where does that production go? Offshore, out of the country to Chile or Peru or someplace like that instead of happening in the valleys and in the farm fields of America.

Why can't we solve this problem? Some say it is too political. I suggest it is not political at all. It is time that we lead, that we solve it, that we address the issues, that we create a system that allows people to come to our country to do certain kinds of work and to go home—to do it in a legal, open, transparent way while we can effectively control our borders as we should as a great nation, and at the same time for those who are illegal we ought to be able to apprehend them and remove them from our country. But to do the first or the last without something in the middle that creates an effective, responsible avenue and workforce is simply irresponsible.

That, in essence, is what we have created.

What happened after 9/11? We rediscovered all of this vast array of immigration law in our country that doesn't work.

We have between 8 and 12 million undocumented people in our country. I say shame on us for having allowed that to happen. You solve the problem, you control the border. Great nations maintain their integrity by controlling their borders. Great nations maintain their integrity by creating a civil process on the inside that effectively works. Great nations maintain their integrity by apprehending those who are violators of the law and treating them accordingly. In this instance, and in those examples or situations, we are not doing either.

I proposed—and 62 of my colleagues agree—a piece of legislation that is most critical to our country and to a segment of our economy. I brought it to the floor this morning willing to stand it alongside this important piece of legislation, willing to limit the debate on it so that we can facilitate the process and move this through. And I surely thought the underlying bill with 60-plus cosponsors, and my amendment with 63, ought to be something that can come together. Apparently it can't, or it won't.

I am here this evening to tell my colleagues we ought to be debating and voting on this important piece of class action reform legislation, and we ought to be voting on agricultural jobs. We ought not simply put it off. Those who are the critics of it, who have no alternative, simply want us to, as we have done for two decades, turn our backs, look over our shoulders, say, Oops, there is a problem, while in many instances these human beings are treated inhumanely, while over 350 of them died at the United States-Mexican border this past year, while we simply say, Oh, well, it is so complicated we cannot solve it.

I suggest we can. I suggest it is ready to be solved now and that many of us have worked to accomplish that.

I hope our leadership can work with the other side and work out our differences and get a unanimous consent agreement that shapes the time and moves this legislation forward. We ought not have lawyers working the legal system to simply benefit their pockets while the citizens who may have been harmed get little or nothing but a meaningless coupon of dubious value. That is not the appropriate way for our legal system to work in this country. And that is why Senators GRASSLEY, CARPER, CHAFFEE, DODD, HATCH, KOHL, LANDRIEU, LUGAR, MILLER, SCHUMER, SPECTER, and a good many others believe that S. 2062 ought to become the law of this land.

I hope by tomorrow we will have resolved this important situation in a way that allows us to move forward in a timely fashion and allow the American people to see where we stand on these critical issues.

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

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

Mr. FRIST. Mr. President, I want to update everybody as to where we are with respect to the Class Action Fairness Act. From the many statements over the course of today and last night, it is clear that this bill is important to the American people, and it is important to the economy. It is a bill about equity and it is a bill about fairness.

Earlier today, I attempted to reach an agreement that would allow an orderly process to consider the bill. The agreement respected Members' rights to offer amendments, but also represented a commitment to focus on the issue—class action reform—and eventually proceed toward a final agreement with the House through the regular conference process. That is all we asked with no restrictions as long as we stayed on the bill, amendments on the bill, and once we passed it in the Senate, it would go to a conference with the House.

The important point is at the end of the day—and this is where we stand tonight—by the end of this week we need to pass this bill and do what is right for the American people to create a public law.

Unfortunately, we were unable to get this agreement. There was an offer from the other side which did not necessarily allow completion of this measure, and that offer included five nongermane amendments, the subject matter of these amendments simply being unknown. These nongermane amendments are totally unrelated to class action reform. They could be controversial in nature, and I can tell my colleagues, sharing with my colleagues

which amendments they might be, indeed they are very controversial in nature and would require extended debate. That is not the way to complete action on this bill.

With that said, I am prepared to file cloture this evening on the bill. I do so continuing to hope we can consider relevant amendments to the bill while the motion ripens. If colleagues do have relevant class action amendments they want considered, I encourage them to come forward and discuss them with the managers and let us work out a process to dispose of them.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 430, S. 2062, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Bill Frist, Orrin Hatch, Charles Grassley, Peter Fitzgerald, Craig Thomas, Mitch McConnell, Ted Stevens, Robert F. Bennett, Jim Talent, George Allen, Jon Kyl, Rick Santorum, Jeff Sessions, Pete Domenici, Susan Collins, Lamar Alexander, John Cornyn.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. FRIST. Mr. President, for the information of my colleagues, this vote will occur on Friday unless it is vitiated by some other agreement, and we will remain in discussion and willing to vitiate it if agreement can be reached. We will be on the bill throughout tomorrow's session. Again, I hope we will be able to dispose of class action amendments during that period.

