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Senate

(Legislative day of Monday, May 1, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

God is able to make all grace abound toward you, that you, always having all sufficiency in all things, may have an abundance for every good work.—II Corinthians 9:8.

Gracious Father, we claim this Biblical promise as we begin this new day. We thank You for Your amazing grace, Your unqualified love, and forgiveness that flows from Your heart into our hearts filling up our diminished reserves. We are energized by the realization that You have chosen to be our God and have chosen us to belong first and foremost to You. So we clarify our priorities and commit ourselves to seek first Your will and put that above all else. It is liberating to know that You will supply all we need, in all sufficiency, to discern and do what glorifies You. Grant us wisdom, Lord, for the decisions of this day.

We ask this not for our own personal success but for our beloved Nation. America deserves the very best from us today. Experience has taught us that You alone can empower us to be the leaders America needs. Fill us with a new passion for patriotism and fresh commitment for the responsibilities of leadership You have entrusted to us.

In the name of Him who helps us live every day to the fullest. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. GORTON. Mr. President, this morning the leader time has been reserved and the Senate will resume consideration of H.R. 956, the product liability bill.

Under the provisions of the agreement reached last night, there will be at least two rollcall votes beginning at 9:45 this morning on or in relation to amendments to the substitute amendment. Further rollcall votes are expected following the 9:45 a.m. stacked votes, and a vote on final passage can be expected at about 11:30 this morning.

Senators should also be aware that the Senate will begin consideration of the solid waste disposal bill at noon.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER (Mr. CAMPBELL). The Senate will resume consideration of H.R. 956, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gorton amendment No. 596, in the nature of a substitute.

Coverdell-Dole amendment No. 690 (to amendment No. 596), in the nature of a substitute.

Shelby-Heflin modified amendment No. 693 (to amendment No. 690), to provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided for under State law.

Harkin amendment No. 749 (to amendment No. 690), to adjust the limitation on punitive damages that may be awarded against certain defendants.

Mr. GORTON. Mr. President, as I have just announced on behalf of the majority leader, we will have two votes in about 10 minutes. Seeing nobody here at the moment to speak, 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. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 693, AS FURTHER MODIFIED, TO AMENDMENT NO. 596

Mr. SHELBY. Mr. President, I ask unanimous consent that I be allowed to amend the Shelby-Heflin amendment, which is slated to be voted on in a few minutes, by inserting at the end of the amendment: ''This paragraph shall cease to be effective September 1, 1996.''

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

The amendment (No. 693), as further modified, is as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107 but only during such time as the State law so provides. This paragraph shall cease to be effective September 1, 1996.

Mr. GORTON. Mr. President, this is now a reasonable amendment. There was a debate on the Shelby-Heflin amendment yesterday to which I had certain objections, but it is clear that the law of Alabama is unique and peculiar.

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

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I think it can easily be amended, and the two Senators from Alabama will want to give the Alabama Legislature sufficient time to consider that amendment. I think that is appropriate, and I believe that we can now accept the Shelby-Heflin amendment by voice vote. Assuming that we do so, Mr. President, there will only be one vote at 9:45.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as further modified.

So the amendment (No. 693), as further modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I have reservations about this in regard to what has occurred, but I am faced with reality, the reality of votes, and the reality of conference.

Senator SHELBY and I, therefore, are approaching this issue from a pragmatic, not philosophical, viewpoint. I just want to make that clear.

Mr. SHELBY. Mr. President, regarding the amendment we have worked out and that has been voted on, I agree with the senior Senator from Alabama. We can both count. We were counting votes and we were looking reality in the face.

Our State of Alabama is unique among the 50 States in that, as I have said before on the floor, we have had a wrongful death statute that assesses punitive damages only where someone is killed and there is a civil action because of the death. Most States in the Union—I guess all of them except Alabama—have compensatory damages.

If I had my ''druthers,'' I would leave this like it was or like it is today, but this will give the Alabama Legislature until September 12, 1996, to consider changing it, if this proposed legislation were to become law.

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

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 749

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 749, offered by the Senator from Iowa [Mr. HARKIN].

Mr. GORTON. I move to table the Harkin amendment, and I ask for the yeas and nays

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

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

The result was announced—yeas 78, nays 20, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—78

Abraham	Feinstein	Mack
Ashcroft	Ford	McCain
Bennett	Frist	McConnell
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Bradley	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Nunn
Bryan	Gregg	Packwood
Burns	Hatfield	Pell
Campbell	Heflin	Pressler
Chafee	Helms	Pryor
Coats	Hutchison	Robb
Cochran	Inhofe	Rockefeller
Cohen	Jeffords	Roth
Coverdell	Johnston	Santorum
Craig	Kassebaum	Simon
D'Amato	Kempthorne	Simpson
DeWine	Kerrey	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Specter
Domenici	Kyl	Stevens
Exon	Lautenberg	Thomas
Faircloth	Lott	Thompson
Feingold	Lugar	Thurmond

NAYS—20

Akaka	Dorgan	Levin
Baucus	Harkin	Mikulski
Boxer	Hatch	Reid
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Conrad	Kennedy	Wellstone
Daschle	Leahy	

NOT VOTING—2

Lieberman	Warner

So the motion to lay on the table the amendment (No. 749) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred.)

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote 159 I voted ''no.'' It was my intention to vote ''yea.'' I ask unanimous consent I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 629 TO AMENDMENT NO. 690, AS AMENDED

(Purpose: To eliminate caps on punitive damage awards)

Mr. DORGAN. Mr. President, I would like to offer amendment No. 629. The amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 629 to amendment No. 690, as amended:

The amendment is as follows:

Insert at the appropriate place: ''Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards.''

Mr. DORGAN. Mr. President, the amendment which I have offered is not identical but nearly identical to the amendment I offered prior to cloture. The amendment deals with the punitive damage cap. The amendment I offered previously I offered to the Dole substitute. I now offer this amendment to the underlying bill.

Very simply, my amendment would remove the cap on punitive damages that exists in the bill. The amendment that I offered previously was defeated by a vote of 51 to 49. I would like for the Senate to express itself on that issue in light of the activities on this legislation since the Senate voted on it. While I think there is merit in a product liability reform bill and while I think there is merit on both sides of this issue, I believe the legislation should be like the legislation on product liability we considered last year. That legislation came to the floor of the Senate and was voted on with respect to the last cloture vote without any cap on punitive damages.

Last year, the bill that originated in the Commerce Committee and brought to the floor, did not include a cap on punitive damages. This year, the legislation, as it emerged in the Commerce Committee by the same authors, included a cap on punitive damages. I believe they were right last year and wrong this year on that particular section of the bill.

I believe some reform necessary in this area, but I believe their best impulses and best instincts last year served them better than this year when they decided to impose an arbitrary cap on punitive damages.

After all, the legislation requires you to provide clear and convincing evidence as a burden of proof that the harm caused was carried out with a—let me quote this—''conscious and flagrant indifference to the safety of others.'' If a plaintiff has gone through trial and provided clear and convincing evidence that harm was caused or carried out with a conscious and flagrant indifference to the safety of others, then I do not understand why someone would suggest we ought to have a cap on punitive damages.

The legislation that is before us contains a cap on punitive damages in several different steps. It is, as I understand it, two times compensatory damages to a maximum of $250,000, a distinction from that particular cap for small businesses, certain designated small businesses in the bill, and, third, a provision that a judge could increase the punitive damage award upon a petition by the plaintiff. That is my understanding of what is in the legislation that is before the Senate. My amendment says, notwithstanding any other provision of this act, nothing in this act shall impose limitations on punitive damage awards.

Again and finally, let me say that this is the same position Senator ROCKEFELLER and Senator GORTON had last year, no cap on punitive damages. And I think it is appropriate. The reason I think it is appropriate is we have changed the bar that you must get over in order to prove punitive damages. It requires clear and convincing evidence that the harm caused was carried out with conscious and flagrant indifference to the safety of others.

I just do not understand how, if you meet that burden of proof and demonstrate conscious and flagrant indifference to the safety of others, you can say to a corporation worth several billions of dollars, it would cost less to pay awards than it would to fix the problems. A punitive damages cap is appropriate. I really believe the Senate would improve this legislation by adopting the very position the two managers of the bill had last year. Their first and best instinct was not to have a punitive damages cap then. I believe that is the position the Senate ought to adopt now.

Mr. President, with that, I would hope, when we have another vote on this, the Senate will decide to eliminate the punitive damages cap. With that, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, unlike the situation at the time at which the Senator from North Dakota presented this amendment a week or so ago, we now have a bill in the Chamber in which there is no cap on punitive damages. I say that not in triumph but in regret. I believe that one of the great vices at which legislation of this sort properly should be aimed is at creating some kind of relationship between the actual damages caused by a tort, caused by a wrong, and the damages that can be recovered as a result. But with the latest set of amendments here, we have permitted a judge on certain findings of egregious conduct to go beyond what juries are permitted successfully to impose in the way of punitive damages.

The entire matter, Mr. President, is at one level an argument on philosophy but at another level it is a debate about the Constitution of the United States. The Supreme Court in several recent cases, while not setting a specific ceiling or cap on punitive damages itself, has spoken of serious constitutional questions caused by unlimited punitive damages, or by punitive damages that are not related in any rational fashion to actual damages found by a jury or determined by a court.

In other words, the Supreme Court of the United States has invited the Congress to do exactly what I had hoped we would do more successfully than we have accomplished in this bill.

But just to go over it again, we have said that the maximum punitive damages that can effectively be awarded by a jury are in an amount twice the total of all economic damages and all noneconomic damages that go for pain and suffering. And since those damages, in very serious cases of people being maimed for life, can well go into eight figures, and sometimes do, we have a very large potential remaining for punitive damages. But in addition to that provision, in the so-called Snowe amendment is a $250,000 figure when twice the total of economic and noneconomic damages would be less than $250,000, together with the right of a judge to go beyond even the Snowe formula where the judge feels that formula to be too limited not to permit proper punitive damages for particularly egregious conduct.

So the Senator from North Dakota, in a number of respects, has already succeeded. There is no number. There is no specific formula which limits punitive damages.

As I have said frequently, I think there should be. Working with the laws of my own State and a handful of other States where punitive damages are not allowed at all, where the cap is zero in most cases, we find no difference in the safety or carefulness of business enterprises in those States. No case has been proven for the efficacy of punitive damages as a deterrent, in any event. My own view is that the original limitation in this bill was an appropriate one, but that original limitation has twice been liberalized in the course of this debate. And I express the fervent hope that in concerning ourselves with the proposition that we should not permit absolutely unlimited discretion on the part of juries, we should not have no maximum sentence in civil cases for wrongs, that we will make the partial and halting move toward some kind of rationalization which is now contained in this bill.

Mr. President, we are in a peculiar situation here this morning in that we have a potential of this amendment and one other to be dealt with and we do not have specific limitations on the amount of time that can be utilized for them. So I hope that, when either the Senator from West Virginia or the Senator from North Dakota next speaks, we can get an indication as to when they will finish to allow the other amendment to take place. There will be votes on any other amendments which come up, but we will be asking unanimous consent that those votes take place after closing arguments and before the vote on final passage. So the sooner we know how long these two amendments will be debated, the earlier we will be able to predict to our Senators who are not here when they will have to come back to the floor to vote.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, a couple of points. I agree with what the Senator from the State of Washington said in argument to this amendment.

Just for the edification of my colleagues—this fact has not been brought out, I do not believe, in the debate—we have removed caps, but people do not realize, I think, often that there are caps on some rather extraordinary crimes in the Federal statutes. I will give some examples.

Many Federal criminal fines, even for particularly egregious crimes, do not exceed $250,000. And that was our original proposal, economic damages times three or $250,000, whichever is greater.

Listen to this. If you tamper with consumer products and it results in death, the Federal statute limitation is $100,000 for punitive damages. If you retaliate against a witness, it is $250,000. If you assault the President, it is $10,000. If you rob a bank with the use of a deadly weapon, the punitive damage limit cap is $10,000. Sexual exploitation of children for an individual, $100,000; in terms of an organization—however that would work out—$200,000. For treason—for treason—$10,000.

Now I say that in no way to defend caps, because the Senator from West Virginia has fought for the removal of caps and we have, I believe, been able to do that.

I would, in closing, remind my esteemed friend and colleague from the State of North Dakota, who is as principled a person as I have ever met, that the Senator from the State of Washington and I have so bloodied ourselves in making sure we come back with effective removal of caps that we have said, and that we have been unable to obtain unanimous consent in this body to, in effect, make the cap total and complete because of a matter of 60 seconds in filing the amendment, that if we bring back the amendment with anything but the cap removed, that we will vote against the motion for cloture should there be a filibuster on the conference report.

So I really do believe that we are operating not only in good faith but in good substance on removal of the cap. I hope, therefore, that what I consider a redundant amendment by the Senator from North Dakota would be defeated.

I thank the Chair and yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I shall not prolong the debate. When I have completed with my remarks, I see no reason that you could not enter a unanimous-consent request to have a vote. I have no objection to a vote.

First, let me make a couple of comments. The Senator from Washington said, and I think the Senator from West Virginia also seemed to say, the way the bill is constructed, there really are not caps on punitive damage awards. If that, in fact, is the case, then I would think that they would have no objection to accepting language that says there are no caps on punitive damage awards. That is what my amendment says.

That was the Commerce Committee position last year on this bill. It was the right position. We raised the bar on what you must prove to receive a punitive damage award. Once we raised the bar, we felt it inappropriate to include caps. Now this year they want to include caps.

When the two Senators say there are not really caps, I understand what they are referencing. But, honestly, I think the claimants will find there are caps. There is $250,000 written in. That is written there for a reason. Because, under ordinary circumstances, that will be a cap, two times compensatory damages.

Let me make two other quick points.

Mr. ROCKEFELLER. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. ROCKEFELLER. Just as a point of clarification, the reason that the $250,000 was put in there in its new configuration was not in terms of the caps. We made certain that there was an alternate ceiling. So that if the economic damages and the noneconomic damages did not appear to arrive at $250,000 multiplied by two, that the claimant would be guaranteed the $250,000. It is an alternate ceiling.

Mr. DORGAN. If the Senators were building a floor rather than creating a cap, I say, God bless the floor and let us just get rid of the cap. Let us vote for my amendment and we will solve this.

But, let me make two other comments. First, if a company, a large company with vast resources, produces a product or a device that will be used in the field of medicine discovers, during its testing, the product is sufficiently faulty in its operation and it may cause some deaths; if the company fails to disclose that information and the product goes to market and some unsuspecting patient lies on a hospital gurney going into the operating room and dies during a routine procedure and later the family discovers that person died because the product used was faulty and the company knew it, I suppose they would want to bring a lawsuit against the company. In that case, I think society would want that company to be punished sufficiently so that other companies would understand you cannot do that, that kills people; you ought to be punished for it. You ought not get a slap on the wrist, you ought to be punished for it.

That is what punitive damage awards are for. The case I just mentioned is a real case, and there are plenty of cases like that.

There is not an epidemic of punitive damage awards in this country. It happens rarely because it requires a substantial burden of proof, and we have increased that burden. There is no litigation crisis with respect to punitive damages. In 25 years, the survey that I have seen—1965 to 1990—says that 355 punitive damages were awarded in State and Federal product liability lawsuits nationwide. This is a country of 250 million people; 355 punitive damage awards nationwide. Of those awards, 35 are larger than $10 million. All but one of these awards were reduced, and 11 of the 35 were reduced to zero.

The point I make is, this is not an epidemic or crisis. Punitive damage awards have not been escalating out of control. But I do think there are certain circumstances where an enterprise worth billions makes a conscious decision that we will risk whatever awards exist out there because we will gain more profit by selling this, knowing the defects, than we will risk paying the damages to someone injured or killed by that product.

My own view is that there is merit on both sides of the debate on product liability. That is why I have decided to support and have supported moving forward, increasing the standards, trying to shut down some of the litigation in this country, because there is too much frivolous litigation, as a matter of fact. The country is just prone to litigate almost everything. We have too many lawyers in America. And we keep training more and more every year.

I think there is merit to the position of the two Senators, that we ought to do something in a reasonable way on product liability. I think there is no merit to putting a cap on punitive damages. There was not merit to it last year. They did not have it in the bill last year. They changed their minds. Their first instinct is correct. Always stick with your first instinct. My amendment will allow us to stick with your first instinct. If the Senate agrees, we will live with your victory of last year deciding there shall not be punitive damages in the product liability bill.

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

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Very briefly, Mr. President, I think that Members should know that this amendment by the Senator from North Dakota is all-encompassing and that it overrides the amendment which was supported by the vast majority of Members of the Senate that does have strict limits on punitive damages in cases involving small businesses, businesses with fewer than 25 employees and individuals of relatively modest means whose total assets are less than half a million dollars.

So they, after having been the beneficiary of the last week of that very careful protection, protection against absolute bankruptcy, should the Dorgan amendment be adopted, they will be thrown into a situation in which absolutely unlimited punitive damages can be awarded against them. It is important for Members to understand that.

UNANIMOUS CONSENT AGREEMENT

Mr. GORTON. With that, Mr. President, now having cleared this with the Democratic side, I ask unanimous consent that the vote on, or in relation to, the Dorgan amendment, or in relation to any other amendment in order, and final passage occur back to back at the conclusion of the previously allotted time with the first vote limited to 15 minutes and the other consecutive votes in the voting sequence limited to 10 minutes each.

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

Mr. DORGAN. Mr. President, I was going to ask for the yeas and nays.

Mr. GORTON. I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise to speak against passage of this bill. I realize that, with cloture having been invoked, my words may not change many votes, but maybe they might change one or two. And then I feel like maybe my remarks, in a strong adversarial posture, might appeal to the reason of Senators to encourage them to eliminate some of the grossly unfair provisions that are in this bill.

I might say in the beginning that I believe the difference between the caps that are put in this bill and the fact that there were no caps in the last bill reflects a change in the makeup of the Senate, as a result of last November's elections.

There are caps in this bill with an additur provision whereby a judge could increase a jury's award of punitive damages. Clearly, that has already been ruled on by the Supreme Court as being unconstitutional. The case of Dimick versus Schiedt was decided in 1935 on that issue and makes the additur provision unconstitutional.

In my judgment, there are a number of other unconstitutional elements that should be pointed out. One is the matter pertaining to the role of the U.S. circuit courts of appeal being able to determine controlling precedent on the State courts within the jurisdiction of the Federal circuit.

Article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, has been construed to mean that the State courts must follow the decision of the Supreme Court and not the lower Federal courts.

The case of Erie versus Tompkins basically says that the Federal courts, in diversity cases, shall follow the substantive law of the State. There is no question that the Federal courts, through its rulemaking process and Congress, pursuant to its powers under the Rules Enabling Act, control in regards to procedural matters. I just want to mention that.

I want to direct the Senate's attention to a chart that Senator LEVIN produced and used in a previous argument. I thought it was an excellent presentation, and I ask unanimous consent that this table be printed in the RECORD.

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

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed.
Alcohol or drug abuse defense	do	Do.
Misuse or alteration of product defense	do	Do.
Punitive damage limitations	do	Do.
Statute of limitations	do	Prohibited.
Statute of repose	do	Allowed.
Joint and several liability (non-economic damages).	do	Do.
Biomaterials provisions	do	Do.

Mr. HEFLIN. Mr. President, this is chart entitled ''Preemption of State Product Liability Laws,'' and it has a column of State laws more favorable to plaintiffs and State laws more favorable to defendants and what happens as regards preemption under this legislation. First as to the liability of product sellers, that is retailers, this bill prohibits any laws more favorable to plaintiff, but it allows laws more favorable to the defendants. Second, with respect to the alcohol or drug abuse defense, the bill prohibits State laws more favorable to plaintiffs but it allows State laws more favorable to defendants. Third, as to the misuse or alteration of product defense, the bill prohibits State laws more favorable to plaintiffs but allows State laws more favorable to defendants.

Punitive damage limitations are treated the same way—unfavorable as to plaintiffs and favorable as to defendants. As to the statutes of limitations, that is the one and only provision that really exists in this whole bill is as to uniformity.

With regard to the statute of repose provision of 20 years, this bill preempts State laws more favorable to plaintiffs but not those State laws more favorable to defendants.

On the issue of eliminating joint and several liability for noneconomic damages, this bill preempts State laws which are more favorable to plaintiffs but allow State laws which are more favorable to defendants. And you have the biomaterials provisions which are treated in the same manner. I think this chart Senator LEVIN prepared is a very excellent chart, and I hope my colleagues will take time to reflect upon it.

Now, I want to also direct my colleagues attention to the potential costs of the bill, an issue which I hope will be investigated, because I do not believe CBO or anyone else has looked at this matter very closely. There is language in the bill that includes within the scope of the word ''claimant'' a governmental entity which includes the Federal Government and all of its entities.

I do not think there is any question that the purpose of this bill is to save product manufacturers money. The Government, as a claimant, would be bringing suit against a defendant, and if the purpose of the bill is to save money, it means it saves money for the defendant, for corporate America, when the Federal Government brings suit.

So the cost to the Government has never been calculated, and there are so many things that are involved, particularly like the statute of limitations and statute of repose as to helicopters, tanks, NASA equipment, and all of GSA's equipment, and every conceivable way regarding which products are purchased by the Government. The issue of costs to the Government ought to be looked at more closely in my judgment.

Now, there is also a provision dealing with foreign nationals and foreign governments, and I realize that this is under statutory construction, that nothing in this title can be construed to preempt State choice of law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation and, in effect, the right of any court to transfer venue, or to apply the law of a foreign nation, or to dismiss a claim of a foreign nation, or of a citizen of a foreign nation, on the grounds of inconvenient forum.

In the world of terrorism today, these issues ought to be addressed. Hopefully, in the terrorist bill that will come before the Senate in the coming weeks, we will give some consideration regarding this issue. The Senate ought to make certain that the provisions of this product liability bill do not in some unintended way give some advantage to a terrorist entity.

I think one of the most unfair provisions in this legislation is the provision that says that an injured party cannot introduce in the compensatory damage part of a trial elements of conduct that constitute a cause of action for punitive damages. Therefore, as I have pointed out before, gross negligence, recklessness, wantonness, intentional conduct, and all activity of a similar nature, is prohibited from being considered in the main trial for compensatory damages. To me, that is one of the most unfair provisions that exist in this bill.

The biomaterials section and the definition of implants therein, where there is language regarding coming in contact through a surgically produced opening and coming in contact with bodily fluids or tissue, in my judgment, is a wide-open situation for a great deal of problems pertaining to component parts of the implant, and I urge that that be carefully reviewed.

Some of these issues which I have just reviewed—and I hope some people in the White House are listening to me as I speak about this—ought to be carefully considered not only by the Department of Justice and every agency of Government that could be affected. Certainly, the FDA ought to consider the language that is being placed into this bill as to matters dealing with the human body in that biomaterial definition of ''loss.''

Of course, the very basic unfairness of the bill begins with the fact that commercial loss, which is a business loss, is excluded from being within the purview of this bill.

Of course, I have given illustrations on the floor about the fact that if a factory blows up and people that are injured from the faulty, defective product, they come under this bill; but for commercial law, they do not.

Some say the commercial loss exemption might be applied to individuals. I remember there was a ''Dear Colleague'' letter circulated on this issue. I would imagine in that instance we would find it would be rarely ever used, we might find out of 2,000 employees in a factory where a boiler blows up, we might find that there might be one moonlighting sock salesman. That would be the only way that we would have, basically, any commercial loss that would occur to that individual.

Now, most of all of the business litigation and most of the punitive damages awards that have come about are business or commercial losses. The case of Pennzoil versus Texaco was, for example, probably the largest punitive damages case that has ever been awarded, and it was a commercial litigation where business was suing other business.

There are other provisions throughout the bill that are very unfair, and I have listed them in previous arguments. I hope that this bill will be carefully reviewed in conference and we will see the removal of a great number unwise provisions.

I just appeal to the conscience of the people that are involved who will be in conference on this, and appeal to the White House to look at this matter when it reaches conference between the House and Senate. It just shocks the conscience to see the unfairness that exists in all the various provisions of this bill and I hope that I have pointed out the key issue very clearly for my colleagues to consider. Mr. President, I urge that we vote no on final passage.

Mr. ROCKEFELLER. Mr. President, I encourage my colleagues would vote aye on this bill.

Mr. President, while I had my doubts, I have believed for a long time that the Senate would eventually come to this point. Inexorably, it would happen. After many years of debate, many years of filibusters on this Senate floor, this body finally has a chance to cast its vote for what I think is responsible, balanced punitive damages tort reform.

I think the vote yesterday was historic. The Senate, for the first time, broke the log jam that has blocked action on what I referred to last night as a deadly serious issue, and the Senate has blocked that for years and years. Now the Senate has said, ''proceed.''

My belief that this time would come is based on several points. First and foremost, the problems with our punitive damages system cry out for solutions. We are here for that purpose. We were elected to address the problems that require attention and action. We have done so to the best of our ability.

In this case, because products by definition, virtually, involve interstate commerce—that point has been made but not accepted, I suppose, by all—70 percent of everything we make in West Virginia is sold in another State. By definition, States cannot preoccupy this field. This is precisely an area where Congress needs to step in.

Each State really cannot fix the flaws of the country's interstate product liability system. That is because the biggest problem involves the patchwork—varied, unpredictable nature—of every State in the union having different product liability rules and standards.

Businesses that sell or manufacture products are subject to the endless confusion, the hassle, the court costs, the wasteful costs, in general, of this maze.

Consumers who want safe products want more products that will increase their safety and cannot get them. Consumers who are victims of defective products and cannot get recompensed for an average of 3 years, are also hurt by the delays and the costs that stem from the product liability system. So businesses hurt, consumers are hurt. We have a problem.

My interest in these problems really stem from seeing the way they hurt my own State of West Virginia. Manufacturers, small businesses, the fear, consumers, workers, and the victims of defective products.

The Senator from North Dakota several moments ago said that there has only been *x* numbers of liability cases in the last 2 years, 10 years whatever. That argument has been used many, many times. It is a very misleading, false argument. It is not the number of punitive damages awards that have been granted. It is the threat which exists in every case, in every suit, of which there are unending numbers in this litigious society.

It is the threat of litigation that is the problem and has crushed so much innovation and research and development which would help consumers.

My interest, again, in West Virginia comes from knowing people who directly have suffered from this and have gone out of business from this, as well as victims who have been hurt by this. I have seen the victims who came back from the Persian Gulf war with something called a mystery syndrome illness which the Defense Department says does not exist, but I see these people and I know it does exist.

When we see the people, and we see the individuals and we see they are hurt, we want to help them. To put it simply, then, the product liability system is broken. The Congress and the President must have parity.

Second, I have believed that a product liability reform bill would eventually pass this Senate because of the way some Members have approached the effort to cause it to pass, which I believe it will.

Members of both sides of the aisle have been troubled by the problems with product liability. Some time ago the bipartisan team work necessary to enact legislation began to form. In the past 4 years, the Senator from the State of Washington and I have had the job of leading that team. The Senator from Washington and I made a pact: To promote a balanced, moderate, serious, legislative remedy to these problems in product liability, tort reform.

We let the businesses interested in reform know that the consumers and victims had to be the winners of reform, too. We made that very clear and have made that very clear up until the very last moments. We have kept making it clear.

We explained to the general public that the harm done to business by the problems with product liability also hurt the general public, which is called the rest of the country. They cost jobs, they stifle the innovation needed to make safer drugs and products, and they impose an enormous hidden tax on every American.

That is why we devised a bill to deal with the range of problems that affect different sectors of the society, and we did it fairly. In this legislation we promote quicker settlements through alternative dispute resolution. We insisted on that so victims get compensation faster. We give the victims of harm done by substances like asbestos enough time to seek relief by saying the clock can only run after they discover the harm that they are suffering and, again, the reason, the cause of the harm they are suffering.

We have made a number of adjustments in the way businesses are made liable for the impact of products where the rules are not fair to them.

But my point is also that this bill reflects the balance and the moderation that emerges when Members of both sides of the aisle choose to work together, choose to trust one another, choose to accommodate the diverse concerns that arise when a complicated topic like product liability comes up.

We are not seeing a lot of bipartisanship in the legislative process these days, and it is sad. It is more than sad for the country, it is grievous. I find all of that very troublesome. I think it is essentially a disservice to the country. We are a diverse nation with a Government designed to represent our differences and built with checks and balances on one another. We should draw on the strength of that diversity. Democrats and Republicans in the Senate should spend more time, I think, working together on the country's problems, working out solutions that will last and that will take root.

I think we do that in this bill. And when we do have bipartisan cooperation and it works, it only encourages us to do more, I hope. That is why the Senator from Washington and I formed the team to deal with the problems of product liability, and we intend to maintain that bipartisanship until we see a bill signed into law sometime later this year.

Finally, my belief that product liability legislation would pass has been based on the talent and the leadership that have been invested in this effort. Many Members of this body have contributed to this arduous, difficult effort. Senators DODD and LIEBERMAN have been staunch allies, and their staffs, Tony Orza and Nina Bang-Jensen. Senators on the other side of the aisle, from the majority leader to the chairmen of the Commerce and Judiciary Committees, have played essential roles in this. It is impossible to fully explain how much I respect and appreciate the Senator from Washington, SLADE GORTON. I think he stands out for, first of all, his acumen, his amazing mind, his tenacity, the wisdom of his counsel, his calmness under substantial fire, and his commitment to reform.

The staff who have assisted in this effort I think deserve medals for their valor and service and for their, by the way, exhaustion. On Senator GORTON's staff, Lance Bultena and Trent Erickson have been steady, quiet, dogged, and perfect in helping us work this through.

Assisting me, I cannot thank enough, and I would need to start with Tamera Stanton, who is my legislative director who sits at my left as I speak, who masters all subjects with tenacity and with understanding, is skillful in her sense of nuance, strategy, politics, and policy; Ellen Doneski, who does not know how to stop working, and as a result never does stop working and accomplishes incredible, amazing things, often many at the same time, so she just never stops working; Jim Gottlieb and Bill Brew, both in fact lawyers, which we need in our office. And they have both been brilliant, skillful, dogged, and successful. Without their labors and their incredible talent we would not be at this point.

I do not want to take the body's time, but I just want to make the point again that, if you pick up the paper, you will read Senator GORTON's name. If you listen to the television, you will hear his name and Senator HOLLINGS' name. And they can both do all of this on their own, pretty much, anyway. But actually it does not quite work out that way. Just as Senator HOLLINGS, Kevin Curtin, and others—it is the public that needs to know, while they are in their orgy of dislike for the Federal Government, that there are incredible people called staff of the U.S. Senators who make possible what it is that we do.

I want to acknowledge with respect the persistence and commitment of the flag-bearers who took the other side on this issue. The Senators from Alabama and South Carolina are daunting in their own legal minds and ferocity when it comes to this issue—both of them. They are different in many ways, the same in many ways, but both of them are extraordinary in their commitment to their beliefs. I hope they would agree it was a fair and open debate. They prevailed in the past without exception. It worked out the other way this time.

This has not been an easy issue for anybody involved. The legal system is a very serious part of our national fabric and life. The rights of every American are fundamental and are not to be tampered with easily. I have always felt that, as I have fought for product liability reform, in a sense I restate my pledge to navigate the remainder of the legislative process with a deep commitment to the principles of fairness and justice.

But I remain absolutely sure that it is time to fix this broken part of our legal system, and I think we have done a lot of it. The country is saddled with costs, with waste, with problems that can be eased with the reforms in this legislation.

The PRESIDING OFFICER (Mr. SANTORUM). The time of the Senator has expired.

Mr. ROCKEFELLER. Mr. President, I ask for an additional 60 seconds.

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

Mr. ROCKEFELLER. I am proud to give the Senate a chance, finally, to cast its vote on a balanced legislative remedy. I am relieved we restored a bill simply dealing with product liability and with the important changes worked out in the final hours that represent the bipartisanship and the balance that we sought from the beginning of this effort.

I am confident that President Clinton will sign this bill with whatever perfections we can make. I hope we will soon see the benefits of reform and demonstrate to the skeptics that the changes are in the entire Nation's interests.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first a procedural announcement. Thirty minutes remains under the order with respect to debate on product liability. Senators in their offices, therefore, should be on notice that approximately at 11:40 there will be a vote on my motion to table the Dorgan amendment, followed immediately by a vote on final passage of the product liability bill with, we think, the substitute adopted by voice vote. So Members should be prepared to come to the floor at or shortly after 11:40.

On a second matter, in which I know I am joined by my colleague from West Virginia, regrettably, due to the inability of the Senators from Washington and West Virginia to get unanimous consent to make one additional change in their proposal, the so-called new trial provision after an additur remains in this bill. The Senators from West Virginia and Washington have pledged that the bill will not be presented by them to this body with that provision in it, and that pledge remains.

Other than that, this bill is the work of many years of effort culminated in this Congress, as in the last Congress, by the joint efforts of the Senator from West Virginia and myself, and of many others whom I will mention after we have had a final vote. Together, with the input from Members on both sides of the aisle, I am confident that the bill will pass and that it will represent a significant step forward.

Mr. President, one other comment that I make as a sponsor and one of the people who drafted this bill in the punitive damages section, we included an additive provision at the request of the Department of Justice of the United States, with the assurance that the provision is constitutional. That opinion, in my view, is correct. Such provisions are found in the laws of many States. If a court should, however, find the additive provisions to be unconstitutional, it is our intention that the remainder of the punitive damages provision will stand and that only the additive provision which is now found in section 107(b)(3) would be severed.

Mr. President, one argument against congressional legislation in this field, which has been raised by almost all of those who have come here to speak against it, is that we should not interfere in the Federal system with the laws of the 50 States. It is a curious argument as it is generally advanced by those Members of this body who are most anxious to interfere with the prerogatives of the States in many areas for which there is no explicit constitutional warrant. This, however, is a case in which congressional legislation is expressly warranted by the Constitution, and may very well have been anticipated, or would have been anticipated had they known what the economy of the United States would look like in the late 20th century, by those who wrote the Constitution itself. One of the principal reasons for the Constitutional Convention was the chaos that attended interstate commerce among the 13 States after the close of the War of the Revolution and before the adoption of the Constitution.

So under article I, section 8, clause 3, the interstate commerce clause, the Congress is invited, is given plenary power over interstate commerce. Of course, most of the products with which this bill deals are made of materials that arrive in interstate commerce and are sold after they are manufactured in interstate commerce, and a far greater degree of uniformity that is now in this bill would be constitutionally warranted. The compromises in this bill are in certain cases political and in other cases highly principled attempts to provide a degree of predictability and uniformity which will lead to more economic development, greater jobs, and better products for consumers with the very real history of local control over our courts and over our litigation. But as long ago as in the Federalist Papers, Alexander Hamilton made it clear that one of the key purposes of the Constitution was to prevent interstate commerce from being, and I quote him: ''Fettered, interrupted, and narrowed'' by parochial State regulations.

That, regrettably, is exactly what we have, particularly in that handful of States, often in rural counties, in which we find repeated huge punitive damage awards, almost invariably entered against out-of-State defendants or out-of-State corporations in a way which fetters, interrupts, and narrows interstate commerce by discouraging research and development and discouraging the marketing of new products. We have seen that happen in instance after instance in which companies large and small have found it improvident to develop new products to cure previously incurably diseases or to solve problems in our society because they might have an adverse impact on some individual, and that individual might sue and that individual might persuade a jury in someplace or another to award punitive damages in an amount that would make it utterly unprofitable ever to have entered that business in the first place.

Perhaps worse, and perhaps a greater interference with interstate commerce, is successful defense litigation where large companies find that they have spent tens of millions of dollars successfully defending against product liability litigation over products, that gross price of which is far less than those legal fees. So they say, ''Why produce parts for implant into the bodies of people of the United States, as much good as those things do?''

It is our hope to make a modest step forward in creating a balance, not by denying any person the right to go to court, not by limiting the actual damages that any individual can receive for an act which is the responsibility of the individual or company which is called upon to make payment, but to see to it that there are fewer arbitrary

judgments; that less of the time defendants are required to pay for the negligence or for the acts of others.

Mr. President, a day or so ago, the Senator from California [Mrs. BOXER], argued at length with respect to the McCain-Lieberman portions of this bill on biomaterials and that corporations would be allowed to set up shell subsidiaries and protect themselves from liabilities.

That concern was raised in the Commerce Committee by the Senator from Nebraska [Mr. EXON], and expressly taken care of by an amendment that will allow piercing that corporate shell and not preventing the corporation, which is actually in control and which has assets, from protecting itself from the consequences of its own negligence.

But basically, Mr. President, we now have a product liability bill which includes a statutory repose for products that are used in a business enterprise. We have a limitation on joint liability with respect to noneconomic damages—that is, pain and suffering—under which we simply say that you are responsible as a defendant for the degree to which you have harmed the claimant, but that a defendant that is only 10 or 20 percent responsible for these damages is not going to be charged for the entire verdict simply because some other defendant cannot be reached.

We have imposed some modest rationality on the award of punitive damages. My colleague here this morning came up with one of the best sets of examples I have ever heard, something which has not been brought before the Senate in this 3 weeks, when he points out that for all practical purposes every Federal criminal statute which includes the right to a fine as a part of the sentence has a limitation on those fines, and yet to be subjected to a criminal fine one must be found guilty beyond a reasonable doubt. One has all of the protections of the fifth amendment against self-incrimination. And yet here we, the Congress of the United States, have set a maximum fine, $10,000; maximum fine, $25,000. I think the maximum fine they found was $250,000.

We vote for these criminal penalties, and yet our opponents tell us how outrageous it is in a civil case, with no fifth amendment rights, no standard of proof beyond a reasonable doubt, how unreasonable it is to set any limit on what a jury can do in the way of punishment—punishment over and beyond all of the damages that are actually proven by the claimant in a particular case.

Mr. President, this bill is not a perfect bill, in my view, and it is not a perfect bill because it does not limit that form of arbitrary punishment sufficiently. But it does begin down a road which we have been invited to take by the Supreme Court of the United States which says without having set standards itself that there are constitutional implications to unlimited punitive damage verdicts. And so here we have an experiment. We attempt to balance the rights of trial lawyers against the necessity for a better and more effective economy, one in which people are encouraged to innovate, to create new jobs and to create new products for the American people.

We have been at this for a long time. I know from personal experience that there were product liability bills in the Senate and in the Commerce Committee on which I serve as long ago as 1982. I suspect that they existed before that time. I can remember one product liability bill in that committee against which I voted myself because it seemed to me it went too far, that it was unbalanced on the other side. This one is not, Mr. President. This one is a good piece of legislation. It is something that will help the American economy and help the cause of balanced and appropriate justice.

Finally, Mr. President, it is a precedent in a sense but it has one preceding element. A year or so ago, we passed a very modest product liability bill for piston driven aircraft. The legal system, the legal system defended by the other side here, had destroyed that business, reduced its production by 95 percent. A modest change in the law at the Federal level has already contributed to the recovery, the beginning of the recovery of that business—a dramatic illustration that the horror stories are not true and that the promises made by the proponents of this litigation have been proven to be valid by history. If my colleagues will vote for this, if we get it accepted by the House and signed by the President of the United States, this country will be significantly better off.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Oh, so reasoned, says my distinguished colleague from Washington. It is so balanced. GOPAC has taken over. GINGRICH is the Speaker, and there is a contract. Look at the elements of this contract. Part and parcel either by way of amendments here or in bills on the House side or what they have in mind is not just product liability but they have limiting pain and suffering damages; they have limiting the punitive damages; they tried to fit in medical malpractice; they tried to then limit plaintiff's attorney's fees. They voted against the fees on the defendants. They were not making enough. They ought to make more than $133,000 a year. They tried to limit punitive damages in all civil cases. The English rule is in the bill over on the House side; the alternative dispute resolution with the plaintiff having to pay all the fees; the securities litigation, the FDA and FAA rules where they would bar damages if the product is approved by either of those entities; they exempt the medical devices and the doctors, a provision about frivolous suits, statutes of repose; restricted submission of evidence is in this bill, in the House bills, bifurcation of the trials, both actual and punitive damages. Then they even put in an unconstitutional additur provision here.

Like the sheepdog had tasted blood, with product liability they are going to gobble up all the other rights and say it is so reasoned and so balanced.

One exemption they have from all this, Mr. President. One exemption—the manufacturers, the very crowd that through this bill continue to put in the amendments and everything else. They exempt the manufacturer and apply this all to the injured party and have the unmitigated gall to come up here and say they are for consumers. Why, heavens above. Come on.

I ask unanimous consent to include in the RECORD the State-based organizations opposed to this legal reform bill.

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

STATE BASED ORGANIZATIONS OPPOSED TO ''LEGAL REFORM'' IN THE SENATE (S. 565)

Alaska PIRG.
Arizona Citizen Action.
California Citizen Action.
Center for Public Interest Law at the University of San Diego.
California Crime Victims Legal Clinic.
Fair Housing Council of San Gabriel Valley.
Colorado Steelworkers Union Local 2102.
Coalition of Silicon Survivors.
Colorado DES Action.
Denver UAW.
Colorado ACLU.
Denver Gray Panthers.
Colorado Public Interest Research Group (CoPIRG).
Colorado Clean Water Action.
Colorado Senior Lobby.
Connecticut Citizen Action Group.
ConnPIRG (Connecticut Public Interest Research Group).
Delaware Coalition for Accountability and Justice.
Delaware AARP.
Delaware Council of Senior Citizens.
Delaware AFL–CIO.
Delaware Federation of Women's Clubs.
Delaware Women and Wellness.
Delaware Breast Cancer Coalition.
Building Trades Council of Delaware.
UAW Local 1183—Delaware.
Delaware Sierra Club.
Delaware Audubon Society.
Save the Wetlands and Bays—Delaware.
Georgia Consumer Center.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Council Against Handgun Violence.
Citizens Action Coalition of Indiana.
Planned Parenthood of Maryland.
Law Foundation of Prince George's County.
Maryland Sierra Club.
Teamsters Joint Council No. 62.
UFCW Local 440.
White Lung Association & National Asbestos Victims.
Sexual Assault/Domestic Violence Center, Inc.
IBEW Local 24.
Maryland Clean Water Action.
Maryland Employment Lawyers Association.
Health Education Resource Organization (H.E.R.O.).
Environmental Action Foundation.

Massachusetts Consumer Association.
Minnesotans for Safe Foods.
Missouri PIRG.
Montana PIRG.
Nebraska Coalition for Accountability & Justice.
Nebraska Farmers Union.
Nebraska Women's Political Network.
Nebraska National Organization for Women.
United Rubber Workers of America, Local 286.
Communications Workers of America, Local 7470.
Nebraska Head Injury Association.
Nebraska Center for Rural Affairs.
White Lung Association of New Jersey.
Consumers League of New Jersey.
Cornucopia Network of New Jersey.
New Jersey DES Action.
New Jersey Environmental Federation.
New Mexico Citizen Action.
Essex West Hudson Labor Council.
Uniformed Firefighters Association of Greater New York.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Consumers Council.
North Dakota Public Employees Association.
North Dakota DES Action.
North Dakota Clean Water Action.
Dakota Center for Independent Living.
North Dakota Breast Implant Coalition.
North Dakota Progressive Coalition.
Laborer's International Union, Local 580.
Boilermaker's Local 647.
Ironworkers Local 793.
United Transportation Union.
Sierra Club, Agassiz Basin Group.
Plumbers & Pipefitters Local 338.
United Church of Christ.
Teamsters Local 116.
Teamsters Local 123.
Plumbers & Pipefitters, Local 795.
Workers Against Inhumane Treatment.
Ohio Consumer League.
Oregon Fair Share.
Oregon Consumer League.
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
SmokeFree Pennsylvania.
South Dakota AFSCME.
East River Group Sierra Club.
Black Hills Group Sierra Club.
South Dakota State University.
IBEW, Local 426.
South Dakota DES Action.
South Dakota Peace & Justice Center.
Native American Women's Health & Education Center.
Native American Women's Reproductive Rights Coalition.
South Dakota AFL–CIO.
UFCW Local 304A.
Yankton Sioux Tribe.
South Dakota Coalition Against Domestic Violence.
South Dakota Advocacy Network.
South Dakota United Transportation Union.
South Dakota United Paperworkers International Union.
Texas Alliance for Human Needs.
Texas Public Citizen.
Vermont PIRG.
WASHPIRG (Washington Public Interest Research Group).
Wisconsin PIRG.

CITIZEN ACTION,
Montgomery, AL, April 26, 1995.

Hon. RICHARD SHELBY,
U.S. Senate,
Washington, DC.

DEAR SENATOR SHELBY: On behalf of our members, I am writing to thank you for your past opposition to federal ''tort reform'' legislation and to offer our support in your efforts this year.

As you know, Governor Fob James, in his April 18th State of the State Address, stated that ''intrusive federal law should not dictate tort reform legislation to the states.'' You might also be interested to know that similar sentiments have been reflected by the majority of audiences in several forums I have attended on the issued in the past month.

Our members also are deeply concerned about the consequences of capping punitive damages and eliminating joint and several liability for non-economic damages. Proposals such as these threaten public safety in Alabama by removing the deterrent effect of punitive damages, and they discriminate against those most likely to suffer non-economic damages, such as women, seniors, and children.

Thank you again for your leadership in fighting to uphold the democratic principles embodied in our state civil justice system and for voting ''no'' on the upcoming cloture votes on S. 565. Please do not hesitate to call on me for any assistance on this matter in the coming weeks.

Sincerely yours,

MIKE ODOM,
Executive Director.

ARIZONA CONSUMERS COUNCIL,
Phoenix, AZ, April 19, 1995.

Senator JOHN MCCAIN,
Russell Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: Two bills are expected to come to the floor this week—The Telecommunications Competition and Deregulation Act of 1995, and the Product Liability Fairness Act of 1995. We believe that these bills are both anti-consumer and anti-competitive.

Consumers have been strong in their requests to continue regulation of cable and in feeling that their bills have gone too high—three times the rate of inflation—for this service. Reregulation was the ONLY bill which was passed over the veto of President Bush.

Your office asked me to represent you on KFYI in favor of reregulation at that time. I did my best on that program.

Local cable companies now have a network which pass 96% of the homes in the country. They are best positioned to compete with the monopoly local telephone companies. This bill would permit these local monopolies to buy each other, merge or joint venture, thus eliminating the most likely competitor in each market. This means the promised benefits of competition, including lower prices, greater innovation and better service may never be realized by most consumers.

S. 565 sets arbitrary limits on punitive damages and eliminates joint and several liability for non-economic damages. This bill will restrict the ability of injured consumers to obtain full and fair compensation for their injuries, and for juries to act to prevent further wrongdoing.

The Arizona Consumers Council which represents consumers in all countries of the state and was organized in 1966 is also a member of Consumer Federation of America, who represent 50 million consumers nationwide, we urge you to opposed S. 652. and also S. 565.

Sincerely,

PHYLLIS ROWE,
President.

CONSUMER FEDERATION OF CALIFORNIA,
Westminster, CA, April 18, 1995.

Re Opposition to S. 565 and S. 454.

Senator BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On behalf of the Consumer Federation of California, I wish to express strong opposition to S 565, the ''Product Liability Fairness Act of 1995.'' Injured consumers would not be able to obtain full and fair compensation if this legislation is passed.

The two major provisions of this legislation would have a far reaching, negative impact on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Consumer Federation of California also urges you to oppose S. 454, ''The Health Care Liability and Quality Assurance Act'' which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of the consumer to be compensated fully for injuries and to act to prevent further wrong doing.

Sincerely,

Dr. REGENE L. MITCHELL,
President.

MOTOR VOTERS,
Sacramento, CA, April 19, 1995.

Re S. 565: Oppose.

Hon. DIANE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Motor Voters is a non-profit, non-partisan auto safety organization founded in Lemon Grove, outside San Diego, in 1979.

This letter is to urge you to oppose S. 565, the product liability measure. Our members include parents of children who suffered permanent, debilitating brain injuries or who were killed due to the deliberate disregard of auto manufacturers.

It would be impossible to tell you how strongly those parents feel that companies need to be held accountable for their actions. In fact, they wish to see the law strengthened to provide for felony criminal penalties for corporate executives who knowingly market unsafe products.

Corporate executive are too insulated from the damage they inflict upon their customers and the public at large. If they were more personally accountable, it would provide a desperately needed incentive for them to consider more than their bottom line.

In the absence of criminal penalties, the only hope we have of curbing rampant corporate misconduct is through product liability laws. It is appalling that special interests are seeking to restrict remedies in consumers' court of last resort. The ''loser pays'' concept is particularly pernicious, as it entirely ignores the unequal footing of the two

parties. Individuals already risk a great deal when they sue a giant corporation, and experience tremendous stress. A family with a brain-injured child has enough to worry about without the danger that, if their attorney makes a mistake, they can be totally impoverished.

Ironically, many advances in safety technology, spurred by lawsuits, end up benefiting everyone—including companies. For example, here in California, many former defense contractors are converting to making auto safety components such as air bags. The demand for improved safety is spawning an entire new industry and creating new, high-tech jobs. It is time to move forward, not back.

For all of the above reasons, I urge your ''no'' vote on S. 565.

Sincerely,

ROSEMARY SHAHAN,
President.

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP,
Los Angeles, CA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote ''No'' on S. 565.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN, We are writing on behalf of CALPIRG's members, and on behalf of all residents of California to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, CALPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MARY RAFTERY,
Legislative Director.

COALITION FOR ACCOUNTABILITY & JUSTICE,
April 21, 1995.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CAMPBELL: We, the undersigned individuals and organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Colorado.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving ''non-economic'' damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tier system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Colorado exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protection for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill. Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Julie Shiels, Son killed by defective bunkbed; International Steelworkers Union, Local 2102; Coalition of Silicon Survivors; DES Action, Colorado Chapter; Denver United Auto Workers; ACLU of Colorado; Gray Panthers of Denver; Colorado Public Interest Research Group (CoPIRG); Clean Water Action, Colorado Chapter; Ann Ives, Silicon breast survivor, DES survivor; Oil, Chemical & Atomic Worker International Union, AFL–CIO; Colorado Senior Lobby.

COLORADO PUBLIC INTEREST RESEARCH GROUP,
Denver, CO, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote No. on S. 565.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR NIGHTHORSE CAMPBELL: We are writing on behalf of COPIRG's members, and on behalf of all residents of Colorado to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, COPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

RICHARD MCCLINTOCK,
Executive Director.

CONNECTICUT PUBLIC INTEREST RESEARCH GROUP,
Hartford, CT, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote ''No'' on S. 565

Hon. CHRIS DODD,
U.S. Senate
Washington, DC.

DEAR SENATOR DODD: We are writing on behalf of ConnPIRG's members, and on behalf of all residents of Connecticut to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, ConnPIRG is a statewide; nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its cap on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

JAMES AMSPACHER,
Organizing Director.

CONNECTICUT CITIZEN ACTION GROUP,
West Hartford, CT.

Senator CHRISTOPHER DODD,
Senate Office Building,
Washington, DC

DEAR SENATOR DODD: On behalf of the Connecticut Citizen Action Group, I'm asking you to oppose Senate Bill 565 and to vote against cloture. S. 565, called the ''Product Liability Fairness Act'' does nothing to protect consumers. Instead, it lets corporate wrongdoers off the hook when they produce products that injure consumers.

First, this bill sets arbitrary caps on punitive damages of $250,000 or three times the out-of-pocket expenses. Ordinary citizens serving on juries use these awards to punish and deter outrageous and dangerous behavior by corporations.

Second, this bill makes it more difficult for victims with less earning power—particularly seniors, women and children—to recover the fair cost of their injuries. Consumers and workers injured through no fault of their own, but by the actions of more than one wrongdoer would have to prove the degree of fault of each liable party. If any wrongdoer were unable to pay its share, the injured consumer would have to bear the cost.

Senator Dodd, these reforms are wrong-minded. They imperil ordinary consumers and we ask that you work to defeat such measures. Again, please vote against S. 565 and against cloture.

GREGORY HADDAD,
Legislative Director.

DELAWARE COALITION FOR ACCOUNTABILITY AND JUSTICE,
April 24, 1995.

Hon. WILLIAM ROTH,
Hon. JOSEPH BIDEN,
U.S. Senate,
Washington, DC.

DEAR SENATORS: We, the undersigned individuals and organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Delaware.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages, and deterring harmful behavior. By giving ''noneconomic'' damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Delaware exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuse or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 959, in addition to the provisions outlines above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Edward Cahill, State Director, Delaware AARP; Edward Peterson, President, Delaware AFL–CIO; Deirdre O'Connoll, Executive Director, Women and Wellness; Rick Crawford, President, Building Trades Council of Delaware; Debbie Heaton, President, Delaware Sierra Club; Til Purnell, Executive Director, Save Wetlands and Bays; Amos McCluney, Jr., President, Delaware Council of Senior Citizens; May Northwood, President, Delaware Federation of Women's Clubs;[1] Maureen Lauterbach, Women and Wellness and National Breast Cancer Coalition;[1] Don Cordell, President, United Auto Workers Local 1183; Ann Rydgren, President, Delaware Audubon Society.

CONSUMER FRAUD WATCH,
Tallahassee, FL, April 19, 1995.

Senator CONNIE MACK,
U.S. Senate,
Washington, DC.

DEAR SENATOR MACK: I want to express our strong opposition to S. 565, the ''Product Liability Fairness Act of 1995''. This bill would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, ''The Health Care Liability and Quality Assurance Act'' which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely,

WALTER T. DARTLAND,
Executive Director.

FLORIDA CONSUMER ACTION NETWORK,
Tallahassee, FL, April 24, 1995.

Senator BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: The Florida Consumer Action Network (FCAN) is requesting that you vote ''NO'' on Senate Bill 565, the Product Liability Bill. Additionally, we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the more than 40,000 families that are members of FCAN and on all Florida consumers.

By capping punitive damages at $250,000 or three times the economic loss (whichever is greater) the legislation removes the punitive impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages rather than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of Florida's consumers. We again ask for

[1] For identification purposes only. Endorsements are by the individual, not the organization.

your vote against S. 565 and against cloture in the upcoming debate.

Sincerely,

MONTE E. BELOTE,
Executive Director.

FLORIDA PIRG,
FLORIDA PUBLIC INTEREST RESEARCH GROUP,
Tallahassee, FL, April 24, 1995.

Re Protect Victims of Dangerous Products, Oppose Cloture and Vote No on S. 565.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: We are writing on behalf of Florida PIRG's members, and on behalf of all residents of Florida to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Florida PIRG is a statewide, nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANN WHITFIELD,
Executive Director.

CITIZEN ACTION,
Atlanta, GA, April 18, 1995.

Hon. PAUL COVERDELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR COVERDELL: On behalf of the 40,000 members of Georgia Citizen Action, I am writing to express our opposition to S. 565 and to urge you to vote against cloture.

S. 565, the Product Liability Fairness Act of 1995, is anything but fair to consumers. In fact, it will effectively leave citizens unprotected against the manufacture and sale of hazardous or defective products. Capping punitive damages at $250,000 or three times economic loss defeats the purpose of punitive damages, which is to punish for a wrongdoing. Multi-million dollar corporations will consider these caps merely the cost of doing business, rather than a punishment for injuring unsuspecting consumers, and consequently, punitive damages will no longer serve as a deterrent to irresponsible and unscrupulous companies who would manufacture or sell harmful products.

Additionally, the provisions to eliminate joint and several liability for non-economic damages discriminates against women, children, and senior citizens as they are less likely to recover high economic damages (i.e. lost wages). Joint and several liability ensures that the parties at fault pay, not the victim, and by eliminating this, those victims who suffer loss of reproductive capacity, disfigurement, or loss of sight, for example, could be further wronged by not being able to recover the full amount of their awarded damages.

For these reasons, Georgia Citizen Action strongly urges you to oppose S. 565 and to vote against cloture. Please inform us of your actions regarding this bill.

Sincerely,

LORI GLIDEWELL,
Director.

CITIZEN ADVOCACY CENTER,
Elmhurst, IL, April 20, 1995.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: The Citizen Advocacy Center, a non-partisan, not-for-profit organization in DuPage County, is dedicated to building democracy for the 21st century. We promote good citizenship, participation in civic affairs, access to justice, and accountability of local governments to the citizens of the western suburbs of Chicago. We are writing to urge you to vote ''no'' both on the upcoming cloture vote of S. 565, and the vote on the merits. We oppose any legislation that makes access to justice more difficult for individual citizens.

As you know Senator Braun, the large crossover vote in the western suburbs of Chicago, particularly the crossover vote of women, helped to elect you to represent our interests in the United States Senate. We expect you to make access to justice easier, not more difficult, for consumers viciously injured by defective products. The provisions of S. 565 are an undisguised attempt to take control and common sense away from Illinois citizens in the jury box and to replace it with Washington-dictated arbitrariness designed to protect and payback the business interests that have paid so handsomely for this legislation. In particular, we find the provisions of S. 565 do great damage to women—and as one of the few women Senators, we frankly expect you to take a good hard look at how the specific provisions of this bill will prevent women with low economic damage awards from being adequately compensated for lifelong injuries caused by corporate greed.

Moreover, after last Sunday's Chicago Tribune Magazine cover story, it seems that you are burnishing your business image after having recently secured a seat on the Finance Committee. Nonetheless, Illinois voters remember that last year you voted against a less damaging products liability bill, and a flip-flop vote now will look like you are selling out ordinary citizens and consumers to cozy up to business interests. We are happy that you have won a seat on the committee, but we expect you to use that seat to remain true to the agenda that put you in the Senate in the first place. Please do not sell out the citizens of Illinois.

Very truly yours,

THERESA AMATO,
Executive Director,
Citizen Advocacy Center.

CHICAGO AND CENTRAL STATES JOINT BOARD, ACTWU, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION,
Chicago, IL, March 31, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: On behalf of the members of our union we urge you to vote against consideration of any legislation that lessons the financial responsibility of corporate polluters or manufacturers of dangerous products. These, so called, efforts at ''tort reform'' are more aptly known as the Wrongdoer Protection Act.

Furthermore, these attempts at reform are plainly anti-workers and anti-consumer.

Your opposition to the more onerous parts of these tort reforms proposals is not enough. Your leadership is needed to stop passage of any restrictions limiting the access of consumers and workers to the courts.

Your leadership against these tort restrictions can send a positive signal that you stand on the side of workers and consumers.

Sincerely,

JAMES K. TRIBBLE,
International Vice President.
RONALD WILLIS,
Manager, ACTWU, Chicago and Central States Joint Board.

PUBLIC ACTION,
Chicago, IL, April 24, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: Illinois Public Action is requesting that you vote ''NO'' on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the 215,000 families that are members of Public Action and on all Illinois consumers.

By capping punitive damages at $250,000 or three times the economic loss (which ever is greater), the legislation removes the punitive impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of the damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of the Illinois public. We again ask for your vote against the bill and against cloture in the coming debate.

Sincerely,

ROBERT B. CREAMER,
Executive Director.

ILLINOIS PIRG, Illinois Public INTEREST RESEARCH GROUP,
Chicago, IL, April 24, 1995.

Re: Protect Victims of Dangerous Products, Oppose Cloture and Vote No on S. 565.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Wshington, DC.

DEAR SENATOR MOSELEY-BRAUN: We are writing on behalf of Illinois PIRG's members, and on behalf of all residents of Illinois to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Illinois PIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has

fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DIANE BROWN,
Executive Director.

IOWA CITIZEN
ACTION NETWORK,
Des Moines, IA, April 14, 1995.

Hon. TOM HARKIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HARKIN: We are writing to communicate ICAN's views about the so-called Products Liability ''Fairness'' Act—S. 565. It is our understanding that S. 565 is set for two weeks of debate on the Senate floor, beginning on or about April 24.

We are pleased that you have indicated that, as in the past, you will lead the fight against this legislation. We heartily commend your determination to use all means available to keep the bill from coming to a vote on final passage.

S. 565 is a bill that would produce extremely detrimental consequences for citizens, workers, and consumers. There are a number of objectionable provisions in the legislation, but for the purposes of this letter we would like to focus on provisions relating to joint and several liability and punitive damages.

As you know, S. 565 eliminates joint and several liability for non-economic damages. This clearly discriminates against women, children, senior citizens, persons with disabilities, the poor, and low-wage workers, who more often receive the bulk of compensation for their injuries due to sustained non-economic losses, such as loss of reproductive capacity, loss of vision, disfigurement, etc. S. 565 treats these first rate members of society as second class citizens.

Under current Iowa law, in cases where more than one party is found to have been at fault in causing a plaintiff's injuries, a guilty party that caused more than 50% of the harm can be held jointly and severally liable for damages. S. 565 would supersede Iowa law, making it more likely that injured parties would be forced to forego amounts of compensation for their non-economic losses when one or more of the defendants are unable to pay. This Washington-Knows-Best bill reshuffles the cards and stacks the deck against plaintiffs in Iowa.

S. 565 also imposes an arbitrary and unreasonable cap on punitive damages that would undermine the important deterrent effect which these damages have on corporate wrongdoers. This is unnecessary and rash in light of the fact that punitive damages in product liability cases are rare but have made Americans much safer.

The bill limits punitive damage judgments to the greater of three times the amount of economic losses or $250,000. Once again, this provision is a slap in the face to women, children, senior citizens, persons with disabilities, the poor, and low-wage workers. And the provision sends a warped message to corporate wrongdoers: If you injure a woman, a child, an elderly grandparent, a disabled person, or a minimum wage worker, you are likely to be punished less than if you injure a corporate CEO. The consequences of such a legal policy would be lethal to many average Americans.

In addition, S. 565 imposes an unreasonable standard of ''conscious flagrant indifference to safety'' for assessment of punitive damages. A defendant whose conduct was merely ''reckless'' or ''wanton'' would escape punitive damages. If the superheightened punitive damage standards in S. 565 had applied to the Exxon-Valdez case, Exxon would probably not have paid a dime in punitive damages since the punitive damages were awarded for ''reckless'' conduct. Moreover, proving a corporate defendant's ''state of mind'' would be next to impossible in most product liability cases.

S. 565 is imprudent and unwarranted legislation. Product liability tort filings make up an extremely small percentage of all civil filings and the number of product liability filings has been steadily declining. We are mobilizing concerned citizens in Iowa to oppose this bogus bill.

We are grateful for your leadership in opposing this legislation. Please let us know whether and how we can provide any information or assistance to support your efforts.

Your commitment to civil justice for all Americans is greatly appreciated.

Respectfully,

STEVE SIEGEL/BL
President.
BRAD LINT,
Executive Director.

UAW SUB-REGIONAL OFFICE
REGION 4,
Des Moines, IA, April 20, 1995.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: On behalf of the UAW men and women who live, work, and vote in Iowa, I am writing to express our opposition to S. 565—the so-called Products Liability ''Fairness'' Act. This legislation is grossly unfair and one-sided.

S. 565 would, without a doubt, take away the right of workers to hold large corporations fully accountable for the injuries they cause when they manufacture and sell defective products—including dangerous workplace machinery. Employers claims, however, appear to be unaffected by the law—only workers would lose their right to be heard.

S. 565 sets up a series of hurdles and obstacles to the ability of injured workers and consumers to recover from the manufacturers of defective products. In fact, under the bill's statute of repose, workers injured by defective machinery more than twenty years old could not recover *at all,* but businesses apparently could recover all their losses—including lost profits.

S. 565 would also cap punitive damages far below the point of effectiveness. If the bill becomes law it would be much more difficult for ordinary Iowans to punish and deter corporate misbehavior, even when they are maimed or killed by the recklessness or negligence of a corporation.

In summary, S. 565 is unfair to workers and consumers. The UAW is delighted that you will be voting against cloture during debate and, if needed, against the bill on final passage.

Thank you for your firm commitment to civil justice for workers and consumers.

Respectfully,

CHUCK GIFFORD,
President.

IOWA STATE COUNCIL
OF SENIOR CITIZENS,
Waterloo, IA, April 20, 1995.

Hon. TOM HARKIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HARKIN: I am writing to express our concern about S. 565—the so-called Products Liability ''Fairness'' Act. The Iowa State Council of Senior Citizens believes the bill to be unfair to senior citizens and we are grateful for your announced opposition to it.

It is my understanding that S. 565 eliminates joint and several liability for non-economic losses. Senior citizens do not generally incur substantial economic losses when they are injured by defective products. They tend to receive compensation for non-economic losses resulting from disfigurement, loss of vision, pain and suffering, etc.

Under S. 565 when multiple parties are found to have caused the harm to an injured consumer the amount of compensation for non-economic losses would, without exception, be reduced when one or more of the at-fault parties is unable to pay. This situation would be worse than current Iowa law where injured consumers can at least recover non-economic damages jointly and severally whenever one of the parties at fault is more than 50% responsible for the harm caused to the injured consumer.

It is also my understanding that S. 565 limits punitive damages in product liability cases to the greater of three times the amount of economic losses or $250,000. This provision also discriminates against senior citizens. Again, since seniors do not usually have large economic losses, corporate wrongdoers who injure a senior are likely—if their misconduct was bad enough to warrant punitive damages—to be punished less than if they injure a corporate executive who has large earnings. Is this wise legal policy?

The Iowa State Council of Senior Citizens believes that, taken together, these two discriminatory provisions could lead to less safe medical devices and consumer products primarily manufactured for use by senior citizens. Women, children, disabled persons, and low-wage workers are also likely to be adversely affected by these ill-conceived provisions.

S. 565 could have a devastating effect on the economic security and safety of older Iowans. The Iowa State Council Citizens is glad you will oppose S. 565 during the coming Senate debate by voting against cloture and, if necessary, against the bill.

Thank you for your considerate attention to our point of view. Please let us know if we can be of any further assistance.

Respectfully,

FRANK ALEXANDER,
President.

CITIZEN ACTION,
Louisville, KY, March 14, 1995.

Hon. MITCH MCCONNELL,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of Kentucky Citizen Action, I would like to express our strong opposition to the so-called ''Product Liability Fairness Act'', S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a ''moderate'' light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of $250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 25 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting ''No'' on cloture.

Sincerely,

LORI EVERHART,
State Director.

CITIZEN ACTION,
Baton Rouge, LA, April 14, 1995.

Hon. JOHN BREAUX,
U.S. Senate,
Washington, DC.

DEAR SENATOR BREAUX: On behalf of our members, your constituents, Louisiana Citizen Action once again asks that you vote ''No'' on S. 565 and ''No'' on cloture. We strongly believe that it is your responsibility to hold negligent businesses accountable to the public.

By setting caps on punitive damages, S. 565 would send a clear message that corporations do not really have to worry about liability for dangerous products and practices. Punitive damages, after all, were meant to be deterrents to corporate misconduct.

This law, which favors the financial interests of big business over protecting the public, is especially threatening to the most vulnerable—women, children, and seniors. Elimination of joint and several liability for non-economic damages deeply undervalues the impact of injuries upon these citizens.

Please take a firm stand to support fairness and responsibility in our judicial system. We will be happy to inform our members when you vote no to S. 565 and no to cloture. Thank you for your consideration on this issue.

Sincerely,

PAULA HENDERSON,
State Director.

MAINE PEOPLE'S ALLIANCE.
April 21, 1995.

Senator OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: As you know, debate will begin next week on the Rockefeller-Gorton Bill (S. 565). We wanted to write you in hopes that with your concern for the citizens of Maine—particularly women, children and other economically underprivileged—you will join with us in opposition to that bill. The Contract With America effort is bulldozing ahead with legal reforms that only benefit the manufacturers of defective products.

The bill's supporters claim it is designed to reduce the ''explosion'' of product liability lawsuits, but there is no evidence suggesting that such a problem exists. In fact, close study of 30 years of case law in Maine reveals that punitive damages have been awarded in only three cases. At $250,000, companies will not be deterred and will simply write the cost of a punitive damage award into the cost of doing business.

An especially worrisome provision of this bill will be the elimination of joint and several liability for non-economic damages. Since women, seniors, and children are more likely to suffer non-economic injuries than high economic injuries (e.g. lost wages), the elimination of joint and several liability discriminates against them. This provision basically states that corporations which manufacture child car seats or children's pajamas can be less careful than manufacturers of golf carts.

As you know, our organization has differed with you on some issues in the past, however we know that you will join with us in opposing this tort reform effort. The notion of Federal Legislation that would preempt the ability of states like Maine to hold wrong doers accountable and deter their future wrongdoing is unacceptable. As you know our organization has had differences with you in the past, but we hope that you will join us in standing against the bill. All Mainers, especially those without the largest salaries (especially women and children) deserve access to a fair and supportive legal system.

Sincerely,

JOE DITRE,
Executive Director.

CITIZEN ACTION,
Bethesda, MD, April 17, 1995.

Hon. BARBARA MIKULSKI,
Hart Building,
Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of Maryland Citizen Action and our 50,000 members I am writing to urge you to oppose ''The Product Liability Fairness Act'' (S. 565). Please vote pro-consumer and against cloture when this bill comes up in the Senate. If enacted the most vulnerable citizens in our state would be further disadvantaged and the rights of consumers to hold irresponsible manufacturers accountable for their wrongful behavior would be severely limited.

As a champion of women's health, working people and children, I am sure you know that these groups are disproportionately affected by faulty products—breast implants, asbestos, and flammable pajamas to name just a few. S. 565 limits the ability of these people to collect fair compensation for their injuries or losses because it would eliminate joint and several liability for non-economic damages. Under current law, a plaintiff is paid only once, and the cost is covered by the wrongdoers who contributed to the victim's loss. Under S. 565, non-economic damages, such as a women's loss of fertility or a worker's loss of a limb, would not be fully compensated if one of the wrongdoers is unavailable or insolvent. The victim would be forced to carry the burden.

S. 565 also imposes a cap on punitive damages ($250,000 or 3 times economic damages) which undermines the important deterrent effect that these damages have on corporate wrongdoers. Under our current system punitive damages are often the only means available to deter irresponsible behavior such as that exhibited by Dow Corning when it knowingly sold hundreds of thousands of faulty and dangerous breast implants to women. Under S. 565, large corporations, such as Dow Corning, may find it more cost effective to continue their harmful behavior and risk paying punitive damages.

Please stand up for consumers in Maryland by opposing S. 565 and voting against cloture. We are counting on your admirable leadership and your great fighting spirit to halt the current attack on average consumers, women, families and children.

Please let me know how you intend to vote.

Sincerely,

SHELLI CRAVER,
Director, Maryland Citizen Action.

MARYLAND STATE TEACHERS ASSOCIATION—NEA,
Baltimore, MD, March 29, 1995.

Hon. PAUL S. SARBANES,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: The Maryland State Teachers Association has very strong reservations about the so-called ''Common Sense Legal Reforms Act,'' which the Senate appears to be rushing forward without full debate or careful analysis. We urge you to vote against this bill as anti-consumer legislation.

We see this bill as restricting the ability of injured consumers and workers to obtain full and fair compensation for such injuries. While all of us have a stake in making sure that frivolous law suits become less common than they appear to be, we also all have a stake in making sure that individuals maintain rights to protest and recover damages from product manufactures which have been shown to be dangerous.

Therefore, I urge your opposition to this and similar legislation.

Yours truly,

KARL K. PENCE,
President.

MARYLAND PUBLIC INTEREST RESEARCH GROUP,
Baltimore, MD, April 24, 1995.

PROTECT VICTIMS OF DANGEROUS PRODUCTS—OPPOSE CLOTURE AND VOTE ''NO'' ON S. 565

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MIKULSKI: We are writing on behalf of MaryPIRG's members, and on behalf of all residents of Maryland to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights

of victims of dangerous and defective products. As you know, MaryPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DANIEL PONTIOUS,
Executive Director.

APRIL 24, 1995.

Hon. BARBARA A. MIKULSKI,
Hon. PAUL S. SARBANES,
U.S. Senate,
Washington, DC.

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Maryland.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving ''non-economic'' damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Maryland exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Jennifer L. Marshall, Coalition for Accountability and Justice; Anne D. LoPiano, Law Foundation of Prince George's County, MD Inc.; Nancy Davis, Maryland Sierra Club; Ken Reichard, United Food and Commercial Workers, Local 400; Cynthia K. Bailey, LCSWC, Sexual Assault/Domestic Violence Center, Inc.; Dru Schmidt-Perkins, Clean Water Action; Dr. Leonardo Ortega, Health Education Resource Organization—HERO; Michele Douglas, Planned Parenthood of Maryland, Inc.; Dan Pontious, Maryland PIRG; Bob Turner, Teamsters Joint Council No. 62; Paul Safchuck, White Lung Association & National Asbestos Victims; Woody McNemar, International Brotherhood of Electrical Workers, Local 24; Kathleen Cahill, Maryland Employment Lawyers Association; Margaret Morgan-Hubbard, Environmental Action Foundation.

JOBS WITH JUSTICE,
Combridge, MA, April 21, 1995.

Senator EDWARD KENNEDY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KENNEDY: We, the undersigned supporters of Jobs With Justice, a workers' rights coalition, are extremely concerned about the negative effects on the rights of workers and consumers which will result from proposals before the Senate to change the civil justice system. We urge you to oppose these proposals, particularly the ''Product Liability Fairness Act,'' (S. 565) cosponsored by Senators Rockefeller and Gorton, and to oppose cloture, for the following reasons:

Elimination of Joint and Several Liability for Non-Economic Damages—The Rockefeller/Gorton bill would shift costs from parties that caused injuries to injured workers and consumers. By eliminating joint and several liability for non-economic damages, injured workers and consumers whose compensation includes losses related to lifelong excruciating pain, loss of fertility, loss of mobility, and disfigurement may be left to bear the cost of those injuries. Joint and several liability requires that those judged responsible for an injury be responsible for paying the costs of that injury. Elimination of it for non-economic damages unfairly hurts workers and consumers, especially those who don't earn high incomes or are older since their damages often are mostly non-economic.

Caps On Punitive Damages—Rockefeller/Gorton would limit punitive damages to $250,000 or three times economic damages, whichever is greater, and would make it much harder to impose them. Punitive damages, though rarely awarded, are a powerful tool in preventing repetition of preventable injuries. Limiting them would lessen the motivation of corporations to make safe products. As a result, more workers and consumers will be injured.

Statute of Repose—This would make it impossible for a worker injured by defective machinery and equipment to receive compensation from the manufacturer if the machinery and equipment had been on the market for twenty years.

For the above reasons, we urge you to protect workers and consumers by opposing the Rockefeller/Gorton bill and similar legislation and to oppose cloture.

Sincerely,

Juana Hernandez, Staff, Immigrant Workers Resource Ctr.; Melanie Kasperian, Vice President, Mass Teachers Association; Edward Kelly, Executive Director, Citizen Action of Massachusetts; Miles Calvey, Business Manager, I.B.E.W. Local 2222; Phil Mamber, President, United Electrical Workers, District 2; John Williams, Executive Director, Mass. Toxics Campaign; John Murphy, Secretary Treasurer, Teamsters Local 122; Richard Reardon, Business Agent, Teamsters Local 25; John O'Connor, Executive Director, Jobs & Environment Campaign; Rand Wilson, Director, Massachusetts Jobs with Justice.

CITIZEN ACTION,
Cambridge, MA, April 20, 1995.

Senator JOHN KERRY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KERRY: On behalf of the members of Citizen Action of Massachusetts, I strongly urge you to oppose S. 565, and similar product liability bills, and to vote against cloture on them.

There is no ''litigation explosion.'' Defective products cases represent less than one-hundredth of one percent of the total caseload in state courts, according to the National Center for State Courts. Since 1990, total state tort filings have decreased. Nor have punitive damage awards been widespread. Between 1965 and 1990, punitive damages were awarded in less than 15 products liability cases each year, one quarter of which involved asbestos.

S. 565, and similar bills make it more difficult for consumers who obtain an award of damages caused by irresponsible corporate behavior from actually collecting those damages where more than one corporation is responsible for their injuries. In addition S. 565 and similar bills seek to drastically limit the ability of citizen juries to award punitive damages: the kind of damages which deter the production and marketing of unsafe products. At time of decreasing regulatory oversight, the possibility of punitive damages represents a vital pro-consumer bulwark against unsafe and defective products. Punitive damages, because they can be high,

make corporations take notice and treat product safety seriously.

S. 565 and similar bills are irresponsible and anti-consumer. I strongly urge you to oppose them and to vote against cloture.

Sincerely,

EDWARD F. KELLY,
Executive Director.

MASSACHUSETTS PUBLIC INTEREST RESEARCH GROUP,
Boston, MA, 24 April 1995.

Hon. JOHN KERRY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KERRY: We are writing on behalf of MASSPIRG's members, and on behalf of all residents of Massachusetts to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, MASSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DEIRDRE CUMMINGS,
Consumer Program Director.

MICHIGAN CONSUMER FEDERATION,
April 18, 1995.

Hon. CARL LEVIN,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEVIN: I appreciated meeting you at the ''Teddy Bear Clinic'' where you so ably pointed out the threat to public safety posed by the Republican's ''regulatory moratorium.'' Your leadership for consumer safety has always been appreciated.

We need your leadership in another consumer safety area—products liability. With federal cutbacks in regulatory programs, we look to the legal system as one of the few effective means of improving product safety. Time and time again, it has been private lawsuits—or the perceived threat of lawsuits—which has forced corporations to either remove defective products from the marketplace or improve them.

I know you are a fan of ''cost-benefit'' analyses. So are manufacturers. In a well-known memo, Ford Motor Company calculated that it would cost more to prevent Pintos from exploding than it would pay out in legal expenses. Consequently, many Pinto owners were incinerated. Why would we want to cap the only means of making ''cost-benefit'' assessments favor consumer safety?

The Michigan Consumer Federation is a member of the Consumer Federation of America. Annually, CFA bestows its highest honor for consumer advocacy—the Philip A. Hart award. We are proud that the nation's largest and most respected consumer organization recognized a Michigan giant and former United States Senator for its most prestigious award. That places a great deal of responsibility for those of us in Michigan.

S. 565 isn't about fairness. It's about corporations wanting to ''get away with murder.'' Let's not tilt the playing field in their favor. Vote for a strong system of individual legal rights for victims of corporate wrongdoing. It helps make products safer for all of us.

Sincerely,

RICK GAMBER,
Executive Vice President.

CITIZEN ACTION,
East Lansing, MI, April 24, 1995.

Senator SPENCER ABRAHAM,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the 300,000 members of Michigan Citizen Action, I want to express our strong opposition to the so-called ''Product Liability Fairness Act.'' I urge you to vote against efforts to move this anti-consumer, anti-worker legislation.

There are three major provisions in S. 565 which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, S. 565 eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Third, S. 565 prevents workers and consumers—but not businesses—from recovering for losses caused by defective machines or products over 20 years old.

I urge you to act to prevent passage of this legislation which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing. this bill is not in the best interest of Michigan residents. Vote ''NO'' on cloture and ''NO'' on the bill.

Yours Truly,

LINDA A. TEETER,
Program Director.

PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN,
Ann Arbor, MI, April 25, 1995.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN. We are writing on behalf of PIRGIM's members, and on behalf of all residents of Michigan to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PIRGIM is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the right of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from the dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

TIMEEN WEGMEYER,
Campaign Director.

MINNESOTA COACT,
St. Paul, MN, April 24, 1995.

Senator PAUL WELLSTONE,
Hart Office Building,
Washington, DC.

DEAR SENATOR WELLSTONE: On behalf of Minnesota COACT's 40,000 statewide members, I am writing to urge you to vote ''no'' on S. 565 and to vote against cloture. As a national leader in the fight for health care reform, you probably recognize that this legislation will seriously undermine the ability of consumers to be protected from and compensated for medical malpractice negligence.

By capping the punitive damages at $250,000 or three times the economic loss (whichever is greater), S. 565 restricts a person's ability to obtain full and fair compensation and dramatically reduces the ability to deter future wrongdoing.

Furthermore, S. 565 eliminated joint and several liability for punitive damages and non-economic loss but not for economic damages. This distinction will aggravate the disparity in awards between high-income earners and low-income earners.

Medical malpractice causes 80,000 deaths and up to 300,000 serious injuries each year according to a recent Harvard Medical Practice Study. For the health and safety of consumers throughout Minnesota, please vote ''no'' on S. 565 and vote against cloture on the Senate floor.

Sincerely,

JON YOUNGDAHL,
Executive Director.

MISSOURI CITIZEN ACTION,
April 24, 1995.

Senator JOHN ASHCROFT,
Senate Office Building,
Washington, DC.

DEAR SENATOR ASHCROFT, Missouri Citizen Action strongly urges you to vote ''no'' on Senate Bill 565. In addition, we urge you to vote against cloture when the bill is debated on the Senate floor. As Missouri's largest consumer coalition, we can tell you that this bill could have a major negative impact on the rights, and lives, of the tens of thousands of Missouri consumers and families which we represent.

Caps on punitive damages, such as those in S.B. 565, gut the ability of our civil justice system to threaten real punishment of those whose negligence or greed may tempt them to put a product on the market which could injure us or our family members. Without the threat of real punitive damages, these potential corporate wrongdoers will see damages awards as just another predictable cost of doing business, to be factored into the price of a defective product.

The elimination of joint and several liability for non-economic damages will, likewise, have a negative effect on average Missourians. This provision of S.B. 565 strikes especially at women, children, and seniors.

Clearly this legislation is not in the interest of working Missourians. It is merely an attempt to shield wrongdoers from the consequences of their actions. In that you have consistently voiced a strong opinion in favor of ''getting tough'' on criminals who prey on our communities, we believe that it would be inconsistent on your part to now vote to protect those whose potential to harm innocent victims in the pursuit of profit. Once again, we urge you to vote ''no'' on S.B. 565, and to vote against cloture.

Sincerely,

PATRICK HARVEY,
Executive Director.

CITIZEN ACTION,
Lincoln, NE, March 28, 1995.

Senator BOB KERREY,
Hart Office Building, Washington, DC.

DEAR SENATOR: As director of Nebraska Citizen Action, with over 8,000 active members, I want to express our strong opposition to the so-called ''Common Sense Legal Reforms Act.'' The Senate is rushing this bill forward without full debate or time for careful analysis. I urge you to vote against efforts to move this anti-consumer legislation forward, including procedural moves to cut off debate.

This and similar bills pending in the Senate would restrict the ability of injured consumers and workers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent future injuries.

There are two major provisions which are common to all the bills which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, all bills would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income. It defies all principals of fairness to base how we determine compensation for damages, only on a persons yearly salary.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing.

Sincerely,

WALT BLEICH,
Director.

COALITION FOR ACCOUNTABILITY & JUSTICE,
April 24, 1995.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, DC.

DEAR SENATOR EXON: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Nebraska.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving ''non-economic'' damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that has served consumers and the residents of Nebraska exceedingly well. As you noted during our meeting, your efforts at medical malpractice reform is but one example.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

One must also keep in mind that S. 565 must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. S. 565 does nothing to bring the rights and remedies available to Nebraskans up to the proposed federal standards, and yet it limits our ability to shape state law in a way that would address the unique needs and concerns of Nebraska citizens.

We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

John Hansen, President, Nebraska Farmers Union; Carol McShane, Nebraska Women's Political Network; Jared Teichmeier, President, United Rubber Workers of America Local 286; Linda Burkey, Executive Director, Nebraska Head Injury Association; Walt Bleich, Executive Director, Nebraska Citizen Action; Cristina Sherman, State Coordinator, National Organization for Women; Marv Morrison, Secretary-Treasurer, Communications Workers of America Local 7470; Marty Strange, Program Director, Center for Rural Affairs.

NEW HAMPSHIRE CITIZEN ACTION,
Concord, NH, April 20, 1995.

Senator JUDD GREGG,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GREGG: I am writing to express my concerns about S. 565—the Rockefeller–Gorton bill. The expressed goal of this bill is to reduce the supposed explosion of product liability lawsuits. It does this by effectively limiting the awards a plaintive could receive: capping punitive damages and eliminating joint and several liability.

I have three problems with this bill. First, I do not think that it will accomplish its goals. I am aware of no evidence that capping awards will in fact reduce the number of suits filed. Capping awards could in fact increase the total dollar amount of liability awards if it removes the incentive for a producer to correct a dangerous flaw in its product, such that more injuries occur and more suits are filed.

Second, I was under the impression that the Republican Party was a supporter of the rights of victims as opposed to criminals. Punitive damages are one way of compensating victims injured through criminal negligence. Protecting the assets of the perpetrator is wrong.

Third is the issue of states' rights. You and your Republican colleagues have gone on and on about returning decision making power to the states. Yet in this bill, by preempting state statutes, you would gather in to the federal government powers that have belonged to the states for over two hundred years. That, sir, is as big a flip-flop as Dick Swett ever made!

I urge you not to support this bill, and not to support any vote for cloture on debate of this bill. Thank you.

Sincerely,

ROBERT D. YAGER, M.D.,

P.S.: I have been sued and lost a case involving punitive damages. Despite that personal experience, I still think this is a bad bill.

NEW JERSEY CITIZEN ACTION,
Hackensack, NJ, April 18, 1995.

Hon. BILL BRADLEY,
Senate Office Building, Washington, DC.

DEAR SENATOR BRADLEY: New Jersey Citizen Action in requesting that you vote ''NO'' on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill is passed, it will have a devastating effect on the 115,000 families that are members of N.J.C.A.

By capping punitive damages at $250,000 or three times the economic loss (which ever is greater) the legislation removes ''the punishment'' that is supposed to be reflected in the damages. It becomes cheaper to pay the damages than to rectify the situation.

Eliminating joint and several liability for non-economic damages discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering—it could also be loss of reproductive capacity, loss of sight or disfigurement.

Obviously this bill is not in the best interests of New Jersey residents. Once again we ask you to vote ''NO'' on Senate Bill 565 and vote against cloture.

Very truly yours,

PHYLLIS SALOWE-KAYE,
Executive Director.

NEW JERSEY PUBLIC INTEREST RESEARCH GROUP,
Trenton, NJ, April 24, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: We are writing on behalf of NJPIRG's members, and on behalf of all residents of New Jersey to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, NJPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANDY IGREJAS,
Consumer Advocate.

NEW JERSEY TENANTS ORGANIZATION,
Hackensack, NJ, April 20, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The New Jersey Tenants Organization (NJTO) opposes any changes in joint and several liability and the imposition of punitive damage caps. This is not reform; it is war on consumers.

Please oppose the tort reform legislation now before the Senate and vote ''NO.''

Thank you for your anticipated stand in favor of the consumers of the State of New Jersey.

Yours truly,

BONNIE SHAPIRO,
Administrative Director.

CITIZEN ACTION OF NEW YORK,
Albany, NY, April 24, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR MOYNIHAN: We are writing to urge that you protect victims of dangerous products by voting to be sure that S. 565 never comes to the Senate floor and continuing to oppose S. 565 and any other measures that would strip victims of dangerous products, incompetent doctors or other negligent parties of their fundamental rights to justice and fair compensation.

Those who would vote for S. 565 forget the famous exploding Pinto, a traveling bomb that Ford's bean counters let stay on the road rather than spend a few dollars to fix the gas tank. They would forget the damage to women from the Dalkon shield and breast implants, products that the manufacturers knew might cause harm. They would forget those children who were horribly burned by flammable pajamas. And they would forget the thousands of workers who were exposed to asbestos decades after the manufacturers knew that the material caused cancer.

There are very few cases a year, 15, in which punitive damages are awarded. But the threat of these damages is too often the only barrier to more companies making the cold calculation that making a safe product isn't worth the cost. Artificial caps on punitive damages will result in a slap on the wrist to negligent corporations and expose American consumers to dangerous products.

The provision in S. 565 that would not allow workers or consumers to sue over damages caused by older products, but allows companies to sue, reveals the vicious anti-consumer bias of this bill. If the bill were honestly concerned about the legal system why would it allow businesses to sue but not consumers or workers? The exemption for businesses shows that the authors primary motive is to protect corporations from being punished for the harm their negligence causes to consumers and employees.

We also urge your opposition to changes in joint and several liability. This provision only increases the likelihood that a victim will not be fairly compensated for the injuries and suffering caused by negligence. Those who are the most vulnerable, women, children and the elderly, will lose the most if joint and several liability is eliminated.

Finally, we remain concerned that the Senate will consider establishing a cap on pain and suffering in medical malpractice cases. Such an action would be particularly ironic coming just after well publicized incidents of medical malpractice. The facts remain that, as the Office of Technology Assessment found in a recent report, caps on malpractice awards will have no impact on the nation's health care costs but they will save money for doctors at the expense of victims of gross malpractice.

We urge your continued vigilance on behalf of victims of negligence by voting against cloture for S. 565 and working vigorously to oppose any other measures that would gut the civil justice system.

Sincerely,

RICHARD KIRSCH,
Executive Director.

EMPIRE STATE CONSUMER ASSOCIATION,
Rochester, NY, April 19, 1995.

Hon. ALFONSE M. D'AMATO,
Hart Building, U.S. Senate, Washington, DC.

DEAR SENATOR D'AMATO: I want to express our strong opposition to S. 565, the ''Product Liability Fairness Act of 1995.'' This bill would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, ''The Health Care Liability and Quality Act'' which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely yours,

JUDY BRAIMAN.

CITIZEN ACTION,
Raleigh, NC, March 14, 1995.

Hon. D.M. LAUCH FAIRCLOTH,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR FAIRCLOTH: On behalf of North Carolina Citizen Action, I would like to express our strong opposition to the so-called ''Product Liability Fairness Act'', S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a ''moderate'' light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of $250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat of that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their

egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 24 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting ''NO'' on cloture.

Sincerely,

LORI EVERHART,
State Director.

COALITION FOR ACCOUNTABILITY AND JUSTICE,
April 4, 1995.

Hon. KENT CONRAD,
Hon. BYRON DORGAN,
U.S. Senate, Washington, DC.

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system, and to vote ''no'' on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By limiting pain and suffering damages in some cases, the bill will severely restrict awards to certain groups—including seniors, women, and children—and favor the rich who, in the case of death or serious injury, have high lost wages, over the rights of low- and middle-income wage earners. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of North Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases. Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interest in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Gerrard Friesz, North Dakota Public Employees Association.
Pam Solwey, North Dakota DES Action.
Sherry Shadley, North Dakota Clean Water Action.
Chuck Stebbins, Dakota Center for Independent Living.
Pauline Nygaard, North Dakota Breast Implant Coalition.
Don Morrison, North Dakota Progressive Coalition.
Lani Weatherly, Laborers International Union, Local 580.
Jude M. Reilly, Boilermakers Local 647.
Gary L. Nelson, Ironworkers Local 793.
John Risch, United Transportation Union.
Dexter Perkins, Sierra Club, Agassiz Basin Group.
Gary McKenzie, Plumbers and Pipefitters Local 338.
Rev. Jack Seville, United Church of Christ (organization for identification only).
Dean Cypher, Teamsters Local 116.
Al Thomas, Teamsters Local 123.
Norman Stuhlmiller, (former chairperson, Legislative Committee, North Dakota AARP).
Logan Dockter, Plumbers and Pipefitters Local 795.
Jeff Husebye, Doug Swanson, Workers Against Inhumane Treatment.

CITIZEN ACTION,
April 24, 1995.

Members of the U.S. Senate, Washington, DC:

DEAR SENATORS: I am writing on behalf of Ohio Citizen Action, Ohio's largest consumer and environmental organization, to urge Members of the Senate to oppose S. 565 and to vote against cloture. There are a number of reasons for our opposition to this bill, but we will briefly mention only two.

First, the cap on punitive damages would unquestionably undermine the potential for such assessments to truly punish wrongdoers. While punitive damage assessments are rare in product liability cases, they often are the only means for citizens to stop the reckless behavior of a wrongdoer. With the arbitrary cap, not only would future punitive damage assessments not adequately punish the wrongdoer, but companies could calculate whether it would be more cost-effective to produce a safe product or risk punitive damages.

Second, the statute of repose would deny workers and consumers their right to seek compensation if they are injured by a product that is more than twenty years old. It is, by no means, uncommon for workplace equipment to exceed this limit. At the same time, however, businesses are exempt from this restriction. The company can still sue for commercial losses.

S. 565 would be a giant step backwards in a legal system that now works reasonably well to protect average Americans. We urge you to oppose S. 565 and to vote against cloture.

Thank you for your consideration.

Sincerely,

SHARI WEIR,
Consumer Issues Director.

OHIO PUBLIC INTEREST RESEARCH GROUP,
Columbus, OH, April 25, 1995.

Hon. MIKE DEWINE,
U.S. Senate, Washington, DC.

DEAR SENATOR DEWINE: We are writing on behalf of Ohio PIRG's members, and on behalf of all residents of Ohio to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Ohio PIRG is a statewide, nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly *unfair* to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

AMY SIMPSON,
Campaign Director.

OREGON STATE PUBLIC INTEREST RESEARCH GROUP,
Portland, OR, April 25, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Washington, DC.

DEAR SENATOR HATFIELD: We are writing on behalf of OSPIRG's members, and on behalf of all residents of Oregon to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, OSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. It caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MAUREEN KIRK,
Executive Director.

VICTIMS AGAINST LETHAL VALVES,
Pittsburg, PA, April 19, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: As founder and leader of V.A.L.V. (Victims Against Lethal Valves) I am writing to you for all implanted victims of the Bjorg/Shiley ConvexoConcave heart valve to urge you to vote against bill S. 565.

We oppose this legislation as it definitely limits the rights of consumers in our civil justice system. We believe bill S. 565 is an anti-consumer legislative move that will only enhance the rights of big business, i.e., manufacturers. We believe that this bill will only encourage manufacturers to have a stronger attitude of uncaring towards the products they produce and place in the marketplace for the consumer. Today, with workers' relaxed attitudes and work ethics it would hardly be a feasible idea to give the manufacturers a freer hand in the quality control of products. This is a time when we need stronger controls over big business, not the consumer. The consumer is being hurt enough as it is with the dangerous quality of products that is being turned out to them now.

Injuries that are the result of a manufacturer's flaw should be compensated to the injured. When products are marketed as being wonderful and safe in fancy, expensive advertisements to draw in the consumer to purchase, the manufacturer should be responsible for any consequence after the sale of their product if it has been flawed from the manufacturing process.

V.A.L.V. members throughout the state of Pennsylvania strongly urge you to vote against bill S. 565 as well as similar legislation and to vote against cloture.

We thank you for considering our fears.

Respectfully yours,

ELAINE S. LEVENSON,
Founder.

CITIZEN ACTION/
PENNSYLVANIA CHAPTER,
April 21, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC

DEAR SENATOR SPECTER: On behalf of our 40,000 members in Pennsylvania, we are writing to express our strong opposition to S. 565, the so-called ''Product Liability Fairness Act'' sponsored by Senators Rockefeller and Gorton. We urge you to oppose any effort to move this anti-consumer, anti-worker legislation forward, including procedural moves to cut off debate.

S. 565 would drastically limit the ability of injured consumers and workers to obtain full and fair compensation, and would restrict the ability of citizen juries to impose adequate deterrents to prevent future injuries.

Specifically, S. 565 would place caps on punitive damage awards of $250,000 or three times economic damages. Such awards, while rare, are designed to punish corporations that intentionally or recklessly disregard the safety of consumers, and to deter other corporations from such behavior. Placing arbitrary limits on punitive damages will only serve to encourage such behavior, placing consumers at greater risk.

S. 565 would also eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of child-bearing capacity, loss of sight or limb, or disfigurement. This provision places a greater value on lost income, thereby discriminating against women, children, and senior citizens.

Finally, this bill would prevent workers and consumers—but not businesses—from recovering damages for losses caused by defective machines or products that are more than 20 years old.

We strongly urge you to protect the legal rights of consumers and workers throughout Pennsylvania by voting against passage of S. 565 and voting against cloture. Thank you for your consideration.

Sincerely,

LAUREN TOWNSEND,
Philadelphia Area Director.

JENNIFER O'DONNELL,
Pittsburgh Area Director.

PENNSYLVANIA PUBLIC INTEREST RESEARCH GROUP,
Philadelphia, PA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote No on S. 565.

Hon. ARLAN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: We are writing on behalf of PennPIRG's members, and on behalf of all residents of Pennsylvania to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PennPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability ''Fairness'' Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

STEPHANIE HAYNES,
Campaign Director.

DES ACTION,
Nescopeck, PA, April 24, 1995.

DEAR SENATOR RICK SANTORUM: On behalf of 480,000 DES exposed in Pa. we deplore you to oppose S.B. 565.

We still deserve to have a trial by jury and also awarded as they see fit. That means no PS!

Common Sense Legal Reform was written to protect major corporations and forgetting the real victims. Such as 10 million DES exposed.

Our spouses deserve to receive compensation for * * * several liability.

DES Action Pa. would urge you to prevent passage of any legislation, which would greatly restrict the ability of injured consumers to be compensated fully and * * * injured to act to prevent further wrongdoing.

Sincerely,

MARY JEAN GRECO GOLOMB.

PENNSYLVANIA AFL–CIO,
Harrisburg, PA, April 6, 1995.

Re S. 565—Product Liability.

Hon. RICH SANTORUM,
U.S. Senate, Dirkson Bldg., Washington, DC.

DEAR SENATOR SANTORUM: We are writing to urge your strong opposition to S. 565, reforms to the Product Liability Law. S. 565 will have its most dramatic effect on working men and women who are injured by defective machinery. It is our understanding that 60% of the Product Liability claims arise from workplace injuries.

First and foremost, we are concerned that weakening the Product Liability Law will undermine safety in the workplace. As a practical matter, it is the threat of a lawsuit that encourages manufacturers to design and produce safe machinery. OSHA, which could play some role, has been ineffective in regulating in this area and is likely to continue to be ineffective. We must look to the Product Liability Law as the single most important force for safety machinery in the workplace.

The specific changes proposed by S. 565 will not only undermine safety, but unfairly deny injured workers compensation for loss of body part or body function.

Several issues are of priority concern for Pennsylvania workers:

(1) *Twenty-year Statute of Repose:*

The statute of repose would deny the right to file a claim if a worker is injured by machinery more than 20 years old. Pennsylvania, as you know, is a mature industrial state. Many of our workers are working with machinery that is older than 20 years.

To cut off their rights by a fixed time limitation is artificial and will deny those injured any remedy. The age of the machine should be taken into account in determining the defect, but the proposed change is inflexible and unfair. Finally, it will create a market for used machinery rather than encourage new manufacturing of safer equipment.

(2) The overriding of both the Federal Employers' Liability Act and the Longshoremen's and Harbor Workers Compensation Act will hurt those covered by these laws in Pennsylvania—specifically our Longshoremen and Railroad and Airline workers.

(3) The elimination of joint and several liability could end up leaving injured workers with no responsible party to pay for a judgement and award.

(4) The cap on punitive damages again is arbitrary and will undermine the incentive to produce safe machinery. The cap of $250,000 is artificially low and fails to consider the reality that few punitive damages are awarded under current Pennsylvania law.

The real purpose of punitive damages is to control outrageous conduct on the part of manufacturers.

These are just some of our major concerns with S. 565.

We urge you to strongly oppose this legislation and vote in support of encouraging the manufacture of safe products. Each year, 150,000 Pennsylvanians experience serious workplace injuries and close to 5,000 occupationally caused deaths occur. Many of these injuries and diseases are caused by defective products. S. 565 will only add to the pain and suffering of those who go to work each day with an expectation of returning home safe.

Thank you.

Sincerely,

WILLIAM M. GEORGE,
President.
RICHARD W. BLOOMINGDALE,
Secretary-Treasurer.

COALITION FOR ACCOUNTABILITY & JUSTICE
April 24, 1995.

Hon. LARRY PRESSLER,
Hon. THOMAS DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of South Dakota.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving ''non-economic'' damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight and civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of South Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockfeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote ''no'' on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Mike Coffey, AFSCME; Bob Burns, South Dakota State University; Jeanne Koster, South Dakota Peace and Justice Center; Jack E. Dudley, South Dakota AFL–CIO; Roann Redlin, South Dakota Coalition Against Domestic Violence; Phyllis Bitterman, United Paperworks International Union; Karen Fogas, East River Group Sierra Club; David Feller, IBEW, Local 426; Charon Asetoyer, Native American Women's Health and Education Center; Jim Larson, UFCW Local 304A; Roann Redlin, South Dakota Advocacy Network; Sam Clauson, Black Hills Group Sierra Club; Mary Kirkus, South Dakota DES Action; Charon Asetoyer, Native American Women's Reproductive Rights Coalition; Darrell Drapeau, Yankton Sioux Tribe; Rick Davids, United Transportation Union.

CITIZEN ACTION,
Nashville, TN, April 20, 1995.

Hon. FRED THOMPSON,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR THOMPSON: Greetings from Nashville. I am director of Tennessee Citizen Action, a grassroots consumer group with over 5,000 members across the state. I am writing to express Citizen Action's strong concerns about S. 565, the product liability bill to be considered next week on the Senate floor.