#### MORNING BUSINESS

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

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

#### HONORING OUR ARMED FORCES

##### LANCE CORPORAL RUSSELL WHITE

Mr. CARPER. Mr. President, I would like to set aside a few moments today to reflect on the life of LCpl Russell P. White. Russell epitomized the best of our country's brave men and women who are fighting to secure a new democracy in the Middle East. He exhib-

ited unwavering courage, dutiful service to his country, and above all else, honor. In the way he lived his life—and how we remember him—Russell reminds each of us how good we can be.

A resident of Dagsboro, Russell's passing has deeply affected the community. A graduate of Indian River High School, Russell was the son of Gregg and Tricia White. Friends, family, and school officials recalled Russell as a proud young man who made a sacrifice for their freedom, even if his death did not come during combat. As a senior at Indian River High School in rural Frankford, Russell spent his days in classrooms overlooking soybean fields, and his spare time at home hunting duck along tranquil Vines Creek. In his senior year, he tried out for and made the football team at Indian River. He became a starter and, at a mere 165 pounds, played nose guard, out hustling opposing lineman who weighed 50 to 100 pounds more than he did.

But Russell had a desire to be part of something bigger. He wanted to be among the troops sent to hunt Osama bin Laden in the mountainous terrain of Afghanistan, so he joined the Marines early last year.

Russell had been stationed in Afghanistan for about a month prior to his death and was part of the mission to root out bin Laden and other members of al-Qaida. He was assigned to the 3rd Battalion, 6th Marine Regiment, whose home base is at Camp Lejeune, NC.

Russell was remembered by his fellow marines as a young man who had a kind spirit and a zest for life with an outlook that sometimes got him into a little trouble, especially in the 13 grueling weeks of boot camp. When drill sergeants would bark orders, Russell would often crack a smile, unlike others who might shed tears in their bunks at night. "They couldn't crack him." Russell's father, Gregg, said. While Russell may have found some of his early training a little amusing, he was absolutely serious about his duties in Afghanistan.

Russell was a remarkable and well-respected young soldier. His friends and family remember him as an honorable man. He enjoyed playing football, hunting, skiing and being out on the water. He had hoped to return to Sussex County to help run his father's home-building business. Sadly, that dream will not be fulfilled.

I rise today to commemorate Russell, to celebrate his life, and to offer his family our support and our deepest sympathy on their tragic loss.

#### 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 cat-

egories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 14, 1995, a 9-year-old boy named Steven Wilson was found brutally raped, beaten, and drowned in a muddy ditch one mile from his house. Around the town, little Steven was known as a kid who liked to play with dolls. Other kids teased him and called him "fag." Nonetheless, Lamont Harden, a 15-year-old neighbor of Wilson, confessed to this horrific murder on the basis that he was trying to "humble the fag" that allegedly got into a scuffle with his brother.

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 Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### INTERIOR ALASKA WILDFIRES

Ms. MURKOWSKI. Mr. President, 10 years ago, on July 6, 1994, fourteen wildland firefighters lost their lives fighting the deadly South Canyon Fire near Glenwood Springs, CO. Nine of the 13 who perished were members of a single crew—a hotshot crew based in the small high desert town of Prineville in central Oregon. The "Prineville Nine," as they have come to be called, were all in their 20s.

The events of July 6, 1994 were as significant to the wildland fire community as the events of September 11, 2001 were to the New York City Fire Department, and the brave young men and women who perished in the South Canyon Fire were every bit as heroic as those who perished at the World Trade Center.

The anniversary of the South Canyon Fire brings home to all who live in the West how dearly we hold the brave young men and women, clad in their fire resistant yellow shirts, green pants and helmets, who fight the fires that sweep through our backyards.

On Monday, July 5, I had the privilege to visit a fire camp near Fairbanks, AK. The young men and women based at the camp were fighting the Boundary Fire, which is burning to the North of Fairbanks, under the experienced leadership of Steve Hart and his Type I Incident Management Team, drawn from the Rocky Mountain region of our Nation.

In the course of my visit, I had the opportunity to meet with each of the leaders on the Incident Command Team and received detailed briefings on how the fire was being managed.

One of those briefings was delivered by the Incident Safety Officer, who emphasized the acronym L-C-E-S, which stands for lookouts, communications, escape routes, and safety zones. Wildland firefighters are taught to keep safety in their forefront of their minds, constantly focusing on L-C-E-S.