It is our view that this legislation would have serious implications for the health and safety of your constituents. S. 565 would impose federal requirements, for the first time in over two hundred years, on an area which has been under state authority. In doing so, we believe that it would limit both the ability of injured consumers to obtain fair compensation and the ability of citizen juries to hold guilty parties accountable for their actions. As a result, the incentives which have convinced many companies to improve the safety of their products will be lessened.

While there are a number of troubling provisions in S. 565, I would like to raise two key issues. First, the bill would destroy the ability of citizen juries to impose penalties on wrongdoers in order to prevent future injuries. Punitive damages are rarely used. In fact, over the last 25 years, punitive damages have been awarded in less than 15 cases each year (less than 11 cases excluding asbestos cases). But punitive damages have proven to be critical in persuading manufacturers to improve the safety of their products or remove unsafe products from the marketplace. By placing arbitrary caps on awards, S. 565 would make it virtually impossible for citizen juries to act to protect society from future harm. At a time when Congress is considering limits on federal regulation, it makes little sense to further erode the ability of people to use the courts as a way to improve the safety of the marketplace.

Second, S. 565 would establish a discriminatory legal system in which the level of compensation is based not on the level of the injury, but on the economic status of the injured consumer. By eliminating joint and several liability for non-economic damages, the bill states that it is not important to compensate individuals for having to live with excruciating pain, disfigurement, blindness, or loss of the ability to bear children.

Given these and other provisions, Tennessee Citizen Action believes that the passage of S. 565 would be detrimental to consumers and the nation. We appreciate your consideration of our views and look forward to learning your position on these important issues.

Sincerely,

C. BRIAN MCGUIRE,
State Director.

TEXAS CITIZEN ACTION,
Austin, TX, April 23, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: We are writing you to ask for your vote against cloture on S.565 the ''Unfair Product Liability Act'' introduced by Senator Rockefeller. We are extremely concerned about the impact this will have on the safety standards of everyday products for consumers and innocent citizens. We believe there are several provisions of the bill which will eliminate the consumers ability to hold wrongdoers accountable for their actions, and limit innocent victims recourse to fully recover for damages they have accrued.

Capping punitive damages will do nothing to increase safety standards for innocent consumers. By limiting punitive damage awards to $250,000 or three times economic damages you are creating a nuisance expense for multi-billion dollar companies such as Ford Motor Company or Dow Chemical. This is creating a predictability in the market place for the minute number of companies who act negligently allowing them to calculate their risk for producing a less than safe product and further lets them rest assured they will never be held liable past a certain dollar amount.

S.565 prevents consumers from holding manufacturers of products which cause significant harm or injury accountable if the product is older than 20 years. Many products are intended to last longer than 20 years. This law however, would eliminate all consumer rights to be made whole if a 20 year old product caused significant harm or damages. This is an example of corporate wrongdoers being protected at the expense of consumers protection.

The elimination of ''Joint and Several Liability'' is a slap in the face to innocent individuals, families, and communities. Allowing guilty defendants off the hook without having to make innocent victims 100% whole is a disgrace. We will without a doubt see victims paying for portions of their damages even when they were completely without fault. This will not only affect individuals but likewise families, communities, cities, and states. We will see wrongdoers getting off free of charge while cities, towns, and families pick up the tab for the irresponsible behavior of others.

Texas Citizen Action has a membership of well over 150,000 citizens. These people have joined our organization because they believe in the positions we take on consumer protection issues. The passage of S.565 will be a major step backwards for individuals and communities and their rights to hold others

accountable for wrongs they may commit. We ask you to vote against cloture on S.565 for the citizens of Texas.

Sincerely,

DANIEL LAMBE,
Program Director.

DEFENDERS OF THE RIGHTS OF TEXANS,
Austin, TX, April 24, 1995.

Re S. 565.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Washington, DC.

DEAR SENATOR HUTCHISON: Defenders of the Rights of Texans (DRT) is asking you to vote against cloture on S. 565, Sen. Rockefeller's ''Unfair Product Liability Act.'' This bill will adversely impact the safety standards of products which we consumers utilize on a daily basis. We strongly feel that victims of unsafe products must retain the ability to hold accountable those who produce products which kill and maim. Limiting damages does not protect consumers, it protects manufacturers of products that injure consumers. That should not happen!

The effect of eliminating some of the current protections in the law will be to make the victim pay twice, even when they contributed nothing to the accident or injury. If Congress eliminates ''Joint and Several Liability'', you will make it difficult for your constituents to recover fully from their misfortune. The only pain and suffering you will be eliminating is that of the offending party. We support victims' rights, not the rights of those corporations or individuals who do not want to take responsibility when their products harm the American public.

We oppose capping punitive damages because we know that it takes significant awards to get the attention of manufacturers who continue to foist its products on an unsuspecting public years after the corporation knows the product to be unsafe. Why Congress would consider rewarding such unacceptable behavior is beyond our organization's comprehension.

Defenders of the Rights of Texans is a coalition of individuals and organizations—consumer, environmental, worker, academic, clergy, student, and victims—who oppose sacrificing our rights on the alter of corporate greed. We ask you to represent our interests by voting against cloture on S. 565.

Sincerely,

BOB COMEAUX,
San Antonio, TX.

VIRGINIA NATIONAL ORGANIZATION
FOR WOMEN,
April 15, 1995.

Hon. CHARLES ROBB,
U.S. Senate, Washington, DC.

DEAR SENATOR ROBB, Virginia N.O.W., represents some 20,000 Virginia women. We are writing to urge you to vote no on cloture and no on S. 565 and any other measure that restricts individual legal rights.

S. 565, the ''Product Liability Fairness Act'', is in fact, unfair. By limiting non-economic damages, it give wealthy individuals and corporations greater rights than middle-income citizens and families. Additionally, S. 565 transfers authority for the civil justice system from the states to the federal government. States know better how to serve its individual citizens and the issues that impact the citizens than the Washington bureaucracy. Whatever happened to the idea of states' rights and limiting the power of the federal government? S. 565 caps pain and suffering awards on medical malpractice suits. Why single out a particular type of lawsuit to cap awards?

Virginia N.O.W. has supported many women who have filed lawsuits, for both international and negligent injuries. During the 1995 legislative session we along with other citizens groups such as the VTLA, NAACP, ACLU, LofWV, worked hard to obtain a compromise on the Virginia Human Rights Act. A bill which passed the legislative session only to be vetoed by the Governor. The bill reverses the Lockhart decision, which basically prevents a small business employee from filing a lawsuit based on race, color, sex or national origin. Additionally, VA N.O.W. supports lawsuits for sexual harassment, defective products, product liability, employment discrimination and of course intentional injury. Economic justice as well as civil justice must be preserved. S. 565 seeks to destroy both, please vote ''no'' on S. 565.

People all across America are closely watching the new Republican majority in Congress in an effort to determine whether it truly represents the people or big business. Surely, the outcome and deliberations of S. 565 will provide an answer.

Sincerely,

DULANEY S. NICKERSON.

CITIZEN ACTION,
Charlottesville, VA, April 17, 1995.

Hon. CHARLES S. ROBB,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR ROBB: I am writing on behalf of Virginia Citizen Action and its over 50,000 members to ask you to oppose S. 565, the ''Product Liability Fairness Act.'' We would ask you that you do whatever is necessary to defeat this bill, including voting against any effort invoke cloture on debate.

Senator, this bill would make America a much more dangerous place for all of us. By capping punitive damages, this bill will send a signal to corporate wrongdoers that they can escape any real punishment for making and selling products that will kill or injure innocent people. S. 565 would eliminate the deterrent effect of punitive damages and remove one of the real protections Americans have had for over 200 years.

This bill is anything but fair. By eliminating joint and several liability for non-economic damages, it discriminates against women, children and seniors. Non-economic damages are not just pain and suffering. What about a women's loss of the ability to bear children or a child's disfigurement for life!

Senator, S. 565 is not ''moderate'' and it is not ''fair''. We hope that you will work to defeat this bill and protect every Virginian and every American from those special interests who want to escape responsibility for their actions at the expense of the health and safety of the American people.

Sincerely,

MARC WETHERHORN,
State Director.

VIRGINIA CITIZENS CONSUMER COUNCIL,
Yorktown, VA, April 25, 1995.

Re S. 565.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROBB: The Virginia Citizens Consumer Council strongly urges you to oppose S. 565, the ''Product Liability Fairness Act of 1995. This bill will do irreparable harm to Virginia consumers by restricting the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries. Corporate wrongdoers must be held accountable when consumers are harmed by the products they buy as a matter of simple justice and to foster confidence in the American marketplace.

Two major provisions of this legislation will have a negative impact on consumers and workers. First, this bill sets arbitrary limits on punitive damage awards of $250,000 or three times the economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Virginians' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income. For similar reasons, VCCC urges you to oppose S. 454, ''The Health Care Liability and Quality Assurance Act'' which would severely affect the rights of injured patients.

VCCC urges you to act to prevent passage of this legislation, which will greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing. Virginia consumers count on you to act in our best interest by voting NO on this anti-consumer, auto-worker bill. Please let me know the outcome of the Senate votes on S. 565 and S. 454 and how you cast your votes. Thank you.

Sincerely,

JEAN ANN FOX,
President.

WASHINGTON CITIZEN ACTION,
STATE HEADQUARTERS,
Seattle, WA, April 19, 1995.

Hon. SLADE GORTON:

On behalf of our 42,000 members statewide and our 20 affiliate community, church, labor, and senior organizations, Washington Citizen Action urges you to oppose Senate Bill 565 and to vote against cloture. This bill is one of the most anti-consumer pieces of legislation to make it to the Senate floor in decades. Please do all that you can to stop S. 565 from passing.

The arbitrary caps on punitive damages would eliminate the incentive to produce safe products and would allow negligent corporations to operate with little to no accountability. S. 565 will undoubtedly result in a multitude of injuries, disfigurements, and deaths. In addition, these limits will take away all recourse society has to punish wrongdoers that knowingly and repeatedly maim and kill people with deadly products and negligent actions.

By eliminating joint and several liability for non-economic damages, S. 565 would weaken the ability of ordinary Americans to receive fair compensation when they are injured by unsafe products and practices. The bill is unfair to women, children, seniors, working families, small businesses, and lower to middle income Americans. Victims and their families will be rendered unable to receive adequate compensation for their injuries while the guilty parties are let off the hook. This is not our idea of American justice.

In America, the courts have proven to be the major protection citizens have against negligent corporations and unsafe products. We cannot afford to let our civil justice system be dismantled by the provisions of S. 565. Vote NO on S. 565! Vote NO on cloture!

Sincerely,

DAVID WEST,
Executive Director.

WEST VIRGINIA-CITIZEN ACTION GROUP,
Charleston, WV, April 24, 1995.

Re Proposed legislation concerning Civil Justice System (S. 565).

Hon. JOHN D. ROCKEFELLER, IV,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER. On behalf of the twenty thousand members of the West Virginia-Citizen Action Group (WV–CAG), I am writing this brief letter to encourage you to rethink your support for S. 565. However well-intentioned this legislation may be, I honestly believe that the potential—and unintended—consequences are so great as to offset any perceived benefits.

I realize, of course, that the House-passed ''Common Sense Legal Reform Act'' is more draconian than S. 565. This does not ameliorate the many deficiencies contained in the Senate bill, including the two most egregious (as follows):

By capping punitive damage caps at $250,000 or three times the economic loss (whichever is greater), the proposed legislation removes the ''punishment'' that is supposed to be reflected in damages. As a result, it will become cheaper in many instances to pay the damages than to rectify the problem.

By eliminating joint and several liability for non-economic damages, the proposed legislation unfairly discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering; it can also be loss of reproductive capacity, loss of right or disfigurement.

After studying this, and related tort reform proposals for many year, we are convinced that such efforts are contrary to public policy and will jeopardize the hand-earned rights of injured West Virginians. Accordingly, I would like to urge you to reconsider your position and fight, as you have done so often in the past, for the rights of West Virginia consumers.

Thank you very much for your time and consideration. I hope to see and/or talk with you again soon. If you need any further information, please feel free to contact me.

Sincerely,

STATE SENATOR DAVID GRUBB,
Executive Director.

WISCONSIN CONSUMERS LEAGUE,
Milwaukee, WI.

Re SB 565 and 454.

Senator HERBERT KOHL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KOHL: We write to urge your opposition to the so-called ''Common Sense Legal Reforms Act'' submitted as part of the Contract with America. This package of bills would substantially modify existing product liability and medical malpractice laws. It is largely unsupported by the vast majority of the rigorous evidence which has been developed on these topics. Rather, it is seemingly being swept along on a wave of anecdote, innuendo and, in some cases, outright untruths.

There can be little doubt that product liability and medical malpractice laws have evolved to reflect emerging technologies. They have had the desired effects of modifying behavior to the optimum end of preventing injury to consumers and workers. The claims regarding the alleged stultifying effects of these bodies of common law are generally unsupported by credible, systematic evidence. For example, the work of Professor Galanter, at the UW Law School, compellingly refutes allegations regarding any alleged 'litigation explosion'. The punitive damages which S. 565 would limit are only relatively rarely awarded. Such 'sledge-hammer' approaches to ''reforming'' such legal standards, while politically satisfying, are only coincidentally related to thoughtful policy-making.

It is, in our view, remarkably arrogant for legislators to substitute their prospective judgments regarding equitable outcomes for specific factual cases yet to arise for the judgment of juries, which, by definition, can examine each case on its own unique, and prospectively unknowable, facts. How can anyone think they can be more fair regarding situations yet to occur than can juries with the benefit of hindsight?

We repeat our opposition to these unnecessarily broad attempts to weaken the preventative impacts of the common law.

Very truly yours,

JAMES L. BROWN,
President.

WISCONSIN CITIZEN ACTION,
Milwaukee, WI, April 21, 1995.

Hon. RUSS FEINGOLD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of our 103,000 members and our coalition of 110 labor, senior, religious, environmental, women's, farm and community organizations, we are writing to urge you to oppose S. 565 and to vote against cloture. We very much appreciated your help last year in the defeat of S. 687, this bill's predecessor. We're confident we can count on you again.

This bill is very similar to the product liability ''reform'' Bob Kasten used to push when he represented Wisconsin in the United States Senate. We like to think that one of the reasons why Wisconsin voters chose not to re-elect Bob Kasten to the Senate is because they repudiated his consistently anti-consumer positions. S. 565 is similarly out of step with the interests of Wisconsin consumers.

The provisions in this bill cannot claim to be ''moderate.'' A punitive damage cap of $250,000 or three times the economic loss to a victim of an injurious product is no more than a slap on the wrist to the corporations responsible for the deaths and injuries caused by products like the Ford Pinto, the Dalkon Shield, silicone-gel breast implants and flammable baby pajamas. The manufacturer of the ''Slip 'N' Slide'' water slide, which caused a 35-year old Wisconsin mechanic to break his neck, become temporarily quadriplegic and suffer permanent spasms, would have had its punishment reduced to one-thirtieth of what a jury thought appropriate. The U.S. Senate would be changing the punishment so that it cannot possible fit the crime in an era of public sentiment to get tough on wrongdoers.

We have no idea how many similar horror stories like those are waiting to happen. Corporate wrongdoers would face a dollar and cent deterrent too cheap to stay their pursuit of profit without regard for consumer health and safety. The temptation for corporations to proceed with dangerous products, even if they are eventually found guilty in a lawsuit, would get that much easier. S. 565 will weaken the ability of our civil justice system to act as both deterrent and remedy.

The elimination of joint and several liability for noneconomic damages discriminates against the most vulnerable populations in our society—women, children and seniors. These are the members of our society who are usually forced to claim noneconomic losses, and these constituencies would now be forced to shoulder the burden of being only partially compensated. Noneconomic damages include the loss of reproductive capacity, loss of sight and permanent disfigurement, not just ''pain and suffering.'' It is simply unfair that a party found to be negligent should not be required to make these vulnerable people whole after they have been injured.

The U.S. Consumer Product Safety Commission once estimated that some 33,000,000 people are injured by defective or dangerous products every year. 29,000 of them die. Only 1.6% of the injured parties sue. S. 565 solves no problem in our civil justice system, but it will create a very real human toll if it is allowed to pass. We respectfully urge you to vote against the bill and to vote against cloture.

Thanks once again for your outstanding leadership in defeating the anti-consumer product liability ''reform'' bill in last year's Congress. We appreciate all your help in continuing that effort by defeating this bill again, albeit in a tougher political climate. Thank you for attention in this matter.

Sincerely,

LARRY MARX,
Executive Director.

CENTER FOR PUBLIC REPRESENTATION, INC.,
Madison, WI, April 21, 1995.

Re Senate bill 565.

Senator HERB KOHL,
Washington, DC.

DEAR SENATOR KOHL: As you know S. 565, the misleadingly-named ''Common Sense Product Liability and Legal Reform Act of 1995'' will soon be considered by the Senate. As one of the major consumer advocacy groups in Wisconsin, we urge you to oppose this anti-consumer measure.

While certain aspects of our tort system are certainly in need of reform, this bill totally misses the mark. Instead of protecting consumers from some of the excesses of our legal system, it would protect manufacturers of defective products from assuming full responsibility for their actions. Seizing upon such highly publicized and distorted cases like the ''burning McDonald's coffee'' proponents of this measure (as well as similar proposals in numerous state legislatures including Wisconsin) would eviscerate the ability of our legal system to effectively enforce rules on product safety and punish those who violate them.

The proposed restrictions on punitive damages are completely counter-intuitive. By encouraging corporations to produce safe products, punitive damages (which, insurance industry rhetoric notwithstanding, are rarely awarded by juries or upheld on appeal) actually help corporations *save* money. Safe products mean fewer, not more lawsuits. Safe products mean fewer, not more medical insurance claims filed by consumers. Safe products mean fewer government recalls. And safe products mean an improved quality of life for all consumers.

The elimination of joint and several liability for non-economic damages is also misplaced. On first blush, this common law concept may seem unfair; why should one corporation that is only slightly liable have to pick up the tab for a more culpable corporation that happens to be insolvent? But when you look closer, joint and several liability *is* the fairest resolution to a difficult dilemma. It looks at all of the parties involved in a products liability lawsuit and decides that the costs should be spread so as to fully compensate the victim who, after all, is the only innocent party. And since non-economic damages are frequently awarded to the most vulnerable members of society; the poor, young children, senior citizens, this provision would affect such groups disproportionately.

The elimination of liability for products more than twenty years old is also unfair to consumers. Again, this provision would disproportionately harm the most vulnerable consumers, since they rely more heavily on

older, used products. The anti-consumer nature of this bill is especially apparent in this provision, since it exempts companies who suffer commercial losses.

Another particularly disturbing provision in S. 565 from the Wisconsin perspective is its preemption of state consumer protection laws. As you know, Wisconsin is a national leader in the area of consumer protection. Its well-deserved reputation in this area has been built up over many decades. S. 565 would tarnish that image and bring Wisconsin down to the lowest common denominator in protecting its citizens from consumer abuse.

There are other consumer-unfriendly aspects to S. 565, including its exemption from liability for the sellers of products and the special treatment provided for suppliers of materials for medical devices. Moreover, the bill exempts corporations from many of the restrictions on damages which it imposes on individual consumers.

Consumer groups in Wisconsin and around the country have fought long and hard over the past few decades to insure that consumers have access to safe and effective products. S. 565 would annul much of this hard work in one fell swoop. On behalf of all of Wisconsin's consumers, we urge you to oppose it.

Thank you.

Yours truly,

STEPHEN E. MEILI,
Director, Consumer Law Clinic.

Mr. HOLLINGS. There it is. I did not want to really fill up the RECORD, but every responsible, credible consumer entity in any of the 50 States is opposed to this initiative, and the other side knows it. But they come around and talk balance and they talk consumers and they say you cannot produce products.

I ask unanimous consent to insert in the RECORD these two advertisements by the pharmaceutical companies, February 23, 1995, and April 5, 1995, in the Washington Post.

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

[From the Washington Post, Feb. 23, 1995]

DRUG COMPANIES TARGET MAJOR DISEASES WITH RECORD R&D INVESTMENT

Pharmaceutical companies will spend nearly $15 billion on drug research and development in 1995. New medicines in development for leading diseases include: 86 for heart disease and stroke, 124 for cancer, 107 for AIDS and AIDS-related diseases, 19 for Alzheimer's, 46 for mental diseases, and 79 for infectious diseases.

[From the Washington Post, Apr. 5, 1995]

WHO LEADS THE WORLD IN DISCOVERING MAJOR NEW DRUGS?

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home, the drug industry has been making 9 out of every 10 new drug discoveries. So when a breakthrough medicine is created for AIDS, heart disease, Alzheimer's, stroke, cancer or any other disease, chances are it will come from America's drug research companies.

Mr. HOLLINGS. Just the one in February, one statement:

Pharmaceutical companies will spend nearly $15 billion on drug research and development in 1995.

According to the Senator from Washington, they cannot spend. They just cannot work anymore with this law. And right here in April:

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home the drug industry is making nine out of every ten new drug discoveries. Breakthrough medicines that are going to be created for AIDS, heart disease, Alzheimer's, stroke, cancer, or any other disease will come from the American drug companies.

But according to the Senator from Washington, they cannot bring out products. Come on. They have tried every trick in the book.

What we really have afoot, Mr. President, when they cite the Constitution is just that—an assault against the constitutional right of trial by jury guaranteed by the seventh amendment. People who say they do not trust politicians anymore are waiting for the politicians to behave as though they trust the people. You and I trust them to elect us, but when they get us 12 men and women on a jury sworn to listen to the facts and make their finding, according to their sworn oath, ''They do not know what they are doing; they have gone ape; they are just runaway juries,'' and everything else of that kind.

But we up here, the bureaucracy in Washington, we should decide rather than letting the juries decide back home.

We have a right, Mr. President, that has worked over the many, many years. You have safe drug products. Thank heavens, we have product liability and we have taken off Dalkon shield and all the rest of these other things—cancer causing products. We have safer automobiles.

Why do you think Chrysler the other day said they were going to recall I think some 350,000 or several million cars? I had the summation. Seventy-one million automobiles in the last 10 years, American and foreign manufacture, have been recalled. They do not recall them because of the goodness of their heart. They recall them on account of product liability. What we have in hand here they want to destroy. We have always had in this land ''salus populi suprema lex.'' Safety of the people is the supreme law.

Now they come with this measure, the profits of the manufacturers is the supreme law, and whine that they are for the consumers and they cannot put out products.

How does this come about? I have been in this for 40 years and I have watched it develop: Pollster politics. They tell you when you come to this national office up here that you have to get a poll and get to four or five hot-button items and then you have to identify with them. You are for jobs, everybody is for jobs; you are against crime; you are against taxes. They just go down the list.

Then they tell you, and in fact GOPAC puts on a school over there for the young Congressmen that are elected, they say, ''You have only got a 20-second time bite to give your message, so you need words that count, words that excite, inflame.''

And do you know what they call us up here now? I quote the Speaker. He terms the U.S. Government that pledged to preserve, protect, and defend, he calls it the corrupt liberal welfare State.

And when you can come in this anti-Government drive with the Contract With America and you see it in the morning paper and if you read it closely, it is gone: ''Get rid of the Government. The Government is not the solution, the Government is the problem. The Government is the enemy.''

That has been the drumbeat. If you can wrap it together in tort reform, you can get against the lawyers and against the Government both and you can really have a winner.

Well, for 15 years we have defended against this assault. President Ford helped us 15 years ago. He appointed a commission. And when President Ford appointed that commission, they had a 4-year study that came out and found that the States for 200 years have been handling this properly, basic tort law.

Incidentally, of all the civil findings, only 9 percent are tort. And of all the tort, only 4 percent of the 9 percent, or 0.38, thirty-eight one-hundredths of 1 percent of what we are supposed to be dealing with. It is not a problem at all.

They said the States were handling it. And now we know by record in the hearing that the States have reformed, they have acted. The legislators are not asleep, the Governors are not asleep, the attorneys general are not asleep back in the States. They can handle this problem. That is the plea of the contract in reality. Get all of these things, housing grants, block grants to the States, welfare block grants, whatever it is. Give it back to the States.

Not on this one. You are in the hands of the Philistines, that manufacturing crowd out there—the Conference Board, the NFIB, the Chamber of Commerce.

I have been elected six times and they do not come running.

That crowd that we have, they come running. Yes, the Chamber wants to know where you stand, the NFIB, the Conference Board, everything else. They talk about trial lawyers giving you money. They give money but the others, the manufacturing and insurance crowd, they give more money and they have the votes.

And the people who really oppose this bill do not have a PAC. Have you ever seen a PAC for the American Bar Association? Have you ever seen a PAC for the Consumer Association, Public Citizen, Association for State Supreme Court Justices, Association of State Legislators, law school deans—they have all appeared in the polls—the State attorneys general? They do not have PAC's.

But there they come with all this. And we have been working with them, but we have the contract now. And we have had many of these Senators that finally changed their votes who said, ''You know, I got in trouble. I committed a year ago.''

That is how it happens, if people want to know. When all the powerful organizations come to you in a campaign and you are for reform—''Yeah, I'm for reform. I'm for reform.'' They have been reminded in the last several days in this debate here how they gave their commitment.

So I went to them, I said, ''How do you change your vote?'' They said, ''Well, I got in trouble a year ago or 2 years ago when I was running.'' And that explains it. But it does not change the lack of merit in this particular initiative and the danger of it all.

So what we have is ''Kill all the lawyers.'' You could see it in the amendments. That is what they have.

Our friend Dan Quayle started that before the American Bar Association some 4 years ago and we still have it going. If you can vote against the lawyers and say they are running away and getting all the money and everything else like that, you have mob action on foot and you can get it moving.

Well, Mr. President, it is bad law. What happens is they do not give you a Federal cause of action. If they had come in—and I have been insisting for the 15-year period, if you want to make a finding under the interstate commerce clause that they plea, that we are going to make a congressional finding that there is a national problem and give a Federal cause of action, that is one thing. No, that is not what they want. They say they are trying to get simplicity, eliminate complexity, get uniformity. But then they put guidelines down for the 50 States to interpret and then can go into the Federal court and, by the way, exempt the manufacturer. Any of these things that I have talked of, any of these initiatives, any of these amendments, just exempt the crowd that wrote the bill.

Now I can tell you here and now if that is not hypocrisy, I do not know what the heck is. And yet they are saying they are proud now and they want to thank everybody, tell them about their balance and everything else like that.

This is one of the most dangerous initiatives. It has been held up for 15 years by all of these organizations. It is a nonproblem. They know it. It is a solution looking for a problem, in all reality.

And we are headed, yes, with the English rule, we are headed with two levels of society. ''Get rid of the jurors and people with common sense back home. We know it all up here.''

They started over 130 years ago diminishing that guaranteed right of trial by jury. So today, less than 2 percent of civil cases go to a jury trial in England. And you are told that the issues are too complex, you do not have sense enough to understand and what have you. And that is the initiative that starts today on the floor of the U.S. Senate.

They know in their hearts it is bad law. They have tried everything from the Girl Scouts, and had to withdraw that; they tried the Little League and had to withdraw that. They put George McGovern on TV and had to pull him off. They tried everything—the McDonald's case, then when that was explained to them, you do not hear them talk about the McDonald's case. Always these little anecdotal things that they bring up.

But they got one winner: ''Let's get rid of the lawyers.'' We can get a majority vote on that. We can get a majority vote on that. And so it is.

In essence, what you are really doing is getting rid of the jurors. The trial by jury, they are eroding it, nibbling at it bit by bit is the intent and purpose, just like they had in England where you do not even get a review of facts or anything else. You cannot even ask the jurors any questions; you cannot find the background.

I could go down the list, but my time is now limited and I am practically out of time.

I simply say that it is a sad day in the history of government because it brings to culmination the so-called contract of reform which goes totally in contradiction to the entire theme of the contract back home. The people know—you are going to hear it now in the budget. The people back home need a tax cut because they know how to spend the money better than the Government up here. All of these pleas and everything. The people back home know this, they know that, they know everything except the facts of the case that they are sworn to uphold.

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

Mr. HOLLINGS. I yield the floor.

Mr. GORTON. Mr. President, again, for the information of Members, we will now have the vote on my motion to table the Dorgan amendment.

There are then two other amendments, all amounting to the same thing, that will come before final passage. I hope that those two amendments will be adopted by voice vote. I will then ask for a rollcall on final passage of the bill.

The PRESIDING OFFICER. Under the previous order, the question occurs on agreeing to the motion to table amendment No. 629 offered by the Senator from North Dakota [Mr. DORGAN]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote ''yea.''

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 160 Leg.]

YEAS—54

Abraham	Frist	Lugar
Ashcroft	Glenn	Mack
Bennett	Gorton	McCain
Bond	Gramm	McConnell
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Robb
Coverdell	Hutchison	Rockefeller
Craig	Inhofe	Santorum
DeWine	Jeffords	Smith
Dodd	Johnston	Snowe
Dole	Kassebaum	Stevens
Domenici	Kempthorne	Thomas
Exon	Kyl	Thompson
Faircloth	Lott	Thurmond

NAYS—44

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Packwood
Bradley	Heflin	Pryor
Breaux	Hollings	Reid
Bryan	Inouye	Roth
Bumpers	Kennedy	Sarbanes
Byrd	Kerrey	Shelby
Cohen	Kerry	Simon
Conrad	Kohl	Simpson
D'Amato	Lautenberg	Specter
Daschle	Leahy	Wellstone
Dorgan	Levin	

NOT VOTING—2

Lieberman	Warner

So the motion to lay on the table the amendment (No. 629) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TOXIC HARM

Ms. MIKULSKI. Are asbestos-related injuries and deaths covered by the toxic harm exception to the statute of repose in S. 565?

Mr. ROCKEFELLER. Yes, asbestos-related injuries and deaths are covered by the toxic harm exception to the statute of repose.

AMENDMENT NO. 790

Mr. HATCH. Mr. President, I wish to discuss language in the Gorton-Rockefeller-Dole substitute amendment concerning punitive damages. The substitute language includes a formula for calculating the amount of punitive damages allowed to be awarded to a claimant against a defendant. This formula originated with Senator SNOWE and was added to the Dole-Exon-Hatch amendment last week, with my support. It remains part of the underlying substitute amendment. The formula to which I refer provides generally that the amount awarded to the claimant for punitive damages in a products liability action shall not exceed the greater of two times the sum of the amount awarded for economic loss and

noneconomic loss, or $250,000. In the case of a small business, a special rule provides that the amount of punitive damages shall not exceed the lesser of two times the sum of the amount awarded to the claimant for economic loss and noneconomic loss, or $250,000.

It is my understanding that the formula for calculating the amount of punitive damages is intended to take into account the separate provision in the bill that makes a defendant only severally liable for noneconomic losses. Thus, when doubling the amount of noneconomic losses in computing the upper limit of punitive damages which may be awarded against a defendant, it is appropriate only to consider the share of noneconomic loss attributable to that defendant. It would be unfair and inconsistent with other provisions in this act to expand the base multiplier in the punitive damages section of this bill to include noneconomic losses not attributable to a defendant.

Mr. HELMS. Mr. President, the pending Product Liability Fairness Act, even though it has been watered down considerably by our Democrat colleagues, is nonetheless needed to remedy the morass of product liability laws plaguing our judicial system today. We have a duty to ensure that Americans are fairly compensated when they are injured by faulty products. But today's legal system has been maneuvered into a position of encouraging many people to file frivolous suits demanding unreasonably high damage awards.

I am extremely disappointed that the medical malpractice provisions, approved by the Senate on May 2, were deleted because of threats by the Democrats that they would block passage of the entire bill.

Americans are suing each other too often, for too much money and for too little reason. Last year, more than 70,000 product liability lawsuits clogged U.S. courts. And by 1992, lawyer fees accounted for 61 percent of the total amount spent on product liability claims.

In so many cases, those who are injured least tend to receive the largest settlements, while many of the most severely injured spend years in the legal system, sometimes never receiving the compensation they deserve.

Mr. President, the pending legislation will be a first step toward remedying these problems with the current system by:

First, giving manufacturers and consumers certainty as to the rules of the game when it comes to product liability lawsuits;

Second, allowing consumers with valid claims to receive fair awards, and receive these awards faster;

Third, reducing costs of litigation and insurance premiums, which in turn, will lead to lower prices for consumer products;

Fourth, giving consumers with valid claims more time to file complaints against negligent manufacturers; and

Fifth, eliminating unwarranted lawsuits which threaten to bankrupt small businesses—the segment of our economy that provides most of the jobs in this country.

Mr. President, rather than expound on the problems with the current system, I will share with my colleagues a letter from the plant manager of Butler Manufacturing, a small business in Laurinburg, NC. His letter is similar to many I have received from 99 other small businessmen from my State. It reads:

DEAR SENATOR HELMS: As you know, Butler Manufacturing has a plant in Laurinburg, North Carolina which employs two hundred workers. We urge your support of S. 565, the Product Liability Fairness Act, which offers some of the reforms needed in the product liability area.

Our company spends hundreds of thousands of dollars each year for product liability insurance and legal fees and our employees devote hundreds of hours of their time to help our attorneys defend unwarranted product liability claims.

Many times we settle a claim which we honestly believe has little merit because it is less expensive to settle than to litigate or to expose the Company's assets to punitive damages.

Our Company competes in the international market place. To be competitive we cannot bear the cost of product liability insurance, huge punitive damage expense, and large costs to defend unwarranted claims which our competitors do not bear.

We believe persons injured by faulty products through no fault of their own ought to be compensated for their out-of-pocket losses. However, current court-made rules allow much greater compensation than is justified and also make it difficult for companies to properly defend themselves.

Mr. President, this explains why small businesses—not the Fortune 500 companies—are the ones most threatened if nothing is done to reform the current legal system.

According to the National Federation of Independent Businesses, the cost and availability of liability insurance rank No. 5 out of a list of 75 problems facing small businesses today. They are constantly in danger of being pulled into unwarranted lawsuits, where the fear of punitive damages forces them to settle in cases in which they should never have been involved.

About half of all small business owners earn about $50,000 a year. However, a Rand Institute study shows that it costs the same small businessman an average of $100,000 to defend against a lawsuit—regardless of the suit's merit. Thus, defending even a single unwarranted lawsuit costs twice as much as the average small business owner earns in a year.

Perhaps the most critical problem for small businesses is something lawyers know as joint and several liability, which permits plaintiffs to recover the full amount of damages from any one of the defendants—regardless of the amount of fault of the individual defendant. So, even if a small businessman is responsible for only 10 percent of the damage caused the plaintiff, under the current system, that businessman can still be held liable for 100 percent of the damages. The pending bill fixes this problem by holding a defendant liable for the percentage of noneconomic damages for which he or she is responsible.

Mr. President, I have many friends who are trial lawyers. They have made some compelling arguments in favor of the current system; however, in this matter, we have had to agree to disagree.

For example, trial lawyers argue that: First, limits on punitive damage awards are unnecessary because courts don't frequently award punitive damages; and Second, when they are awarded, punitive damages generally do not amount to very large sums.

As every first year law student knows—or should know—there are three kinds of damages awarded in civil lawsuits.

The first—economic damages—reimburses an injured person for lost wages, medical care, and out-of-pocket costs incurred as a result of the injury.

Second—noneconomic damages—are awarded for things such as pain and suffering, and

Finally, there are punitive damages. The purpose of punitive damages is not to compensate the injured person, but rather to punish the defendant for his or her negligent behavior. Most of the disagreement in the pending bill surrounds punitive damages.

Mr. President, are punitive damages rarely awarded as trial lawyers claim? No. Injured parties routinely request punitive damages in product liability and other tort claims. They do so because they know that's where the big bucks are. Not only are punitive damages routinely requested, the amount of punitive damages awarded is increasing. In Cook County, IL, the average punitive damage award was $6.7 million. In 1984, the average punitive award in San Francisco was $743,000.

In North Carolina punitive damages have been awarded only once. Despite this fact, any time a product manufactured in North Carolina ends up in another State, the North Carolina manufacturer can still be hauled into an out-of-State court and sued for outrageous punitive damage amounts.

Mr. President, trial lawyers also assert that product liability reforms are unnecessary because so very few lawsuits filed today are product liability cases. They claim that contract disputes and domestic relations cases make up more of the current case load in today's courts.

That product liability cases make up a small piece of all tort cases ignores one important and critical point: It only takes one product liability lawsuit to bankrupt a small manufacturing firm. Even if the manufacturer is not found negligent, it still costs that small business a small fortune to defend the lawsuit.

Lastly, lawyers argue that product liability reform will not lower liability

insurance premiums that manufacturers pay. I disagree. Over the past 40 years, liability insurance costs have increased 4 times the rate of growth of the national economy.

Moreover, for every extra dollar a company pays in product liability insurance, that's a dollar less in an employee's pocket, or a dollar less used to develop new products.

In closing, let me return to the letter from the plant manager in Laurinburg, NC. This is a small business pleading for fairness and for an opportunity to compete fairly for business. If this plant, and the other 99 small businesses who've written me, are to prosper, they cannot afford to defend unwarranted claims every time they turn around.

We cannot continue to tie the hands of small businesses by forcing them to defend case after case in a legal system that is unfair, inconsistent, and unpredictable. The pending bill does nothing to impede an injured person's right to recover reasonable damages for his or her injuries. Nor does the bill favor any particular industry. It simply weeds out frivolous and unwise lawsuits, making it easier and for injured individuals to obtain the recovery they deserve.

PRODUCT LIABILITY—STATES' RIGHTS AND ONE-WAY PREEMPTION

Mr. FEINGOLD. Mr. President, I rise to briefly discuss one of the more interesting—and most distressing—components of S. 565, the so-called Product Liability Fairness Act. That, Mr. President, is the conscious and flagrant expropriation of the rights of the State and local governments to fashion their own civil justice systems.

Over and over in the early months of the 104th Congress we have heard the distinguished majority leader announce his intent to ''dust off the 10th amendment''. That amendment, part of the Bill of Rights and sometimes thought of as the forgotten child of the Bill of Rights, states that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Well, here is a power that has been reserved by the States for over 200 years. And I cannot help but note the hypocrisy present here. We have heard the thunderous voices of States rights advocates, railing against Washington bureaucrats and proclaiming that this new Congress is committed to the proposition of shifting control of policies from Washington back to the States.

But then many of the same advocates of States rights also support legislation such as this that is designed to seize control over a policy area that has been the domain of the States since our Nation's founding and turn it over to 535 Members of the Congress.

Make no mistake about it: Under this legislation, we are going to tell the States—even in instances where there is no Federal jurisdiction over a tort case—the parameters within which they are to conduct their judicial proceedings.

That means that if a consumer in Sheboygan sues a manufacturer in Green Bay, they will have to litigate under Federal standards, such as a Federal cap on punitive damages, even though this is a completely intrastate judicial question.

There is also a provision that states that a decision of a U.S. circuit court of appeals interpreting the provisions of this legislation shall be controlling precedent to be followed by each and every Federal and State court within that circuit unless overruled or modified by the Supreme Court.

This provision was denounced by Stanley Feldman, chief justice of the Arizona State Supreme Court in his testimony to the Senate Commerce Committee on April 3 on behalf of the conference of chief justices. Chief Justice Feldman said that:

> . . . This provision will be the first time in the history of America that any Federal court has been given the authority to decide a question of State law, a subject which raises the chills on the back of every member of the conference of chief justices.

What happened to the commitment of those on the other side of the aisle to return power back to the State governments? What happened to all of those criticisms we heard of health care reform and other initiatives last year where the other side derided the one-size-fits-all approach to solving problems?

When I made my opening statements on this bill I mentioned a statement made by the Speaker of the House in his address to the Nation on April 7 about the intent of the congressional Republicans in the 104th Congress. The Speaker stated that:

> We must restore freedom by ending bureaucratic micromanagement here in Washington . . . This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters; we've got to return power back to you—to your families, your neighborhoods, your local and State governments.

Mr. President, I don't say this very often, but when the Speaker of the House says: ''This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters,'' I tend to agree with him.

That is precisely why I opposed last year's crime bill. Enforcement of our criminal laws is best left in the hands of our local police and sheriffs' departments, because what works and is needed in the inner city of Milwaukee is not necessarily what works and is needed in the rural confines of Rusk County. It is problematic enough for a Senator from Wisconsin to understand these regional distinctions, but to suggest that 524 Members of Congress from 49 other States will know how to address the idiosyncrasies of fighting crime in Onalaska, WI, seems a bit far-fetched to me.

This same principle holds true for our tort systems. Maybe one of our rural farming States has purposely fashioned their legal system so as to protect farmers from defective machinery that is commonplace in that State. Maybe another State that attracts large numbers of retired persons has used the availability of punitive damages to deter certain products from being sold that are unsafe and would disproportionately affect the elderly.

The other side talks a good game when it is expressed over and over again that State legislatures and governments are best equipped to solve problems that are local in nature. But whether it is crime legislation, or civil justice reform, or even term limits, there is a clear assumption that local or private decisions are best made by those in Washington, DC.

I served in the Wisconsin State Senate for over 10 years and I know how the various State legislatures around the country would react to this bill. In fact, the national conference of State legislatures strongly opposes the Product Liability Fairness Act. In a letter sent to all Members of this body, the conference states:

> State civil justice systems are expressions of local values and needs, as the Founders intended when they established our system of Constitutional federalism. National product liability standards put at risk this fundamental expression of self-government and federalism.
>
> Moreover, the confusion resulting from superimposing a one-size-fits-all Federal standard for product liability over existing State tort law presents a risk to the efficient administration of justice in State courts.

Mr. President, I think it is abundantly clear that the notion of States' rights is about to go right out the window as we usurp over 200 years of State control over their tort systems. Another organization comprised of those who are involved in local judicial systems is the conference of State chief justices. Let me quote from a statement submitted by the chief justices expressing their opposition to Federal product liability legislation. They say;

> The negative consequences of S. 565 for federalism are incalculable. With the proposed legislation reaching so far into substantive civil law, States will be forced to provide the judicial structure, but will not be permitted to decide the social and economic questions in the law that their courts administer. Enactment of S. 565 would alter, in one stroke, the fundamental principles of federalism inherent in this country's tort law. . . .
>
> S. 565 is a radical departure from our current legal regime and is neither justified by experience nor wise as a matter of policy.

So I think it is clear what a dramatic and radical arrogation of power this legislation represents. But even if you accept this notion that we should have Federal standards with regard to product liability actions—and I don't—but even if you do believe such standards are necessary, this legislation is light-years away from bringing any sense of uniformity to our civil justice system.

The supporters of this legislation have made it clear that they believe Federal uniform standards for our product liability laws are warranted,

presumably to address the supposed uncertainty and unpredictability of our legal system.

Those of us on the other side disagree. We believe the system was designed to protect innocent consumers who have been injured by defective products, and more importantly, we are reluctant to usurp the authority of the States over an area that for 200 years has been the domain of the State legislatures.

As I stated earlier, many of us are also bewildered as to why some would make changes to the legal system that are opposed by the National Conference of State Legislatures, the Conference of Chief Justices, the American Bar Association and law professors throughout the country.

But I think it is important to point out the great fallacy in the notion that this bill provides uniform Federal standards. It clearly does not. What it does provide, is a line in the sand. This bill says that State laws and State reforms that are designed to protect consumers, children, working people, and the elderly are no longer applicable.

It says that those States do not know how to protect consumers—we here in Washington, DC know best how to do that. If you are on that side of the line in the sand, well sorry but you are out of luck because apparently it is the Congress that knows best how to protect farmers in Iowa, factory workers in Michigan, and children in California.

But if you are on the other side of that line, if there are State laws or State reforms that are designed to protect the interests of the business and manufacturing communities, well those are OK. This bill says that those State legislatures know exactly what they are doing and we should not preempt any of their efforts.

These are uniform Federal standards? Let me raise a couple of examples to illustrate just how unfair and unbalanced the bill is in this regard. The punitive damage cap is an obvious example. The underlying bill calls for a cap on punitive damages equal to the greater of two times compensatory damages of $250,000. In addition, under certain circumstances a judge may award supplementary punitive damages above the amount the jury has rewarded.

I think the layperson would look at this provision and assume that this cap—a Federal cap of $250,000 or two times compensatory damages—would apply across the board. In other words, whether you were injured by a defective product in Wisconsin, New York, or Mississippi and filed suit in any of those State courts, a jury would be able to award punitive damages of up to $250,000 or two times compensatory damages.

Unfortunately, especially for those who support uniformity, that is not what this legislation would do. Under the now-amended bill, the punitive damage cap would not preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages. Those State laws would not be preempted.

In other words, if a State allowed unlimited punitive damages, or even had a cap but that cap was higher than this new Federal cap, that State law would be preempted by this legislation.

But if a State prohibited punitive damage awards, or had a cap lower than the cap in the underlying bill, that State law is hailed as responsible and fair and allowed to continue under this legislation.

I wonder if any of my colleagues are familiar with the ''Slip 'n Slide'' case we had in Wisconsin just a few short years ago. The Slip 'n Slide is a sort of water slide that is spread out over the ground. You are supposed to get a good running start, jump head first on the wet plastic and then slide along the rest of the wet plastic. It was a product that was manufactured for families and obviously, targeted especially for children.

The plaintiff in this case, a 35-year-old father of two, dove onto this water slide, struck his chin on the ground and broke his neck. He was rendered an incomplete quadriplegic. The plaintiff was unable to return to his $12,000 a year job and had no means to pay the $46,000 in medical bills he was saddled with.

During the trial, the plaintiff alleged that the product was unreasonably dangerous for its intended purpose. This was compounded by the fact that the water slide's warnings were inadequate because they were not prominently displayed among the product's list of instructions and warnings.

Testimony was presented showing that other users had experienced similar injuries and one individual had even died from such an accident. It was also made clear that the manufacturer continued to market the product even after it was made aware that numerous neck injuries such as this were occurring.

Let me say that again; the facts showed that the manufacturer knew the product was causing neck injuries and yet still continued to market the product.

The jury in this case, in a Wisconsin State court, found that the manufacturer was 100 percent at fault and awarded over $12 million to the plaintiff, including $10 million in punitive damages. This judgment was later reduced so that the plaintiff and his family in the end received about $5 million.

We know what the other side's response to this is; ''$10 million? That jury must be out of control.''

Some of us, however, have faith in the ability of the American people to serve on juries and administer justice in a fair and equitable manner.

You can bet, Mr. President, that the manufacturer of the Slip 'n Slide is thrilled about this legislation. Those on the other side want to insulate such companies from juries and the threat of extensive punitive damages. Why? Because such a large punitive damage award might force the manufacturer to take a product off the market that has been considerably profitable for that manufacturer.

But I would contend, Mr. President, that our civil justice system is designed to do just that—to sanction parties that knowingly market a defective product and to protect the consumers that are victimized by these products.

That Wisconsin jury awarded a large punitive damage award for two reasons: One, to get a dangerous product off the market that is often used by young children and that was causing numerous neck injuries and paralysis; and second, to punish the manufacturer for continuing to market the product with knowledge of its very serious defects and to deter other manufacturers from engaging in similar conduct.

I would say that in this case, the jury—in a State court—knew exactly what it was doing and justice was served.

Mr. President, the Wisconsin jury in this case awarded $10 million in punitive damages in the slip 'n slide case. I have no doubt that most of the proponents of this bill believe that this is a classic case of a jury run amok.

Here is what I find interesting though. That jury found the manufacturer in this case 100 percent at fault. Suppose this was a criminal defendant on trial for assault with a deadly weapon. After all, the manufacturer in this case was marketing a product that they knew was causing neck injuries and paralysis.

The fact is, if this had been a criminal defendant I have no doubt that there would have been a bidding war on the other side to see who could propose the stiffest criminal sentence for this defendant.

We can only speculate about what the fate of the Slip 'n Slide would have been had this accident and litigation occurred in a State that currently prohibits punitive damage awards. Most likely, more neck injuries and maybe some fatalities would have occurred until a suit had been filed in a court where punitive damages were permitted.

Had the underlying bill been in effect 4 years ago, that Wisconsin jury would have had to award an amount consistent with the arbitrary cap. One can only wonder if the manufacturer would have pulled this dangerous product because of a $250,000 slap on the wrist.

Let me say this one more time: The jury in this case—a State jury—found the manufacturer to be 100 percent at fault. The jury found that the manufacturer continued to market the product—a product targeted mostly at children—even after the manufacturer discovered that the product was causing numerous neck injuries and paralysis.

The jury elected to award substantial punitive damages to punish the manufacturer for this reprehensible behavior

and to deter other manufacturers from engaging in similar conduct.

I say to my colleagues that this is exactly what our civil justice system, grounded in the principle of trial by jury, was designed to do and I am confounded as to why the supporters of this bill are unwilling to trust those Americans that meet their civil duties by serving on juries.

How troubling that at a time when Americans are so distrustful of their Government that we in Government are not willing to trust Americans to administer civil justice.

Mr. President, I am somewhat mystified as to how supporters of this bill can suggest that this bill is proconsumer when they want to place this kind of a straightjacket on juries. In addition, I find it absolutely ludicrous that the supporters of this bill would suggest that we are providing uniformity when we are going to have completely different punitive damage standards throughout the 50 States.

Let me provide another example of how this bill would pre-empt State laws to the extent that those laws are proconsumer.

S. 565 creates a new Federal standard for the number of years a manufacturer or product seller can be held liable for a harm caused by a particular product. Known as a statute of repose, that period is 20 years under this bill. Why 20 years? Good question.

The product liability legislation considered in the last Congress, written by the same two principal authors, contained a 25-year statute of repose—5 years longer. Why? Well a footnote in the committee report from last year justified 25 years by pointing out that according to testimony received by the Commerce Committee, and I quote,

> Thirty percent of the lawsuits brought against machine tool manufacturers involve machines that over 25 years old.

Therefore, presumably, the authors of this bill selected 25 years as the life expectancy of all products manufactured in the United States.

But now we have a new bill that the supporters have tried to characterize as much more moderate and much narrower than either the House-passed legal reform legislation or the product liability bill considered by the Senate just last year. But remarkably, the 25-year statute of repose has been dropped to 20 years.

Why? Once again, good question. This year's committee report conspicuously leave out that footnote about the machine tool testimony, and makes absolutely no mention whatsoever as to why 20 years was selected.

Instead, the committee report promotes the consistency of this statute of repose with the General Aircraft Revitalization Act of 1994, passed by this body last year. Mr. President, I voted for that legislation. But that legislation provided an 18 year statute of repose for a very narrow segment of our manufacturing base.

This body came to the conclusion, the overwhelming conclusion as I recall that vote, that 18 years was a reasonable length of time for liability claims associated with the general aviation aircraft.

This statute of repose, however, is entirely different. His 20-year period would apply to all durable products across the board with a few limited exceptions. Machine tools, farm equipment, football helmets—you name it. This Congress is going to decide that the life expectancy of virtually every product in America is 20 years.

But this takes us back to the issue of selective preemption of State authority over liability laws. Section 108(B)(2) reads;

> . . . If pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

In other words, if a state legislature has decided against having a statute of repose, or has decided on a statute that is longer than 20 years, this new Federal law will override the judgment of that State legislature. Again, so much for uniform Federal standards.

Ironically, this year's committee report also justifies a Federal statute of repose on the basis that Japan is poised to enact a short 10-year statute of repose. So now apparently the Japanese Government knows better than the State of Wisconsin how to properly administer civil justice in cases involving Wisconsin litigants. I wonder how the Framers of the Constitution would feel about that assertion.

Before I conclude my remarks, Mr. President, I would like to remind my colleagues of the giant precedent we are about to set, or the radical departure from our current system as the Chief Justices put it. This legislation would make dramatic alterations to some of the oldest and most fundamental underlying principles of our judicial system.

Product liability is just a first step—the majority has made their intention clear to pursue legislation that would overhaul our entire civil justice system.

As we make these sort of tremendously consequential decisions, there are a variety of groups and individuals we can seek advice from. Those of us that oppose this legislation have chosen to listen to the experts on this issue—whether it is Chief Justices, the American Bar Association or the National Conference of State Legislatures.

But those who support this legislation do not want to listen to State legislators, judges or even the consumer organizations that this bill purports to protect. Instead, the other side has chosen to listen to the advice of corporate America on how to best to shield those who manufacture and sell defective products from any sort of liability. That is unfortunate for all of us.

Thank you, Mr. President, and I yield the floor.

Mr. DOMENICI. Mr. President, I am pleased to support the efforts of my colleagues today to reform our system of products liability litigation. The Senator from Washington [Mr. GORTON], the Senator from Utah [Mr. HATCH], and the Senator from West Virginia [Mr. ROCKEFELLER] deserve a lot of credit for putting together a bipartisan approach to solving the problems associated with products liability.

I have watched this debate over the past 2 weeks with great interest. I was pleased to see that there was some interest in expanding this bill in order to achieve general across-the-board legal reform, and I supported many of the thoughtful amendments which were brought to the floor. I would have preferred to include the rule 11 amendment offered by the distinguished Senator From Colorado [Mr. BROWN] and the amendment on joint and several liability offered by the distinguished Senator from Michigan [Mr. ABRAHAM] in any bill we might eventually pass. But I realize that in the interest of compromise, changes had to be made in order to get something passed, and unfortunately that compromise will not include comprehensive legal reform.

I am no stranger to legal reform. I have been trying to fix our broken securities class action system for several years, and many of the problems associated with securities litigation are inherent to our general tort system. I also have introduced legislation in past years to fix some of the problems associated with medical malpractice.

I am disappointed that we will not address medical malpractice litigation reform in this bill. The distinguished Senator from Kentucky [Mr. MCCONNELL] and the chairperson of the Labor Committee, the gentlewoman from Kansas [Mrs. KASSEBAUM], did a fine job putting together a comprehensive and fair overhaul of our medical malpractice system. There were several provisions in the medical malpractice amendment which I included in my health care reform bill last Congress, and I believe that the amendment would have gone a long way toward reducing health care costs for all American citizens. For that reason, I hope that we will take up medical malpractice reform later on in this Congress.

Particularly, I would like to address collateral source reform, which would prevent duplicative payments by insurance companies for the same injuries. I heard just last week from an individual who works for a company that sells insurance in my home State of New Mexico. He told me about a case that he just handled where a claimant was paid five different ways for the same injury. He told me that four ways was common, but that this was his first five-way case. He told me that if we want to achieve significant reform, preventing

this sort of duplicative payment and the litigation that goes along with it will substantially strengthen our system. I hope we will continue to pursue collateral source reform later this year.

I also had hoped that we would be able to include general rule 11 reform in this bill and the Senator from Colorado, Senator BROWN, should be commended for bringing his important amendment to the floor. Prior to 1993, courts were required to sanction attorneys who filed a frivolous complaint, and rule 11 served as a healthy deterrent to strike suits. However, rule 11 was weakened in 1993 and judges were given the discretion to impose sanctions even when they found that a complaint truly was frivolous. Senator BROWN's amendment would return us to the pre-1993 standard and adopt a preference for the sanction to be payment of the attorneys fees and costs of the opposing party.

It also would limit fishing expedition lawsuits by requiring attorneys to make an adequate inquiry into the facts prior to the filing of a complaint. Attorneys should be required to stop, think and investigate the facts before filing lawsuits which could have a potentially devastating effect, and Senator BROWN's amendment would have done just that. I believe that this issue also should be re-visited later in the year.

As for products liability, there can be no doubt that the current system in place in this country extracts tremendous costs from the business community and from consumers. The great expense associated with products liability lawsuits drives up the cost of producing and selling goods, and these costs are passed on to the American consumer. We have heard several Senators talk about how half of the cost of a $200 football helmet is associated with products liability litigation, and how $8 out of the cost of a $12 vaccine goes to products liability costs. We can no longer afford to require our consumers to pay this tort tax.

Because of the high costs associated with products liability litigation, American companies often find it difficult to obtain liability insurance. The insurance industry has estimated that the current cost to business and consumers of the U.S. tort system is over $100 billion. Insurance costs in the United States are 15 to 20 times greater than those of our competitors in Europe and Japan. Much of this money ends up in the pockets of lawyers, who exploit the system and reap huge fee awards while plaintiffs go undercompensated and our businesses suffer.

For companies involved in the manufacture of certain products, like machine tools, medical devices, and vaccines, this means that beneficial products go undeveloped, or after they are developed, they do not make it to the marketplace out of fear of being sued. This hampers our competitiveness abroad, and limits the products available to consumers. Harvard Business School Prof. Michael Porter has written about how products liability affects American competitiveness. He wrote:

> In the United States * * * product liability is so extreme and uncertain as to retard innovation. The legal and regulatory climate places firms in constant jeopardy of costly, and, as importantly, lengthy product liability suits. The existing approach goes beyond any reasonable need to protect consumers, as other nations have demonstrated through more pragmatic approaches.

In the case of manufacturers of vaccines and other medical devices, the cost of our unreasonable and certainly unpragmatic products liability litigation system often means that potentially life-saving innovations never make it to the American public. Products liability adds $3,000 to the cost of a pacemaker, and $170 to the cost of a motorized wheelchair. It also has caused the DuPont Co. to cease manufacturing the polyester yarn used in heart surgery out of fears of products liability litigation. Five cents worth of yarn cost them $5 million to defend a case, and DuPont decided that they simply could not afford further litigation costs. Now, foreign companies manufacture the yarn and will not sell it in the United States out of fear of also being sued.

In cases where a truly defective product has injured an individual, the litigation process is too slow, too costly, and too unpredictable. This bill, because it creates a Federal system of products liability law, will return some certainty to a system that now often undercompensates those really injured by defective products and overcompensates those with frivolous claims.

Those injured by defective products often must wait 4 to 5 years to receive compensation. This leads victims to settle more quickly in order to receive relief within a reasonable time. Companies must expend huge amounts of money in legal fees to settle or litigate these long, complicated cases. These again are resources that could be better spent developing new products or improving the designs of existing ones.

Another major problem with our tort system is with punitive damages. As their name implies, punitive damages are designed to punish companies and deter future wrongful conduct. They are assessed in these cases in addition to the actual damages suffered by injured victims.

Unfortunately, these damages have little effect except to line the pockets of lawyers. They serve relatively little deterent purpose and led former Supreme Court Justice Lewis Powell to describe them as inviting ''punishment so arbitrary as to be virtually random.'' Because juries can impose virtually limitless punitive damages, in Justice Powell's words, they act as ''legislator and judge, without the training, experience, or guidance of either.'' Justice Powell is absolutely correct, and I applaud the drafters of this bill for dealing with the problems associated with these types of damages.

Reform of punitive damages will return some common sense to the system. Under the current system, punitive damages do little to deter wrongful conduct and merely serve to line the pockets of contingency fee lawyers. Huge punitive damage awards also threaten to wipe out small businesses and charitable organizations. By limiting the amount of punitive damages available in these cases and raising the legal threshold for an award of punitive damages, this bill will relieve some of the pressure on even the most innocent defendant to settle or face an award which could potentially bankrupt the company. It also will provide some uniformity and certainty in States which still allow punitives. Finally, for those States which do not allow punitive damages, I think the bill makes it clear that they may continue to do so.

The drafters of this bill also have taken the wise step to reform joint liability, without limiting the ability of plaintiffs to recover their economic damages. The bill abolishes joint liability for noneconomic damages, like pain and suffering, but allows States to retain it for economic damages like hospital bills. This will reduce the pressure on defendants who are only nominally responsible for the injury to settle the case or risk huge liability out of proportion to their degree of fault, while ensuring that injured victims get compensated for their out-of-pocket loss.

I would have liked to see this extended across the board to all civil cases and I voted for the Abraham amendment, but at least in the area of products liability, this provision strikes a fair balance between the rights of injured plaintiffs and those of those defendants brought into cases merely because of their deep pocket.

The bill also limits liability in cases where the victim altered or misused the allegedly defective product in an unforeseeable way. It simply is unfair to hold manufacturers liable in cases where consumers use products in ways for which they were not intended. It also is unfair to hold defendants liable in cases where the plaintiff's use of alcohol or drugs significantly contributed to their injury. I am happy to see that this bill provides an absolute defense in such cases.

Mr. President, as I said earlier, I am no stranger to legal reform. Many of those who are responsible for this important and well-crafted legislation are cosponsors of the securities reform bill Senator DODD and I hope to bring to the floor soon after this bill. I hope that we can follow our colleagues in the House and enact comprehensive but fair legal reform in the 104th Congress. I appreciate all of the hard work that went into this bill and hope that we will pass it.

Mr. GLENN. Mr. President, product liability reform is long overdue and I am pleased that the Senate is acting

favorably on this bill. I have cosponsored product liability reform legislation in three previous Congresses.

I believe that this legislation is good for both consumers and businesses. Our product liability system is out of control and reform is desperately needed. Under our current system manufacturers of products are subject to a patchwork of varying State laws whose beneficiaries are most often lawyers instead of litigants.

The Congress is currently debating the proper role of the Federal Government across a broad range of issue areas. Many believe that functions now conducted at the Federal level should be moved to the States. On this issue I believe that we need a more uniform system of product liability and therefore Federal standards are necessary.

The current system is unfair to consumers. Much too much of the money paid by manufacturers goes to attorneys' fees instead of the injured party. the high cost of product liability insurance means higher costs for consumers. Because of the unpredictability of the current system, many severely injured consumers receive less than they deserve while mildly injured consumers often recover more. Furthermore, because of unpredictability, cases which are substantially similar receive very different results. Product liability cases often require a great deal of time and many claimants are forced to settle because of economic necessity.

The current system is unfair to manufacturers. The cost of litigation is a substantial expense to companies. Companies spend more on legal costs and less on other important areas such as research and development. In some cases manufacturers decide not to invest in or develop new products because of product liability concerns. Ultimately this burden or product liability makes our companies less competitive in world markets than foreign companies.

During the debate on this legislation, I have been particularly concerned that as we reform our product liability laws we do not affect the rights of individuals to bring suits when they have been harmed. On the contrary, it is my intent to bring rationality to a system that has become more like a lottery. For me, legal reform does not mean putting a padlock on the court house door.

There are several very important improvements that this legislation will provide. A statute of repose of 20 years is established for durable goods in the workplace. After 20 years no suit may be brought unless there is an expressed warranty.

Joint liability is abolished for noneconomic damages in product liability cases. Defendants are liable only in direct proportion to their responsibility for harm. Therefore, fault will be the controlling factor in the award of damages, not the size of a defendant's wallet.

Another important area is punitive damages. I am supportive of raising the standard of proof to clear and convincing evidence. I am very concerned, however, about the establishment of caps on punitive damages and that the bill not impose a one size fits all prescription. In fact this is the issue that kept me from cosponsoring this legislation during this Congress. The bill originally provided for a proportional cap based on economic damages. During the amending process, that cap was improved by including all compensatory damages. Even with that improvement, however, the bill remained too restrictive. I support the further inclusion of the judge additur provision allowing an increase in punitive damage awards in especially egregious cases.

However, I believe that an additional provision in the additur section is without merit. That provision would allow a defendant another trial on damages should additur occur. This goes against the fundamental principles behind product liability reform—fairness, simplification and streamlining the system. Instead, this provision could provide a never ending litigation cycle which will insure full employment for all lawyers. And it increases the burden on an already overburdened legal system. This one provision is so egregious, that it prompted my vote against cloture on the Gorton-Rockefeller compromise which I found otherwise acceptable. I am pleased that Senators ROCKEFELLER and GORTON intend to address this language in conference.

Unfortunately, the product liability legislation this year turned into a Christmas tree attracting numerous unrelated items that had never been in the bill before. The expansion of the legislation to include medical malpractice and general civil liability litigation, as Senator ROCKEFELLER has accurately pointed out, caused the tree to topple over. Those matters should and will be addressed more completely in separate legislation.

During the debate, the Senate considered several amendments addressing medical malpractice. I believe action is needed to ensure timely and appropriate awards for patients who are harmed by negligent medical care, while at the same time protecting health care providers from unwarranted lawsuits and the need to practice costly defensive medicine.

I supported a medical malpractice amendment offered by Senator KENNEDY which was based on provisions contained in comprehensive health care reform legislation in the last Congress. This approach requires States to establish alternative dispute resolution mechanisms so that cases can get an early hearing, and it limits attorney's contingency fees to one-third of the first $150,000 awarded and 25 percent thereafter. I regret that this amendment, which would have modified Senator MCCONNELL's medical malpractice amendment, was defeated.

I oppose Senator MCCONNELL's medical malpractice amendment, for both substantive and procedural reasons. I was concerned that the amendment did not allow States to adopt their own medical malpractice laws if they were more beneficial to consumers, and I opposed its caps on punitive damages.

I am hopeful that the Senate will return to the important issue of medical malpractice reform when the Labor and Human Resources Committee reports the bill it has approved and during debate on health care reform measures.

With the addition of medical malpractice and general civil liability, efforts to pass product liability bill reform were diminished. All of these extraneous items have threatened passage of a good product liability bill and the White House has also made it clear that they would veto such Christmas tree legislation.

In an effort to pare the bill back to its core principles, I opposed motions to cut off debate on the bill. I believe that through this process, the bill now provides effective product liability reform and its chances of enactment are improved. I applaud the efforts of Senators ROCKEFELLER and GORTON in the enormous amount of work undertaken to pass this legislation.

Mr. ROTH. Mr. President, the Senate's debate on product liability reform has revealed that many citizens and many members of the business community strongly favor legislation that would alter significant aspects of tort law. Products liability law traditionally has been a matter of State law, and the primary venue for products cases traditionally has been the State courts, which are our Nation's courts of general jurisdiction. Proponents of the products liability legislation have asked us, then, to change the laws of each State by creating Federal standards that would apply in all products cases, whether they are brought in Federal or State courts.

I oppose Federal products liability legislation because it will preempt whole areas of State law that have been developed incrementally over many, many years. The legislation does not deal with Federal question jurisdiction or any Federal cause of action. Instead, it pertains to an area of law that has long been the primary responsibility of State courts. If it is to occur, the reinvention of tort law should occur through the State courts and legislatures, which are best situated to determine and control the impact of reform within their own communities.

We are not dealing in an area where the States have proven incapable of enacting change. The vast majority of States have already adopted some type of tort reform, and many States are considering further changes. These reform measures have varied widely. Some have involved more dramatic changes than the Senate has debated; some have involved more modest

changes; and some have involved referendums on important Sate constitutional provisions. In my own State of Delaware, the State legislature has before it several different tort reform proposals.

The impact of the reforms passed so far at the State level is unclear, but at least by one measure, the State reforms appear to be having a positive effect. In a recent survey involving 1993 data, American businesses for the first time in many years reported that they spent less on insurance and other risk-related expenses than they did the year before. Much of the savings came from changes enacted by States to their workers compensation laws, which have enabled employers to contain their workers compensation costs in various ways. The survey reported that the cost businesses paid for liability risks, which includes products liability, had leveled out. This is encouraging news.

The patchwork course of tort reform at the State level has not happened with the alacrity or the uniformity that many reform proponents would like to see. But the State efforts demonstrate why Federal legislation in this area is so profoundly misguided. In the best tradition of our Federal form of Government, the States have balanced, and in many instances are still considering how to balance, the competing interests in the tort reform debate for their own communities. We stand poised to upend that State-based process in favor of legislation that purports to create uniform Federal standards. In doing so, we are involving the Federal Government intimately in an area where it does not belong.

The Supreme Court's recent ruling in United States versus Lopez, the case which struck down as unconstitutional the Federal Gun Free School Zones Act, raises a serious question as to whether the Federal Government is permitted to take over the law of products liability.

I oppose the products liability legislation not because of any specific provisions being debated, but because the federalization of this area of the law is a bad idea. Federalizing products liability law embarks us, I fear, on a course where over the years Congress will succumb to a creeping temptation to federalize other areas of State law solely, as in this case, on the grounds of convenience. I am wary of where that course leads.

(At the request of Mr. ROCKEFELLER, the following statement was ordered to be printed in the RECORD.)

● Mr. LIEBERMAN. Mr. President, due to the death of a close family member, I am regrettably unable to be present on the Senate floor today to join my colleagues in passing product liability legislation. It is day long awaited by those of us who have been working on behalf of reform for years only to be denied, not only passage of a bill, but full and open debate. I was proud to be a cosponsor of past product liability bills, including this year's bill, S. 565.

Credit for this remarkable turn of events is due to Senators ROCKEFELLER and GORTON, who have labored long and hard on the Senate floor over the last 2 weeks and, quite literally, for years to produce a fair bill. It is their perseverance and fair treatment of all that is responsible for our success today. Their staffs have done extraordinary work on their behalf and deserve all of our thanks—Tamera Stanton, Ellen Doneski, Lance Bultena, Trent Erickson, and others.

Were I present today, I would have voted to table Harkin amendment No. 749, to table Dorgan amendment No. 629 and, of course, I would have enthusiastically voted ''yes'' for final passage.

Mr. President, I would ask unanimous consent that I be added as a cosponsor of the bill as passed by the Senate today. This is an important first step toward comprehensive reform of our legal system. It is incremental reform, but it's significance should be understated. It establishes some important principles for further reform: parties responsible for harm must be held fully accountable and parties who have caused no harm should not be bullied into settlements by a system that does more to compensate lawyers than to achieve justice for injured people.●

Mr. PRESSLER. Mr. President, as we conclude the debate over S. 565, the Product Liability Fairness Act, we have come full circle.

COMMITTEE ACTION

On March 15 I joined with Senators GORTON and ROCKEFELLER in introducing legislation designed to reform that portion of America's tort system dealing with products liability. Two days of hearings were conducted on the bill and on April 6 the Senate Committee on Commerce, Science, and Transportation, of which I am chairman, met in executive session to consider the legislation.

During the committee process there was talk of expanding the bill to encompass a broader array of tort reform. As chairman, I resisted efforts to expand the legislation into any areas that did not fall within the jurisdiction of the Commerce Committee. Do not get me wrong. I support more broad-based tort reform. My voting record over the past 2 weeks proves that fact. However, during committee consideration I believed it was important not to add provisions that fall under the province of other Senate committees. As a result, on April 6 the Commerce Committee voted 13 to 6 to send a products liability reform bill to the full Senate.

SENATE CONSIDERATION

On April 24 the full Senate took up the measure. Over the past 2½ weeks the legislation has consumed some 90 hours of Senate debate. It has been a constructive process. No one can say this body did not fully explore the issues involved. No one can say we blocked any attempts to make changes to the legislation. Indeed, it was those—like myself—who favored a broader bill that found themselves blocked.

Since April 24, we have debated and voted upon over 30 amendments. Roughly a dozen of those dealt with reforming the medical malpractice system. Senator MCCONNELL introduced a broad reform amendment similar to legislation that had been fully debated by the Committee on Labor and Human Resources. That major amendment, together with a number of smaller malpractice reform measures passed the Senate and became part of the bill. I was proud to support these efforts and voted for many of the malpractice initiatives.

Next the Senate turned its attention toward broadening reforms concerning punitive damages. By considering some half dozen punitive damages amendments and adopting several—including major provisions offered by Senators DOLE and HATCH, by Senator SNOWE and by Senator DEWINE—a majority of the Senate worked its will to expand the reform of punitive damage awards from product liability cases to include all civil cases. Again I supported these efforts and worked for their passage.

Finally, the Senate turned to a consideration of joint and several liability. S. 565 as reported contained a provision abolishing joint liability for noneconomic damages. As to these damages, defendants would be liable only in direct proportion to their responsibility for the claimant's harm. They would not be responsible for the harm caused by another defendant who later was found unable to pay the compensation awarded. In other words, with regard to noneconomic damages, a defendant's liability would be several and not joint. Senator ABRAHAM offered an amendment on the floor to extend this concept to all civil cases. Unfortunately, that amendment was tabled.

Mr. President, these actions brought us to Thursday of last week. They also put a majority of the Senate on record in favor of broad-based legal reform. Most importantly, our efforts produced a fair, reasonable, and balanced bill.

Sadly, our efforts were not enough. Last Thursday the Senate failed in two votes to end debate, allow a vote on final passage of the bill, and move to a conference with the House of Representatives to work out the difference between our bill and the much more sweeping legislation passed by the House earlier this year.

As a result, Senate leadership crafted an alternative bill. That measure, introduced Friday as a substitute to the pending legislation, returned the reform initiative to its Commerce Committee roots. That proposal, along with the amendment we are debating today, is very similar to S. 565 as reported by the Commerce Committee.

How did this happen? Quite simply the opponents of broad-based tort reform were highly effective in their

campaign against the legislation. Like much of the debate over the issue of civil justice reform, the rhetoric tended to get very emotional and often strayed off course.

THE TRUTH ABOUT THE BILL

Mr. President, the truth is this legislation would not change any of what is right with our current legal system. The courthouse doors would remain open. Consumers would still have a full range of rights. Persons wrongfully injured still would be compensated. Tort cases could be used to provide a strong check on corporate behavior. Contingent fees would continue to allow ordinary citizens with limited means the ability to bring suit. What would change is that frivolous lawsuits would be curtailed—pure and simple.

In an earlier statement I outlined how the bill's provisions concerning punitive damages, the statutes of limitations and repose, joint and several liability, defenses for alcohol and drug abuse, and biomaterial suppliers would benefit small business, consumers, and those injured by products. Therefore, I will not take the Senate's time to reexamine those issues today. It is not necessary. Under the latest alternative we have before us today, the things I said in that statement continue to apply.

I would add only a few comments concerning the views of the American people—specifically the citizens of my home State of South Dakota—with regard to our legal system. A recent poll conducted in my State found that 83 percent of survey respondents say that ''the present liability system has problems and should be improved,'' while only 10 percent say that ''the present liability lawsuit system is working well and should not be changed.''

In addition, this is not a partisan issue: 78 percent of Democrats, 83 percent of Independents, and 88 percent of Republicans in South Dakota responding to the survey say there are problems that need to be improved. of those who had served on a civil trial jury, 79 percent say the system has problems and needs improvement.

Mr. President, the pending measure is not as broad as I would like. I truly wish we could have done more to address the problems of the tort system generally and not limit ourselves simply to product liability cases. However, I am gratified the model used by the Senate for product liability reform continues to be the bill reported to this body by the Commerce Committee. It represents an excellent move forward and I strongly urge all of my colleagues to vote for this legislation.

Mr. BINGAMAN. Mr. President, I rise today in opposition to H.R. 956, the Product Liability Act of 1995.

I have closely followed the debate on this legislation over the past 2 weeks and I have come to the conclusion that despite the efforts of many of this Chamber, including my good friend from West Virginia, to craft a balanced bill, the bill we are voting on today falls short of that goal.

Mr. President, the issues we have debated over the course of the past 2 weeks are complex and far reaching. Contrary to what some would have the American public believe, the solutions to the problems facing our legal system cannot be explained away in 30-second sound bites or by anecdotal evidence. Each day throughout this country, judges and juries struggle to determine what is meant by justice, and, I believe in the vast majority of cases, these people, our neighbors, friends, coworkers and family, do a remarkable job of determining what is fair and what is just.

I have supported reforms to our legal system in the past and was prepared to support a reasonable reform measure at the end of this debate. I am a cosponsor of S. 240, the Securities Litigation Reform Act of 1995, authored by my colleagues from New Mexico and Connecticut. I have supported my own State's efforts at reform in the area of product liability and medical malpractice, and I worked with my colleagues on the Labor and Human Resources Committee last year to fashion reasonable medical malpractice reform during the health care reform debate. Last week, I voted for an amendment by my colleague from Massachusetts, Senator KENNEDY, that was a reasonable approach to medical malpractice reform and would have protected the rights of States such as New Mexico to enact their own reform.

Indeed, a proposal that would have significantly improved this legislation was considered by Senator BREAUX. This amendment would have created a truly uniform statute of repose and addressed the concerns about the elimination of joint and several liability in a reasoned and balanced matter. The amendment also would have allowed a jury to determine whether or not punitive damages are warranted in a particular case and would have allowed the judge to determine the amount of punitive damages that should be awarded. Unfortunately, Senator BREAUX did not have the opportunity to offer his amendment and the Senate did not have the opportunity to debate it as a result of cloture being invoked yesterday.

I have come to the conclusion that the bill that we vote on today tilts the scales too heavily against protection of the rights of injured victims and against just punishment of dangerous practices. Also, Mr. President, I am concerned about the provision limiting the award of punitive damages in cases filed against a small business. I take a back seat to no one in my concern for small businesses and have worked throughout my career in the Senate to promote the growth and prosperity of small businesses especially in my home State. However, the provision contained in this bill is not well considered; I am afraid that it would lead to more litigation, not less, and arbitrarily eliminate the opportunity for injured plaintiffs to recover fair and just compensation for damages inflicted as a result of conscious and flagrant indifference to their safety. That is what we are talking about Mr. President, not simply a mistake, but a conscious and flagrant indifference to the safety of consumers.

Mr. President, I would say to my friend from West Virginia, Senator ROCKEFELLER, and my friend from Washington, Senator GORTON, that I commend them for their efforts during this debate to bring reason to our deliberations. I know that they have worked diligently and in good faith to develop meaningful and balanced legislation in this area. Unfortunately, I do not believe that the bill before us reaches those objectives and for that reason I intend to vote against this bill and urge my colleagues to join me.

Mr. KERRY. Mr. President, when we talk about reforming product liability law, we are talking about taking away the rights of U.S. citizens. This is serious business—among the most serious things we can do in the Senate, and it is from this perspective that we must approach this debate.

Cloture has been invoked and we are about to vote on final passage. But before we haphazardly strip citizens of their rights, we need to take a long, hard look at what this means to people—how it affects families and children and average, hard-working people who have suffered.

Let us take a representative case. It is a wrongful death case.

A woman drives a Pinto to the supermarket. Someone bumps into the rear of the car, and the car explodes—it explodes. She is tragically burned alive—a wife, a mother, a human being burned alive because of what, after years of legal hassling and thousands of dollars in legal fees, lawyers hours, and a legal battle that has become part of tort history, Ford had calculated that it was cheaper to settle than to protect the lives of every Pinto owner with a recall.

It made good business sense to take the risk of people dying.

Mr. President, that kind of business sense is exactly what I am here to fight against.

I am here to fight for the husband of that woman in the Pinto. I ask my colleagues—would you settle for $250,000 in exchange for losing your spouse and destroying your life?

Is that fair? Is that just?

Mr. President, if this bill were to become law, you would not even get the $250,000 because there is not a lawyer in the country who would take the case.

No law firm could afford to go up against the Ford Motor Co., with its host of attorneys and huge legal budget, and an infinite ability to push motions and appeals to the limit and slow down the process to their advantage. It just would not happen.

Mr. President, I cannot sanction stripping this legal right from even one American. I cannot do it. And anyone who can, should look into the eyes of

that husband. They should look into the face of the thousands and thousands of victims across this country who seek simple justice and fairness and ask only to be given a chance to fight the big guys.

It is a matter of fairness. It assures that those who do not have the resources to fight the richest and most prominent American corporations when they are wrong will have a chance for simple justice.

I am here to fight for average hard-working Americans and to put a face to this legislation—to talk about how this bill will affect real Americans. Real Americans, like the 5-year-old boy in New Bedford, MA, who died in a house fire after the flammable material on a couch ignited, or the 8-month-old baby who suffered second- and third-degree burns on his arms, legs, and back in a house fire that started when the bedding in his crib was ignited by a portable electric heater.

Or, the eight working-class families in Woburn who sued two of our Nation's biggest corporations because they suspected the companies had polluted the East Woburn water supply with highly toxic industrial solvents, causing death and injury to their children.

The Woburn case took 9 years, and the attorney that pleaded the case spent $1 million of his own money on it. The jury ultimately found one of the companies negligent, and the scientific research done during the 9-year trial demonstrated the link between the industrial solvents in the water supply and human disease. The company is now helping to clean up the polluted aquifer. The attorney has said that if this bill were law today, he would never have considered the case.

If we pass the Dole substitute to H.R. 956, I fear we will be doing great harm. Our votes will have a serious impact on real Americans.

Mr. President, our laws play a critical role in fostering a competitive economic environment by establishing groundrules for fair competition and by helping to reduce the costs of doing business. But I believe Congress has a special responsibility to ensure the laws we write are reasonable and fair; we must weigh the impact of laws will have on both consumers and business.

In the 10 years I have considered product liability reform at the Federal level, I have heard proponents of reform argue that consumers lose under the present system. They have argued that injured consumers receive inadequate compensation, and that injured consumers wait unreasonable amounts of time in litigation—on the average of 3 years—before they receive compensation. They have also argued that injured consumers face closed courthouse doors because the statutes of limitation have expired on their cases.

Proponents of reform have stressed that companies in the United States also lose under the current system. They have pointed to insurance rates that disable American manufacturers by forcing them to pay 10 to 50 times more for product liability insurance than their foreign competitors. They have claimed there is an explosion in products liability litigation, with uncontrollable punitive damages awards. They have argued that the present system of lottery liability, where liability differs from State to State, does not enhance the safety of U.S. products.

Each time the Senate has considered products liability legislation, I have measured the legislation against four tests: Is it fair to injured consumers; will it help lower insurance rates for American business; will it help reduce the number of tort cases and lower the cost of litigation, the transaction costs, for American business; and will it create uniformity in the laws covering products liability or generate more confusion in the legal system?

In my examination of whether S. 565, the products Liability Fairness Act, and the Dole substitute satisfy these tests, I have concluded that this legislation fails on each account. It does not address the real concerns of business, nor is it fair to consumers.

IS THE LEGISLATION FAIR TO CONSUMERS?

Consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. But, according to the most authoritative study on punitive damages, conducted in 1993 by professors at Boston's Suffolk University Law School and Northeastern University, there were only 355 awards in products suits from 1965 to 1990, and half of these awards were reduced or overturned. In my own State of Massachusetts, there were absolutely no punitive damages awarded in products cases.

Contrary to ensuring that injured consumers will receive adequate compensation in relation to their actual damages, this legislation imposes a cap on punitive damages. This is perhaps the most damaging aspect of this legislation to consumer interests. Although the cap has been amended to equal the sum of economic and noneconomic damages, a cap is still a cap.

In our civil justice system compensatory damages—economic and noneconomic for pain and suffering—compensate victims; in addition, punitive damages may be awarded by juries to punish the wrongdoer.

As such, punitive damages are often the only way individual Americans can force reckless defendants to change their conduct. However, despite the effectiveness of punitive damages as deterrents, they are exceedingly rare.

And the new standards imposed for punitives in this bill will make them more rare than the Alabama sturgeon.

Under most State laws, the defendant can be found liable for punitive damages if they engaged in reckless or willful and wanton or grossly negligent type of behavior.

But under this bill, Mr. President, such behavior is not enough. A plaintiff must show that a company engaged in conduct manifesting a ''conscious, flagrant, indifference to safety''. I have no idea what that means, Mr. President. but it certainly appears to be a tougher standard to meet.

Moreover, it is unclear how the cap on punitives in this bill would affect the 39 States that presently either do not permit punitive damage awards or have enacted measures that significantly reduce the size and frequency of such awards.

Far from ensuring injured consumers will enjoy expeditious resolution of their case, this legislation could prolong litigation by allowing either party to request a separate hearing in order for punitive damages to be awarded. Far from ensuring courthouse doors remain open to injured consumers, this bill imposes a 2-year statute of limitation and shortens the statute of repose by 5 years from last year's bill.

If this bill truly protects consumers interests, why is it opposed by every major consumer group in America?

If this legislation had been in effect, many cases would simply not have been possible. Let me give just one more example here:

In 1988, Playtex removed from the market its super-absorbent tampons linked to Toxic Shock Syndrome only after a $10 million punitive damages award following the death of a woman who used the tampons.

The Tenth Circuit Court of Appeals found ''Playtex deliberately disregarded studies and medical reports linking high-absorbency tampons fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their high-absorbency tampons.''

Playtex subsequently strengthened its warnings and began a public awareness campaign about the dangers of toxic shock. It is doubtful whether a cap of $250,000 on punitive damages would have caused Playtex to alter its behavior.

If the cap on punitive damages contained in this legislation is enacted, wrongdoers may find it more cost effective to continue their bad behavior and risk paying punitive damages. I do not believe we should pass a bill that reduces the incentive for companies to produce the safest products.

WILL THIS LEGISLATION LOWER INSURANCE COSTS FOR BUSINESSES?

In testimony before the Commerce Committee several years ago, the American Insurance Association stated:

> The bill is likely to have little or no beneficial impact on the frequency or severity of product liability claims * * * And it is not likely to reduce claims or improve the insurance market.

So, this legislation will not provide businesses with cheaper insurance rates. Insurance premiums for most industries account for less than 1 percent of a business' gross receipts. Such a small percentage hardly threatens the

viability of business and should not result in increased costs to consumers.

Over the last decade, product liability insurance cost 26 cents per $100 of retail product sales, which would account for $26 on the price of a $10,000 automobile. Since 1987, according to a study by the Consumer Federal of America, product liability insurance premiums have actually dropped by 47 percent, from $4 billion to $2.7 billion, a fact that was confirmed by a 1992 Commerce Department study.

Let us take a look at Florida. In Florida's 1986 tort reform law, the State eliminated joint and several liability, limited noneconomic damages to $450,000, limited punitive damages, and required the insurance industry to make rate filings indicating the effect of the changes in its tort laws on product liability insurance rates.

Yet, Aetna's subsequent rate filing listed the effect of each change on its rates as zero. If such dramatic changes in Florida's tort reform law resulted in no lowering of liability insurance costs for a major carrier like Aetna, where is the evidence to suggest this bill will produce different results?

WILL THE LEGISLATION LOWER THE COST OF PRODUCTS LIABILITY LITIGATION FOR BUSINESSES?

Proponents of this legislation speak in terms of an explosion in product liability litigation. However, the evidence belies this characterization. In fact, the number of nonasbestos products liability suits in Federal courts has declined almost 40 percent since 1985. In State courts, where most products liability claims are filed, lawsuits have remained constant since 1990, according to testimony presented to the committee on April 3, by the National Center for State Courts.

The 1992 annual report of the National Center for State Courts found that tort cases are approximately 9 percent of the 10 million civil filings in State courts and products cases are 4 percent of these—40,000.

Only one-third of 1 percent of all tort filings in State courts are product filings.

Of all tort filings in 1991, 58 percent were related to automobile liability; 33 percent were miscellaneous; 5 percent were malpractice; and 4 percent were products. Since 1990, the national total of State tort filings has fallen by 2 percent.

In 1990, the Rand Corp. found that most injured Americans never file a lawsuit for their injuries: only 10 percent of injury victims ever use the tort system to seek compensation for their injuries.

This report also found that only 7 percent of all compensation for accident victims is paid through the tort system. The report observed:

> Americans' behavior does not accord with the more extreme characterizations of litigiousness that have been put forward by some.

If there has been a litigation explosion, it is not in the area of products liability. Once again, this legislation misses the target in addressing the real litigation problems facing business.

WILL THIS LEGISLATION BRING UNIFORMITY TO PRODUCT LIABILITY LAW?

Tort law has traditionally been a State responsibility, and the imposition of Federal products standards upon State tort law would, according to the National Conference of State Legislatures, ''create confusion in State courts.''

Testimony by the Conference of Chief Justices was even more emphatic:

> If the primary goal of this legislation is to provide consistency and uniformity in tort litigation, we are concerned that its effect will be the opposite.
>
> Preempting each State's existing tort law in favor of a broad Federal product liability law will create additional complexities and unpredictability for tort litigation in both State and Federal courts, while depriving victims of defective products of carefully reasoned principles and procedures already developed at the State level.

This bill will not end the search of the sponsors for a single settled law because it does not create Federal question jurisdiction. The legislation would preempt all related State law and substitute Federal standards, but it would impose the Federal standards in a single overlay upon the 56 existing State court systems as well as the Federal courts.

The result will be both State and Federal courts applying a mix of State and Federal law in the same case; State supreme courts will no longer be the final arbiters of their tort law. The U.S. Supreme Court, which many experts argue is already overburdened, will become the final arbiter of this new legal thicket.

So, here we have what is indeed an irony: Those who ordinarily preach the virtue of reserving power to the States are instead advancing legislation to usurp the legitimate authority of States.

At a time when many in Congress are intent upon returning responsibility for many Federal programs to the States, this legislation would preempt State law.

Mr. President, the sponsors of this legislation have worked extremely hard, and I particularly wish to commend my friend from West Virginia for his tireless efforts on behalf of this legislation. I also commend the ranking Democrat on the Commerce Committee, Senator HOLLINGS, for his stalwart defense of consumer interests.

For all of this effort, I regret that I cannot support this bill. I cannot support it for two very simple reasons. The legislation is patently unfair to consumers, and it will not resolve the products liability problems businesses tell me they face.

It will remove from ordinary Americans the power they retain in the jury box to force accountability for dangerous, careless, or reckless behavior. In the jury box, each American can bring about positive change. If we undermine the ability of our citizens to force changes in bad behavior, we will have compromised our Nation's core values.

While many Americans increasingly sense an erosion of personal responsibility, our civil justice system remains one institution that holds individuals and organizations accountable for their behavior. Make no mistake, by restricting the civil justice system, this bill will take rights away from Americans.

All of the available evidence on this legislation shows it will not make businesses more competitive by reducing insurance rates or the costs of corporate litigation, and it will not create national uniformity in products liability law.

A great deal of hype has been generated about this issue, and after 15 years, it appears to have taken on a life of its own. But all the lobbying and advertising cannot convince me that this legislation will accomplish its stated goals.

The Dole substitute to H.R. 956 fails to strike a reasonable balance between promoting the competitive interests of business and protecting the rights of consumers. It will create a nightmarish new legal thicket that should be avoided rather than embraced. It is unfortunate that after all the effort we could not have achieved a reasonable balance.

After we have argued all the complicated points of law, after we have poured over horror story after horror story, the issues boil down to one simple point: This bill is not fair, and it should be rejected.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent that a letter I received from the National Federation of State High School Associations be printed in the RECORD.

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

NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS,
Kansas City, MO, May 9, 1995.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: On behalf of the National Federation of State High School Associations, I want to commend you for your leadership on legislation to address the long overdue reform of our civil justice system. We applaud your efforts to rein in the exploding costs of litigation that, if unchecked, threaten to bankrupt non-profit organizations such as ours and our member affiliates. The National Federation is comprised of 51 state high school associations, with the primary purpose of promulgating sports and non-sports playing rules, including those specific to safety issues, for more than 20,000 schools and approximately 10,000,000 students each year. Additionally, our member associations establish and enforce the eligibility rules under which all boys and girls compete in high school athletics.

The legislation pending before the United States Senate, The Product Liability Fairness Act of 1995 (H.R. 956), sets limits on all product liability cases. Furthermore, the bill as currently amended, would eliminate joint

liability for non-economic damages. Instead, only several liability would be allowed which means that each defendant would be liable only for his, her, or its portion by reason of its proportion of the fault causing the injury. Economic damages, i.e. lost wages, medical costs, etc. would remain joint and several at the discretion of each state.

We strongly agree with your comment on the floor this past week stating ''it is unfair and unproductive to make defendants pay for damages of a nature that are literally beyond their control or beyond their fault.'' This fundamental concept should apply to the civil justice system as well.

Let me cite two examples of costly litigation we recently incurred which epitomize the unfairness and counterproductive nature of current civil law. Both occurred in school swimming pools.

First, in Indiana a high school boy was ''leap frogging'' off the starting platform, prior to the start of practice, despite repeated warnings from his coach. On one such leap, his foot got caught under the platform; he fell head first into the water and struck his head on the pool bottom. Tragically, he suffered a neck injury that ultimately resulted in quadriplegla. While this unimaginably horrible accident was not related to any swimming competition, the National Federation was sued simply because it writes the rules for interscholastic swimming, including rules related to standards for equipment and facilities such as the depth of swimming pools.

Yet another incident occurred in Michigan during a water polo practice. This incident involved a high school boy who jumped off the platform over a lane designation rope and struck his head on the pool bottom. This seemingly harmless leap resulted in a lifetime of paralysis from the neck down. While the National Federation does not even write water polo rules, nor rules for the practice sessions for any sport, we were included in the law suit and incurred exorbitant legal fees for a defense that should not have been necessary.

These are but two examples of what has become a nightmare of litigation for the National Federation and its member affiliates. Without radical reforms to our system of civil justice, organizations such as ours whose sole mission is to build a consensus for safe sports competition will be unfairly jeopardized and possibly destroyed.

Unfortunately, lawyers often join sanctioning bodies such as ours in law suits as a trial strategy rather than because of a reasonable belief that the injury was caused in any way by the action of the sanctioning body. Current law discourages sanctioning bodies from setting minimum safety standards because of their fear of being joined in subsequent litigation. This is bad public policy.

Therefore, in addition to holding firm in your effort to reform the civil justice system, we urge you to include an exemption in the law for sanctioning bodies such as ours who are joined in law suits solely because they recommend minimum standards for facilities and equipment for the purpose of reducing risk inherent in participation in almost any given sport. This exemption would be consistent with your stated belief that it is unfair and unproductive to make defendants liable for incidents that are ''literally beyond their control or beyond their fault.''

Again, thank you for your leadership on this vital issue. The members of the National Federation of State High School Associations and I look forward to assisting you in achieving these needed reforms.

Sincerely,

ROBERT F. KANABY,
Executive Director.

Mr. BYRD. Mr. President, the Senate has been considering legislation related to product liability for almost 2 weeks. During that time I have heard from a number of West Virginians who have been harmed or injured by defective products, as well as from businesses that have been seriously impacted by lawsuits brought against them—at times somewhat unfairly. I have listened to the debate and considered how the Senate can best balance these competing interests, and have concluded that the substitute amendment offered by Senators GORTON and ROCKEFELLER does not adequately protect the rights of injured parties and consumers in two critical areas.

The first involves the issue of several or proportional liability, versus joint and several liability. Under the concept of proportional liability, a defendant is only responsible for a percentage of liability directly contributing to the injury or harm caused by the defective product. On the other hand, joint and several liability provides that each defendant who contributes to causing a plaintiff's injury may be held liable for the total amount of damages. Joint and several liability, by enabling a plaintiff to recover all of his or her damages from a single defendant with the greatest financial assets or resources—the so-called ''deep pocket''—makes it more likely that the plaintiff will obtain full recovery in the event that one defendant does not have the assets to pay part of the judgment.

The proposed legislation completely eliminates joint and several liability for noneconomic damages, such as pain and suffering, while retaining it for economic damages. This means that victims would fully recover their economic damages in the form of lost income or medical expenses, but victims with higher lost incomes, such as business executives, would receive greater compensation. Victims would fully recover their economic damages, even if only one defendant among several defendants is still solvent, because the ''deep pocket'' would provide full compensation for economic damages; however, due to the elimination of joint and several liability for noneconomic damages the parties would only receive partial compensation for pain and suffering.

This provision could significantly reduce compensation in cases where the individual could still earn a livelihood, and thus not have large economic damages, yet that same individual could still have significant noneconomic damages. In this context, noneconomic damages could include not just pain and suffering, but also any diminishment of the quality of life, such as infertility or the loss of a limb.

The result of completely eliminating joint and several liability for noneconomic damages, then, would be that the innocent victim might not receive a majority of the compensation due if the other wrongful defendants were insolvent. I have concluded that this provision in the legislation shifts the balance too far in the direction of defendants at the expense of the victims of wrong doing in the form of defective products.

The other key provision of the legislation is the section dealing with punitive damages. Punitive damages are intended to punish willful or wanton misconduct on the part of a manufacturer or business. Furthermore, by punishing misconduct, punitive damages are intended to deter such behavior in the future.

Punitive damages therefore must take into consideration the financial assets of the defendant or guilty party. A punitive damage judgment of $250,000 may be both harsh punishment and a significant deterrent to a small business, but it is insignificant to a large corporation. Any cap on punitive damages can only serve to benefit, if not condone, egregious and wanton behavior by large corporations.

The legislation limits punitive damages to the greater of $250,000 or two times the total economic and noneconomic damages. The bill also stipulates that a judge may add to these punitive damages, and exceed the cap, at his discretion. I am concerned that this ''judge additur'' provision does not fully resolve the problem of capping punitive damages for large corporations. First, many judges may be reluctant to overrule a jury's decision, and add to the punitive judgment. Second, the effect could be arbitrary, as some judges may opt to add to punitive judgments, while others may not. Third, the burden of proof would be on judges to demonstrate why a larger punitive judgment that would exceed the cap is necessary, which could discourage judges from adding to punitive judgments. Fourth, it strikes at the heart of our tradition of jury judgments in such product liability and civil litigation.

I recognize that the current product liability system, which involves different laws in each of the 50 States, imposes a considerable hardship on some manufacturers, particularly in the case of small business. I endorse the goal of establishing some type of national uniformity in this area. However, I regret that I cannot support the legislation that is now before the Senate. While national uniformity is a laudable goal, any national standard must also fully protect the rights of consumers and victims of harm caused by defective products.

While I may disagree on several of the provisions included in this measure, I would be remiss if I did not acknowledge and salute the hard work and leadership of Senator ROCKEFELLER. He believes in this legislation. He has put his heart into working on it, and I believe that he is correct in that there are inequities in the present system which need to be addressed. My opposition notwithstanding, I want to commend both Senator ROCKEFELLER and Senator GORTON for their tireless

efforts on behalf of product liability reform.

Mr. LEVIN. Mr. President, I believe that there is a strong argument to be made for uniformity in product liability law since so many products are sold across State lines.

But there is no uniformity in this bill. This bill contains limits and restrictions on compensation for injuries caused by defective products, but those limits and restrictions are not uniform. On the contrary, the bill contains a one-way preemption provision, which allows States to adopt virtually any law that differs from the so-called national standard, as long as that law is more restrictive than that standard. A patchwork of State laws is still permitted, provided that the divergences are in the direction of greater restrictions on the injured party.

As I pointed out earlier in this debate, every single provision of this bill is written to prohibit State laws that are more favorable to plaintiffs. But the only provision of the bill that would prohibit State laws that are more favorable to defendants is the statute of limitations. We are not adopting true national standards at all.

This bill is not balanced, it is not uniform, and I cannot support it.

I ask unanimous consent that a table demonstrating the one-way nature of the preemption in this bill be printed in the RECORD.

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

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed.
Alcohol or drug abuse defense	do	Do.
Misuse or alteration of product defense	do	Do.
Punitive damage limitations	do	Do.
Statute of limitations	do	Prohibited.
Statute of repose	do	Allowed.
Joint and several liability (non-economic damages).	do	Do.
Biomaterials provisions	do	Do.

Ms. MIKULSKI. Mr. President, I voted for cloture on the product liability bill because I believe it is important to the economy, job creation, international investment, and our ability to do research, especially on issues of women's health.

Mr. President, much has been said about caps. I do not like caps—caps on job creation or caps on innovative research. I do not like caps on technological advancement or caps on our ability to go global. I am opposed to caps on profits, caps on wages, or caps on opportunity.

My job as a U.S. Senator is to save jobs, save lives and save communities. I support efforts to reduce frivolous law suits and improve the efficiency of our legal system.

I have heard of cost estimates for cases that are in the millions. That's outrageous. We should make every effort to establish consistency and uniformity, but not at the price of people's fundamental right to redress.

When it comes to public health and safety I want to ensure that those responsible are in fact held accountable for their actions. For that reason, I will not support any legislation which closes the courthouse door to citizens with legitimate cases.

This is the kind of balance I support and that I believe we, as Members of Congress, need to achieve with this legislation.

Mr. President, today's cloture vote was a difficult decision for me. Product liability involves very complex and complicated issues, including joint and several liability, noneconomic versus economic damages, statute of repose, punitive damages, and alternate dispute resolution. To help me better understand product liability and its impact on people's day to day lives, I met with people on both sides of this issue. I met with business organizations and consumer organizations. All the groups made legitimate arguments expressing worthwhile and important concerns.

Some businesses are concerned about how our current system ultimately impacts their decisions about innovation and competitiveness, small businesses are concerned about going out of business all together. We should take every step we can to cut unnecessary liability costs and encourage innovation. Innovation will ultimately lead to jobs today and jobs tomorrow. We must acknowledge that innovation, particularly in the health field, is critical for out Nation's economic stability and competitiveness, and it is critical to the health and safety of American citizens.

I was particularly moved by the National Family Planning and Reproductive Health Association's position that tort reform is needed to increase investment in women's health research and technologies. Mr. President, the product liability issue has been around for quite some time. There was no doubt that I could not sign on to previous product liability reform bills introduced in the early 1980's. But, I believe the current legislation is an attempt to achieve a reasonable balance at this point.

Is this bill perfect? Of course, it is not. In this case, it is hard to put forth a perfect bill. There is no doubt that we should review this issue in the coming years and make sure it is working. If it is not working, we in Congress have the option to review it and make changes. Looking at our current system, I believe there are areas that can be improved. For that reason, I am willing to support Federal product liability reform. Many of the reforms proposed by this legislation have already been done at the State level. So, in many ways we are acting consistently with respect to the States.

Mr. President, I want to make it clear. The House bill goes too far. It includes a number of bad provisions, including severe caps on pain and suffering. To move beyond the Senate bill would be a mistake. The scales on this issue are delicately balanced. If those scales are tipped, it is unlikely I will support this bill.

Mr. PELL. Mr. President, today the Senate has passed by a convincing margin the product liability bill. It was a difficult and contentious effort, much akin to the debate that this area has generated over the last decade. I was pleased that the Senate saw fit to pass this legislation and am hopeful that a productive and successful conference with the House will follow and eventually that the President will sign this legislation into law.

I have long supported product liability reform even when it began as a somewhat lonely effort over a decade ago. Finally, with a supportive Congress, it seems that we may be coming up with a bill that can actually become the law of the land. It must be noted that in order to preserve the best possible chance of reaching that result, other areas of legal reform, such as medical malpractice and broad tort reform, have been excluded. I joined in the effort to keep this bill clean from those additions but I want to state that I support reform in those areas as well and look forward to addressing them in the future. I simply felt that this legislation was an inappropriate forum for dealing with those issues. In the end, this bill represents a workable and reasonable balance for reforming the legal procedures and standards governing how one can seek redress for harm caused by faulty products.

I congratulate the hard work of my colleagues, in particular Senators ROCKEFELLER and GORTON, who artfully and doggedly crafted a compromise that was acceptable to the Senate. They have worked hard and long, indeed for years, on this legislation and they are to be commended for their accomplishment. I await the conference report on this legislation with anticipation and express my hope for speedy final consideration.

Mr. BRADLEY. Mr. President, I rise in opposition to the Product Liability Fairness Act of 1995. Let me first say, Mr. President, that I share the concerns of the people of New Jersey and this country that our society is too litigious. I share the concerns of my colleagues and the American people that the cost of this litigation explosion is injurious to the social and economic future of this country. However, after reviewing this bill and assessing the arguments, both pro and con, I do not think that this bill strikes the appropriate balance between the desires of manufacturers and product sellers to streamline the product liability process and the ability of ordinary Americans to bring lawsuits seeking relief from injuries resulting from defective and dangerous products.

Mr. President, I favor a cap on punitive damages for small businesses. I supported the amendment of my colleague from Ohio, Senator DEWINE,

which provides for a cap on punitive damages for small businesses with 25 or fewer employees and individuals with assets of less than $500,000. Small businesses are the engine that drives the American economy and provide for at least half of this country's new employment opportunities. While a cap on punitive damage awards should be sufficient to punish and deter future action, it should also reflect the fact that a cap that may be sufficient to punish a large corporation may in fact push a small business into the abyss of bankruptcy.

However, Mr. President, I have grave concerns about the overall cap on punitive damages. The purpose of punitive awards is to punish the wrongdoer for egregious behavior and deter such behavior in the future. I believe that if we place a low cap on punitive damages, some corporations will not be discouraged from exposing consumers to dangerous products. Indeed, with predictable caps, Mr. President, wrongdoers may find it more cost effective to make dangerous decisions and risk paying punitive damages. Moreover, Mr. President, while this bill authorizes judges to increase an award of punitive damages beyond the limits of the cap, this safeguard is illusory because defendants have the right to receive a new trial—a right which they will surely exercise. Indeed, the provision in the bill will only lead to repetitive litigation, increase costs and prevent deserving consumers from obtaining their awards in a timely manner.

Mr. President, I do not need to repeat the horror stories about women who have tragically suffered and died from using dangerous products, children who have been burned by flammable clothing, or hard working Americans, who have senselessly been injured and killed as a result of defective automobiles. What needs to be repeated is that the one constant in all of these horror stories is that the manufacturer knew of the dangerous defect and failed to take adequate steps to protect the public. Mr. President, punitive damages are available to police conduct that is so egregious that the offender disregarded forseeable dangerous consequences. Indeed, as this bill provides, punitive damages are only available where there is clear and convincing evidence of a conscious, flagrant indifference to the safety of others. Given the nature of the offense, Mr. President, I firmly believe that placing a cap on punitive damages will be counterproductive to society's efforts to police and deter such egregious conduct.

Mr. President, under the present caps, cigarette manufacturers and those who irresponsibly market alcohol to intoxicated persons or minors who then kill or injure innocent victims in traffic crashes would continue to manufacture and market these products of destruction with less fear of having to one day pay the price for the massive damage that their products inflict on society. Moreover, firearms and ammunition are virtually the only unregulated consumer product in America. As such, the tort system is the only check on the safety of consumers. I am not willing, Mr. President, to place a cap on punitive damages when the result will be that such action will lessen the liability of the manufacturers who profit from these destructive products.

Mr. President, while I also think that there is a need for joint and several liability reform, I cannot endorse the blanket elimination of joint and several liability for noneconomic damages that is in the present bill. Instead, Mr. President, I favor the approach currently in operation in New Jersey, which provides for proportional liability if the defendant is responsible for 20 percent or less of the harm, several liability for noneconomic damages if a defendant is responsible for between 20 percent and 60 percent of the harm, and joint and several liability if the defendant is responsible for 60 percent or more of the harm.

Mr. President, this bill would preempt State product liability law ''to the extent that state law applies to an issue covered under the Act.'' Proponents of product liability reform argue that Federal legislation is needed to establish uniformity. However, the bill does not require States to have uniform State laws. For example, those States that do not now allow punitive damages would not be required to award them, even though the bill provides for the award of such damages. The effect of this provision is that States can offer their individual citizens fewer rights, but not more.

Mr. President, this bill also excludes actions involving commercial loss. By excluding such actions, the bill places restrictions on the ability of individuals to seek redress from defective products, but does not place any restrictions on corporations to seek redress. For example, if a product explodes in a factory, the worker's recovery for injuries is limited by this bill; however, the factory owner may sue the product manufacturer or seller free from the restrictions of the bill for such speculative damages as the factory's loss of profits because of delays in production. Thus, the effect of this provision is to value material property over the health and safety of individual citizens.

Mr. President, we have been told that there is a litigation explosion with respect to product liability and that corporations and the business community are suffering under the weight of this explosion. However, Mr. President, excluding cases of asbestos, product liability claims in Federal courts have declined by approximately 36 percent between 1985 and 1991. Moreover, in State courts, product liability cases are approximately 4 percent of all tort filings, .0036 percent of all civil caseloads and .00097 percent of the total State court caseloads.

Mr. President, although there have been relatively few punitive damage awards in product liability cases over the last 25 years, we have been told that the threat of punitive damages encourages many product manufacturers to settle cases that they would have no problem winning in an effort to avoid having claims for punitive damages go to juries unfamiliar with the precautions that are now taken to insure that products are safe. However, Mr. President, the numbers simply do not add up to the conclusion that the business community is being treated unfairly by juries. Indeed, almost 60 percent of the product liability cases brought in 1993, plaintiffs were the losing parties.

Mr. President, it has additionally been argued that these lawsuits increase the costs of producing products in this country and thus hurt American competitiveness. However, a 1987 Conference Board survey of risk managers of 232 corporations shows that product liability costs for most businesses are 1 percent or less of the final price of a product, and have very little impact on larger economic issues such as market share or jobs. In addition, the American Insurance Association, the largest trade association representing the insurance industry, has testified that this legislation will have virtually no effect on insurance costs.

Mr. President, to put it succinctly, I do not think that the bill will really do what its proponents say it will do. As mentioned earlier, the proponents of this bill argue that the business community is suffering under the weight of a litigation explosion. They contend that this bill will decrease both the incidence and cost of litigation. Mr. President, no one disagrees that we are an overly litigious society. However, I am not convinced that this bill can correct the problem of litigiousness in society. Indeed, Mr. President, the fact is that the punitive caps provision providing for the automatic right to a new trial by defendants will serve to only increase the delay and cost of litigation. This bill tilts the scales of justice too far to the disadvantage of individual consumers. Thus, I cannot support legislation which will endanger the health and safety of hard working Americans.

In conclusion, Mr. President, because of the above stated concerns, I must oppose the Product Liability Fairness Act of 1995.

VOTE ON AMENDMENT NO. 690, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 690, the Coverdell-Dole substitute, as amended.

So the amendment (No. 690), as amended, was agreed to.

VOTE ON AMENDMENT NO. 596, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 596, the Gorton substitute, as amended.

So the amendment (No. 596), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the

amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. GORTON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote ''yea.''

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

The result was announced—yeas 61, nays 37, as follows:

[Rollcall Vote No. 161 Leg.]

YEAS—61

Abraham	Frist	McCain
Ashcroft	Glenn	McConnell
Bennett	Gorton	Mikulski
Bond	Gramm	Moseley-Braun
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Pryor
Conrad	Hutchison	Robb
Coverdell	Inhofe	Rockefeller
Craig	Jeffords	Santorum
DeWine	Johnston	Smith
Dodd	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kohl	Thomas
Dorgan	Kyl	Thompson
Exon	Lott	Thurmond
Faircloth	Lugar	
Feinstein	Mack	

NAYS—37

Akaka	Feingold	Moynihan
Baucus	Ford	Murray
Biden	Graham	Packwood
Bingaman	Harkin	Reid
Boxer	Heflin	Roth
Bradley	Hollings	Sarbanes
Breaux	Inouye	Shelby
Bryan	Kennedy	Simon
Bumpers	Kerrey	Simpson
Byrd	Kerry	Specter
Cohen	Lautenberg	Wellstone
D'Amato	Leahy	
Daschle	Levin	

NOT VOTING—2

Lieberman	Warner

So the bill (H.R. 956), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 956) entitled ''An Act to establish legal standards and procedures for product liability litigation, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term ''actual malice'' means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(6) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(7) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(8) HARM.—The term ''harm'' means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(9) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(10) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(11) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(12) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(13) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(14) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(15) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(16) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(17) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—The amount of punitive damages that may be awarded in a product liability action that is subject to this title against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed the lesser of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(3) EXCEPTION.—

(A) DETERMINATION BY COURT.—Notwithstanding subparagraph (C), in a product liability action that is subject to this title, if the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages in excess of the amount determined in accordance with paragraph (1) to be awarded to the claimant (referred to in this paragraph as the ''additur'') in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under subparagraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the misconduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITURS.—If the court awards an additur under this paragraph, the court shall state its reasons for setting the amount of the additur in findings of fact and conclusions of law. If the additur is—

(i) accepted by the defendant, it shall be entered by the court as a final judgment;

(ii) accepted by the defendant under protest, the order may be reviewed on appeal; or

(iii) not accepted by the defense, the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only, and judgment shall enter upon the verdict of liability and damages after the issue of punitive damages is decided.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(5) REMITTITURS.—Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 108. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1996.

SEC. 109. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 111. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject

of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 112. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I would want to take this opportunity to first congratulate the majority of the Members of the Senate and Members on both sides of the aisle for by far the most significant step in legal reform which has been taken by the Senate in many, many years, perhaps in the memory of the most senior of the sitting Senators. This has been a project by members of the Commerce Committee which has lasted for a decade and a half. It also, I may say, after 2½ weeks of debate, has been one in which the views of the Members had an impact, had an impact in showing that a majority of the Senate, a bare majority, wants a broader legal reform package than is included in this bill, but that others worried about particular details were willing to work on those details, and to cast their votes accordingly. So I believe that the Senate has worked its will in a particularly fine fashion.

I want to pay particular tribute to my colleague, the Senator from West Virginia [Mr. ROCKEFELLER]. In many respects this has been a far more difficult task for him than it has been for me. I represent a broad coalition of views within my own political party with only a few having had differences. Senator ROCKEFELLER throughout this entire period of time has spoken for a significant number of Members of his colleagues but by no means a majority of them. But his dedication to the cause of this reform has been exemplary, and his persuasive ability with many of those colleagues has constantly left me in awe and with a great deal of inspiration. I believe that his persistence has paid off, and how wonderfully that it has done so.

I have gotten to know Tamera Stanton, his legislative director, and Ellen Doneski, his legislative assistant, very well during the course of this period of time and know how much they have contributed to his success, as has Trent Erickson, Lance Bultena, Jeanne Bumpus for me, and the majority leader's assistant, Kyle McSlarrow.

Other Senators have contributed significantly to this result, the chairman of the Commerce Committee, Senator PRESSLER, Senator COVERDELL, and Senators SNOWE and DEWINE who came up with the formula for punitive damages which appealed to the majority of Members of this body.

I only regret that Senator LIEBERMAN, the other principal cosponsor of this bill, through a family emergency is absent today. I know that he would like to have been in on the end of this. But his contributions are greatly appreciated. And he is one of the primary authors of the portion of this bill that deals with medical devices.

Now we go on to try to get a final proposal passed by the Congress and through the President of the United States.

The majority leader has been patient in allowing us 2½ weeks on this, and was an absolute key to its success as well.

With that, I think he wishes us to go on to another subject.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I too want to at this moment thank those who have been in the trenches over the years and, of course, most of all my distinguished colleague, the Senator from Alabama. It is always good to get in behind the chief justice because you know you are on the side of the law and of equity, and you know you are on the side of the judgment. Certainly it is, as we all revere him ethically, that you are on the side of ethics and equity.

I thank publicly Senator HEFLIN for his leadership, and particularly Winston Lett, a member of his staff. On my staff, Kevin Curtin, Jim Drewry, Moses Boyd, James Leventis, and Lloyd Ator. They have been working around the clock, Kevin and Moses and others have been working in sort of a minority position on this measure.

The record would show that my particular Commerce Committee has over the past several Congresses voted by a majority to report this bill. So we have had a sort of uphill fight. I still feel that, of course, we had the merit. I guess they feel they had the merit. But in any event, I think the 15-year holdup was because of that on our side. I also would like to thank Senator BIDEN's staff, the Senator himself, Sean Moylan, Karen Robb. And then with respect to, of course, the medical malpractice part, we did not have hearings but Health and Human Resources did. The distinguished former chairman, Senator KENNEDY, was the leader on that.

We had, of course, the vigorous help of Senator BOXER and Senator WELLSTONE. So it has been thoroughly aired and properly heard. The Senate has voted. But let us see what the House crowd comes up with in the contract.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I would like to congratulate Senator HOLLINGS for his outstanding work in regard to it, although we did not come out victorious. He is a great comrade in arms and has had a vast amount of experience on this matter. I suppose that looking back over the years, 15 or more years, he has fought these battles and I have been with him throughout, and he has tremendous knowledge in this area.

Originally, this bill was designed not to go to Judiciary. It was designed to go to Commerce. At that time, Senator HOLLINGS was not chairman. But obviously, it is a bill that deals with the judicial system. From the very beginning it was designed to avoid a careful scrutiny in regards its judicial impact. Fortunately, over the years, we had an individual who was an outstanding lawyer, and who had been an outstanding trial lawyer, Senator HOLLINGS in the State of South Carolina, and who has been there to deal with this matter.

I would also like to thank the staffs of Senator HOLLINGS and others who have been so important. They have really exhibited tremendous knowledge of the law. They have followed this legislation diligently and have done a tremendous job. Senator HOLLINGS has named them, and I will not repeat their names. But on my staff, Winston Lett and Jim Whiddon have worked tirelessly and diligently on this legislation, and I thank them for their great service in our legislative efforts.

I also want to congratulate Senator ROCKEFELLER and Senator GORTON for their advocacy in pushing forward on their bill. They just seem to have better allies than we did. I always at the end of a lawsuit, whether I won or lost, went over and congratulated my opposing counsel, and do so today. We will be having other battles as they come down the road, and sometimes we will be compatriots. We will be cosponsors and joint fighters in the same cause. Then, as it is with all Senators, we will be on opposite sides again in the future on some issue. But that is the way the Senate works; that is the way democracy works. During the debate on a great issue, you can disagree but you do not have to be disagreeable.

I think that Senator GORTON and Senator ROCKEFELLER never showed any disagreeable nature. I disagreed with them with respect to the cause the were advancing, but not in the manner they advanced it; they played fair and square. I want to thank them particularly for working out a settlement in regard to the unique and different situation as to Alabama's wrongful death statute.

We worked out a situation by which the amendment was adopted giving time to our State legislature or to our courts or to both to find a solution to be able to fit into this bill, if it is finally passed.

Then I want to say, while I will congratulate them, please do not take that as any indication that I have ceased to fight. I have not surrendered and will not give up in my efforts to maintain the traditional role of the 50 States in allowing them to fashion their own solutions to problems which may arise with regard to product liability laws. I believe the 10th amendment to the U.S. Constitution still has some meaning, and I will continue to assert the primacy of the States on these matters.

There are appeals. There are appeals to conference, there are appeals to the White House, there are appeals to the President to eliminate the unfairness of the bill or to see the death of this unfair bill. So we will continue to fight. The battle is not over. We have not surrendered, and we will continue to battle in the future because we feel we are battling for the injured parties,

the consumers of America, and that we have right on our side. And we ask the Lord to give us a little more guidance in regard to these appeals as we move forward.

So I thank everybody concerned who has put up with me, and we will continue to battle on this issue as well as other issues that come up that affect the rights of the people.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me thank all of my colleagues for the fact we finished this bill. It has been 2 weeks and 2 days, but there were a couple of interruptions—the death of former Senator Stennis and other matters. So it was not solid. We probably did it in about 8 or 9 days.

We have had a lot of good debate on both sides. I congratulate all the principal players, Senators HEFLIN and HOLLINGS, also Senator ROCKEFELLER and Senator GORTON, who were on the winning side of this issue. I think they did a remarkable job in keeping a very fragile, narrow coalition together. We broadened the bill with narrow margins. I think we knew at the time those provisions would not be in the bill or we could not obtain the 60 votes we needed for cloture, so adjustments were made. But at least we made a record on medical malpractice, on punitive damages, and on other issues that we believe are very important and we believe will be back before the Senate.

I also wish to thank Senator COVERDELL for his work with outside groups as sort of the coordinator, and my colleague, Senator LOTT of Mississippi, the majority whip, who did an excellent job, along with his staff and members of my staff and others because we had some very difficult votes.

I think we have had a dramatic step forward. The product liability bill has been introduced in every Congress for the last decade. In most cases, however, we could not even muster the votes to consider the legislation. We could not get the 60 votes to even talk about it because we had strong opposition and we had a lot of what we thought were distortions. The other side would say not.

So I think passage today is an important victory for common sense and the American people. It is also important to note that we have just passed a bill that was stronger than bills introduced in previous years, stronger because of the efforts of some of our Members in the Chamber that added small business protections.

I wish to pay tribute to our newest Members, who as a group provided energy, ideas, and determination in this debate. Senators SNOWE and DEWINE made a significant contribution that allowed us to obtain meaningful protection from abusive punitive damages while protecting small businesses.

Senators ABRAHAM and KYL responded to the call of the American people in last year's elections by their efforts to expand these protections to include volunteer and charitable organizations and to add needed civil justice reforms. Together with Senators KASSEBAUM and MCCONNELL, who introduced medical malpractice reforms, they produced something never before seen on the Senate floor—clearer majorities for broader reform. For various reasons, we could not get the 60 votes to bring debate to a close on these broader reforms, but we have had the opportunity and I think it is certainly important.

Just 3 days ago, I received a letter from the head of the Boy Scouts of America, Mr. Jere Ratcliffe. In just the second line of his letter, Mr. Ratcliffe says something that ought to cause all of us to pause. I quote:

> The civil justice system, as it now exists, has consequences which worked a chilling effect on our willingness and ability to continue to pursue activities that are beneficial to all of us. . . . This is particularly so in the case of volunteer service organizations.

That is what he believes. That is what many of us believe. So we have heard from the trial lawyers. They say everything is fine, but the volunteer organizations tell us a different story.

I would just say that we hope to bring up sometime later this year or, if not, next year the McConnell-Lieberman-Kassebaum health care liability bill—hopefully, later this year. The amendment was added by a 53 to 47 vote. In addition, some Senators support medical malpractice reform but voted against that amendment last week because they wanted to pursue only a product liability bill. So we are going to revisit that later in the year. We have a lot of work to do. I do not know how late it is going to be. But in any event, we will be taking a hard look at that legislation, hopefully this year; if not, early next year.

So, again, I thank the managers, Senator GORTON and Senator ROCKEFELLER. This is a bipartisan effort, as are most things in the Senate because without a bipartisan effort, you cannot get the 60 votes to shut off debate and pass the bill. That is the way it works. Some people may not totally understand it, may disagree with it, but that is the way it works. So now we move to another legislative matter, which I would ask the Chair to report.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The PRESIDING OFFICER. Under the previous order, the hour of noon having arrived, the Senate will now proceed to the consideration of S. 534, which the clerk will now report.

The legislative clerk read as follows:

> A bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Interstate Transportation of Municipal Solid Waste Act of 1995''.

TITLE I—INTERSTATE WASTE

SEC. 101. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

''SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

''(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) Except as provided in paragraph (4), immediately upon the date of enactment of this section if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal solid waste in any landfill or incinerator that is not covered by the exceptions provided in subsection (b) and that is subject to the jurisdiction of the Governor and the affected local government.

''(2) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(D) and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may limit the quantity of out-of-State municipal solid waste received for disposal at each landfill or incinerator covered by the exceptions provided in subsection (b) that is subject to the jurisdiction of the Governor, to an annual amount equal to or greater than the quantity of out-of-State municipal solid waste received for disposal at such landfill or incinerator during calendar year 1993.

''(3)(A) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(E), and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may prohibit or limit the amount of out-of-State municipal solid waste disposed of at any landfill or incinerator covered by the exceptions in subsection (b) that is subject to the jurisdiction of the Governor, generated in any State that is determined by the Administrator under paragraph (6)(E) as having exported, to landfills or incinerators not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste, more than—

''(i) 3,500,000 tons of municipal solid waste in calendar year 1996;

''(ii) 3,000,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

''(iii) 2,500,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

''(iv) 1,500,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

''(v) 1,000,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

''(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

''(I) In calendar year 1996, the greater of 1,400,000 tons or 90 percent of the amount exported to the State in calendar year 1993.

''(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

''(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.

''(IV) In calendar year 1999, the greater of 1,100,000 tons or 90 percent of the amount exported to the State in calendar year 1998.

''(V) In calendar year 2000, 1,000,000 tons.

''(VI) In calendar year 2001, 800,000 tons.

''(VII) In calendar year 2002 or any calendar year thereafter, 600,000 tons.

''(ii) The Governor of an importing State may take action to restrict levels of imports to reflect the appropriate level of out-of-State municipal solid waste imports if—

''(I) the Governor of the importing State has notified the Governor of the exporting State and the Administrator, 12 months prior to taking any such action, of the importing State's intention to impose the requirements of this section;

''(II) the Governor of the importing State has notified the Governor of the exporting State and the Administrator of the violation by the exporting State of this section at least 90 days prior to taking any such action; and

''(III) the restrictions imposed by the Governor of the importing State are uniform at all facilities.

''(C) The authority provided by subparagraphs (A) and (B) shall apply for as long as a State exceeds the permissible levels as determined by the Administrator under paragraph (6)(E).

''(4)(A) A Governor may not exercise the authority granted under this section if such action would result in the violation of, or would otherwise be inconsistent with, the terms of a host community agreement or a permit issued from the State to receive out-of-State municipal solid waste.

''(B) Except as provided in paragraph (3), a Governor may not exercise the authority granted under this section in a manner that would require any owner or operator of a landfill or incinerator covered by the exceptions provided in subsection (b) to reduce the amount of out-of-State municipal solid waste received from any State for disposal at such landfill or incinerator to an annual quantity less than the amount received from such State for disposal at such landfill or incinerator during calendar year 1993.

''(5) Any limitation imposed by a Governor under paragraph (2) or (3)—

''(A) shall be applicable throughout the State;

''(B) shall not directly or indirectly discriminate against any particular landfill or incinerator within the State; and

''(C) shall not directly or indirectly discriminate against any shipments of out-of-State municipal solid waste on the basis of place of origin and all such limitations shall be applied to all States in violation of paragraph (3).

''(6) ANNUAL STATE REPORT.—

''(A) IN GENERAL.—Within 90 days after enactment of this section and on April 1 of each year thereafter the owner or operator of each landfill or incinerator receiving out-of-State municipal solid waste shall submit to the affected local government and to the Governor of the State in which the landfill or incinerator is located, information specifying the amount and State of origin of out-of-State municipal solid waste received for disposal during the preceding calendar year. Within 120 days after enactment of this section and on July 1 of each year thereafter each State shall publish and make available to the Administrator, the Governor of the State of origin and the public, a report containing information on the amount of out-of-State municipal solid waste received for disposal in the State during the preceding calendar year.

''(B) CONTENTS.—Each submission referred to in this section shall be such as would result in criminal penalties in case of false or misleading information. Such information shall include the amount of waste received, the State of origin, the identity of the generator, the date of the shipment, and the type of out-of-State municipal solid waste.

''(C) LIST.—The Administrator shall publish a list of States that the Administrator has determined have exported out-of-State in any of the following calendar years an amount of municipal solid waste in excess of—

''(i) 3,500,000 tons in 1996;

''(ii) 3,000,000 tons in 1997;

''(iii) 3,000,000 tons in 1998;

''(iv) 2,500,000 tons in 1999;

''(v) 2,500,000 tons in 2000;

''(vi) 1,500,000 tons in 2001;

''(vii) 1,500,000 tons in 2002;

''(viii) 1,000,000 tons in 2003; and

''(ix) 1,000,000 tons in each calendar year after 2003.

The list for any calendar year shall be published by June 1 of the following calendar year.

''(D) SAVINGS PROVISION.—Nothing in this subsection shall be construed to preempt any State requirement that requires more frequent reporting of information.

''(7) Any affected local government that intends to submit a request under paragraph (1) or take formal action to enter into a host community agreement after the date of enactment of this subsection shall, prior to taking such action—

''(A) notify the Governor, contiguous local governments, and any contiguous Indian tribes;

''(B) publish notice of the action in a newspaper of general circulation at least 30 days before taking such action;

''(C) provide an opportunity for public comment; and

''(D) following notice and comment, take formal action on any proposed request or action at a public meeting.

''(8) Any owner or operator seeking a host community agreement after the date of enactment of this subsection shall provide to the affected local government the following information, which shall be made available to the public from the affected local government:

''(A) A brief description of the planned facility, including a description of the facility size, ultimate waste capacity, and anticipated monthly and yearly waste quantities to be handled.

''(B) A map of the facility site that indicates the location of the facility in relation to the local road system and topographical and hydrological features and any buffer zones and facility units to be acquired by the owner or operator of the facility.

''(C) A description of the existing environmental conditions at the site, and any violations of applicable laws or regulations.

''(D) A description of environmental controls to be utilized at the facility.

''(E) A description of the site access controls to be employed, and roadway improvements to be made, by the owner or operator, and an estimate of the timing and extent of increased local truck traffic.

''(F) A list of all required Federal, State, and local permits.

''(G) Any information that is required by State or Federal law to be provided with respect to any violations of environmental laws (including regulations) by the owner and operator, the disposition of enforcement proceedings taken with respect to the violations, and corrective measures taken as a result of the proceedings.

''(H) Any information that is required by State or Federal law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

''(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The authority to prohibit the disposal of out-of-State municipal solid waste provided under subsection (a)(1) shall not apply to landfills and incinerators in operation on the date of enactment of this section that—

''(A) received during calendar year 1993 documented shipments of out-of-State municipal solid waste; and

''(B)(i) in the case of landfills, are in compliance with all applicable Federal and State laws and regulations relating to operation, design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action; or

''(ii) in the case of incinerators, are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429) and applicable State laws and regulations relating to facility design and operations.

''(2) A Governor may not prohibit the disposal of out-of-State municipal solid waste pursuant to subsection (a)(1) at facilities described in this subsection that are not in compliance with applicable Federal and State laws and regulations unless disposal of municipal solid waste generated within the State at such facilities is also prohibited.

''(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) In any case in which an affected local government is considering entering into, or has entered into, a host community agreement and the disposal or incineration of out-of-State municipal solid waste under such agreement would preclude the use of municipal solid waste management capacity described in paragraph (2), the Governor of the State in which the affected local government is located may prohibit the execution of such host community agreement with respect to that capacity.

''(2) The municipal solid waste management capacity referred to in paragraph (1) is that capacity—

''(A) that is permitted under Federal or State law;

''(B) that is identified under the State plan; and

''(C) for which a legally binding commitment between the owner or operator and another party has been made for its use for disposal or incineration of municipal solid waste generated within the region (identified under section 4006(a)) in which the local government is located.

''(d) COST RECOVERY SURCHARGE.—

''(1) AUTHORITY.—A State described in paragraph (2) may adopt a law and impose and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

''(2) APPLICABILITY.—The authority to impose a cost recovery surcharge under this subsection applies to any State that on or before April 3, 1994, imposed and collected a special fee on the processing or disposal of out-of-State municipal solid waste pursuant to a State law.

''(3) LIMITATION.—No such State may impose or collect a cost recovery surcharge from a facility on any out-of-State municipal solid waste that is being received at the facility under 1 or more contracts entered into after April 3, 1994, and before the date of enactment of this section.

''(4) AMOUNT OF SURCHARGE.—The amount of the cost recovery surcharge may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (6) and in no event may exceed $1.00 per ton of waste.

''(5) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State covered by this subsection shall be used to

fund those solid waste management programs administered by the State or its political subdivision that incur costs for which the surcharge is collected.

''(6) CONDITIONS.—(A) Subject to subparagraphs (B) and (C), a State covered by this subsection may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

''(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

''(ii) the surcharge is based on those costs to the State demonstrated under clause (i) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

''(iii) the surcharge is compensatory and is not discriminatory.

''(B) In no event shall a cost recovery surcharge be imposed by a State to the extent that the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax assessed against or voluntarily paid to the State or its political subdivision in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

''(C) The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A)(iii).

''(7) DEFINITIONS.—As used in this subsection:

''(A) The term 'costs' means the costs incurred by the State for the implementation of its laws governing the processing or disposal of municipal solid waste, limited to the issuance of new permits and renewal of or modification of permits, inspection and compliance monitoring, enforcement, and costs associated with technical assistance, data management, and collection of fees.

''(B) The term 'processing' means any activity to reduce the volume of solid waste or alter its chemical, biological or physical state, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

''(e) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed—

''(1) to have any effect on State law relating to contracts; or

''(2) to affect the authority of any State or local government to protect public health and the environment through laws, regulations, and permits, including the authority to limit the total amount of municipal solid waste that landfill or incinerator owners or operators within the jurisdiction of a State may accept during a prescribed period, provided that such limitations do not discriminate between in-State and out-of-State municipal solid waste, except to the extent authorized by this section.

''(f) DEFINITIONS.—As used in this section:

''(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means—

''(i) the public body created by State law with responsibility to plan for municipal solid waste management, a majority of the members of which are elected officials, for the area in which the facility is located or proposed to be located; or

''(ii) the elected officials of the city, town, township, borough, county, or parish exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or is proposed to be located.

''(B)(i) Within 90 days after the date of enactment of this section, a Governor may designate and publish notice of which entity listed in clause (i) or (ii) of subparagraph (A) shall serve as the affected local government for actions taken under this section and after publication of such notice.

''(ii) If a Governor fails to make and publish notice of such a designation, the affected local government shall be the elected officials of the city, town, township, borough, county, parish, or other public body created pursuant to State law with primary jurisdiction over the land or the use of land on which the facility is located or is proposed to be located.

''(C) For purposes of host community agreements entered into before the date of publication of the notice, the term means either a public body described in subparagraph (A)(i) or the elected officials of any of the public bodies described in subparagraph (A)(ii).

''(2) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding document or documents executed by duly authorized officials of the affected local government that specifically authorizes a landfill or incinerator to receive municipal solid waste generated out of State, but does not include any agreement to pay host community fees for receipt of waste unless additional express authorization to receive out-of-State waste is also included.

''(3) The term 'out-of-State municipal solid waste' means, with respect to any State, municipal solid waste generated outside of the State. To the extent that the President determines it is consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal solid waste generated outside of the United States.

''(4) The term 'municipal solid waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal solid waste' does not include—

''(A) any solid waste identified or listed as a hazardous waste under section 3001;

''(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

''(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal solid waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

''(D) any solid waste that is—

''(i) generated by an industrial facility; and

''(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator of the waste, or is located on property owned by a company with which the generator is affiliated;

''(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

''(F) any industrial waste that is not identical to municipal solid waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

''(G) any medical waste that is segregated from or not mixed with municipal solid waste (as otherwise defined in this paragraph); or

''(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

''(5) The term 'compliance' means a pattern or practice of adhering to and satisfying standards and requirements promulgated by the Federal or a State government for the purpose of preventing significant harm to human health and the environment. Actions undertaken in accordance with compliance schedules for remediation established by Federal or State enforcement authorities shall be considered compliance for purposes of this section.

''(6) The terms 'specifically authorized' and 'specifically authorizes' refer to an explicit authorization, contained in a host community agreement or permit, to import waste from outside the State. Such authorization may include a reference to a fixed radius surrounding the landfill or incinerator that includes an area outside the State or a reference to any place of origin, reference to specific places outside the State, or use of such phrases as 'regardless of origin' or 'outside the State'. The language for such authorization may vary as long as it clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from sources outside the State.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

''Sec. 4011. Interstate transportation of municipal solid waste.''.

TITLE II—FLOW CONTROL

SEC. 201. SHORT TITLE.

This title may be cited as the ''Municipal Solid Waste Flow Control Act of 1995''.

SEC. 202. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.), as amended by section 101, is amended by adding after section 4011 the following new section:

''SEC. 4012. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

''(a) DEFINITIONS.—In this section:

''(1) DESIGNATE; DESIGNATION.—The terms 'designate' and 'designation' refer to an authorization by a State or political subdivision, and the act of a State or political subdivision in requiring or contractually committing, that all or any portion of the municipal solid waste or recyclable material that is generated within the boundaries of the State or political subdivision be delivered to waste management facilities or facilities for recyclable material or a public service authority identified by the State or political subdivision.

''(2) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the authority to control the movement of municipal solid waste or voluntarily relinquished recyclable material and direct such solid waste or voluntarily relinquished recyclable material to a designated waste management facility or facility for recyclable material.

''(3) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means—

''(A) solid waste generated by the general public or from a residential, commercial, institutional, or industrial source, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible material and noncombustible material such as metal and glass, including residue remaining after recyclable material has been separated from

waste destined for disposal, and including waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); but

''(B) does not include—

''(i) waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

''(ii) waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606) or any corrective action taken under this Act;

''(iii) medical waste listed in section 11002;

''(iv) industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling;

''(v) recyclable material; or

''(vi) sludge.

''(4) PUBLIC SERVICE AUTHORITY.—The term 'public service authority' means—

''(A) an authority or authorities created pursuant to State legislation to provide individually or in combination solid waste management services to political subdivisions; or

''(B) an authority that was issued a certificate of incorporation by a State corporation commission established by a State constitution.

''(5) RECYCLABLE MATERIAL.—The term 'recyclable material' means material that has been separated from waste otherwise destined for disposal (at the source of the waste or at a processing facility) or has been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic material such as food and yard waste, or reuse (other than for the purpose of incineration).

''(6) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means a facility that collects, separates, stores, transports, transfers, treats, processes, combusts, or disposes of municipal solid waste.

''(b) AUTHORITY.—

''(1) IN GENERAL.—Each State and each political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction by directing the municipal solid waste or recyclable material to a waste management facility or facility for recyclable material, if such flow control authority—

''(A) is imposed pursuant to a law, ordinance, regulation, or other legally binding provision of the State or political subdivision in effect on May 15, 1994; and

''(B) has been implemented by designating before May 15, 1994, the particular waste management facilities or public service authority to which the municipal solid waste or recyclable material is to be delivered, the substantial construction of which facilities was performed after the effective date of that law, ordinance, regulation, or other legally binding provision and which facilities were in operation as of May 15, 1994.

''(2) LIMITATION.—The authority of this section extends only to the specific classes or categories of municipal solid waste to which flow control authority requiring a movement to a waste management facility was actually applied on or before May 15, 1994 (or, in the case of a State or political subdivision that qualifies under subsection (c), to the specific classes or categories of municipal solid waste for which the State or political subdivision prior to May 15, 1994, had committed to the designation of a waste management facility).

''(3) LACK OF CLEAR IDENTIFICATION.—With regard to facilities granted flow control authority under subsection (c), if the specific classes or categories of municipal solid waste are not clearly identified, the authority of this section shall apply only to municipal solid waste generated by households.

''(4) DURATION OF AUTHORITY.—With respect to each designated waste management facility, the authority of this section shall be effective until the later of—

''(A) the end of the remaining life of a contract between the State or political subdivision and any other person regarding the movement or delivery of municipal solid waste or voluntarily relinquished recyclable material to a designated facility (as in effect May 15, 1994);

''(B) completion of the schedule for payment of the capital costs of the facility concerned (as in effect May 15, 1994); or

''(C) the end of the remaining useful life of the original facility, as that remaining life may be extended by—

''(i) retrofitting of equipment or the making of other significant modifications to meet applicable environmental requirements or safety requirements;

''(ii) routine repair or scheduled replacement of equipment or components that does not add to the capacity of a waste management facility; or

''(iii) expansion of the facility on land that is—

''(I) legally or equitably owned, or under option to purchase or lease, by the owner or operator of the facility; and

''(II) covered by the permit for the facility (as in effect May 15, 1994).

''(5) ADDITIONAL AUTHORITY.—Notwithstanding anything to the contrary in this section, but subject to subsection (j), a State or political subdivision of a State that, on or before January 1, 1984, adopted regulations under State law that required or directed the transportation, management, or disposal of solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities and applied those regulations to every political subdivision of the State may—

''(A) designate any waste management facility in the State that—

''(i) was designated prior to May 15, 1994, and meets the requirements of subsection (c); or

''(ii) meets the requirements of paragraph (1); and

''(B) continue to exercise flow control authority for the remaining useful life of that facility over all classes and categories of solid waste that were subject to flow control on May 15, 1994.

''(c) COMMITMENT TO CONSTRUCTION.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(1) (A) and (B), any political subdivision of a State may exercise flow control authority under subsection (b), if—

''(A) the law, ordinance, regulation, or other legally binding provision specifically provides for flow control authority for municipal solid waste generated within its boundaries and was in effect prior to May 15, 1994; and

''(B) prior to May 15, 1994, the political subdivision committed to the designation of a waste management facility to which municipal solid waste is to be transported or at which municipal solid waste is to be disposed of under that law, ordinance, regulation, plan, or legally binding provision.

''(2) FACTORS DEMONSTRATING COMMITMENT.—A commitment to the designation of a waste management facility is demonstrated by 1 or more of the following factors:

''(A) CONSTRUCTION PERMITS.—All permits required for the substantial construction of the facility were obtained prior to May 15, 1994.

''(B) CONTRACTS.—All contracts for the substantial construction of the facility were in effect prior to May 15, 1994.

''(C) REVENUE BONDS.—Prior to May 15, 1994, revenue bonds were presented for sale to specifically provide revenue for the construction of the facility.

''(D) CONSTRUCTION AND OPERATING PERMITS.—The State or political subdivision submitted to the appropriate regulatory agency or agencies, on or before May 15, 1994, substantially complete permit applications for the construction and operation of the facility.

''(d) CONSTRUCTED AND OPERATED.—

''(1) IN GENERAL.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if—

''(A) prior to May 15, 1994, the political subdivision—

''(i) contracted with a public service authority or with its operator to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or is within or under the control of the political subdivision, in order to support revenue bonds issued by and in the name of the public service authority for waste management facilities; or

''(ii) entered into contracts with a public service authority to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or within the control of the political subdivision, which imposed flow control pursuant to a law, ordinance, regulation, or other legally binding provision and where outstanding revenue bonds were issued in the name of public service authorities for waste management facilities; and

''(B) prior to May 15, 1994, the public service authority—

''(i) issued the revenue bonds for the construction of municipal solid waste facilities to which the political subdivision's municipal solid waste is transferred or disposed; and

''(ii) commenced operation of the facilities.

''(2) DURATION OF AUTHORITY.—Authority under this subsection may be exercised by a political subdivision qualifying under paragraph (1)(A)(ii) only until the expiration of the contract or the life of the bond, whichever is earlier.

''(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

''(1) was mandated by State law to provide for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the county;

''(2) is currently required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

''(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through a law, ordinance, regulation, contract, or other legally binding provision; and

''(4) had incurred significant financial expenditures to comply with the mandates under State law and to repay outstanding

revenue bonds that were issued for the construction of solid waste management facilities to which the political subdivision's waste was designated.

''(f) RETAINED AUTHORITY.—

''(1) REQUEST.—On the request of a generator of municipal solid waste affected by this section, a State or political subdivision may authorize the diversion of all or a portion of the solid waste generated by the generator making the request to an alternative solid waste treatment or disposal facility, if the purpose of the request is to provide a higher level of protection for human health and the environment or reduce potential future liability of the generator under Federal or State law for the management of such waste, unless the State or political subdivision determines that the facility to which the municipal solid waste is proposed to be diverted does not provide a higher level of protection for human health and the environment or does not reduce the potential future liability of the generator under Federal or State law for the management of such waste.

''(2) CONTENTS.—A request under paragraph (1) shall include information on the environmental suitability of the proposed alternative treatment or disposal facility and method, compared to that of the designated facility and method.

''(g) LIMITATIONS ON REVENUE.—A State or political subdivision may exercise flow control authority under subsection (b), (c), or (d) only if the State or political subdivision certifies that the use of any of its revenues derived from the exercise of that authority will be used for solid waste management services.

''(h) REASONABLE REGULATION OF COMMERCE.—A law, ordinance, regulation, or other legally binding provision or official act of a State or political subdivision, as described in subsection (b), (c), or (d), that implements flow control authority in compliance with this section shall be considered to be a reasonable regulation of commerce retroactive to its date of enactment or effective date and shall not be considered to be an undue burden on or otherwise considered as impairing, restraining, or discriminating against interstate commerce.

''(i) EFFECT ON EXISTING LAWS AND CONTRACTS.—

''(1) ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to have any effect on any other law relating to the protection of human health and the environment or the management of municipal solid waste or recyclable material.

''(2) STATE LAW.—Nothing in this section shall be construed to authorize a political subdivision of a State to exercise the flow control authority granted by this section in a manner that is inconsistent with State law.

''(3) OWNERSHIP OF RECYCLABLE MATERIAL.—Nothing in this section—

''(A) authorizes a State or political subdivision of a State to require a generator or owner of recyclable material to transfer recyclable material to the State or political subdivision; or

''(B) prohibits a generator or owner of recyclable material from selling, purchasing, accepting, conveying, or transporting recyclable material for the purpose of transformation or remanufacture into usable or marketable material, unless the generator or owner voluntarily made the recyclable material available to the State or political subdivision and relinquished any right to, or ownership of, the recyclable material.

''(j) REPEAL.—(1) Notwithstanding any provision of this title, authority to flow control by directing municipal solid waste or recyclable materials to a waste management facility shall terminate on the date that is 30 years after the date of enactment of this Act.

''(2) This section and the item relating to this section in the table of contents for subtitle D of the Solid Waste Disposal Act are repealed effective as of the date that is 30 years after the date of enactment of this Act.''.

SEC. 203. TABLE OF CONTENTS AMENDMENT.

The table of contents for subtitle D in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901), as amended by section 101(b), is amended by adding after the item relating to section 4011 the following new item:

''Sec. 4012. State and local government control of movement of municipal solid waste and recyclable material.''.

TITLE III—GROUND WATER MONITORING

SEC. 301. GROUND WATER MONITORING.

(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C. 6949a(c)) is amended—

(1) by striking ''CRITERIA.—Not later'' and inserting the following: ''CRITERIA.—

''(1) IN GENERAL.—Not later''; and

(2) by adding at the end the following new paragraph:

''(2) ADDITIONAL REVISIONS.—Subject to paragraph (2), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

''(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

''(B) the municipal solid waste landfill unit or expansion serves—

''(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

''(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

''(3) PROTECTION OF GROUND WATER RESOURCES.—

''(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

''(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

''(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

''(4) REMOTE ALASKA NATIVE VILLAGES.—Upon certification by the Governor of the State of Alaska that application of the requirements of the criteria described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) would be infeasible, would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the unit shall be exempt from those requirements.''.

(b) REINSTATEMENT OF REGULATORY EXEMPTION.—It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

Mr. DOLE. Mr. President, I understand the distinguished Democratic leader wants to speak for a few moments on product liability, and so he will be here momentarily. But I would say, as we start S. 534, keep in mind it came out of the committee by a vote of 16 to 0. And I hope this is something we can complete before the week is out, sometime by late Friday afternoon. I know there are amendments. We can dispose of amendments. But I hope that in many cases the amendments can be resolved by agreement, by working them out. And I know we have reasonable managers on both sides of the aisle.

This is important legislation, and I am happy to have it before the Senate. I hope we can complete action on it before the week is out because next week we will go to the budget and, hopefully, following that to telecommunications. So we have our next 2 or 3 weeks laid out for us before a very brief Memorial Day recess.

I will also be sending a letter to Senator DASCHLE today with reference to the August recess, and unless we can reach some accommodation, I then will announce in the next week whether or not there will be an August recess and, if so, the length of that recess.

Mr. CHAFEE. I wonder if the leader would yield to a question.

I heard the ominous words ''a very brief Memorial Day recess.'' What does that mean?

Mr. DOLE. It is a week.

Mr. CHAFEE. That is fine.

Mr. DOLE. It may be longer than the August recess.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE PRODUCT LIABILITY BILL

Mr. DASCHLE. Mr. President, I want to commend so many Senators on both sides of the aisle for their efforts over the last couple of weeks on product liability. This has been a vigorous debate, and a debate that obviously has required a good deal of compromise and concession on both sides.

I believe there was another opportunity that we could have had to reach greater consensus on the bill, and I am sorry we missed that opportunity in the final days of this debate.

But I do believe that as a result of the decisions made by this body over

the last couple of weeks, the message ought to be very clear. The message is this: Members of the Senate are not willing to accept the extreme measures that have been proposed by the House. If those more extreme measures are added to the bill in conference, it is very unlikely that anything will ultimately pass.

It is critical, as we look to the conference report, that we keep this bill modest, that we not load it up with expansionist amendments, that we seek to ensure that what has been passed is all that comes back to the Senate.

I will say unequivocally that I believe this legislation will again be in trouble if it comes back vastly different from what it is right now. Many of us felt very strongly we could have improved upon this bill, especially with regard to punitive limits and with regard to the limitations on joint and several liability. For many of us who opposed the bill, there were provisions that we supported and would have liked to have been able to vote for, but, unfortunately, we could not resolve the issues that, in our view, were still too onerous to support.

But let me say, in spite of the fact that there was a very strong vote, that vote is directly dependent upon the degree to which the more extreme measures that were initially added are kept off the bill. We do not want to see them when this comes back. We will continue to fight this in a consequential way if they do come back, and I hope that that message was loud and clear.

I was very pleased with the comments made by both Senators ROCKEFELLER and GORTON yesterday as they commented about what they expect to see in conference. Senator GORTON said that he does not think there is one semicolon that is negotiable, and I think that is an accurate reflection of where the Senate stands.

So, indeed, we passed a piece of legislation today that may reflect the views of three-fifths of the Senate, but I think that it is a very tenuous victory, depending upon what may or may not occur in the conference report. So we look to that at some point in the future. But I must say that while those on both sides of the aisle who supported the legislation can claim victory, I think it is also important that they appreciate how tenuous that victory is and how important it is that we come back to the floor with something meaningful, something narrow and focused, and something that directly addresses the concerns raised on this floor for the last 2 weeks.

With that, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

SIXTY VOTES NEEDED ON CONTROVERSIAL ISSUES

Mr. CHAFEE. Mr. President, I would also say to the distinguished Democratic leader, it appears around here if there is anything controversial now, you need 60 votes to get it passed. Not a 51 vote margin, 51 to 49, it has to be 60 votes if the legislation is controversial; something new in the life of the Senate, but not entirely new, I will say that.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I call up S. 534.

The PRESIDING OFFICER. It is the pending business.

Mr. CHAFEE. Mr. President, I join with the Senator from New Hampshire, Senator SMITH, in presenting S. 534 to the Senate. This is legislation dealing with interstate waste and flow control authority.

I want to acknowledge Senator SMITH's efforts as chairman of the Environment and Public Works Committee's Subcommittee on Superfund, Waste Control, and Risk Assessment. Senator SMITH has taken the lead in drafting this legislation, targeting issues that went unresolved last year.

I also want to acknowledge the work of the distinguished ranking member of our committee, Senator BAUCUS, for his help in the framing of this legislation which we will now be discussing over the next day or so.

Mr. President, this legislation is straightforward and attempts to deal with the issues of interstate waste and flow control, balancing the interests of the States that import waste, trash that comes into States for disposal, and the exporters, States that do not have landfills or incinerators and thus ship it out. We try to deal with communities with outstanding revenue bonds as they deal with the issues of construction of waste facilities the local individual who dispose of his or her garbage.

This bill includes three titles. Title I deals with interstate waste and is similar to the bill approved by the Senate last year. I would like to stress that. The interstate waste portion is one that was approved unanimously by this Senate last year.

Title II focuses on flow control, which we will discuss in a few minutes. And title III reinstates the ground water monitoring exemption for small landfills in the municipal solid waste landfill criteria.

Let me turn to title I. This is a very contentious area. Indeed, I guess we have dealt with this, on and off, over the past 5 years. And no one has been more ardent in trying to get this problem solved than the distinguished Senator from Indiana, Senator COATS.

Now, on interstate shipments, the bill before us, as I say, is similar to S. 2345, which was approved unanimously last year by the Senate.

I want to make it clear that the bill before us deals exclusively with the transport, across State borders, of municipal solid waste. That is what we are talking about. We are not talking about restrictions on hazardous waste or industrial waste or even construction and demolition debris. Those items involve an entirely different set of problems and would require different approaches than we are dealing with here.

We are dealing here with municipal solid waste, sometimes referred to as MSW; what the rest of us, in layman's terms, would call garbage or trash.

Specifically the bill provides the following. There is an import ban. A Governor may, if requested by the affected local community, as designated by the Governor, ban out-of-State municipal solid waste at landfills or incinerators that did not receive out-of-State waste in 1993.

Now, this gets a little bit complicated, but these are provisions that we have worked out with Governors and municipalities, particularly the ones that cross borders.

So the first point is there can be an import ban that the Governor can impose, if he is requested by a local community and if that community did not receive out-of-State waste in 1993. Or he can impose this same ban at those facilities that received municipal solid waste in 1993 but are not in compliance with applicable Federal or State standards. So there is a power in the Governor. Now that is an import ban.

Further, a Governor may unilaterally freeze out-of-State waste at 1993 levels at landfills and incinerators that received waste during 1993 and are in compliance. In other words, the Governor can put a clamp on limiting it to the amount that came in in 1993, at those levels.

Now, there is an export ratchet, likewise. A Governor may unilaterally ban out-of-State waste from any State exporting more than 3.5 million tons in 1996. This declines to 3 million tons in 1997 and 1998, drops to 2.5 million tons in 1999 and the year 2000, 1.5 million tons in the year 2001 and 2002, and 1 million tons in 2003 and every year thereafter. So the Governor has this power to ban out-of-State waste coming from a State that is exporting very substantial amounts. That is the power in the importing State Governor.

There is also another ratchet. A Governor may unilaterally restrict out-of-State waste imported from any one State in excess of certain levels.

There is a cost recovery surcharge provision. States that imposed a differential fee on the disposal of out-of-State waste on or before April 3, 1994, are allowed to impose a fee of no more than $1 per ton.

So there is that $1-per-ton limitation, a differential that a State can impose, as long as the differential fee is used to fund solid waste management programs.

What we are dealing with all through here are the limitations that are imposed by the commerce clause of our Constitution. The bill we are dealing

with today explicitly prohibits a Governor from limiting or prohibiting solid waste imports to landfills or incinerators that have a host community agreement to receive out-of-State waste.

In addressing the problem of interstate waste, I, as chairman, and Senator SMITH, likewise as chairman of the subcommittee, have tried to find a solution that will reduce unwanted imports yet give exporting States some time to reduce the amount of waste generated, to increase recycling, and to site new in-State capacity.

What we are trying to do is to take into account the large exporting States' problems, but we are not going to let them export forever.

What can they do? As I say, they can reduce the amount of waste generated, they can increase recycling, and they can set up their own sites in their States to deal with the problem—incinerators, landfills, or whatever they might be.

Title II deals with what is known as flow control. Flow control refers to the legal authority of States or local governments to designate where waste must be taken for processing or treatment or disposal. Over the past 20 years, State and local governments have used flow control as a financing mechanism for the development of municipal solid waste disposal facilities.

What am I talking about? I am talking about incinerators and landfills, for example. A municipality says, ''We have to have an incinerator to take care of the waste within our municipality.'' So they say, ''Well, we'll build one. And where do we get the money? We issue bonds. All right, but how are we going to make certain that we are going to have the waste flowing in and the so-called tipping fees?'' So the municipality passes an ordinance which says: Everybody in this municipality must take trash to this central facility, and there they pay a tipping fee and you are not allowed to ship it elsewhere. BFI or other commercial firms cannot come in and say, ''I'll take your waste for a lower price.'' No.

The way it works is the locals say you can only take it here, because that is the way we can pay off our bonds.

Flow control guarantees that a projected amount of waste will be received at a designated waste facility. Thus, a predictable revenue stream is generated for the retirement of the cost of the facility, the capital cost, and the operating expenses.

Flow control, as you can see, distorts the waste market by creating State or municipally controlled waste monopolies. Obviously, it becomes a monopoly. If the city of St. Louis says that no trash can be taken elsewhere but to the city incinerator, that is a monopoly. But the city of St. Louis might say, well, we spent a lot of money to build this incinerator and the only way we can pay off our bonds is with a guarantee flow from our municipality so when the big trucks, private trucks pick up, they can only take it to the city of St. Louis incinerator.

Communities across the country have made investments predicated on flow control, but I, and likewise Senator SMITH and Senator BAUCUS, do not believe in perpetuating that kind of system into the future. Designating where waste must go will only drive up the cost of waste disposal for our citizens.

Not unlike the interstate transport of municipal solid waste and its implications on interstate commerce, flow control has emerged as a controversial legislative issue because of several recent Federal court decisions. Over the past 5 years, Federal courts have ruled that flow control laws in no fewer than four States violate the commerce clause of the U.S. Constitution. Similar to restrictions on interstate waste, flow control undermines the commerce clause by barring States and political subdivisions by placing undue burdens on interstate commerce.

This case all came up May 16, 1994, just a year ago. It was called the Carbone case, Carbone versus Town of Clarkstown, NY, which the Supreme Court decided just a year ago. The Supreme Court's ruling in the Carbone case has made it clear that absent congressional action, the exercise of flow control by States and political subdivisions is unconstitutional; it interferes with interstate commerce. The city of St. Louis no longer can say to all its citizens, ''You must bring your trash to this central facility.'' That is interfering with interstate commerce and is unconstitutional, unless Congress decides otherwise.

So we are here today to override the constitutional provisions on State laws that interfere with interstate commerce and so as to provide new authority to the States. We are beset with communities, such as the illustrative one I gave of St. Louis, that has invested substantial sums of money in their incinerators and are counting on paying off those bonds through the fees that come in and suddenly the whole ground rules are changed by the Supreme Court decision. So they come to us and say, ''Grandfather us. We issued those bonds dependent upon this flow of trash.''

The Supreme Court has said Congress can do this. We can provide new authority to the States by declaring that the impact of such laws on interstate commerce is reasonable.

Should we move in this direction? I say yes, but a qualified yes. We should tread carefully, and this bill does that.

This Senator believes that Congress was granted the power to regulate commerce in order to ensure the free flow of goods and to protect against economic warfare among the States. We must not create a system that builds walls around our States and our communities. The economy of our country has been successful over the past 200 years because of the free flow of goods and services among our States. Let us not go overboard today loading up this bill with discriminatory amendments. Unnecessarily restricting the interstate transport of waste and providing unlimited flow control will limit competition in the waste market. It will discourage the selection of less costly waste disposal options, and it will force duplicative infrastructure investments in our communities.

The intention of the bill before us today is to provide States and political subdivisions with flow control authority in order to meet financial obligations with respect to solid waste management facilities and to maintain their creditworthiness.

Title II provides limited flow control authority under certain conditions to States and subdivisions that have embarked on these commitments, these financial investments that, rightly or wrongly, were predicated on the expectation or implementation of flow control. They built these facilities and issued the bonds believing that what they were doing was right, was legal and was dependent upon restricting where the trash within their communities could go. It could only come to the municipal landfill or incinerator.

We are not, in grandfathering these provisions, reflecting any position on the appropriateness of flow control as a policy option. In each instance in which flow control authority is granted under this legislation, that grant is predicated on meeting debt obligations.

The final part is title III, which is called groundwater monitoring. In it, we reinstate a groundwater monitoring exemption for small landfills in the municipal solid waste landfill criteria. All of this reflects back on the Resource Conservation Recovery Act, section 4010(c). One of the most significant issues raised during the revision of the criteria was the impact on small community landfills.

As a result, the October 9, 1991, final rule for the criteria included a groundwater exemption of owners and operators of certain small landfills.

In January 1992, petitions were filed with the U.S. Court of Appeals for review of the new landfill criteria. The court, in its review, vacated the small landfill exemption as it pertained to groundwater monitoring.

The purpose of title III of the reported bill is to reinstate the exemption.

As many of us remember from the debate on interstate waste in 1992, the flow of garbage raises intense local and regional concerns. In some areas of the country, this seemingly mundane issue is politically potent. Who would have thought that so much heat could be generated by garbage disposal?

Mr. President, I believe this legislation represents a good-faith effort to bring the various parties together on the issues of interstate waste and flow

control. It provides additional authority to waste importers without overriding the needs of waste-exporting States.

It protects past community financial investments with respect to flow control; yet, it provides opportunities for the private sector. I commend the Senator from New Hampshire and look forward to working with him and other Members of the Senate to approve this legislation in an expeditious fashion.

Now, Mr. President, I would like to yield the floor, without losing the same, to Senator BAUCUS for his opening statement.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. I am pleased to be here considering legislation to give our States and communities the right to say ''no'' to out-of-State trash. That is basically what the major portion of this bill is all about—that is, enabling States to say, ''We do not want this stuff and we have the right to say, no, we do not want the garbage.'' We need this legislation to allow States to do that, and that is basically because of the U.S. Constitution, commerce clause, article I, which basically states that only Congress can regulate interstate commerce, States cannot. So we are now acting in Congress.

Mr. President, we have been working on this issue for a long time—6 years. We have explored a lot of options, we have held many hearings, and we have debated this issue frequently. We passed interstate waste bills in each of the last three Congresses here in the U.S. Senate. I believe it is finally time to finish the job.

I will have more to say on that subject later. Let me say a little bit about this legislation.

Garbage is big business. Each year, the United States throws out more than 200 million tons of municipal waste. That is enough to build a 30-foot wall of trash from Los Angeles to New York. About 1 ton in 14 goes to a landfill or incinerator in another State. Nearly every State is a seller or a buyer in the municipal waste market; 47 States export some garbage, and 44 States import some garbage.

Some interstate movement of garbage makes sense. In Montana, for example, two towns have made arrangements to share landfills with western North Dakota towns. Some trash from Wyoming areas of Yellowstone Park is disposed of in Montana. These arrangements save money for the communities involved. And the establishment of shared regional landfills can be a policy that does make sense.

But it only makes sense when the communities involved agree to it. No place should become an unwilling dumping ground. Nobody should have to take garbage they do not want from another community.

The legislation before us takes us a step closer to preventing Montana and other rural States from becoming a national dump. It lets Governors freeze imports at 1993 levels, and stop new imports if affected communities want them stopped. It is not perfect, but it is a good start.

Mr. President, I want to congratulate the Senators who have worked so hard over the years on this issue trying to develop a balanced bill. Senator COATS has been particularly helpful and particularly committed to enacting interstate legislation. Senators LAUTENBERG, MOYNIHAN, and our new chairman, Senator CHAFEE, and many others have worked tirelessly.

This issue has been around Congress long enough. I think it is time to stand up for the small towns and finish the job.

Senator LAUTENBERG, the ranking member of the relevant subcommittee, is now in the Budget Committee and is not able to be here. He worked hard, along with Senator SMITH, and at a later time he will want to make a statement.

Mr. CHAFEE. Mr. President, I yield to the distinguished Senator from New Hampshire.

Mr. SMITH. Mr. President, I thank Chairman CHAFEE.

Mr. President, this bill is a compromise bill. It is not going to please everyone, and maybe that is the reason why it is a good piece of legislation, I do not know. But a little more than 2 months ago, the Superfund Waste Control and Risk Assessment Subcommittee, which I chair, held a hearing to consider proposals to regulate the interstate transportation of solid waste and whether to provide local control authority to State and local governments.

The controversy here surrounding the interstate transportation of municipal solid waste is one that the Senate has been considering since 1990. Today, 47 States export approximately 14 to 15 million tons of municipal solid waste per year for disposal in other States—14 to 15 million tons.

While short-distance waste exports have been occurring for some time, the development of a long-haul waste transport market has been a more recent development. With tipping fees as high as $140 per ton in some large cities, compared with the national average of between $30 and $50 a ton, there is an incentive, obviously, from municipalities to transport these wastes by truck and rail to distant States for some permanent disposal.

That is a pretty big incentive. Anywhere from $30 to $50 to $140 a ton is a huge disparity.

Those States that have recently been the recipients of large amounts of long-haul waste have raised a concern that their limited capacity for solid waste is being filled and that they have become a dumping ground for somebody else's waste problems. So over the last few years, 37 States have passed laws to prohibit, limit, or severely tax waste that enters their jurisdiction. However, almost all of these laws have been struck down by the Supreme Court for violating the commerce clause of the Constitution.

So while there has been a recent easing of disposal and the capacity to dispose nationwide, there is still significant concerns about the future consequences of this long-haul system. Congress needs to define what the future is, whether we are going to honor the interstate commerce clause or not, or whether we are going to adjust it or micromanage it, or do something with it. But there are people out there who are impacted, as we speak, by the fact that this decision is still in limbo.

So to address these concerns, Congress—specifically the Environment and Public Works Committee—has been attempting to strike a balance between importing and exporting States. Last year, the Committee on Environment and Public Works, of which I am a member, unanimously reported S. 2345 to address this problem. A number of Members, both on and off of the committee, including very prominent Members who will be involved in this debate over the next couple of days, like Senators COATS, SPECTER, LAUTENBERG, MOYNIHAN, and others, took a very active role in attempting to develop a compromise that importing and exporting States could live with. While the Senate easily passed this compromise by a voice vote on September 30, 1994, it was the end of the session and time ran out before this issue could be finally resolved.

So this legislation has been a balancing effort, a real balancing effort. In regard to the interstate transportation of municipal solid waste, we have tried to carefully balance the issues of both the importers and the exporters, and nobody is happy with the interstate language. Perhaps that indicates to me, as I said earlier, that we might be on to something.

The bill that Senator CHAFEE and I introduced incorporates the interstate waste bill that unanimously passed the Senate last year.

Let me repeat that, because I think in the debate, as the chairman, Senator CHAFEE, knows, it is getting lost. What Senator CHAFEE and I are offering in the area of interstate waste transfer unanimously passed the Senate last year. That is what we put in our bill. That is simply all we are offering this year.

Mr. CHAFEE. Mr. President, could I ask a question to make a point?

When it passed unanimously last year, that was when the other party was in charge, had the majority. So not only did all of the Democrats vote for it in a bill that was drafted by a majority of the Democrats in the committee and approved on the floor, but every Republican likewise voted for it.

So two different parties have worked on this legislation over 2 separate years and come to exactly the same result. Having passed unanimously last year, I certainly hope we can get on with the same language, get the same

approval this year of the same language.

Mr. SMITH. I thank Senator CHAFEE for making that point. He is correct. This is not a partisan issue. It is a carefully crafted compromise to try to accommodate some genuine concerns out there among many individuals.

Again, in the Senate, controlled by the Democratic Party last session, it was passed unanimously. The Republicans are now under control, and we are offering the same language again on interstate transfer. There is not any reason why we should have a huge fight here, unless people, for whatever reason, are trying to capitalize on something or take unfair advantage.

We felt it was fair and we continue to feel that now. Senator CHAFEE and I are in agreement on that, and I know there will be Senators from both the importing and exporting States that will try to weaken or strengthen, depending on their position, the interstate portions of this bill. The bill is in two sections—both interstate as well as flow control. There are two sections to the bill.

My response is, we struck this compromise last year, all parties agreed, and there have been no significant changes. What would be the fight?

Let me move to the issue of flow control, because we have heard statements from a variety of individuals before our committee, very prominent individuals. Senator BILL COHEN, Governor Christine Whitman of New Jersey and others, Congressman CHRIS SMITH of New Jersey, who asked Members to move quickly to address the issue of flow control. And we did. We moved very quickly at the behest of those individuals.

Frankly, ever since we moved quickly at their behest, we have been getting beat about the head and shoulders by some who asked Members to move at their behest. A number of witnesses expressed a strong concern that without prompt congressional action to provide for continued authority in this area, many communities would be in danger of having their bond ratings lowered. That is true.

For those of my colleagues who may not have heard me speak to this issue on the subject of flow control, let me be clear. This bill is in my subcommittee, the Superfund Committee, which I chair. It is in my jurisdiction.

I tried to craft a compromise, which I think we did successfully, to get the bill to the floor and help those people who did have a problem. I oppose flow control. I think it is wrong. I do not support walking away from the interstate commerce clause of the Constitution. I believe that we ought to stand firm on that.

There is a situation that has developed, as Senator CHAFEE has already outlined, where individuals—municipalities—have let bonds, and there are people who stand to lose on this. So we tried to craft a compromise. In that compromise, we basically grandfathered, with reasonable grandfathering provisions, those communities.

I do not believe that flow control is necessary to deal with the problem of solid waste. We do not—I think the private sector can do it just fine. I do not believe the free market is broken. There is no evidence that the free market is broken in this area.

There are many people who are involved in the transport of this material, and I refuse to believe that recycling cannot be accomplished without flow control. I simply do not believe it. I do not think there is any evidence to say that. But some States and some communities got themselves in a bind, and we are trying to help them out of that bind.

Instead, we are being attacked for trying to help them, in many ways by those who wanted it and now have dramatically changed or moved their position. That is the reason why nothing has happened, because everybody wants their position.

This is a compromise. That is the point. I am sympathetic to the communities that feel they need congressional assistance on this matter. There are some. If we are starting from ground zero and there were no bonds let, no contracts signed, Mr. President, I would be here on the floor saying no flow control, period.

However, it was because of this plea, that Senator CHAFEE and I moved forward to introduce this legislation, S. 534, that would provide the flow control authorities to those municipalities that imposed flow control and either constructed or began construction of facilities prior to May 15, 1994, the Carbone decision.

While our bill provides limited grandfather protection for flow control, it also—and this is the key issue—it gives finality. This is final. At the end of 30 years it is over. There is no flow control anymore. We now have the free market kick in. We have help during this 30-year period which I think is more than ample. There are not any bonds I am aware of beyond the 30-year period. So precisely 30 years after the legislation is adopted, no further flow control measures will be allowed—none, zero, zilch.

Both my subcommittee as well as the full committee moved very quickly to mark up this legislation. We did so primarily to help those communities whose bond ratings are endangered as a result of the Supreme Court's recent action. They are. We agree they are. They should not have gotten themselves in that position, but they did. Rather than get into whether or not they should not have gotten into that decision, we did not use that as a criteria. We simply said for whatever reason, they made some decisions that maybe they should not have made, but they are in that position so we will help them out.

Speaking for myself, I am very uncomfortable with providing flow control authority. I do not want flow control authority. I felt that the bill of Senator CHAFEE and myself struck a fair balance in accommodating those who are strong proponents of States rights and those who are strong proponents of the free market. It is a compromise for both of those positions.

During the course of the last 2 months, I have continued to work to accommodate Senators who had concerns about various proceedings in the bill. Everyone wants a fix. We are now hearing from the sublime to the ridiculous. ''Well, we might have a contract in 5 years, we are thinking about it. Could we be exempted?'' No, absolutely not. We are not going to exempt them, if I have anything to say about it. That is wrong. It defeats the spirit and intent of what we are trying to do.

We cannot satisfy everyone. We have tried. We tried hard to address the legitimate concerns, and we will address those concerns. Some of the amendments we will accept. Some we will not.

As a result of our efforts, the EPW Committee ordered this reported as amended on March 23 by a rollcall vote of 16–0. Again, the whole sequence of events here: Last year it was unanimous, no objection by Republicans or Democrats in the Senate in a Democrat Congress. We have a Republican Congress, it passes the committee 16–0.

That says something about this bill. It says that those people out there who are trying to dramatically alter the bill are simply on a course that is not going to be in the best interest of those people who are sitting out there right now waiting for help, which is why we mark this bill up.

I have to say if we ask Senator SMITH, ''What are your priorities in the subcommittee of the Superfund?'' It is Superfund reform. That is what we are working on. We have had six hearings on it. We have another hearing tomorrow. We had one yesterday. We will try to draft a bill in the next 6 weeks to 2 months, and that is a high priority.

Because people came to me, including the ranking member of the subcommittee, Senator LAUTENBERG, and outlined these problems, we agreed—Senator CHAFEE and I and others—that we would bring this bill to the floor as quickly as possible. We have done that and, frankly, with great difficulty, simply because we have been focused on the Superfund issues. I did not anticipate the amount of amendments and the amount of opposition that would be generated on this bill.

But let me just make this very clear to my colleagues. I believe this is an emergency bill for those communities or individuals or entities that have let those bonds. There are communities in a number of States that need quick passage of this legislation to provide them with the financial relief for their previously flow-controlled facilities. If this bill gets bogged down because of amendments, everyone trying to get

their way—they want total flow control or no flow control or no grandfathering or we move into the interstate waste transfer and they want no exporting or total exporting or the Governor having the total right to make decisions and communities having no rights or whatever—whatever the position may be, if they insist on that, this bill will get bogged down. It will not get passed by the end of this week, this legislative week, on Friday. And the budget will be up next week.

After that, I cannot imagine where there will be a window of time to deal with this again. So I appeal to my colleagues who desperately want this bill to help them and their communities in their States with this flow control to not hold this bill up by adding amendments or trying to add amendments that may in fact derail it. Because once it is derailed, in my opinion, it is going to be a long time until it gets back here.

It is the leader's decision, of course, when it comes up. But the point is there is so much on the table after Monday when the budget comes up, any discussion of flow control, with all due respect, is going to be way down here when the budget and the numbers in that get out and the American people begin to interact with their Senators and Congressmen on that.

So I think there is going to be a lot of discussion. If Members choose to oppose this or dilute it or whatever they choose to do, or even—maybe they would like to strengthen it—they will do it at their own peril. This issue, which has been simmering for the last 6 or 7 years, will continue to remain on the back burner during the 104th Congress.

I hope that does not happen, but the choice is clear. Either vote to pass this bill which has the overwhelming majority support, maybe unanimous support, in the Senate and protect those facilities that come within the scope of this bill, or risk it all to protect a small handful of communities that do not fit within this legislation, who are trying desperately to create a situation where, if they want to have flow control at some point in the future, they can have it, or if they have let a little bit of money out there somewhere, a relatively insignificant amount, and they are not sure what they are going to do—that violates the spirit and intent of this bill and I hope it does not happen.

We will be down here as long as it takes to deal with the amendments. I appeal to colleagues, if they have amendments, let us try to work them out. We will try to work out the ones we agree with, and if we can agree with them, we will accept them. If they violate the spirit and intent of what we tried to do in drafting this bill, we will oppose them forcefully on the floor of the Senate.

Let me conclude with a brief summary as follows. Communities out there, as far as flow control is concerned, are in a tough situation. According to the public securities situation, $20 billion in bonds have been issued to pay for flow-controlled facilities. That is not the fault of the U.S. Senate. The interstate commerce clause, I believe, was in effect when that happened. But somehow it got ignored and they got into this bind and they have $20 billion in let bonds.

We are going to try to help them and we do help them with this legislation. We grandfather them, we protect them. We protect the investors, the bondholders, the taxpayers, the individuals out there who have in whatever way participated in these bonds.

As a result of the Carbone decision, the Supreme Court invalidated flow control, so it is in limbo. Here we are in limbo. Nobody knows what to do. They do not know whether to proceed or not to proceed, because they do not know what Congress is going to do in regard to the interpretation of that decision.

Six incinerators in New Jersey have had their bond ratings lowered, and I am sure that is the case in other States, because flow control was invalidated. Again, we are trying to help those communities. That is the goal. Dozens of incinerators and landfills are in immediate danger if flow control is not reauthorized immediately, and every bond based on flow control authority is threatened, every one. Every single bond out there is threatened unless we do something soon. The longer it goes on the worse the threat gets.

So the bill provides a narrow flow control authority to protect those bonds. Again, it is a compromise. It is a fair compromise. It is not my position totally. I would be for no flow control. That is not my position. But it is a compromise position to help those individuals.

With that, Mr. President, I yield the floor and indicate I hope we could get some time agreements and some reasonable information regarding these amendments. If Members who have amendments could come to the floor and offer them in a timely manner so we do not get bogged down and not pass this bill by the end of the week.

Mr. CHAFEE. I thank the distinguished Senator from New Hampshire.

PRIVILEGE OF THE FLOOR—S. 534

Mr. CHAFEE. Mr. President, I ask unanimous consent James McCarthy, of the Congressional Research Service, be granted the privilege of the floor for the pendency of S. 534.

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

Mr. SMITH. Mr. President, I ask unanimous consent Mr. Paul Longsworth, a U.S. Department of Energy employee assigned to my staff for a period of 1 year, be granted the privilege of the floor for the duration of the consideration of S. 534.

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

The Senator from Oregon.

ENDANGERED SPECIES ACT REFORM AMENDMENTS

Mr. PACKWOOD. Mr. President, I am pleased to join with my colleagues as an original cosponsor of the Endangered Species Act Reform Amendments of 1995. This bill is the result of several years' work. The bill represents the culmination of a broad, grassroots effort to bring balance to the Endangered Species Act. This coalition consists of miners, ranchers, loggers, refiners, manufacturers, the fisheries industry, and organized labor.

There are problems with the current Endangered Species Act. The Endangered Species Act is an act that has gone awry. It is wreaking havoc on our communities and economies, particularly in the Pacific Northwest, but increasingly nationwide. It is devastating entire regions and industries. In the Pacific Northwest alone, since the spotted owl was listed as threatened in 1990, millions of acres of Federal timberland and thousands of private acres have been set aside. It takes about 1,300 acres for a pair of owls to breed, so we are told. We have set aside thousands and thousands and thousands of acres in hopes of the owl being saved. No guarantee it will, no guarantee it will not, but a tremendous damper on legitimate economic activity.

It has impacted tens of thousands of human beings and hundreds of rural communities. The estimates on job losses range from a low of 35,000 to a high of 150,000 in the Pacific Northwest.

I was here when the act was originally passed, and I remember what our intention was. We were thinking ''a'' project: a dam, a road, a canal versus a species. When you read the debate, when the original Endangered Species Act was passed, I do not recall the word ''ecosystem'' being mentioned in the debate. None of us was thinking of an entire section of the country being affected by one species. Yet this act is now being used as a tool by environmental groups to further their agenda of locking up not only all public land but much private land as well.

I want to emphasize again, this act applies to private land. For a long time I think people thought this was a public land issue in the West, that while it might limit the activities of the U.S. Forest Service or the Bureau of Land Management or the U.S. Park Service, it did not affect private land. It does. It affects your right in ownership. It can diminish the value of your land in every sense. The Government can take your property under the current Endangered Species Act and not pay you. Private property owners are increasingly losing the right to use their property as they intended.

Let us look at the economic cost of the Endangered Species Act. Edward O. Wilson, a renowned entomologist, has observed that there may be something

on the order of 100 million species and yet only 1.4 million have been named. How many billions of dollars are we willing to spend attempting to save insects, bacteria, fungi—that we have never heard of, never identified, for which there may be little or no chance of recovery. Yet in the effort, we will cause dislocation and hardship for thousands and thousands of people.

The social impacts are no less devastating. Professor Lee, Robert Lee, at the University of Washington in Seattle in the College of Forestry Resources, has an interesting background: an undergraduate degree from the University of California in sociology and then a graduate degree in forestry. He has done extensive work on the social trauma that affects timber towns. He points to the destruction of families, long-lasting social fallout. He can identify it, pinpoint it. He points out that, if you are going to go ahead and apply the Endangered Species Act and close the mill in this town—and it does not take a very big mill if you have a town of 2000 and you have a mill that employs 150 people—that mill is in essence the backbone of the town. If you close it, he says he can guarantee that you will see an increase in suicides, homicides, divorce, juvenile delinquency, drug abuse, spousal and child abuse.

He is not saying that in this town this is all going to happen. What he is saying is when you take a 45- or 50-year-old mill worker who married his childhood sweetheart in high school, lived in town all of his life, his children are in the school, he is making $25,000, $26,000, or $28,000 in the mill, it is the only job he is trained for, and the only principal occupation in town is the mill. It is closed. His mother is still alive and he does not want to leave the town. You take away his livelihood. The Federal Government takes away his livelihood.

Professor Lee says you can bank on it, as sure as we are here, that you are going to have the increases that I talked about in the suicides, homicides, the abuses, the divorces, and alcoholism. It is understandable when you think about it. A 45- or 50-year-old is not likely retrained, does not want to move from town, has lived there all of his life. Those things are as likely to happen as you and I being in this Chamber today.

It is ironic that for years we considered the needs of humans as though nothing else mattered. During that period, probably a long period in our country when we developed this country, from approximately 1800 to 1960, we moved west. We gave no thought to limitation of resources because we thought the resources were unlimited. I am old enough to remember in the Pacific Northwest within the last 30 to 35 years when the electric companies advertised: ''Use more electricity. The more you use, the less per unit you will pay. Have an all-electric house, electric furnace, electric air conditioning.'' The theme was, we will never be able to use all of the electricity we generate. If we ever have to have more, we will build another dam. Or, as we got into the seventies, we will build nuclear plants. But it was use, use, use.

As we moved across the West, the pioneers came over those mountains and they looked at valleys and mountains of timber, timber, and more timber. It is understandable why they thought that those resources could never be used up. These resources were plentiful. The pioneers were not malicious people; they were not greedy; they were not selfish. But they saw the land and thought it was good and right to develop it.

Mr. President, if 100 years ago, 150 years ago, we had on the books, only two laws, the Endangered Species Act and the Wetlands legislation, we would not have developed the West. Every railroad you see, once you get across the Great Plains, is built on rivers and fill. We never would have cleared the valleys, never would have cut the trees and pried out the rocks and farmed it. You would have been prohibited from doing it by just those two acts. But as people moved west, they saw nothing wrong with clearing the land. As a matter of fact, the native Americans, and the early settlers, when they were there saw nothing wrong with burning the trees. They did this not for any kind of malicious intent; they burned for ecological reasons. I doubt if you could do that today.

Things changed. I understand why. You had the century and a half of moving west. You developed the resources, harnessed the rivers, and plowed the land. There was not much thought about the environment, and certainly not much thought at all about endangered species. Then along came Rachel Carson's book, Silent Spring, which I like to say is the pivot upon which the environmental movement started. Basically, the book dealt with agricultural pesticides and runoffs and the damage these were doing. But from that moment forward, you could see the pendulum, which had swung for 160 years toward development and exploitation of the resources, swing in the other direction. Now the pendulum has swung completely the other way.

I do not level this charge at everybody who is a member of the Sierra Club or the Wilderness Society. By far, most of them are very reasonable, decent people. But they are accusing unjustifiably a group of people who are excellent stewards of the land, people who living on the land and taking care of the land and replenishing the land. The irresponsible utilization of natural resources is wrong. But I do not know anybody who is a farmer who wants to misuse and abuse his or her land and not have the option of passing it along to their children. I do not know of anyone—if they used to exist, I do not know them now—in the timber industry who wants to cut and run. Everyone I know in the timber industry who is in the industry wants to cut and plant and grow, and cut and plant and grow forever on an intelligent, sustained-yield practice of forestry.

There is only one group where I have seen a danger. And it is not their fault, and I do not blame them. You are a little woodlot owner. You have 60 or 70 acres of land. You are not Weyerhauser. You are not a commercial timber company. But you have 60 or 70 acres of land. You have been managing it well, and you cut a bit, and you plant a bit. You will use some of it to educate your kids, and maybe some of it to help their families, and maybe some of it for retirement. You are faced now with the possibility, under the Endangered Species Act, that you may be prohibited from cutting on your land at all. Right at the moment, you are not cutting and had not intended to cut. Do you know what you are thinking to yourself? ''I had better do it now. I had better cut and run and get out while I can still get my money to educate my kids and do some of the other things I had planned to do, because maybe in 5 years, the Endangered Species Act will not let me cut at all.'' This is a person who is willing to and had planned to cut and plant land that will be in the family for generations. These are the kinds of unintended consequences we face because of this act.

Under the Endangered Species Act, we have to remember that we must balance both species and humans. But here is the problem with the present act. I want to phrase this carefully. This is the present act. When you are determining whether or not a species is threatened or endangered—those are the two classifications under the act—you are to use the best scientific evidence, and nobody quarrels with that.

Realizing science can be wrong, you may recall that science said if we built the Tellico Dam, the snail darter would disappear. We went through a long battle on the Tellico Dam. Finally, the Endangered Species Committee—the God Squad, as we call it—said if we built the dam, the snail darter would disappear and that was to be the end of it. Congress overruled the Endangered Species Committee and said finish the dam, build the dam. We do not care if the snail darter disappears. The dam is all but done. We just have not dropped the gate. Go ahead with it. We were told we would run the risk of the snail darter disappearing. The best scientific evidence said it would disappear. What happened? We dropped the gate, the reservoir filled up, and the snail darter exists in all of the streams that flow into the reservoir. Science was absolutely wrong. This is no excuse not to use science, but science is not perfect.

I have no quarrel with listing a species as threatened or endangered and using the best science that we know. I would like there to be good scientific peer review, and I would like a chance to appeal to the courts should you have a really horrendously bad decision. But

I think the best science ought to be used.

Now you come to the issue of whether or not you are going to have a recovery plan to try to save the species. And here, only the species counts. If you cannot come up with a recovery plan under the present law, if you cannot come up with a recovery plan that will save the species, or, to put it the other way around, if every recovery plan that you can think of by the best scientific evidence will lead to the extinction of the species, then nothing else counts. People do not count. Revenues to counties do not count. Whether or not the schools have enough money to keep going does not count. Nothing counts but the species, and that is where this act is not balanced.

So, Mr. President, I am glad to join a number of my fellow Senators in introducing amendments to the Endangered Species Act. We think these amendments are a balance. We are not getting rid of the act. We are not getting rid of science. As a matter of fact, we are asking for stronger science, for better science, for better review. But this act finally allows people to be considered as much as bugs. And that has been the failing of the present law.

I hope the Senate will favorably consider this. I am proud to join as a cosponsor.

I am pleased to join with my colleagues as an original cosponsor of the Endangered Species Act Reform Amendments of 1995.

This bill is the result of several years' work.

The bill represents the culmination of broad grassroots efforts to bring balance to the Endangered Species Act.

This broad grassroots coalition consists of miners, ranchers, loggers, farmers, manufacturers, the fisheries industry, and organized labor.

PROBLEMS WITH CURRENT ENDANGERED SPECIES ACT

The Endangered Species Act is an act gone awry. The act is wreaking havoc on our communities and economies, particularly in the Pacific Northwest, but increasingly nationwide. The act is devastating entire industries and regions.

In the Pacific Northwest alone, since the spotted owl was listed as threatened in 1990, millions of acres of Federal timberland and thousands of private acres have been set aside for owls.

The act has impacted tens of thousands of human beings and hundreds of rural communities.

Estimates of the number of jobs lost as a result of the listing range anywhere from 35,000 to 150,000.

The act was originally intended to ensure the survival of species that were threatened by site-specific projects, such as roads, dams, and sewer systems

The act is now being used as a tool by environmental groups to further their agenda of locking up not only all public land, but private land as well.

Private property owners are increasingly losing the right to use their property as they intended.

ECONOMIC COSTS OF ESA

Edward O. Wilson, a renowned entomologist at Harvard observes that there may be something on the order of 100 million species.

Yet only 1.4 million have been named.

How many billions of dollars are we willing to spend attempting to save: fungi, insects, and bacteria we've never heard of, and species for which there may be little or no chance of recovery in any case.

SOCIAL COSTS OF ESA

While the economic costs of protecting species is great, the social impacts are no less devastating.

Robert Lee, sociologist with the University of Washington College of Forest Resources, has done extensive research on the social trauma afflicting timber towns. He points to the destruction of families and long-lasting social fallout in the form of suicide, homicide, divorce, juvenile delinquency, drug abuse, and spousal and child abuse.

It is ironic that for years we considered the needs of humans as though nothing else mattered.

Now, under the Endangered Species Act, we are considering the needs of fish, wildlife, and plants as though nothing else matters.

Both policies are short-sighted and flawed.

CURRENT EFFORTS

We need a process which not only protects plants and animals, but one which recognizes legitimate human needs as well.

That is why, in the last Congress, I joined with Senators GORTON, SHELBY and others in introducing legislation to bring balance to the Endangered Species Act.

This year, with even stronger bipartisan support, we have again introduced legislation to require that the economic and social impacts of Federal efforts to protect species be fully considered.

SUMMARY OF BILL

Our bill contains several components essential to meaningful reform.

The bill reforms the process by which species are listed as threatened or endangered:

Requires independent scientific peer review of the science;

Requires better data collection.

Provides for broader participation by affected States and the public;

Requires judicial review of listing decisions;

In place of intensive Federal management, the bill includes incentives to encourage private landowners to protect species, such as:

Encouraging the exchange of private land for Federal land to provide habitat for affected species; and

Establishing a Federal cost-share program for any direct costs imposed on a private person.

Our bill requires the Secretary to set a ''conservation objective,'' ranging from full recovery of the species to solely protecting the species from actions which would directly injure or kill the species.

In other words, the Secretary could decide to allow a species to go extinct.

Our bill requires that economic and social impacts are fully considered in the development of conservation measures.

Our bill changes the statutory definition of ''harm'' and ''take'' to mean the actual injury or killing of a member of a species.

''Harm'' will no longer apply to the modification of a species' habitat as the courts have broadly interpreted current law.

Our bill minimizes the impacts to private property.

CONCLUSION

It is not our goal to abandon our national commitment to the protection of endangered species; however, we cannot protect every imaginable species.

We can do a better job of balancing jobs and economic opportunity with species protection.

While this bill does not go as far as I would like, it will begin the debate which is long overdue.

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

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I ask unanimous consent I be allowed to proceed for 5 minutes as if in morning business.

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

PRESIDENT CLINTON BRINGS HOME NOTHING

Mr. MCCONNELL. Mr. President, President Clinton has gone to Moscow, and he has come home with nothing. I repeat: President Clinton has gone to Moscow, and he has come home with nothing.

There has not been much coverage yet of the summit over there in Russia, but it is pretty clear that President Clinton has in effect gone to Moscow, given President Yeltsin an opportunity to show that he can deliver the President of the United States for a celebration of the end of World War II, and we have had no progress on stopping the sale of nuclear material to Iran, no apologies about the slaughter of 25,000 people in Chechnya.

In summary, Mr. President, very little, if anything, has been accomplished at this summit that would benefit this country.

Now, arguably, our President showing up over there has helped President

Yeltsin and the Russians, but typically we think of these summits as producing something beneficial for our side. It does not seem to me there has been one single step in the direction that we would like to see us go as a result of this summit.

The issue, of course, is not whether we have a relationship with Russia. We all want to have a relationship with Russia. The question is, What kind of relationship is it going to be?

During the past 2 years, we have seen a real change in the makeup of President Yeltsin's inner cycle or kitchen cabinet. He has fired reformers and replaced them with hard-line reactionary advisers who are suspicious of free market reforms and suspicious of democracy. Some observers have said there is only one reformer left in the cabinet and he is the one they sent over here to the United States to talk to people in the Senate.

In a recent hearing, I asked Deputy Secretary Talbott to identify a single voice of reason in the kitchen cabinet; just one. Secretary Talbott changed the subject.

Yeltsin's decisions are making it very difficult to sustain support for assistance to Russia.

In February, Secretary Christopher said the President would not go to Moscow for a summit if Chechnya were unresolved. Well, the President is there and Chechnya is unresolved. Almost as soon as that line was drawn in the sand by President Clinton, he backed down.

Current Russian policy test United States interests and principles. In fact, current Russian policy makes no sense at all, Mr. President.

In Chechnya, basic principles of democracy and human rights are under siege. It really begs the question: Does a democratic government turn its guns on its civilians, killing 25,000 men, women, and children?

Preliminary indications are we have accepted Yeltsin's determination that this is basically an internal matter and is none of our business. Essentially, that is what President Yeltsin said: ''This is our affair. You butt out, President Clinton.''

Both our security interests and our allies are threatened by the pending sale of nuclear technology to Iran. The biggest current issue between ourselves and the Russians is the pending sale of nuclear technology to Iran. And the President has said earlier in the year he would not go to Moscow for this celebration of V-E Day unless there was progress on that issue. Well, there has been no progress. The nuclear sale continues to go forward.

This agreement that the administration has announced that there will be no sale of the centrifuge technology is simply not adequate. That is a figleaf to allow President Clinton to claim somehow that progress was made on deterring the nuclear transfer to Iran when, in fact, no real progress has been made.

In addition to that, Mr. President, nothing has changed on the issue of NATO expansion and other European security questions. Everyone was surprised by the Russian reversal last December when Yeltsin and Kozyrev denounced NATO plans to enlarge itself and rejected the Partnership for Peace program. Combined with recent statements that Moscow has the right to use force to protect Russian minorities in the Soviet Republics, leaders across the region are justifiably concerned. It should have been essential for the summit to produce a concrete commitment by Yeltsin to respect the political, economic and territorial sovereignty of those countries that used to make up the Soviet Union.

In summary, Mr. President, what is going on here is the Russians are saying, ''We don't want you to expand NATO. And, oh, by the way, all the countries that we used to dominate, that used to be part of the Soviet Union, are our business and none of yours.''

No progress has been made at this summit on any of these issues; not a single shred of evidence of any progress whatsoever on any of these issues.

Mr. President, I, like many Members of the Senate, want to get along with the Russians. Obviously, we have a better relationship than we did during the cold war, but some days I wonder where this relationship is going. It seems to me, by pursuing this Moscow myopia, this view that whatever Yeltsin wants Yeltsin gets, by pursuing that particular point of view, we stand no chance of having the opportunity to build a genuinely constructive relationship with the Russians.

So let me just, in sum, Mr. President, say that I think this summit has been a disappointment. I am sorry that President Yeltsin has been unable to commit to any of the progress that we had hoped for, but mostly I am sorry that President Clinton chose to go. Why is he there?

At virtually every summit in my memory, something has been brought back that was arguably in the interest of the United States. President Clinton has gone to Moscow, gone to Moscow at President Yeltsin's request, given President Yeltsin an opportunity to look good, made no progress on the nuclear sale to Iran, made no progress on the expansion of NATO, and comes home emptyhanded. So, by any standard, Mr. President, this summit is a disappointment.

I yield the floor.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I am very pleased that the Senate today has turned its attention relatively early in the session to a bill of primary importance to my State of Indiana and to many other States in this Nation. It is a bill that the Senate is very familiar with, one to allow States to limit the importation of out-of-State waste. We have discussed it on numerous occasions.

I want to thank the chairman of the subcommittee, Senator SMITH of New Hampshire, and the chairman of the full committee, Senator CHAFEE, for bringing this bill to the floor, as well as the ranking member, Senator BAUCUS, and, of course, Senator DOLE for scheduling this legislation.

Early in my Senate career, which has not been that long, I observed a phenomenon in Indiana as I was driving through the State. All across the State homemade signs posted on telephone poles or stuck in the ground appeared that said, ''Don't dump on us.''

I began to inquire what the subject was. We checked into that and found that the citizens throughout Indiana, many small towns in particular, found that, instead of the local garbage dump which received a truck or two of local community waste, garbage, a day, suddenly they discovered that 18-wheelers were lined up for blocks waiting to enter the local dump to dump their waste. And people said, ''Where is all this coming from?''

You really cannot call these facilities landfills, because they were designed for receipt of small amounts of everyday household trash, waste, that was picked up maybe a couple of times a week at most and delivered to the local dump.

In a little more than a year, our State saw negligible volumes of out-of-State trash that were coming into the State explode to more than 20 percent of our total waste disposal. Virtually overnight, the State of Indiana became a target for out-of-State trash.

The statistics do not begin to tell the story. Because, as I said, the trash parade targeted many small communities in rural areas in Indiana. So the magnitude of the change was dramatic for the citizens of those communities.

Let me just tell you one story, the story of Center Point. This small town in Indiana, a town of 250 people, had a local garbage dump. Not a landfill, it was not certified as a big landfill. It was just a place where the local citizens were able to dispose of their local trash. A couple of trucks picked up the trash in the community and surrounding areas and disposed of it in this area.

In 1989, the local landfill was purchased by out-of-State investors, and the site was doubled. Ads began appearing in national magazines that said: ''Send us your trash.'' Narrow country lanes were clogged with 18-wheelers loaded with trash and garbage from other States. Local citizens, rightfully so, I believe, began to keep a watch on a daily basis, on a 24-hour-a-day basis. They would log in the license plates of the trucks coming to bring the trash,

and we found that most of it was coming from just a few States.

I heard about the incident. I asked my staff to take me there. We went early one morning, and we stood on a hill overlooking the landfill, which now had been expanded considerably. I saw on this narrow, unpaved country lane a whole long line of 18-wheeler trucks that had driven all night to bring east coast waste to Indiana because the disposal fees were so much less than they were at the point of origin.

Suddenly, this little town of Center Point was overwhelmed, as its fragile country roads were torn up by the weight of the 18-wheelers, as signs and posts were knocked over as the 18-wheelers tried to negotiate the narrow turns, and as a landfill facility, a garbage disposal facility designed to take care of the needs of that community for many, many years in the future suddenly was the subject of unwanted and extraordinary volumes of trash, which became obvious were going to quickly fill up that local community's disposal site, leaving its local citizens with no local option to deal with their own waste problem.

Capacity that was sufficient to meet local needs for years was suddenly being used up in months. Hoosiers were understandably angry, and I was angry. We had a very clear message we wanted to deliver, and I delivered that on this Senate floor: That our State, which had mustered the political will to site landfill capacity in our own State borders, within those borders, to dispose of our own generated waste, were overwhelmed by trash flowing from States that were unwilling to responsibly handle their own waste.

Today, Mr. President, over 15 million tons of trash cross State lines. Indiana, Pennsylvania, Ohio, Virginia, and Michigan have borne a disproportionate share of receiving that capacity. We happen to be on an interstate route that runs east to west, Interstate 70. Interstate 70 has become the trash corridor for the flow of east coast trash to lower fee landfills in the Midwest.

Americans throw away about 180 million tons of solid waste yearly. That is enough trash to spread 30 stories high over 1,000 football fields. The question that confronts us is where are we going to put all this? Some communities have been pretty creative. Ten miles from downtown Detroit, there is an old landfill accommodating 21 years' worth of the city's garbage. It rises 150 feet into the sky. It no longer receives trash, but city officials have covered it with some top fill and they make snow in the winter and they declared it a ski area. It is colloquially called ''Mount Trashmore,'' and it attracts thousands of visitors a year. But for most, trash is not a recreational resource; it is a municipal nightmare. Landfills fill up, and there is nowhere else to take the waste.

So our Nation's heartland is becoming our Nation's wasteland as trash increasingly moves across State lines following the route of cheap disposal from the East to the West.

Of the 15 million tons of trash crossing State lines, Indiana, Pennsylvania, Ohio, Virginia, and Michigan have borne, as I said, a disproportionate share. This rising tide of trash wreaks havoc with our planning efforts which, by our own State law, must ensure local capacity for 20 years.

Some States have reacted to this influx of out-of-State trash by forbidding all new landfill sites. Others have taken measures which amount to the nationalization of the trash industry by banning for-profit disposal facilities in order to give States control over this. Because public facilities may discriminate between in-State and out-of-State, one method of eliminating unwanted out-of-State trash is to restrict the commercial sector altogether.

These are not feasible solutions. These do not go to solving the problem. Our own legislature has tried to take care of the problem, but has found that its ability to act effectively is extraordinarily limited. We had a discussion of that this morning. The Senator from Rhode Island, and others, talked about the fact that under the commerce clause of the Constitution, garbage waste is considered a part of interstate commerce, and unless the Congress affirmatively acts to grant States and local jurisdictions the authority to control the flow of waste, they do not have the power to do so. That is why we are here. That is why we have been pursuing for these last several years the prospect of giving these States and these local communities the authority to regulate the flow of out-of-State trash.

We passed laws in Indiana, for instance, that would impose additional fees, that allowed us to check the content of the material coming in. The statute that we passed was on the books 4 days before it was challenged in the court as a violation of the commerce clause, and that case eventually was lost by the State.

Frustrated by the court decisions, Indiana has turned to bilateral agreements. Our Governor and the former Governor of New Jersey agreed to cooperate in stopping illegal waste from New Jersey. They agreed to share information and to pursue joint investigations.

Mr. President, the vast majority of waste shipped across State lines is not illegal waste, it is just ordinary garbage. It is the coffee grounds and eggshells and orange peels, discarded Dr. Pepper bottles, the newspaper, unless it is recycled—just the ordinary waste that each of us carries out to the trash bin in the garage and puts out once or twice a week in front of the house.

In addition, we have no way to accurately count the amount of trash we are receiving illegally to determine what that is. Many shipments are sent indirectly through collecting points in other States. To determine what came from a particular State to Indiana that might be legal or illegal requires a procedure that is an investigative nightmare.

As our own Governor has indicated, and as many other Governors have indicated, and as I believe a solid majority of Senators and Representatives have indicated, the only hope for a solution lies with Federal legislation.

In November 1989, my first year in the Senate, the 101st Congress, I introduced the first bill in the Senate which would allow States to ban, regulate, or impose fees on the interstate transportation of solid waste. After a strenuous debate, this bill passed by a very significant and, I think, surprising vote of 68–31. Unfortunately, in the conference with the House of Representatives, the bill which was passed here was stripped from that bill and the legislation died before becoming law.

In the very next Congress, I again introduced legislation and again forced the issue on the Senate floor. And, again, the Senate acted decisively on the interstate issue, now by a vote of 89–2. The Senators became aware of the problem and realized that their States may not have been the current target of out-of-State waste, but a little bit further down the road they were going to become targets. Many realized that the problem we identified in Indiana in 1989 was now a problem in their State. Senator EXON came to me and said, ''Since you raised this issue, I have discovered communities in my own State that are becoming the recipients of out-of-State trash and they are overwhelming our efforts to deal with this.''

That bill I introduced in the 102d Congress operated on three basic principles: First, it allowed communities that did not currently receive out-of-State trash to prohibit new shipments without express authorization. Second, it grandfathered facilities that were receiving trash from other States in order to give the exporting States time to site their own State capacity. It recognized that States in the crowded east coast corridor had significant waste disposal problems, and that to simply slam the door and say that, as of this date forward, you cannot export any trash whatsoever was simply not going to be a solution to the problem. So in recognizing that, we grandfathered a certain amount of shipment of out-of-State waste.

Third, it allowed Governors the authority to freeze volumes at current levels at the grandfathered facilities, because we wanted to give the Governors of the importing States the ability to say we can continue to take so much with this capacity but no more. Again, that legislation, while it passed the Senate 89–2, did not pass the House of Representatives and it died in that Congress.

In the next Congress, the 103d Congress, I used those principles to craft

legislation that the Senate again positively addressed and the House positively addressed, but unfortunately it died in the last hours of the session coming very close to being enacted into law.

Now, here we are in the 104th Congress and I indicated back in 1989 that this issue was not going to go away. They can kill it in conference; the House can kill it; it can die by procedural methods, but I was not going to give up. I was like a dog who had his teeth sunk deep in the bone and I was not going to let go; I was going to come back and back and back until we got this thing passed. And here I am in the 104th Congress, and I hope this time we will be successful. I am getting lockjaw from keeping my teeth locked onto this issue. I would like to release that grip, send it to the President, get it signed into law, and move on to some other legislation.

Now, the bill before us today recognizes the principles upon which we have operated. The bill, I think, is a reasonable compromise that grants States and local communities the authority that they need to plan for their own needs, to say ''no'' to out-of-State trash. It recognizes the problems of exporting States, and it gives them methods and ways in which to reduce significantly the amount of trash they send out of State. It balances a lot of different needs. As has been described here, it deals with flow control and ground water monitoring.

The heart and soul of this bill, however, is the question of interstate trash shipment. We are working now on some areas of the bill that we feel may need some adjustment, as it has come out of committee. There are negotiations underway, and I trust they will be successful and will allow us to avoid offering some amendments to clarify some of these provisions.

We will talk a little bit more about that later.

Mr. CHAFEE. I wonder if I can ask a question.

Mr. COATS. I yield to the Senator.

Mr. CHAFEE. First, I want to confirm that indeed the Senator has sunk his teeth and jaws deep into this issue. I will second everything he said about his determination on this whole project. He has been at it for, I guess, 5, 6 years, whatever.

Mr. COATS. Six years.

Mr. CHAFEE. The Senator mentioned he had some amendments which I guess he is going to discuss now.

Mr. COATS. Actually, I plan to defer discussion of those amendments now because we are in negotiation with the Senator from Rhode Island, and other Senators of affected States, to try to reach a resolution on these amendments, which we can hopefully put into a package that would be acceptable and offer them as a package rather than as individual amendments. So I would be premature in offering those amendments at this particular time.

Mr. CHAFEE. I am caught in kind of a bind in that I want to be here when the Senator makes his remarks and offers his amendment. But I may have to step out for a minute or two. Who is working with the Senator in connection with his amendments? You mentioned ''we.'' Is it several of you?

Mr. COATS. I say to the Senator from Rhode Island that it is virtually all of the affected parties, both from the exporting States as well as the importing States that are working together to try to resolve these issues.

Mr. CHAFEE. Fine.

Mr. COATS. I will not bring up any amendments in the immediate time period ahead of us here, and certainly the Senator will have an opportunity to leave the floor.

Mr. CHAFEE. OK. Because there is going to come a time when we are going to want amendments brought forward. If the Senator feels he is not quite ready, we will try and complete any negotiations. As the leader has indicated, he wants to finish this bill by the end of the week. My hope is that we can finish it tomorrow. So we will work with your folks and see if we cannot come to some conclusion at least by the time we go to work tomorrow.

Mr. COATS. I appreciate that very much. Obviously, the Senator's cooperation and input is necessary for this. I am anxious, also, to move forward on this. I would be delighted if we can finish this bill tomorrow and not have to carry it over until Friday. We are working as we speak on this matter and hope to have some answer to the Senator shortly.

Mr. CHAFEE. I thank the Senator.

Mr. COATS. In conclusion, Mr. President, let me just say that we have tried several approaches. We have tried the path of patience. We have waited our turn and bided our time. We have agreed to continue to accept some levels of out-of-State waste in exchange for having realistic controls over how much waste we will receive from other States. There is simply no other way for States to realistically plan for their own future capacity, unless we can enact legislation that gives them the authority to regulate the volume of out-of-State trash which that State receives.

The problem here is very basic. There is no negotiation; there is no arm's length or both-parties-at-the-table negotiation that takes place, because States are virtually powerless to sit at the table with the exporters and sit down and say, let us establish some reasonable volumes, let us make sure that we have the capacity to receive what you are sending in; let us negotiate the fees on which this will be shipped back and forth; let us determine the terms of the contract.

Because of the Constitution's commerce clause, it is possible—and it is a practice that has been used over and over again—for someone outside the State, or even inside the State, to purchase a landfill and suddenly open up that landfill, which was designed originally for local needs, to massive volumes of out-of-State trash, which fills up the landfill in a very short period of time and leaves the local citizens few, if any, alternatives. In fact, it forces them to ship their waste out of State in order to find a place to dispose of it.

So we end up with a game of pass the trash. Everybody is passing it on down the highway, generally from east to west. Not always. Metropolitan areas to rural areas, across State lines, it is pass the trash.

As the landfills get filled up, no new ones get built, no new efforts put in place to dispose of out-of-State waste, to reduce the amount, to recycle, to reduce the amount generated initially, to find other ways to dispose of the waste. So we just are moving it around the country to different locations, filling up the cheapest hole in the ground that is available for a certain fee for out-of-State trash.

In the 5 years that Congress has debated the issue, the trucks continue to roll. The garbage continues to mount. The changes that we are proposing here are not an attack on any particular State. They are a defense of our own States. They are not rooted in bitterness, but they are rooted in urgent need.

Again, I want to commend my colleagues on the Environmental Committee for moving expeditiously in this new Congress on this legislation. I look forward to working with them, to strengthening the bill to ensure that we afford real protection to importing States while allowing exporters sufficient time to get their house in order.

That is our goal, Mr. President. I am confident that we can accomplish that goal in the time that we have in the next day or two. I am very, very hopeful that within 48 hours or so we will be able to report that the U.S. Senate has, once again, taken action to deal with this problem and that we will work carefully and closely with the House of Representatives, which in my understanding is moving forward on this expeditiously also, and finally resolve this issue and send the legislation to the President's desk for his signature, which in the past he has indicated he will sign.

Mr. President I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. 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. LAUTENBERG. Mr. President, I take to the floor to discuss the provisions of S. 534, the legislation to address the issue of interstate transportation waste and flow control authority. Very often when one mentions flow control authority, I sense that heads

begin to drop because of the rather arcane subject but a very important one.

If I can just take a moment to say that flow control—and perhaps it has been discussed on the floor and I missed it but I think the importance of the issue will bear some repetition—gives the States the ability to control the flow of household trash, particularly trash within State borders. And while that does not sound like very much to ask, the fact is that demands are being placed on external facilities' availability so that it can simply be trucked, often out-of-State to other States, where in many cases there is an objection to receiving volumes of trash. Though there was a Supreme Court case decision not too long ago that dealt with this and said you cannot stop this, it directs the Congress to resolve the problem and allowed the parameters under which they were to operate to do just that.

So if it begins to inhibit the trucking or the transportation of waste outside the State, then within a State, they have to have some way of controlling where it goes. Again, though the subject seems a bit arcane, the fact is that it has enormous influence on States like my own who are trying to resolve the need, the ability to deal with their waste in an orderly fashion.

Without significant changes to S. 534, my State is going to experience a severe financial crisis precipitated by the Senate's failure to delegate waste management decisions to the States. I am hoping through the amendment process that we can improve the bill so that States can continue to handle their waste the way they deem appropriate.

Title I of the legislation, which addresses interstate restrictions, which I was talking about earlier, is essentially identical. Title I of S. 2345, which was approved by the Senate Environment and Public Works Committee last year, overturns the decision of the Supreme Court in the case of New Jersey versus Philadelphia. The Supreme Court's decision said that interstate restrictions are unconstitutional because a State cannot discriminate against a commodity—in this case out-of-State trash—from being transported. The court said that States cannot give unfair competitive disadvantage against out-of-State haulers, those who are trucking the material from one State to the other who are out of State, for example, Pennsylvania to New Jersey, who want to dispose of trash where it makes the most economic sense.

So the first title will allow the Governors in each State to restrict imports of trash into their States. I have supported this title in the past and will support it in the future if States are given the authority to find an alternative to this obstructive commerce to find in State solutions that now out-of-State exports would restrict.

Unfortunately, S. 534, while giving States new power over interstate shipment of waste, actually reduces the authority that they have enjoyed within a State to properly handle their waste. That is a principal problem that I have with title II of S. 534, the title that deals with flow control authority within the State. Once again, I will take a moment to explain why States use flow control.

Congress passed the Resource Conservation and Recovery Act in 1976. The acronym is RCRA. RCRA made standards and improved solid waste disposal methods and practices. Under subtitle (d) of that law, State and local governments developed comprehensive waste management plans that meet minimum standards that are set by EPA. Although the law created national standards imposed through the solid waste management plans, Congress recognized that solid waste was a problem traditionally managed at the local level. Under the philosophy of local control, subtitle (d) gave State and local governments the flexibility they needed to determine the best way to meet the national standards.

In response to the Federal mandate that waste should be disposed of in an environmentally sound manner, it is hard to disagree with that. Many local governments constructed modern, state-of-the-art recycling systems, waste-to-energy facilities, and sanitary landfills. Integrated waste management systems were implemented to promote recycling, consumer education and proper management and disposal of household hazardous waste.

While necessary and desirable, these facilities were also very costly. The Federal Government does not share the cost of municipal solid waste management disposal at the State and local level. States and local governments, therefore, adopted various means to finance municipal solid waste management services and facilities. The general approach taken by State and local government was to issue revenue bonds. These bonds were secured by long-term contractual promises which rely on a steady, dependable, and consistent quantity of waste for disposal in new facilities. It was their revenue streams, necessary to pay off the bonds and to meet the financial obligations, that were incurred in financing these facilities. To ensure guaranteed quantities of waste, cities and towns enact laws requiring that trash generated within their borders be disposed of in these recently financed facilities. Those laws are the ones we commonly call flow control laws.

Now, these flow control laws were consistent with Congress' instruction in subtitle D that State and local governments endeavor to secure long-term contracts for supplying resource recovery facilities and other environmentally responsible waste disposal facilities. It is also consistent with several courts of appeal and State supreme court decisions. However, on May 16, 1994, the legal basis for flow control was overturned by the Supreme Court in the case of Carbone versus Clarkstown. In the 6-to-3 decision, the U.S. Supreme Court ruled that a New York municipality could not require that garbage generated in the locality be sent to a designated waste management facility.

And again, though the language is common, I think it is important to understand what the outcome was, that is, if a community suddenly elected to abandon its responsibility to provide trash for a disposal facility, then it left that facility, already financed, with insufficient resources, insufficient revenues to continue to meet the financial obligations, as well as keeping the facility operating. They had a choice in many cases. They could ship it out of State. But interstate commerce, as we now know it, looks as if it is going to be obstructed by the first part of the law being proposed here, the bill that is before the Senate.

The Court held that the Clarkstown, NY, flow control ordinance interfered with interstate commerce and deprived out-of-State firms access to the local trash market. Again, out-of-State firms are those that cart the material to landfills that are licensed in other States.

As in the New Jersey versus Philadelphia case, States could not discriminate against out-of-State haulers. In other words, if New Jersey did not want that garbage, that trash brought into their State, it would have been a violation of law, so said the Court in the case of New Jersey versus Philadelphia.

The Court held that since Congress had not specifically delegated this power to the States, these flow control laws violated the interstate commerce clause of the Constitution.

The May 1994 decision in Carbone invalidated the historic right of local and State governments to manage solid waste. The case overturned almost 20 years of sound solid waste management policy and is jeopardizing the solid waste management systems of the over 40 States that rely on flow control authority to manage their solid waste.

The Carbone decision makes it difficult for cities to guarantee a steady stream of waste to disposal and processing facilities. Without this guaranteed steady stream of revenues, it will be virtually impossible for the communities to get financing to build solid waste management facilities.

Second, this decision could result in localities losing the revenue generated by having garbage sent to municipal disposal facilities.

This would eliminate their ability to subsidize nonprofitable waste management activities such as recycling and household hazardous waste programs, which have been very effective in many communities, especially in New Jersey. As we have seen in the District of Columbia, the loss of flow control authority threatens existing recycling programs. This article, entitled ''District to Suspend Curbside Recycling,'' from the Washington Post of April 12, about a month ago, clearly makes the case

that private haulers taking trash to out-of-State locations to avoid the recycling fees led to this financial crisis.

Finally, the Supreme Court decision puts existing bonds used to finance waste management facilities at risk. If localities cannot send an adequate level of garbage to a facility to generate the revenue needed to pay off the bonds, those communities face default. Citizens in the affected communities could find the possibility of extraordinarily high taxes and the inability to go to the financial markets for any of their needs.

The Public Securities Association estimates that $23 billion of bonds are in jeopardy because of the Carbone decision and every citizen, every taxpayer in almost every State, has to worry about this because suddenly they could be faced with having to make up the revenue that is lost as a result of the decision to ship the material out of State because there is no flow control on this.

In last year's bill, in difficult negotiations with importing States, exporting States, and the waste industry, accommodation was reached. S. 2345 overturned both the Philadelphia case and the Carbone case. It recognized that trash was a local issue and one where States should make the rules, not the Supreme Court and not the Congress.

Some amendments were made to assure the maximum amount of competition was included in any flow control program, competition between simply shipping it out of State and the need to furnish the local facility with appropriate revenue opportunities. Certain restrictions were placed on Governors' ability to overturn existing contractual relationships. Because of concerns of the waste industry, flow control could not be expanded to States that had not used it before the Carbone decision. Unfortunately, at the last minute, the bill failed to win unanimous support.

Instead of starting from last year's compromise, this year's bill goes in two different directions. Almost identical to last year's bill, Governors are given the power to shop interstate shipment of waste. However, the bill goes in the other direction as far as waste within States. Title II, the flow control title, only allows existing flow control where default is likely. The title is based on the philosophy that flow control is wrong and anticompetitive, and that protection should be provided for only those communities that are in immediate financial jeopardy because of the Supreme Court decision in Carbone.

Title I, the interstate title, discriminates against free market solutions by allowing States to say no to economically viable interstate shipments. Title II, however, attempts to enshrine the free market by preventing States from considering long-term social goals in addition to short-term economic benefits. Indeed, in its present form, I find the bill internally inconsistent. Without flow control authority denied to them in title II, States will find it more difficult to meet the self-sufficiency goal that is virtually required by title I. Title II says turn waste control over to free enterprise. It sounds like a good idea. However, title I says if you do allow free enterprise to take over, other States can close the market to you. It is a catch-22 situation.

It is interesting to note that additional amendments are expected to further limit the free flow of trash over State lines. Title I, the interstate restriction title, gives new powers that conflict with the interstate commerce clause to Governors that they have not enjoyed since the Philadelphia case was decided in 1972. Title II takes powers away from the States and municipalities that they enjoyed since the 1970's, powers that they have used to keep the trash flowing within their States to local facilities.

My colleague from New Hampshire, the chairman of the subcommittee on Superfund, philosophically believes that flow control is wrong, and I understand his position. But his position conflicts with a concern of my Governor and many Governors who believe that, after the last election, more authority would be put in their hands rather than in the hands of Congress.

Limiting the bill as the sponsors have intended has not been easy.

Since flow control has been a tool to solve the waste disposal problems, the States and towns across America have been a laboratory of unique and creative solutions to their waste problems. These non Federal solutions to the waste problem have led to nonuniform statutes and nonuniform problems that were inadvertently not fixed by S. 534.

At subcommittee markup, over 50 amendments were filed. Changes were accepted to respond to specific problems in five States. Two of those States need additional clarifying language.

A colloquy was entered into for another State and one other State was promised consideration before floor action. These seven State-specific amendments have one thing in common—each of these States are represented by Senators who sit on the Environment and Public Works Committee.

It is a complicated issue. I wish we had been able to resolve these issues before we got to the floor here. But it was necessary to get this bill on the agenda for all kinds of reasons and, as a consequence, we are where we are. But we still have a lot of work to do.

Because many States have delegated waste control authorities to lower levels of government that do not employ Washington counsel, many communities are still reviewing the committee's reported product, still looking at what is being offered. And we always have that from the States when they have an interest or when they have a particular problem with a piece of legislation. They have not had time enough yet to deal with it.

New situations that seem consistent with the intent of the authors but not exactly fitting the language of the bill, are still being discovered.

Mr. President, flow control is not necessary or even preferable for every State. Each State is different. It has its own unique needs. But this bill, as written, is not acceptable by my Governor, Christine Todd Whitman, and neither is it acceptable to many others. As those who have been involved in the flow control discussions over the years, New Jersey has the most sweeping and encompassing system and it has been a success.

In the 1980's, New Jersey's environmental initiatives to close substandard landfills drastically reduced the State's disposal capacity. New Jersey's waste quickly became a burden for other States as the need to export our waste grew.

The high cost and market volatility associated with exporting waste triggered a garbage crisis and strained municipal resources. It was at this time that elected officials of both parties in New Jersey accepted the responsibility to develop a solid waste management system that would provide long-term stability and ultimately, self-sufficiency.

''Self-sufficiency'' simply meaning that we could take care of all of our waste disposal needs within our State's borders. It could not happen overnight. We tried to stop it when it came from other places, and we were turned down by the courts. As I have said now several times, we could not stand to have our shifting of material suddenly cut off from other States when now we are an exporter.

It was clear to the State that other States would not accept New Jersey's waste forever and Federal legislation to eliminate waste exports was inevitable. To meet the goal of self-sufficiency, flow control laws have been in place in New Jersey since 1979 and control all of the nonhazardous solid waste in the State. Flow control has been a significant part of New Jersey's ability to build an infrastructure, mostly landfills, to handle the 14 million tons of solid waste requiring disposal annually.

Since 1988, exports of municipal solid waste from New Jersey have decreased 50 percent. If the flow control authority from last year's bill is included in legislation that passes this body, New Jersey will be self-sufficient by the year 2000, only 5 years away.

New Jersey's recycling programs are also dependent on revenues received from use of New Jersey waste management facilities. Today, New Jersey recycles over 53 percent of its waste.

Despite New Jersey's system, it is not a system that leaves out the private sector. The private sector has built and operates most of the waste facilities in the State. Through competitive bidding, the authorities within

the State ensure services will be provided at the lowest cost. The collection, transportation, construction of disposal facilities, and their operations, are all services for which bids are sought.

Governor Whitman testified that ''every major waste management firm in America, and a laundry list of smaller waste companies, operate in New Jersey today, and we are in the 17th year of a flow control system. That is not a Government monopoly.''

Because of New Jersey's unique system where all the wastes are now flow controlled, without additional amendments, a waste crisis will inevitably occur. Once part of our system is no longer flow controlled, wastes will flow out of State.

New, in-state replacement facilities will be impossible to finance or justify economically although the supply of trash will be there, the trash will flow out-of-state. Even BFI, the company leading the fight against flow control, acknowledges that new private facilities in the State would not be practical without flow control, without the ability to direct where this trash flows.

Even without the recycling fees, it is and will continue to be cheaper to dump garbage in a landfill in Pennsylvania or other States than to handle it anywhere in New Jersey. This is appealing, in the short term, for some of the mayors and some of the communities and towns in New Jersey.

But the free market available over the border is subject to governmental closure by title I of this very bill. Without flow control, what is now a decreasing waste problem will again become a garbage crisis. Without flow control, communities will again give their garbage to low-cost haulers and hope it ends up in certified RCRA facilities, as opposed to being dumped casually someplace in an unlicensed facility that they do not have control over.

Without flow control, communities will select haulers on the basis of only one factor, and that is price. But all of us know that the cheapest alternative is not always the best or the legal one.

Without flow control, we will see more illegal midnight dumping.

Mr. President, to protect my State, I will be offering an amendment to protect the flow control system in existence in New Jersey. With this amendment, I can state that New Jersey will not be sending garbage out-of-state after the year 2000. We just need that window of time to deal with it.

Another alternative is to not fix State problems one by one, but to have a generic fix that was the essence of S. 2345 last year.

Depending on the amendment process we are going to be using in this debate, I will be considering offering such amendment based on that agreement and which I introduced in this Congress as S. 398.

Mr. President, the Governor of New Jersey, Christine Todd Whitman, testified before the committee on this important issue. She said:

> It has been argued by some, and may be said again, that flow control legislation is at odds with the goals and philosophy of the new Congress. The contrary is true. A flow control bill that ensures private sector competition while allowing local governments to make long-term waste management plans is entirely consistent with the goals of this Congress. If Congress denies flow control authority to New Jersey, it essentially mandates that States like Pennsylvania and Ohio take trash from my State, only because land cost in those States are lower than in New Jersey.

Mr. President, the interests of the exporting States and importing States are not in conflict. New Jersey does not want to send its waste out-of-State. It wants to be self-sufficient. But to be self-sufficient, it needs to protect its flow control system and it needs several years to be totally self-sufficient. Without that protection, the fears of the proponents of interstate restrictions, will be realized and wastes will again flow out of states looking for cheap places to send their garbage.

In March of this year, the National Governors unanimously passed a resolution reaffirming a mutual commitment to each State's management of waste within its borders and endorsed the use of flow control in the pursuit of self-sufficiency.

Because title II is so much more restrictive that last year's bill, it will be necessary for New Jersey to send more of its waste out-of-State. Unless title II is corrected, I must strongly oppose the existing title I and any amendments that further limit the State's options of going out of State.

Mr. President, I know that my dissertation just now does not compare with some of the most important declarations delivered on the floor of the U.S. Senate nor in this great city of Washington. However, without trivializing the problem, I just want to make the case once more that it cannot exist both ways: We cannot say to the States you are not allowed to control the flow of trash within your State and, on the other hand, face the very high risk of having a law created that says, ''Uh-uh, you can't ship it to my State or any other State that now or in the future may import trash.''

So we have to arrive at a balance. That is what I have been saying through that flood of words that I have been issuing for the last 25 minutes or so. The subject is not an easy one. It is not a pleasant one. Garbage never is. But the fact of the matter is that it is our garbage and it is our problem and there is not a State exempt from the problem. Today's importer may be tomorrow's exporter, which we bitterly discovered in the State of New Jersey over 23 years ago.

So I hope that my colleagues in the Senate will comply with our request to give the States the authority that they need to handle their garbage within the State with the same authority they will have to keep waste out of their States.

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

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

PRIVILEGE OF THE FLOOR

Mr. LAUTENBERG. Mr. President, I promise there will not be a second speech similar to the one I just delivered. This is a simple request, Mr. President. And that is, I ask unanimous consent that Douglas Johnson, of Senator WELLSTONE's office, and Jill Schneiderman, of Senator DASCHLE's office, be given the privilege of the floor during the consideration of S. 534.

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

Mr. LAUTENBERG. I thank the Chair. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, first, I remind my colleagues on both sides of the aisle that S. 770 is still at the desk and will be there until the close of business today. If colleagues on either side are interested in cosponsoring the bill which would ultimately move the embassy in Israel from Tel Aviv to Jerusalem, we hope you will take advantage and cosponsor the measure.

Second, we are on the Interstate Transportation of Municipal Solid Waste Act of 1995, and we have not been on it long, only since about 1 o'clock. I know a lot of good opening statements have been made. I understand there are a lot of amendments. I urge my colleagues who may not be on the floor, or their staffs who may be listening in their offices, if Members have amendments, we would like to have some votes here this afternoon. We would like to keep this bill moving.

I am tempted to file cloture on the whole bill this afternoon and have a cloture vote on Friday. I would rather not do that. I would rather have Members come to the floor and offer their amendments. But I am certain the managers are here and they are prepared to do business. I know there is one amendment under discussion now. I have heard there are dozens and dozens of amendments. If we are going to complete action on this bill by Friday, we need to move quickly.

I say to all of my colleagues that if you have an amendment, come to the

floor and let us enter into a time agreement of 30, 40 minutes, whatever, and dispose of some of these amendments this afternoon. Senator SMITH is here, Senator CHAFEE is here, Senator BAUCUS has been here, so I think you are prepared to do business, right?

Mr. SMITH. Yes. If the majority leader will yield, the majority leader is correct. I think if the bill does not get completed this week because these amendments do not get offered, they are jeopardizing the things we are trying to accomplish. We are here, and if those who have amendments get them here, we can finish this by this week.

Mr. DOLE. We may be on the budget resolution as early as Tuesday of next week. So the window is not very broad here. This is important legislation that affects everybody all over the country. Tonight we cannot stay in as late as I would like to because we have the Senate spouses annual dinner this evening. We will have to probably stop about 7. So tomorrow night we can go late and late Friday afternoon.

I urge my colleagues again to cooperate and help us move the business of the Senate so that we can move on to something else.

Mr. WELLSTONE. Mr. President, I wanted to say to the majority leader and to the managers that I appreciate wanting to move forward. We are trying to work out something on an amendment right now. I think it is an important piece of legislation. I hope we are close.

I yield the floor.

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

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

AMENDMENT NO. 750

(Purpose: To clarify the continuation of flow control authority where such authority was imposed prior to May 15, 1994)

Mr. WELLSTONE. Mr. President, I thank the Senator from West Virginia for being kind enough to defer to me. I am hoping that we will be able to go forward with an amendment, if we can do it in a very brief period of time. I asked the Senator from West Virginia for his permission to do so. I will wait for a moment, if the Senator would be patient.

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

The PRESIDING OFFICER (Mr. JEFFORDS). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 750.

Mr. WELLSTONE. I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

On page 56, line 10, strike ''is imposed'' and insert ''had been exercised prior to May 15, 1994, and was being implemented on May 15, 1994,''.

On page 56, line 12, insert ''; ' after ''subdivision'' and strike ''in effect on May 15, 1994''.

On page 60, lines 4–5, strike ''was in effect prior to'' and insert ''such authority was imposed prior to May 15, 1994 and was being implemented on''.

Mr. WELLSTONE. Mr. President, I rise today to speak to a subject that is of the greatest importance to many communities in my State of Minnesota, and indeed to communities across the country.

The topic is flow control, and particularly as it relates to S. 534, the Interstate Transportation of Municipal Solid Waste Act of 1995. For those Senators who may not be familiar with the subject of flow control—although you are likely to be very familiar with it once we all finish with this bill—you should take a moment and talk to the people in your communities who are responsible every day of the week for picking up the trash, finding a way to dispose of it, and doing so in an affordable and ecologically sound manner. People like Mr. Rob Dunnette, the plant manager at the Olmstead County Waste-To-Energy facility in Rochester, MN.

Mr. President, in 1980 my State of Minnesota, the cost of disposing of solid wastes in municipal landfills was on the rise * * * and the amount of available landfill space was on the decline. ''At that time,'' says Mr. Dunnette, ''our landfills were filling up, and there was a lot of material going into landfills that shouldn't have.'' The Minnesota State legislature responded by passing the Solid Waste Management Act of 1980, an act which sought to give local communities the tools they needed to deal with the landfill problem. One of those tools was the ability to take on for themselves the authority to control the flow of municipal solid waste. Says Mr. Dunnette, ''The Feds and the State told us to do something different, do something better * * * so we did.''

Mr. President, what Olmstead County did was to adopt flow control. It obtained $27 million in municipal bonds for the construction of three disposal facilities—one for hazardous waste, one for recyclables, and one to convert the remaining solid waste into steam, which was used to heat neighboring buildings and generate electricity.

The entire plan was based on what the State and Federal Government had been encouraging communities to do for years—namely, to adopt flow control authority to integrate and consolidate the disposal of municipal solid wastes.

And it worked. In fact because of the many counties—like Olmstead County—that began to engage in flow control, my State of Minnesota became a national example of how flow control could be an effective tool in managing our local solid waste streams in an economically and ecologically sound manner.

That is until May 15, 1994, when the U.S. Supreme Court ruled that flow control authority was unconstitutional unless explicitly granted by Congress. This is largely why all of us are here on the floor today, talking about flow control.

Mr. President, the issue is simple. The bill before us today, as it is written, excludes many Minnesota communities that have floated millions of dollars in municipal bonds to build facilities under the presumption that they could engage in flow control. But there is a solution to this problem.

Mr. President, I have prepared an amendment, which would ensure that all of the Minnesota counties that had engaged in flow control and had invested money into facilities would be allowed to continue doing so. It clears up a possible misunderstanding, and I thank my colleagues for accepting it.

Let us be clear: My amendment would not authorize flow control for any new communities. Some communities have had good experience with it; clearly, however, it is not right for everyone. What I am saying is that this is a decision that should not be made here in Washington, but rather in the communities directly affected.

My amendment would not require anybody to use flow control. It would only allow those that had been encouraged to engage in flow control since 1980 by the State and Federal Governments, to continue to do so. However without my amendment, millions upon millions of dollars in municipal bonds in Minnesota could be put at risk. As Mr. Dunnette said, ''We're 8 years into our 20-year bond * * * without this fix, it is possible, if not probable, that we may default on those bonds.''

Mr. President, it is as simple as that. If ever there was a clear example of a States-rights issue, this is it. We need to address this issue now, but we need to do so in a manner that is responsive to our communities. Our communities are telling us loud and clear what they need. I hope my colleagues will listen to them.

Mr. President, this is an amendment that really just clears up a possible misunderstanding. I thank the Senator from Rhode Island, the Senator from Montana, and the Senator from New Hampshire for accepting this amendment.

This amendment makes it clear that when a county has gone forward with its own flow control, has bonded, and is implementing this, that they clearly will be covered by this bill. I believe the managers have accepted this amendment.

Mr. CHAFEE. Mr. President, the Senator from Minnesota is correct, this is acceptable to this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 750) was agreed to.

Mr. CHAFEE. I move to reconsider the vote.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Vermont, makes a motion to lay that amendment on the table.

The motion to table is agreed to.

Mr. WELLSTONE. Mr. President, I again would like to thank my colleagues.

This was, for a good many counties in Minnesota, a very, very important question. For all Senators, whether Democrats or Republicans, it always feels good to come through for people in your State. I worked hard at this. I thank my colleagues for their cooperation. I yield the floor.

UNITED STATES ACTION ON JAPAN TRADE

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, our United States Trade Representative, Ambassador Kantor, this morning announced a pair of initiatives regarding our trade relations with Japan for which he is to be commended and which deserve the strong support of this body.

With respect to the first initiative, Ambassador Kantor has announced a plan to impose trade sanctions under section 301 of the Trade Act, pursuant to an investigation into the Japanese auto parts aftermarket. On this issue, this body has already spoken decisively by agreeing to a resolution offered on yesterday by the two leaders and myself, and the vote was 88–8. The Senate, thereby, decisively supports the imposition of such sanctions, given the complete unwillingness of the Japanese to address their market closing practices which block access of the United States parts to Japanese consumers. This has resulted in persistent, large trade deficits which are unfair to our industries and cost tens of thousands of jobs every day.

The Trade Representative is on solid ground to publish a proposed retaliation list under section 301.

Regarding the second initiative, the Trade Representative has also announced his intention to take a broad case against Japan's automotive practices before the World Trade Organization [WTO] by invoking the dispute settlement mechanism. As stated in his letter to the new Director General of the WTO, the case will be based on the fact that ''Japan has failed to carry out its obligations under the WTO'' and thereby ''nullified and impaired benefits accrued to the United States under the WTO'', and ''impedes the attainment of important objectives of the GATT and the WTO.''

As my colleagues are aware, in the debate last December over America's accession to the new WTO system, the question of the impact on United States sovereignty by creating binding decisionmaking dispute settlement bodies in that organization was discussed. In fact, it seems clear that some other nations were quick to sign up to the WTO, specifically in order to attack United States trade laws.

In testimony before the Senate Finance Committee today, a former United States trade negotiator, Alan Wolff, stated with respect to the context of negotiations creating the WTO,

> Our negotiators should have begun to recognize that there was something suspect about the U.S. proposal for an automatically binding system when the rest of the parties to the negotiation made an about face and embraced it. They thought that they were curbing America's ability to act under section 301.

So, some opinion has been expressed that it would be risky to go before the WTO in that a dispute settlement panel could rule against United States 301 action in imposing new retaliatory tariffs on Japanese products.

But the question is, what is in the national interest of the United States? Let us keep our eye on the ball. The case of Japanese discrimination on a very persistent and massive scale has been clear for many years in the automotive market as well as in other markets. No serious person can take issue with this.

I commend the approach taken by Ambassador Kantor. There should be a good case against Japanese automotive industry barriers before the WTO because they are so overwhelming—Japanese practices overwhelm tariff schedules and make them irrelevant to the real dynamics of the market. If there is not a winnable case, I, for one, would suspect something deeply flawed with WTO decisionmaking and not the United States' case. Let me say that again: If there is not a winnable case, then I, for one, would suspect something deeply flawed with the World Trade Organization decisionmaking and not something flawed about the United States' case.

The U.S. Trade Representative has maintained consistently that the operation of section 301 as a bilateral mechanism regarding specific barriers and practices is completely appropriate at the same time that we also attempt to breathe life into the new WTO dispute system. WTO rules do not cover the complete range of barriers that are practiced by the Japanese and, therefore, 301 treatment is totally appropriate in many instances. Furthermore, as a general matter, it certainly appears reasonable to believe that if Japanese practices nullify the value to be gained from the tariff-lowering regime of the GATT, then the United States should prevail in a World Trade Organization dispute.

The Trade Representative has established a two-track approach taking the initiative before the WTO and exercising our bilateral rights under our trade law. I do not see any inconsistency in this approach. It is the right approach because our practices in our market are transparent and open, while Japan's practices are not. Thus, it is a fair challenge to the WTO to recognize and act on the reality of the market situation.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter sent yesterday from Ambassador Kantor to the new Director General of the WTO, Mr. Renato Ruggerio, which gives prefiling notification of the intention of the United States to initiate a WTO challenge against Japanese automotive discrimination. In addition, I also ask unanimous consent to include an op-ed piece from today's Washington Post by the vice chairman of the Chrysler Corp., Mr. Thomas G. Denomme, outlining in detail problems that Chrysler has experienced in attempting to break into the Japanese market.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
U.S. TRADE REPRESENTATIVE,
Washington, DC.

RENATO RUGGIERO,
Director-General, World Trade Organization, Geneva, Switzerland.

DEAR DIRECTOR-GENERAL: I am writing you today to give pre-filing notification of the intention of the United States to invoke the dispute settlement mechanism of the WTO to challenge the discrimination against United States and other competitive foreign products in the market for automobiles and automotive parts in Japan. It is our intention to officially file a case with the World Trade Organization (WTO) in approximately 45 days.

Through its actions and inactions with respect to the automotive sector, Japan has failed to carry out its obligations under the WTO, has nullified and impaired benefits accruing to the United States under the WTO, and has fostered a situation in the automotive sector that nullifies and impairs such benefits, and impedes the attainment of important objectives of the GATT and the WTO.

The market access problems in the automotive sector reflect problems endemic in many sectors in Japan. Relative to gross domestic product, Japan imports far fewer manufactured goods than any other G–7 country and maintains a persistent surplus in its global trade and current accounts. Japan's imports of manufactured goods are one-fifth to one-tenth the level of European countries and nearly one-third the level of the United States, relative to GDP. Overregulation, toleration of market restrictive practices and market structures, and pervasive and unwarranted intervention in the Japanese economy all work together to systematically discriminate against foreign competitive imports.

The United States has focussed on the automotive sector because of its central importance to the United States and other economies, and its huge contribution to the U.S.-Japan trade imbalance. This sector accounts for almost 5 percent of the U.S. GDP, and it directly provides jobs for 2.5 million Americans. The 1994 U.S.-Japan trade imbalance in the automotive sector was $37 billion, nearly 60 percent of the total U.S. trade deficit with Japan and nearly a quarter of the entire U.S. global trade deficit.

This trade imbalance reflects a lack of access for foreign autos and auto parts to the Japanese market for the past 35 years. In Japan today, foreign automobiles have a 4.6 percent share of the market. In the United States, foreign autos occupy a 32.5 percent share of the market. Throughout the rest of the G–7, foreign cars range from 33 to 55 percent of the market. In Japan, foreign auto parts account for only 2.6 percent of the market. In the United States, foreign parts make up 35 percent of the market. Throughout the rest of the G–7, the market share of foreign parts ranges from 16 to 60 percent.

While we are first and foremost concerned about the impact of Japan's automotive barriers and restrictive practices on the interests of U.S. companies and workers, this is a general international economic problem, adversely affecting the interests of many trading nations. Japan's huge trade imbalances in the automotive sector contribute substantially to unstable international economic conditions which undermine global economic recovery and growth, and the health of the international trading system.

The Government of Japan in the past implemented measures to protect the domestic automobile industry, such as discriminatory allocation of capital, foreign investment restrictions, high tariffs, and a range of other measures. As these barriers were removed and as tariffs were reduced through multilateral tariff negotiations, the Government of Japan developed other measures to protect domestic producers from foreign competition. Such measures included, among others, excessively burdensome inspection requirements for imported vehicles, discriminatory access to vehicle registration data, and maintaining an unreasonably complex system of motor vehicle inspection and repair regulations.

At the same time, the Japanese automotive sector as it has developed has been pervasively characterized by close interlocking relationships between auto manufacturers, suppliers, distributors, dealers, and those who repair and inspect cars. The Government of Japan has guided or tolerated the creation by industry of informal market restrictive measures and market structures, which have placed a critical role in excluding foreign competitive suppliers of autos and auto parts from the market.

Foreign motor vehicle manufacturers now face a situation in which limited access to auto dealerships—which until recently were prohibited from carrying products from competing suppliers and which still fear that carrying a competitor's products will damage their relationship with their current supplier— seriously impedes market access. In addition, foreign auto parts suppliers find it virtually impossible to sell high value-added parts to Japanese manufacturers.

In the auto parts aftermarket, excessive and complex regulations channel most repairs to garages tied closely to Japanese parts manufacturers, which results in market discrimination. While we are very conscious of the need for any country to establish regulations pertaining to safety and the environment, the Japanese regulations in the aftermarket go far beyond what is necessary to protect those interests, and are applied with the effect of creating unnecessary obstacles to international trade. Japan has chosen to create and maintain a regulatory system which effectively locks out foreign competitors and imposes extraordinary additional costs on Japanese consumers. According to our estimates, Japan's 34 million households would save $24 billion annually from deregulation of the auto parts aftermarket.

As you are aware, the United States and Japan have been discussing measures to substantially increase access and sales of foreign competitive autos and auto parts in the Japanese market. After long negotiations, the United States and Japan have been unable to reach agreement regarding any of the three principal areas—access and sales of motor vehicles, original equipment parts, and replacement parts—that are crucial to a meaningful solution.

I have directed a task force of lawyers and economists to ready our case for submission to the WTO. I must underline the seriousness of our intentions in this matter.

Yours sincerely,

MICHAEL KANTOR.

JAPAN: ONE-WAY TRADE TACTICS

U.S. Trade Ambassador Mickey Kantor is currently toe to toe with the Japanese in the most contentious trade negotiations to date. The aim is to open Japan to American vehicles and parts. Agreements have been reached in theory to open Japan to foreign insurance, medical equipment, telecommunications equipment and glass. But the toughest and most important sector—automotive—remains unresolved.

The total American trade deficit with Japan last year was $66 billion, and 60 percent of that—more than $36 billion—was in auto trade alone. We can't fix the trade gap with Japan unless we fix the auto sector. And make no mistake, the Japanese domestic industry is virtually closed to foreigners and will remain closed unless we, as a nation, force them to open it. Here are just a few facts:

American companies have sold 400,000 vehicles in Japan in the past 25 years. Japanese companies have sold 40 million in this country. Japanese consumers bought 6.5 million vehicles last year. Only 301,391 were imported—less than 5 percent of the market. We project that Big Three sales in Japan will increase this year by about 12,000 vehicles. Japan ships that many to the United States every three days. The Japanese auto parts market is worth $107 billion per year. America's world-class suppliers have less than 2 percent of that business, even with the weakest dollar since World War II.

Japan does not play by the same rule book as Western nations. It is a closed, mercantilistic society with government and business working hand in hand to prevent any serious foreign competition in the home market, while waging an economic war of conquest in overseas markets. With the second-largest economy in the world, Japan is simply too big and too important for such behavior to be tolerated. It also sends the wrong message to newly developing economies that one-way trade is an acceptable model to follow. It is time for the Japanese traders to grow up and act like responsible economic adults in the world trading system. That system is based on reciprocity. You can sell to us if we can sell to you.

Totally free trade has always been a textbook theory. It has never existed in reality. However, when a major trading nation consistently and egregiously violates the rules of reciprocity to beggar its neighbors, it can ultimately lead to the collapse of world trade. Other nations eventually find the costs of such violations to their own producers to be too great, and a major trade war develops.

The Japanese or their apologists continually protest that their auto markets are not closed to imports. It's just that we don't try hard enough, or that our vehicles are too big or that the steering wheel is on the wrong side.

It all boils down to an argument that Japanese roads and drivers are unique and unsuited to ''foreign'' vehicles and parts—just as a Japanese baseball was unique and unsuitable for ''foreign'' bats, and Japanese snow was unique and unsuitable for ''foreign'' skis and just as (for 23 years) Japanese stomachs were unique and unsuitable for ''foreign'' apples. The list is endless, and the arguments are all bunk.

All of the U.S. companies have right-hand-drive vehicles. Chrysler was the first of the Big Three to export a right-hand-drive vehicle from the United States to Japan with the Jeep Cherokee. The sport utility segment is an increasingly popular segment of the Japanese market, just as it is in the United States and Europe. Last year, 197,877 sport utility vehicles were sold in Japan. Chrysler sold 13,208 vehicles in Japan; 12,701 of them were Jeep vehicles. That is an improvement over 1993, but it is still not a level we would expect in an open market. Japanese officials contend that our sales are going through the ceiling. If so, it's a very low ceiling. Those 12,701 Jeep vehicles represented only 6.4 percent of the sport utility market in Japan.

In the United Kingdom, a market we have only recently entered, we captured a 30 percent share of the gasoline-powered sport utility market. Both markets are right-hand drive. Both have domestic sport utility manufacturers. If we had achieved a 30 percent share in Japan, our sales would have totaled 59,363 vehicles in 1994.

Chrysler projects sales in Japan of 20,000 vehicles in 1995. This increase can be attributed to a number of things—favorable exchange rates, competitive pricing on our vehicles (we just lowered our Jeep prices by 10 percent), the popularity of the sport utility segment and, certainly, the current negotiations and pressure by the Clinton administration. History shows that Japan doesn't liberalize entry unless there is a reason to do so.

Last year, Chrysler opened a new office in Tokyo and expanded our staff there. In early 1996 we will introduce a right-hand-drive Grand Cherokee in Japan, followed by a right-hand-drive Neon and, in early 1997, a right-hand-drive version of our new minivan. We are making these substantial commitments of money, time and engineering talent because we are counting on the continued efforts of the U.S. government to expand entry into the Japanese market and other auto markets around the world.

Chrysler is committed to breaking into the Japanese market and will continue to expand our presence there with more products and staff support and by testing the Japanese auto manufacturers' latest message: that Japanese dealers are free to sell whatever vehicles they choose. We will be knocking on dealers' doors, trying to establish broader distribution opportunities for our products. We will provide Japanese dealers with more products and profits. And we will offer the Japanese consumer a wider choice of vehicles.

A trade agreement that provides real access to Japan's vehicle and parts markets is critical, not only to the Big Three and our employees, but to all of the related industries that supply the industry: semiconductors, electronics, steel, aluminum, chemicals, rubber, machine tools and many others. All told, about 1.5 million employees of America's automakers and their suppliers are waiting for Japan to remove its ''do not enter'' sign.

Regardless of successes in other sectors, the U.S.-Japan framework negotiations will fail both the American producers and the Japanese consumers if the automobile sector is not opened to U.S. vehicles and parts.

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

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

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

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 751

Mr. SMITH. Mr. President, we have an amendment offered by Senator KEMPTHORNE. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for Mr. KEMPTHORNE, proposes an amendment numbered 751.

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

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

The amendment is as follows:

On page 69, line 13, strike the word, ''remote''.

On page 69, line 19, after the word, ''infeasible'', insert the word, ''or''.

On page 69, lines 21 and 22, strike the words, ''the unit shall be exempt from those requirements'' and in lieu thereof insert the words, ''the State may exempt the unit from some or all of those requirements''.

On page 69, line 22, add the following new sentence: ''This subsection shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.''.

Mr. SMITH. Mr. President, this amendment offered by the Senator from Idaho has been agreed to on both sides.

There is no objection on either side. It is a technical amendment to title III and it deals with ground water monitoring.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 751) was agreed to.

Mr. SMITH. Mr. President, I yield the floor and 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. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Rhode Island [Mr. CHAFEE] is recognized.

Mr. CHAFEE. I thank the Chair.

(The remarks of Mr. CHAFEE pertaining to the introduction of S. 786 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CHAFEE. 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. DEWINE. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Ohio is recognized.

CRIME IN AMERICA

Mr. DEWINE. Mr. President, in the coming weeks the Senate will once again turn to the very important issue of crime. Within the next few days I will be introducing on this floor a crime bill of my own. Over the next 4 days I intend to discuss on each one of those 4 days a different aspect of the crime bill that I will be introducing.

Today, I would like to start by talking about two truly fundamental and basic issues and questions. First, what is the proper role of the Federal Government in fighting crime in this country? Second, despite all of the rhetoric, what really works in law enforcement? What matters? What does not matter? What is rhetoric and what is reality? What can the Federal Government do to help local law enforcement? Because, Mr. President, the fact is that over 90 percent of all criminal investigations, prosecutions, and trials do not occur at the Federal level. Rather, they take place at the local and State level.

This means that one of the criteria for any crime bill has to be the impact that bill will have on the ability of local communities themselves to fight crime. Of any crime bill, we have to ask this question: Does it help or does it hurt the local crimefighters, the men and women who are on the front line every single day? Mr. President, if it does help, does the help it gives help permanently or just over the short run? In other words, are we going to get any lasting impact in our battle against crime for the billions of dollars that we are talking of spending at the Federal level?

Mr. President, the role of the Federal Government first and foremost is to do those things that the local community cannot do for itself. I believe the Federal Government has to provide the tools to a local community to fight crime, tools that they could not have but for the help of the Federal Government.

One major Federal responsibility that I would like to discuss today is the creation and maintenance of a national criminal records system. The idea is really very basic and very simple. We need to make it possible for any police officer anywhere in the country to access a national data base, a fully automated data base, data bank, which includes information on fingerprints, DNA, ballistics, outstanding warrants, and complete criminal record history of suspects and of those who have previously been convicted of crimes.

I believe that this system will be an absolutely essential component of local law enforcement in the 21st century. We already have much of this technology in place today, but, quite frankly, it will only become more important in the years ahead. That is why we need to focus on it today, this year, this crime bill. We have to build this system correctly from the beginning.

Mr. President, we will soon be considering the single largest crime fighting bill in the history of this country. If we do not focus on this technology issue now as part of this crime bill, we never will again have the opportunity to do it and to do it correctly. I think that would be tragic, because if we do not do this it will be much more difficult later on for police to fight crime. Conversely, if we do do it, we will solve crimes. We will save people from becoming victims. Yes, we will save lives. I think that really is what is at stake.

Mr. President, if we do not do this now, it will be more difficult for the police to solve crimes committed by the same individual in different cities—to catch, for example, a criminal who used the same gun to commit crimes in both Washington, DC, and Baltimore, MD. It will be more difficult to keep track of sex offenders and to prevent them from repeating their offenses.

Mr. President, when a felon is fleeing from justice and inadvertently falls into the hands of law enforcers in some other jurisdiction, those arresting officers will not know through fingerprints that that person is wanted, let us say, for kidnapping or a terrorist act—kidnapping a child.

Mr. President, when a brave police officer pulls someone over on a deserted highway in the middle of the night, that police officer will not know the kind of person he is pulling over, will not know that the person he has pulled over is a convicted criminal, maybe a fugitive from justice.

Local police work hard and do a great job. They deserve much better than this. They deserve to have the best technology that we can give them.

To do that they need national help. They need the technological backup that only a fully functioning national—national—system can provide. For local law enforcement to get the maximum benefit from a national system, we have to grow this national system locally.

The unique thing about law enforcement in the United States, a country with a Federal system, not a top-down system, of government, is that you can only have a national system if the local law enforcement people build it up themselves. To attempt to create a national system from the top down is like trying to create a TV network if nobody has a television.

We can have all the Federal technology in the world in Washington, DC, but if a police officer in Tennessee or in Ohio or in Massachusetts cannot pull it up in his or her squad car or at the police station, what in the world use is it?

To make a national system, we really need two things. We need the local people to collect data and put it into the national system. And then we need to make sure the men and women scattered throughout this country, tens of thousands of them, who need this information have the ability to get the data back and to use it and to solve crimes and to convict criminals. Unless we invest in local technology, the local data collection, and retrieval, this just will not happen.

When I was in Cleveland recently, I saw the future of law enforcement. I saw police officers punch a name into a laptop computer, no bigger than this. The computer then gave them a picture of the individual and a lot of other information, including outstanding warrants and a complete criminal record.

We have the technology today to give this ability to every law enforcement officer in the country. For a system like this to work, Mr. President, we need local police all over America to be putting in this information. It is the kind of system we have to grow locally so that it can work nationally. Only the Federal Government can do the national coordination that is necessary for this kind of a system. There is an important and legitimate Federal role in crime technology, and my bill reflects this fact. My bill gives direct assistance to local authorities so that they can contribute their knowledge, their information to a national crime fighting system.

Anyone who visits the laboratories of the FBI, as I have, here in Washington cannot help being impressed by the tremendous capabilities and capacity that they have. Our challenge, though, is to ensure that the hub, the FBI's data base, is both expanded by and is useful to local authorities.

While I was at the FBI headquarters recently, the agents looked me directly in the eye and told me that the awesome technology we have really will not be fully utilized, will not live up to the great potential it has unless the local authorities can collect the information and put it into the system.

They expressed to me quite bluntly a skepticism as to whether or not there are the funds available today in jurisdictions across this country to achieve this type of a national system. They have it here in Washington. The FBI has it. But local law enforcement does not today have the resources.

Talk to the police officers of Lucas County, OH. They will tell you how crucially important access to this technology really is. Let me take one example, something we have heard a lot about in the law the last few months on television— DNA. Let us take DNA in a rape case. The police in Lucas County have the technology to collect blood and semen in a rape scene. Today, however, the Lucas County police, sheriff's office, Toledo Police Department, if they have no suspect, there is no quick way to match the DNA samples from the crime scene against the DNA samples of past offenders because Lucas County is not on line with an existing national DNA data base that might help them determine who the predator really was. And even if they already have a suspect in Lucas County, proving that the DNA matches that of the suspect is a very slow process. It is slow because of the great backlog that exists today in getting these samples fully analyzed by a competent individual, an expert who later on can come into court and testify.

If we give Lucas County or the Toledo Police Department immediate access to a national DNA data base, they could know pretty swiftly who committed that crime.

The same problem exists in regard to fingerprints. Now, when a suspect is booked, generally, his fingers get rolled in ink onto three or four separate cards which then get headings like name, address, et cetera, which are typed by the county sheriff's department onto the cards. These fingerprints are then mailed—mailed, Mr. President—in 1995, still mailed—to the FBI and into BCI in Ohio, which is our Bureau of Criminal Identification.

The technology, though, Mr. President, already exists for the computerized fingerprinting of suspects. All they have to do now is place their hands onto a computer imager—the technology is available today—and the fingerprints go then directly into a data base, what could be a national data base.

That would be a tremendous improvement. But, you know, the folks in Lucas County tell me that what they and other police officers nationwide really need is a national computer linkup for fingerprints.

I think that is absolutely correct. If you look at the technology they are trying, let us say, in Cleveland Heights, laptop computers in a squad car, and if you look at the incredible technology already available for fingerprinting, for matching bullet fragments and other physical evidence, the conclusion is really inescapable. We need to make technology a truly national priority.

This is something that we in the U.S. Senate can do and, frankly, something that we must do. The time is now. This is our opportunity.

The situation today is almost like a system of stereo components. We have a great receiver; we have a great set of speakers; we even have a world-class selection of CD's. But we have not hooked the system up and we have not plugged it in.

Mr. President, make no mistake: America's police men and women are already the best in the world. If we give them this equipment, they will solve the crimes; they will get the job done.

The U.S. Senate needs to give these local police officers the tools they really need. The bill that I will introduce in the next several days will accelerate the process of setting up this system of 21st century technology. We really will be going from 19th century technology, which is how many police carry out their functions today, to 21st century technology.

Only if we do this can the State and local authorities make their crime information readily available to the FBI, the national data base, the Federal Bureau of Investigation here in Washington and, frankly, more importantly, vice versa.

My bill makes it possible for States without technology to come on line. And if a State is already on line with the FBI, that State can use the funds to make further improvements to its data collection system.

Let me give you another example. The combined DNA index system, called CODIS, a data base, includes DNA information on criminals convicted of rape, murder, and other violent crimes. Under my legislation, participation in CODIS will be truly national for the first time, and it will be supported by Federal dollars.

In another area that I think is very important, my bill would require convicted sex offenders and other violent criminals to give blood samples as they enter or as they leave prison so that we can develop a truly national sex offender DNA data base.

Mr. President, there exists in this country a class of individuals who I will call, for want of a better term, sexual predators. A predator, as we know, is an animal that preys on other animals, and typically on the weak—sexual predators.

A recent study, Mr. President, found that 28 percent—28 percent—of convicted sex offenders were later convicted of a second sex offense. I will say, Mr. President, based upon my own experience when I was a county prosecutor in Greene County, that that percentage probably is even higher than 28 percent. That is a very high recidivism rate and it shows how serious a problem we are really up against.

And so it makes eminent sense to develop a nationwide system where we can collect systematically the blood, then the DNA, and develop this national DNA data base for sexual predators. If we do this, we will solve crimes; we will prevent crimes; we will prevent tragedies.

I think, Mr. President, we clearly need to do everything in our power to stop these predators. That is why we need to give police access to this national data base.

Mr. President, fingerprints and criminal histories would also be included in this integrated Federal data base.

In addition, my legislation would allocate some of the crime money to fund the FBI's DRUGFIRE program. This is an existing program that, quite frankly, needs to be expanded. We need to help the FBI develop and install computer equipment that would match bullet evidence to information in the FBI's bullet data base.

Today, for example, law enforcement officers in my home county of Greene County, OH, have a filing cabinet full of bullets. These bullets are arranged by caliber—9 mm, .38 slugs, and so on.

Every gun, of course, as we know from watching TV shows, leaves a telltale print on a bullet, so police officers in Greene County or any county can take a bullet from the crime scene and compare it to the bullets they have in their bullet file. They take the bullets that look similar and put them under a microscope, quite frankly, in the very distant hope they might get a match.

Tragically, there is absolutely no hope of matching the bullet with bullets from other police departments. That is one reason there are a lot of unsolved gun crimes in this country today.

DRUGFIRE changes this dramatically. DRUGFIRE connects each bullet microscope to a computer, which takes a picture of the bullet and stores an image in its memory. It can then be matched with millions of other bullets from all around the country.

Today, about eight jurisdictions between Baltimore and Washington, DC, are linked up through DRUGFIRE. They have already connected Baltimore crimes to D.C. crimes—the same gun, the same criminals.

Thanks to DRUGFIRE, a search through 10,000 bullets takes about a minute. Without DRUGFIRE, no one knows how long it will take because no one, of course, would even try to do that.

Mr. President, if everyone in local law enforcement were hooked up to each other nationwide, and to the FBI, through DRUGFIRE, they would have a huge new advantage in the fight against criminals with guns. Gun criminals do not respect State borders—very obvious.

Mr. President, a key criterion on which any crime bill should be judged is: Does it do any permanent good? Not just immediately, but does it do permanent good? Does it just spend money, or does it invest in something that has consistent, long-term benefits?

Mr. President, I maintain that the criminal justice records we are talking about—indeed, all the technology we are talking about—are a crucial long-term investment for this country.

We are not really just talking about the next 5 years. We are talking about a cumulative effect, building, building far out into the future. The efficiency of this system will continue to increase each year. It will have truly a cumulative effect.

We want to do for law enforcement, if I could use this analogy, what the interstate highway system did for U.S. transportation back in the 1950's.

Now, I must admit to my colleagues that this is not a glitzy nor a glamorous issue. The first thing I learned, now almost 20 years ago, as a young assistant county prosecuting attorney, was that law enforcement is very seldom glamorous. It is hard work. What we generally see on TV is not an accurate depiction of police investigations. It is not an accurate depiction of criminal prosecutions.

In fact, Mr. President, what we are seeing or we are hearing about, day after day after day, as the FBI and other law enforcement agencies investigate the horrible tragedy in Oklahoma, what we are seeing unfold is typical law enforcement work, just magnified as they go about their business—their hard, tough, sometimes very boring business—of looking for the lead that will take them to the next lead, the piece of evidence, the shred of evidence that will take them to something else, and on and on until the crime is solved.

Good police work is, if I could use this term, Mr. President, largely grunt work. It can be downright boring hitting the pavement day after day to track down leads. The police in Lucas County, OH, spent a good 8 years trying to track down a grandfather who abducted his granddaughter. They followed his trail from State to State. They finally found him, after 8 years, in California.

Mr. President, a national, easily accessible database would have made that capture probably a lot easier and maybe, just maybe, that little girl would have been reunited with her parents a lot sooner than 8 years after her disappearance.

The Oklahoma City bombing case, as I mentioned a moment ago, demonstrates the real value of a usable national database. A scrap of metal that was blown 2 blocks away from the crime scene by the bomb blast had a vehicle identification number on it. The FBI fed the number into the computerized rapid start system. The vehicle identification number then led the FBI to the rental company in Junction City, and that is where they got the description of the suspect.

Then it took more legwork around Junction City to match a name to the suspect. When the suspect's name was fed into the FBI's national computer database, that is how the FBI found that the terrorism suspect actually had been arrested earlier in Perry, OH, that he was actually in custody.

Mr. President, local law enforcement officers really need access to that kind of technology. The measures I am talking about will help provide them with these tools. This technology may not be glamorous—it is not glamorous—but believe me, it matters, it makes a difference. It will make a huge difference in our national fight against crime. Every single time a police officer pulls someone over, we need that police officer to know that America is with him or with her, not just our encouragement, not just our moral support, but we need to back up that by giving that police officer all the relevant facts we as a nation have compiled about that person, that individual that the police officer has just pulled over.

Last year, we started down the right path. Last year's crime bill did provide some money for this important work. But now we have to concentrate on helping the local—the local—law enforcement community to participate. That is what this year's crime bill absolutely must do, because, Mr. President, if we do not do this, we will be missing a major component of our crimefighting arsenal.

It is no use to have a gold-plated database system in Washington if local crimefighters cannot, do not contribute to it and if they cannot draw out the information, if they cannot use it. Again, back to the statistic that I started this speech with and that is that well over 90 percent of all criminal prosecution is, in fact, local. And so, you have to judge the system you are establishing not just by what it does for the FBI, although that is important, you have to judge what it does for its component parts, what it does for the tens of thousands of police officers and law enforcement agencies around this country.

Our challenge, Mr. President, is to prepare America's law enforcement for the 21st century, and we are falling behind in this task. We have the technology, we have the ability to prevent many of the crimes that are being committed today. Think of it, that is in and of itself a crime, that we have the technology to give law enforcement the tools they need to solve crime and to, more importantly, catch criminals and put them behind bars and keep them locked up, criminals who, but for that technology, will continue to go on and continue to commit crimes and continue to prey upon our citizens. We need to get that technology to where it is needed the most, and that is the local law enforcement.

The improvements I am proposing in America's crime information system constitute a basic investment in the security of American families well into the next century. It is time to move out of the stone age on law enforcement. That is the principle behind my crime technology proposals.

I look forward to working on this in our Judiciary Committee process and on the floor of this Senate in the next few weeks. I think the work we do on this truly has the potential to make a major difference in the lives of ordinary Americans for decades to come. I am proud to be a part of this effort.

I yield the floor

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

OPPOSING THE ELIMINATION OF THE DEPARTMENT OF EDUCATION

Mr. KENNEDY. Mr. President, we now have two budget proposals, one from the House of Representatives and one from the Senate. Both claim to balance the budget to ensure a better future for our children, to provide them with more and better opportunities than we now have. Nothing could be further from the truth, if Congress accepts the House Republican proposal to abolish the Department of Education.

You do not turn your back on education in the name of ensuring a better future for our children. You do not turn your back on education to pay for tax cuts for the wealthiest Americans. You do not turn your back on schoolchildren to pay for tax cuts for the wealthiest Americans. You do not turn your back on college students to pay for tax cuts for the wealthiest Americans. And you do not turn your back on working families to pay for tax cuts for the wealthiest Americans.

Education is critical to the Nation's future. It deserves a seat at the Cabinet table and at the President's right hand when critical decisions are being made. Children do not vote, children cannot hire lobbyists, but a Cabinet officer can fight for them. It is especially objectionable that the Department of Education would be abolished in order to pay for a tax cut for the wealthiest individuals and corporations in our country.

What does the proposal to abolish the Department of Education say about Republican priorities? What kind of Nation are we? What kind of Congress are we? Last Congress, Republicans and Democrats stood together as the Education Congress. Are we now the anti-education Congress?

Last Congress, Democrats and Republicans worked together to reform the Head Start Program. Republicans and Democrats worked to bring about changes in the chapter 1 program. We worked together to adopt the Goals 2000 program, the School-to-Work Program, and the direct loan program. These programs were all passed with Republicans and Democrats working together. It truly was an education Congress.

Now we have the proposal to eliminate the Department of Education which is nothing more than a political stunt. It would save less than 2 percent of the Federal investment in education. These budget proposals will not eliminate bureaucracy in education. What these cuts will do is jeopardize billions of dollars in aid to education which go directly to schools and colleges and students to give them a greater opportunity to learn and to succeed.

Mr. President, I have a list of the various education programs targeted by the House Republican budget for elimination. Outlined in these programs are the safe and drug free school State grants and the Safe and Drug Free School National Program. These are the programs that have been developed to try and help local school districts deal with the problems of substance abuse and violence in their schools.

These programs are all targeted for elimination.

Also on the list for elimination is assistance for the magnet schools which have been developed to try to help the public schools to develop magnet concepts to attract the best of the young people in public schools, to give them some advantages and different specialties so they can advance in their educational competence. That program is effectively dropped out.

The dropout prevention programs, demonstration programs which are targeted at some 400,000 young people who drop out of school every year. They are the principal cause of violence in our society and the principal individuals that have the challenges with teenage pregnancy. We have a small program that is having some positive effects, and it is targeted to be eliminated.

The charter school programs. Last year, when we were considering the education reforms, how many of our Republican colleagues said what we need is break-the-mold public schools, we need to permit the States to move ahead with new charter schools? We included charter schools funding in our Goals 2000 proposals. A number of different States are experimenting with those programs. There are funds in there to help and assist local school communities that are trying to develop charter schools. Those programs effectively have been emasculated.

All of the education technology programs. I was listening to my friend and colleague, the Senator from Ohio, talking about the importance of new technologies to fight crime. We heard important testimony today in our Immigration Committee about how we are trying to utilize the best in technology to try to bring sanity into the whole area of employment and the exploitation of illegal immigrants and deal with the problems of the discrimination that exist against Americans in employment, using the best of technology. How is it that we are trying to do the best in technology when we are trying to deal with immigration and we are trying to use the best of technology in talking about the problems of crime? Here we have a modest program to try to bring the latest technology into the public schools of this country, and it is targeted for elimination under the budget recommendations of the House.

In vocational education the tech-prep educational program is the best work-based learning program that has been developed in this country by the private sector and the public sector working together. It is effectively emasculated. It is an effective program. Many of our colleagues know about model tech-prep programs that have taken place in their States. They are small programs, but they really have the pattern for the development of future training programs and partnerships between the public and private sectors. They are effectively emasculated.

The efforts we made last year on the School-to-Work Program which had bipartisan support, and which Republican Governor Thompson testified on before our Human Resource Committee as being an extremely effective program in helping to move many of the young people that are not going on to 4-year colleges or 2-year colleges or post-high-school education and help them gain employment. Sixty-five percent of all the high school students that graduate do not go on to advanced education. They are the ones who are having the difficulty in getting decent jobs. They are the ones who have seen their real income decline over the period of the last 15 to 18 years. They are the ones who are losing confidence in the whole education system and the democratic process and the free enterprise system.

One of the most innovative and creative programs has been the School-to-Work Program, which helps move these young people, in a thoughtful way, in a way that has the strong support and initiation of the private sector, from school right into employment and future job opportunities with good and decent job programs. It has broad bipartisan support and is supported by Republican Governor Thompson, who was down testifying before us, as being one of the creative programs to try to help reach those young people that are not going on to college. Nonetheless, it is a modest program that was started last year. And that program is effectively eliminated.

Mr. President, I could go on. The Star Schools Program brings distance learning into many of the school districts of this country. Many of the school districts have had tightening budgets, and they are not able to get that science teacher, that language teacher, that chemistry teacher, that biology teacher, because of the demographics of their particular community have decreased, school budgets have gone down. But what we have been able to do with the Star Schools Program is to beam into those schools the best educator, the best physics teacher, the best history teacher, the best language teacher, for the very bright students in those schools who otherwise would be unchallenged in terms of their ability to compete in science and other kinds of technology, which this Nation needs in such desperate amounts. A modest program. It is $30 million, and it is affecting thousands of students, not just in urban areas but in rural areas of the country. The program MCET, in my part of the country, effectively provides distance learning throughout New England. Its greatest supporters are in the rural parts of Maine, New Hampshire, and Vermont—in the rural communities.

You have an exciting program in South Carolina. I have attended programs in Mississippi that have reached out into rural areas all through the South that are teaching children foreign languages, physics, advanced mathematics, and a number of other programs where they do not have those kinds of teachers. It is a modest program that depends upon local support, local matching funds, and it has been an effective program in every kind of evaluation, and it is effectively eliminated and cut.

So, Mr. President, these are matters which we are going to have to have a debate and discussion about when we have the opportunity to debate this matter here on the floor of the U.S. Senate later and also when that conference report comes out.

I urge those who are committed to the cause of education to take a little time and review in detail the assault on many of the programs that have been outlined in the House budget proposal, and a number of those which have been included in the Senate proposal. We have seen the basic assault on the programs which provide for an interest subsidy students while they are in school. That is a program that has been in effect, and that program is effectively being eliminated. In my State of Massachusetts, 70 percent of the students that go to higher education get some form of help, of scholarship help or assistance; 75 to 78 percent of all the scholarship help and assistance is provided by the Federal Government.

The cuts in school-to-work programs proposed in the Republican budget would deny more funds for working families' children in my State of Massachusetts than is being provided by the State today. This is not an issue where the State is going to pick up the slack. I hope that during this debate we will hear from our colleagues in other States and that they will tell us what State has been devoting more and more to higher education for their children. It is not true in Massachusetts.

Tuition and fees in public education have increased dramatically. And that has been true in almost State in the country. And the people that qualify for the student assistance programs are, by definition, the sons and daughters of working families. This is a program that has been tried and tested and true.

I applauded the President of the United States when he talked about trying to provide at least some tuition deduction for working families, up to $10,000, because of the increases in tuition which have taken place in this country. I myself believe we ought to consider permitting the repayment of interest on student loans to be deductible under the Tax Code. Why do we permit the interest that wealthy individuals pay on their second homes to be deductible when we will not permit students to deduct interest payments on their student loans?

That says something about national priorities. Instead of moving in a direction to try and help and assist the sons and daughters of working families, we are moving completely in the opposite direction.

Mr. President, there are many features of those programs which are troublesome. I have mentioned just a few. We are committed to try and consolidate various programs. We made some progress last year in the areas of education. We are doing so now in the training programs. We are working toward those objectives in the Labor and Human Resources Committee.

We welcome the opportunity to do that with our colleagues, to eliminate unnecessary bureaucracy and the overlapping of various programs. I think that makes sense. We welcome the chance to do that.

But kind of wholesale assault on education programs that has been outlined today in the budget by the House of Representatives and the significant undermining of student assistance programs in the Senate, I find to be troublesome and I hope that when the time comes that we will reject those particular areas.

The Republicans claim that these budgets are to give children a better future. Will children have a better future if we revoke our commitment to raise education standards? Will children have a better future if we slash funds to help them learn to read, write, and do math and science? Will children have a better future if we abolish funds to modernize all aspects of education, so that we no longer have to prepare students for the 21st century in 19th-century classrooms. Will children have a better future if the Federal Government slashes $20 billion from student aid, so that vast numbers of able young men and women can no longer afford to go to college? The answer to all these questions is no—no, no, no, no.

The American people agree. Two out of three Americans oppose a balanced budget if it means cutting Social Security, Medicare, or education. Eighty-nine percent of Americans believe a Federal Department of Education is necessary. Sixty-four percent of Americans would increase spending on public schools if they had the opportunity to write the budget.

The American people see what our Republican colleagues refuse to see in their shortsighted budget proposals. Students, families, and the country itself will suffer if we abandon our commitment to education.

Our Republican colleagues say that they want to balance the budget so as not to bury the next generation in debt. Why then are they so willing to bury this generation of students in debt?

The question answers itself. Congress and the Nation should say a resounding no to these irresponsible anti-education proposals.

Mr. CHAFEE. I wonder if the senior Senator from Massachusetts would yield for a question?

Mr. KENNEDY. I yield.

Mr. CHAFEE. Mr. President, here is the problem I find: We have a terrible deficit of $200 billion which every objective group says will rise to over $300 billion and close to $400 billion by the end of the century.

The Republicans have come up with a program that reaches a balanced budget not next year, not the year after, but 7 years away, which seems to me that would be a reasonable timetable to arrive at a situation where we are no longer sending the bills to our children.

Now, the proposal that has emerged from the Republican Budget Committee has many harsh provisions to it. When we are reducing expenditures there are going to be difficulties, as we all recognize and as the Senator has ably pointed out.

It affects this, affects that, affects things I am interested in, that the Senator is interested in, that the Presiding Officer is interested in. There is not one that will not find things we do not like.

The question is, what is the alternative? I do not believe the answer is to say stop giving those tax cuts to rich people, because in the Domenici budget there are no tax cuts. Never mind the rich people. There are no tax cuts at all.

So he has presented a budget which I know we will all find terribly challenging and difficult and dissatisfying. What is the alternative? Maybe the answer is to increase taxes. I do not believe that we can continue on the path we are, which consists of sending the bills to our children. We live high on the hog, and send the bill to our children and grandchildren. I think that is immoral.

If we do not like the proposal, what is a better one? I am not trying to put the Senator on the spot.

Mr. KENNEDY. That is fine.

Mr. CHAFEE. This is a tremendous challenge we all face.

Mr. KENNEDY. I appreciate the Senator's question.

Let me just outline my response very quickly.

First of all, I fail to understand how we are saving the future generations from indebtedness when we are increasing so significantly—about 25 or 30 percent—the debt of students going on to higher education, which is the part I have been talking about.

Let me answer it in this way. First of all, if the Senator is prepared to reject what the majority leader has stated, and that is, that his desire to see the set-asides, the savings of $170 billion which have been included in the Republican budget in the House and the Senate of the United States, that can be used for future tax cuts, if we are going to count those in or count those out, do we say that the majority leader is for

the tax cut and Senator GRAMM is for the tax cut?

I listened to the Senator from Rhode Island indicate that he is not. That, I think, is certainly a more responsible position. These cuts are coming at a time when one is fair enough to juxtapose what has been included in the House budget cuts as well as in the Senate cuts and the saving programs.

To make the judgment that we are cutting back on a number of the programs, particularly as I have mentioned here in education, and setting aside that $170 billion which can be used for tax cuts.

Second, there is no review of the fastest growing contributor to the size of the deficit, which is our tax expenditures. I indicated during the time of the line-item veto, which I supported, that I wanted to see the line-item veto go on this for tax expenditures. We are not reviewing tax expenditures. There is no similar kind of review by the Budget Committee to review the various kinds of subsidies that are out there that are going, in many instances, to some of the most successful companies and corporations. There is no review by the Budget Committee to review those and to find out which ones make sense, which ones do not make sense, and to do the same kinds of cuts that we have seen illustrated by the kinds of cuts that have taken place in this budget, identifying program after program after program after program after program that deals with education.

I think that the Senator's position in terms of fairness and judgment and in terms of the budget would be enhanced if he said, ''Let's take a look at $460 billion in tax expenditures and review those and find out which ones are fair and which ones are not.''

I think that is a position. Finally, let me say that I do think, and I think the Senator would agree with me, we are never going to get at the principal contributor to expanding deficits, which is the health care issue, and the escalations of health care costs both now in terms of medical care which is different from where it was from the mid-1980's to 1990, but nonetheless has doubled virtually the cost of living in terms of where we are for other goods and services.

We are never going to really deal with that increase by just cutting. We are going to have to deal with the escalation of health care costs by looking at the total health care system.

Social Security and Medicaid represent one-quarter of our health care expenditures. If we are going to have some kind of a discipline on that one-quarter, and we will have cutbacks as being included, then we will have a reduction of services without giving some kind of additional sense of reform of health care.

The Senator knows very well that treating people with long-term care and in-home care and permitting them to get help and assistance with prescription drugs which are outside of a hospital setting, and providing for better health care services, that there are many things that can be invested. It can have an impact in reducing the pressures in terms of the growth of the Medicare population.

But the idea that we are going to solve the expansion of health care costs just by cutting back again on Medicare is something that I find troublesome. I wanted to indicate to the Senator that I respect his sincere desire to move and support programs that will bring America into a closer position on the issues of our deficit, but it does seem to me that we should not simply have the harshest cuts in the areas that I think are counterproductive, because I would say to my friend and colleague, that every dollar we cut back in education we will be paying $2 more in terms of social services.

I think, and particularly with regard to education, that is wrong.

Mr. REID. Will the Senator yield?

Mr. CHAFEE. I wonder if the Senator from Nevada would let me finish.

Mr. REID. Of course.

Mr. CHAFEE. I appreciate the suggestions that the Senator from Massachusetts made. Tax expenditures—I suppose he is talking about, first of all, a whole series of things. Whether we should be providing pensions, deductible pensions, or whether we are talking about in the tax expenditures, whether he is talking about depreciation. I do not find those objectionable. But never mind.

It seems to me it would behoove everyone to come up with plans. That is, if the Senator and the administration do not like the Republican proposal for doing something about this balanced budget by the year 2002, which is a very reasonable goal to reach. We have no wars, times are relatively good, inflation is low, unemployment is low, relatively low, and this is the time to gun for this balanced budget amendment, balanced budget situation. But the administration has not done that. It has chosen not to do that.

All right, how about the Democratic Senators doing it themselves? I would be interested to see what they come up with, because this is very, very difficult. And every step that we take, we being the Republicans who have come up with this balanced budget, we are going to be attacked. And there are going to be wonderful things to attack us on. But at least we are trying to get there.

I think as a part of a sense of responsibility, if you want to call it that, that it would be wise, it would be helpful if others came up with their approach. Maybe you can do it better than we can do it. If so, three cheers, and let us hear your ideas.

Mr. KENNEDY. I thank the Senator. I appreciate his moment of challenge.

I am mindful, though, that this does come from voices that were not there when we saw the $70 billion deficit reduction program on the 1993 budget resolution. We did not have it. That is a historic fact. It is a political fact of life, as well. But there was not a single vote that came from that side, not one single vote, when we were moving toward at least a very modest increase in tax which was presented for the top 1 to 2 percent of the taxpayers, to provide a very modest increase. We did not have any support there. Nor did we have support when we were trying to provide the extension of the earned-income tax credit—that is 84,000 families in my State who were able to get some benefit, plus reduce the overall deficit by $600 million. We had that.

I have said on other occasions I respect the seriousness with which the Senator from Rhode Island approached the efforts to try to deal with the health care issue and crisis in a comprehensive way. I am not sure the Senator desires, nor do I, to get into a long debate on what happened to that particular measure.

But, nonetheless, dealing in a comprehensive way with the total health care issues that included Medicare plus other kinds of expenditures was, I think—I thought then and I still do, and I think eventually the country will recognize, whether we do it the way that was suggested the last time or in some other way—we are never going to be serious about getting a handle on health care costs, which is the principal contributor in entitlement spending, until we deal with that issue. We were not able to break through and develop bipartisan support.

I am not here tonight to get into where the blame lies for that. But I do think those of us who supported those positions, and also supported at least a line-item veto that included the tax expenditures, do not come to this debate empty-handed. We do come to this with a recognition that we have attempted to be responsible on this. I, frankly, think that is something that ought to be a part of it, as well.

Should the Senator from Rhode Island say, ''OK, we did not do the health care last year. We understand we are going to have to deal with Medicare this year, and we are prepared to try to work across the line, with this President, with the other side of the aisle, to try to get a handle on health care costs that are part of health care reform,'' I would welcome the opportunity to be the first who comes to the table on that issue. I think I speak for many on this side.

I must say, hope springs eternal in my soul. I think many of us understand there is nobody who could put that challenge with greater credibility than the Senator from Rhode Island. Perhaps we will wait for a little while to hear that challenge go out there where we can sit down and really try to come to grips with this issue.

Mr. REID. Before the Senator yields the floor, I have a question I would like to ask the Senator.

Mr. KENNEDY. I will be glad to yield for a question.

Mr. REID. I say to the senior Senator from Massachusetts, I recall many of us being on this floor just a few months ago, talking about the crisis in health care.

Does the Senator recall that?

Mr. KENNEDY. Yes, I do.

Mr. REID. In fact, it was not minutes or hours or days; we spent weeks on the floor talking about the health care crisis a few months ago.

I am curious; is the crisis suddenly upon us regarding Medicare? The fact of the matter is, that same crisis was here last year, when we worked weeks and weeks trying to solve the problem; is that not true?

Mr. KENNEDY. The Senator is absolutely correct. What stands out even in greater relief is the fact that in that debate there were going to be adjustments made in the Medicare system but, nonetheless, it was going to be part of an overall reform. So the seniors were going to be able, hopefully, to not only have a more comprehensive range of services available to them, but it would give them the kind of protection in the future that the continued escalation of costs for them would not provide.

As the Senator knows full well now, for the average Medicare recipient, they are paying about $1 out of $4, $1 out of $5, of every dollar for health care. Twenty years ago, it was $1 out of every $12.

Now, for those in the lower part of the Medicare system, in many instances, it is $1 out of $3.

So there is a need to both have the reform and to use resources for health care reform rather than tax cuts.

Mr. REID. I ask the Senator from Massachusetts, the fact of the matter is, if there is suddenly a recognition on the other side that there is a crisis in Medicare, should we recognize that the crisis is not in Medicare, it is in health care? Is that not a fair statement?

Mr. KENNEDY. The Senator has stated it very well.

Mr. REID. If the health care costs, as they relate to Medicare, are escalating 10.7 percent a year, is it not a fact that some private systems are going up even more than that?

Mr. KENNEDY. The Senator is correct again.

Mr. REID. That means higher insurance premiums. Does it not mean that people who have no insurance go to an emergency room; and is there any higher cost of medical care any place in the country than in an emergency room?

Mr. KENNEDY. The Senator is absolutely correct on that. The great tragedy in the cost is not only in the dollars and cents, but it is in the cost of parents who wonder if that child is $75 or $100 sick before they will even go to the emergency room to take care of those needs.

As the Senator knows, about 45 percent of all needs that are treated in the emergency room could have been treated—or are preventable—and could have been treated in a much lower-cost setting at a savings of not only resources, but also the anxiety primarily of parents and loved ones because of the illness or sickness of a member of the family.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent I be allowed to speak as in morning business for up to 15 minutes.

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

Mr. REID. Mr. President, before the Senator from Massachusetts leaves the floor, I want to say I have been here and I have used as an illustration some of the things that are being done on the other side of the aisle, as being—well, they remind me some of the things that go on in Las Vegas. We have in Las Vegas the greatest magicians, illusionists in the world. I talked earlier this week about Siegfried and Roy. They can make things happen.

Mr. KENNEDY. And David Copperfield.

Mr. REID. I did not talk about him the other day, but we have David Copperfield, who spends a lot of time in Las Vegas, who does many wonderful things. We have Melinda, who is the Woman of Magic. We also have two new magicians who now live in Las Vegas by the names of Penn and Teller. The reason the other illusionists are so mad at them is because they tell people how they do their tricks.

I think we need some help from the other side of the aisle to tell us how they are doing their tricks because the fact of the matter is, a health care crisis has been upon us for a long time. Suddenly, because they are presenting a budget to us, they find a health care crisis when there has been one here all the time. I think they have been taking lessons from some of my friends in Nevada. I think that because our colleagues on the other side of the aisle are really illusionists or magicians in the true sense of the word.

I appreciate the statement the Senator has given regarding education. We really have to concentrate on education and what it is doing to future generations.

Mr. KENNEDY. May I just ask the Senator, in the House Budget Committee, they actually cut $90 billion, I understand, from Medicare, and put it that much more at risk, in order to recapture funds in the House budget that can be used for tax reduction. Is the Senator familiar with that?

(Mr. BROWN assumed the chair).

Mr. REID. I am very familiar with that. I say to my friend that the Democrats are not against tax cuts. But I think we have to have our priorities in order. Do we take $90 billion away from senior citizens? As indicated, $1 out of every $3 they have they have to spend on health care. Is that a proper priority that we give tax cuts, $20,000 tax cuts, to people making over $350,000 a year? Is that fair, I say to my friend?

Mr. KENNEDY. I think the answer is obvious. I think that it is important as we move through this debate and the budget that is taking place in the House and the Senate that the facts come out about exactly what has been cut and who is going to pay for it. I think the Senator is providing a real service to the membership here in discussing these matters and bringing them to the attention of the membership and to the American people. I thank him for his comments.

Mr. REID. Mr. President, the budget that we have just received today does some interesting things. One thing that it does without any dispute—there is no reason to debate this—is that senior citizens on an average will spend $900 per year more for health care costs. Every year they can expect to lose about $900—in fact, if they can, and most of them cannot—they will have to pay that much more money for health care costs. As I have said to my friend from Massachusetts, there is no crisis today that there was not last December. Suddenly, there is a crisis now. Suddenly, they want to start talking about Medicare and not talk about the rest of health care costs.

Mr. President, this year health care costs in America will go up over $100 billion. We will not have any better health care as a result of that. We have to be concerned about health care generally and not Medicare particularly.

Mr. President, this rhetoric that we have heard and encompassed in this budget about Medicare reform is nothing but a smokescreen for tax cuts. There is a proposal in this Republican budget that we have for tax cuts. It is camouflaged, and says any savings we get we will apply to the tax cut. I think any savings we get we should help these senior citizens that are having their Medicare bills increased. I think we should talk about young people who cannot go to school, or go to college. That is where the money should go, not for tax cuts for the wealthy.

We are talking about a $900 a year increase in out-of-pocket health care for every senior citizen on Medicare, and we will pay for the $20,000 annual tax cut for Americans making $350,000 a year or more. When the facts are filtered from this rhetoric, it is not the Medicare trust fund they are concerned about at all. It is tax cuts they are concerned about.

As I indicated, Mr. President, we are all for tax cuts. But there has to be a prioritization of what is important. Is it more important we give tax cuts to people who make a lot of money or that we take money away from senior citizens or kids trying to get an education?

Eighty-three percent of Medicare spending is for senior citizens with annual incomes of less than $25,000 a

year. Two-thirds is for those with incomes of less than $15,000 a year. Medicare does not cover prescription drugs. It does not cover long-term care. It does not cover dental care or eye care. I think it is time for us to be concerned about improving Medicare rather than trashing Medicare.

We can come up with some savings. Should not those savings be applied to maybe taking a look at long-term care, dental care, or eye care? I would think so.

Drastic cuts in Medicare not only threaten the pocketbooks of seniors but also those of families. Some seniors may be forced to move in with their extended families once the burden of increased premiums, copayments, and deductibles become too great, if in fact they are fortunate enough to have those extended families. A move would result in loss of independence for seniors as well. That is one of the reasons that Medicare was such an important thing—that we will make sure that we did things to increase the independence of seniors, not take away their independence.

What it all boils down to, Mr. President, is priorities. How do we feel about priorities? I believe the most important thing we can be engaged in is reducing the deficit. I think it is for a lot of different reasons and we need to increase savings. We need to increase our balance of trade. We need to make sure that we do not spend more than 17 percent a year for interest on the debt. The American public has to understand that about 48 percent of what we spend is for entitlements. What is the largest part of that? Health care costs—Medicare and Medicaid. We have to do something about that, not just hack away at Medicare but do something about overall health care costs. That should not be swept under the rug.

Last year we debated health care. Perhaps we tried to do too much. There were lots of losers in that health care debate; hundreds of losers, and only one real winner in the health care debate and that was the health insurance industry. They were head and shoulders the winner. They got over the finish line way before anybody else got out of the starting block. They, through their Harry and Louise ads, set out to frighten and confuse the American public, and they hit a home run. They frightened and confused the American public beyond, I think, what even they hoped.

When the health care debate started everyone recognized the truth, that health care was in trouble. Almost 90 percent of the American public favored health care reform. When the debate ended, Mr. President, nobody favored health care reform. The health insurance lobby won the day. That does not mean that the day is won forever because the problems still exist. Health care costs are increasing, and they are driving deficits on local governments, State governments, and the Federal Government.

All of this debate about let us give everything back to the States is scaring the people in Nevada. Why? Especially the large counties, Clark and Washoe Counties get all of leftovers, people that have fallen through the safety net. Social services in Washoe County, Clark County, Reno, and Las Vegas have to take care of those people that fall through the safety net. They cannot do it. They do not have a tax base to do it. They are frightened about what is probably going to happen back here.

Mr. President, there is a statement they want to return the $170 billion dividend to the American people in the form of a tax cut. I do not think that is where the dividend should go. The budget that has been proposed slashes the prime trust funds—aid to education, student loans, all kinds of medical research, and raises taxes on working families who make under $26,000 a year. We have focused on a tax cut. That is a priority of the House and their Contract With America. That is the foundation of their contract—tax cuts amounting to almost $1 trillion over the next 10 years. But have we talked about what has happened to people who are going to get a tax increase in this budget; that is, working families who make under $26,000 a year?

The earned income tax credit is being slashed with a proposal that was introduced, or will be introduced, by the Senate Budget Committee, about 7.8 million people, will have their earned income tax credit whacked. On an average, these people have their taxes increased by $270.

Earned income tax credit recipients with incomes lower than $26,000 will lose their eligibility, generally speaking.

Now, Mr. President, what is an earned income tax credit? It is a way of keeping people off welfare, and it is a way of having people who are on welfare to get off welfare. Why? Because under current law people who make less than $26,000 a year can apply—it is on a sliding scale—to have part of the taxes they pay rebated to them. It works very well. Under current law, with earnings of $16,500 and no other source of income, a married couple with two children would have income slightly above the poverty level in 1996. While they would not owe individual income taxes, they would pay about $2,500 in Social Security taxes on their earnings. Under current law, they would receive an earned income tax credit for the amount they pay, completely offsetting their tax liability.

That is why people want to get off welfare. That is why people do not want to go on welfare. They have a chance to get ahead and be part of working America. Because larger families have greater needs than smaller families, taxpayers with two or more children are entitled to a larger earned income tax credit than taxpayers with one or no children. But under the Senate Budget Committee's mark, a very low-wage worker with two or more children will receive only a token adjustment to compensate him or her for the additional cost of raising this family.

So, Mr. President, we have to be concerned about the tax increases in this mark that we are getting from the Senate. We have heard a lot about the tax decreases for the wealthy, but what about the tax increases for people who make less than $26,000 a year?

The budget grants short-term tax cuts, especially that from the House, instead of focusing on long-term investments on education, health research, and crime control.

May I ask the Chair how much time I have remaining?

The PRESIDING OFFICER. There is 1 minute 52 seconds remaining of the Senator's time.

Mr. REID. I ask unanimous consent that I be extended an additional 5 minutes.

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

Mr. REID. I held a crime summit in Las Vegas which, coincidentally, had been scheduled for several months. It was the day after the Oklahoma City explosion. I met there with the chiefs of police of southern Nevada: Boulder City, Las Vegas, Henderson; Federal officials, DEA, FBI, judges, and a number of other people in an off-the-record discussion about problems relating to crime. There are serious problems that we are not addressing. Law enforcement needs help, lots of help. Yet, the budget proposal cuts the violent crime trust fund.

I will be speaking to a number of graduating classes in Nevada in the next few weeks. These young people, these high school students do not face a very bright future. We are cutting back on student loans and grants, instead of being aware of the fact that money we spend for education comes back to us.

Low-income families—we have talked about them—making less than $26,000 a year are going to be paying more taxes. The budget resolution we have, Mr. President, calls for more taxes.

Research. I would recommend to every one of my colleagues that they go to the National Institutes of Health and talk to the people who have dedicated their lives to curing disease. It is wonderful, the stories you hear out there. Paralysis. We have a significant number of people who have spinal cord injuries. As a result of the perseverance of a number of physicians out there, they have been able to make significant strides in trauma associated with spinal cord injury. And as a result of the work they have done, especially work done with massive doses of steroids immediately following an accident, people today who would have been paralyzed are not as a result of the work done at the National Institutes of Health. The problems that we

deal with there deal with people who are sick and injured and need help.

We are going to cut back on that research. That is wrong.

The time has come, Mr. President, to live up to promises made during the balanced budget debate. For example, to protect Social Security. The Republicans claim that under their budget they will protect Social Security. Social Security, however, will face it's greatest threat under this budget in 2002 when this budget supposedly will balance. Because Social Security surpluses are being scored against the deficit, this budget will collateralize the Social Security trust fund. Black's Law Dictionary defines collateral as ''property which is pledged as security for the satisfaction of a debt.'' In this budget proposal, the definition of collateral is Social Security.

I think we have to live up to the responsibilities that we have. I repeat, we have to do a better job of balancing the budget. This will be the third year in a row that the budget will be lower than the year before, the first time in 50 years. Certainly, we have to do much better than we have done. We have reduced, in the last 2 years, Federal employment by 150,000 people. I think that is significant. We have had the highest economic growth in some 40 years. That is important. We certainly have not done enough. The economy needs a lot of help. The one thing we could do that would help more than any other thing would be to reduce the deficit, but we cannot do it with tax cuts. We cannot do it with cutting educational benefits.

We have to look at the big items. What are the big items? They are interest on the debt, medical expenses, and, of course, we have to look at defense. We cannot leave that because 20 percent of every dollar we spend goes for defense.

I thank the Senator from Rhode Island, the chairman of my committee, for his allowing me to go out of order in morning business.

I yield the floor.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question before the Senate is the substitute amendment reported by the Committee on Environment and Public Works to S. 534.

Is there further debate on the bill?

The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, this is the Graham amendment?

The PRESIDING OFFICER. What is before the Senate is the committee-reported substitute at this point.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

AMENDMENT NO. 752

(Purpose: To revise the provision relating to State-mandated disposal services)

AMENDMENT NO. 753

(Purpose: To provide that a law providing for State-mandated disposal services shall be considered to be a reasonable regulation of commerce)

Mr. GRAHAM. Mr. President, I send to the desk two amendments and ask for their immediate consideration.

The PRESIDING OFFICER. Does the Senator wish these amendments to be considered en bloc?

Mr. GRAHAM. The Senator requests that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes en bloc amendments numbered 752 and 753.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 752

On page 63, strike line 4 and all that follows through page 64, line 2, and insert the following:

''(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

''(1) was responsible under State law for providing for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the county;

''(2) is required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

''(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through the adoption or execution of a law, ordinance, regulation, contract, or other legally binding provision; and

''(4) had incurred, or caused a public service authority to incur, significant financial expenditures to comply with State law and to repay outstanding bonds that were issued specifically for the construction of solid waste management facilities to which the political subdivision's waste is to be delivered.

(5) the authority under this subsection shall be exercised in accordance with Section 401z(b)(4).

AMENDMENT NO. 753

On page 65, line 10, strike ''or (d)'' and insert ''(d), or (e)''.

On page 65, line 3, strike ''or (d)'' and insert ''(d), or (e)''.

Mr. GRAHAM. Mr. President, these two amendments represent technical refinements to a provision of the bill which appears on pages 63 through 65, which I understand have been agreed to by both sides of the aisle, and I ask for their immediate consideration.

Mr. CHAFEE. Mr. President, indeed, they have been agreed to by this side of the aisle, and we are prepared to accept them.

The PRESIDING OFFICER. Is there further debate on the amendments Nos. 752 and 753? Is there objection to the amendments? If not, the amendments are agreed to.

So the amendments (Nos. 752 and 753) were agreed to.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I wish to express my appreciation to Senator CHAFEE, who, in his usual gracious manner, has been so helpful in working through these two technical amendments as well as having assisted the committee in bringing to the floor this important piece of legislation.

I would also like to commend the chair of the subcommittee with specific responsibility, Senator SMITH of New Hampshire, and the ranking minority member, Senator BAUCUS, and Senator LAUTENBERG for their courtesies in the development of these amendments and other provisions in the legislation. I would like to take this opportunity to make a few remarks on the general subject of title II of this legislation which is the provision relating to flow control.

Mr. CHAFEE. I wonder if the Senator, before he gets into that, would like to move to reconsider the vote by which the amendments were agreed to.

Mr. GRAHAM. In further thoughtfulness on the part of the Senator, I move to reconsider the votes by which the two amendments were agreed to en bloc.

Mr. CHAFEE. I move to table that motion.

The motion to lay on the table was agreed to.

Mr. GRAHAM. I thank you, Mr. President, and I thank Senator CHAFEE.

This legislation in title II, which is the title to which my remarks will be directed, raises again the fundamental question that this Federal Government has dealt with throughout its history, and that is the appropriate role of the State government and the National Government. In this case, it raises, in stark relief, the question of who should decide an issue as basic to our public welfare as the disposition of garbage.

I start from a general presumption that that level of government which is closest to the people who will be affected by the action should be able to control the action and therefore I have a general predisposition toward local and State government having responsibility and control. In this case, that predisposition also happens to be in the historical responsibility of local government for the control of their solid waste and its disposition.

Let me turn to a little background of how we got to the legislation that is before us today. I will use for purposes of my examples primarily illustrations from my State of Florida but I believe that similar examples could be drawn from any of the other some 35 States

which have adopted a flow control process to direct their solid waste.

In the case of my State, this involvement was largely driven by environmental and particularly water-related concerns and the impact that those proper considerations of environmental circumstances would have on the public health. I was concerned in reading the report of the committee that the statement is made that the principal issue relative to flow control is economics. In my judgment, while economics are certainly concerns, the statement made on page 6 that ''The primary factor driving the imposition of flow control ordnances is economics'' confuses the ends with the means. The economics are a means of achieving the end.

In the case of my State, the end was to have appropriate sites that would protect the environment and protect public health. My State is one which is growing rapidly. We are adding some 300,000 people every year, having just crossed the 14 million size. Eighty percent of the population of the State of Florida lives in the coastal zone, basically a thin strip of land over pools of water. We depend upon that subsurface water for all of our purposes—human consumption, economic purposes, agriculture—for this large and growing population and the economy which supports that population.

A number of years ago, it was recognized that if we continued to grow at this rapid rate and continued to dispose of our solid waste in the traditional pattern that we were going to endanger our underground water supply. And, therefore, the State passed a comprehensive solid waste management law approximately a decade ago, a law that I am proud to say has been described as one of the most progressive in the Nation and has been a model for other States. That solid waste management law gave a great deal of responsibility to local government, particularly counties, to implement solid waste disposal programs. The goal was to remove a substantial amount of solid waste from landfills and into other disposal methods or into landfills that met a very high standard of environmental protection.

The authority to implement flow control already existed in Florida and thus counties used it as a tool to develop a integrated solid waste management plan that was in compliance with the State law and that addressed the threat of ground water contamination from the more traditional, less protected landfills.

It was in this context, Mr. President, that 2 years ago the U.S. Supreme Court issued an opinion, called the Carbone opinion, which essentially stated that States were without the authority to grant flow control power to their local governments, because the use of that flow control could constitute a restraint on interstate commerce.

That came as a surprise to many who felt that there were few items that were as indigenously local as the direction of garbage. The Supreme Court reached that conclusion, but went on to provide that it was now the responsibility of Congress to set whatever standards it felt appropriate in order to authorize local governments to continue exercising their flow control authority.

If I could quote from the concurring opinion of Justice O'Connor who, in joining the majority in the Carbone opinion stated that, ''It is within Congress' power to authorize local imposition of flow control. Should Congress revisit this area, and enact legislation providing a clear indication that it intends States and localities to implement flow control, we will, of course, defer to that legislative judgment.''

So what we have before us today is the legislative judgment carrying out that empowerment by the U.S. Supreme Court. I am concerned that the judgment that is represented in title II of this bill is a narrow judgment. It is a judgment which essentially says that as the first proposition local governments are denied the authority to engage in flow control; that is the ability to direct their solid waste.

As a second point, it provides that those communities which have already engaged in flow control prior to the date of the Supreme Court opinion, or prior to the date of May 15, 1994, which was the date upon which this initial version of legislation was first proposed, that those communities would be allowed to continue to exercise flow control for the period of time that was required for that community to meet its financial responsibility but in no cases longer than 30 years after the passage of this legislation. The implication of that is that no community which was not engaged in flow control prior to May 15, 1994, would be sanctioned to do so and those communities which were so engaged but which met their financial obligations, such as paying off the bonds that were necessary to construct a modern landfill or a solid waste recycling plant or an incinerator, that once those financial obligations were met they would lose their authority to exercise flow control and no community, regardless of circumstance, would have flow control authority for more than 30 years.

I am deeply concerned about the philosophy that says that the Federal Government is going to assume that degree of policy control offer an activity which has been so historically local and which, by all of its characteristics, should continue to be local.

Mr. CHAFEE. I wonder if I could present the counterargument to the Senator's proposal. The Senator is saying that it goes against his grain and his philosophical belief that a local community cannot impose so-called flow control; a local community cannot say: We are going to build an incinerator. We are going to bond it with revenue bonds, with the revenue coming from the requirement that, for everybody in this community and every business, all trash must go to this central facility. And the reason we, the town, say that, or the city says that, is because we have to pay off the bonds to pay for the facility.

And the Senator finds it disturbing, and understandably so, that in this legislation we are saying, ''No, you cannot do that anymore. Oh, yes, you can do it if you have some bonds outstanding.''

Let us say the bonds have 18 years to go and that is the expected life of the facility. But beyond that, no, you cannot have this proposal. It is a little bit like, I suppose the Senator would say, Big Brother saying to the town of Lakeland, or whatever it is in Florida, whatever the town might be, ''You can't do that.''

Here is the other side of the argument. The other side of the argument says the Constitution of the United States as interpreted by our courts says you cannot do this to start with; that no way can you be able to issue these requirements that everybody in this local community must go to point A to dump the trash. You cannot have some local hauler come in and take it anyplace—to take it to Rhode Island, take it to Texas, take it someplace else, no. The Supreme Court of the United States says that it is unconstitutional to have restrictions that we provide for in this legislation.

I look at it another way. Instead of saying it is difficult to comprehend why Big Brother should step in and say why you cannot have flow control or you can only have it for a limited period, instead the Congress of the United States is saying, ''Despite the fact that flow control is against the Constitution of the United States because it interferes with interstate commerce, we are still going to let you have it in order to pay off your bonds.''

So I look on it more as the Congress giving rather than the Congress taking it away.

Mr. GRAHAM. Mr. President, I think, respectfully, that is not a proper reading of what the Supreme Court said in the Carbone case. I will just refer you to page 8 of the committee report which quotes the language of Justice O'Connor in which she states quite unequivocally:

> It is within Congress' power to authorize local imposition of flow control.

Mr. CHAFEE. That is right.

Mr. GRAHAM. Mr. President, I continue the quote:

> Should Congress revisit this area and enact legislation, providing a clear indication that it intends States and localities to implement flow control, we will, of course, defer to that legislative judgment.

So we have a range of judgments that we can make, including that it is appropriate for State and local governments to continue to implement flow control, those communities which had done it in the past and those which might like to do it in the future and

those which have done it in the past which have paid off indebtedness and wish to continue to utilize it. It is within our power to place the decisionmaking as to whether to use flow control or not in the hands of literally tens of thousands of local government officials, as opposed to centralizing that decision in Washington, with the judgment that is contained in title II of this legislation, which essentially is: Thou shalt not engage in flow control unless you were doing it before May 1994 and, even then, only for the period necessary to pay off your indebtedness and, in no case, more than 30 years from now.

Mr. CHAFEE. I dispute the Senator's characterization of the Congress or the Senate saying thou shalt not engage in flow control. It is not us that is saying that. The Supreme Court has said, ''You can't do it. And, indeed, if you try and do it, you are violating the Constitution.''

But the Supreme Court goes on to say, ''But if you, the Congress, want to give them that power, then you have the ability to do so.''

I do not think it is us imposing a ''thou shalt not'' on them. In effect, we are coming to their rescue. It is true, we could be a broader rescue mission than we are currently on. The Senator aptly has pointed out, all we are doing is limiting our rescue mission; all we are saying is we will rescue those towns that have already made the commitment. They had imposed flow control saying everything had to go to this central landfill or central incinerator, and we are saying you can keep it up because you issued bonds thinking the law was the way it was, you did it fairly, and along comes the Supreme Court which says it is against the Constitution. OK, we will come and help you out.

That is what we are doing. We are not doing it, as the Senator is aptly saying, in perpetuity. We are not saying whatever you want to do in the towns is OK. We are limiting it.

But it is not us who said no to them to start with.

Mr. GRAHAM. Mr. President, I say to my friend and colleague, the Supreme Court has clearly stated, as it does in many of these instances, that activities which are violative of the interstate commerce clause can be made constitutionally acceptable if Congress sets the standards and clearly grants the conditions for that authority.

Mr. CHAFEE. Absolutely.

Mr. GRAHAM. Justice O'Connor has stated it quite explicitly that we have that authority, and I am suggesting that prudence would lead us to a position that would say, let us exercise the authority that the Supreme Court has held that we can possess under the Constitution in a way that decentralizes decisionmaking, that lets local communities, with locally elected officials, take into account their local conditions.

For instance, we are about to say to one of the fastest growing communities in my State, Volusia County, which contains cities such as Daytona Beach and Ormond Beach and DeLand—a very rapidly growing area—that they cannot engage in flow control as a means of managing their solid waste in such a way as to give maximum protection to their vulnerable underground water supply.

I do not know why we in Washington feel that we know more about the sensibilities, the economics, the values, the environment, the public health threat of the people in Volusia County than their locally elected officials. What purpose are we serving by being so narrow in our willingness to offer—my State just a few years ago was one of the smallest States in the Union. In fact, we are celebrating our 150th anniversary of statehood. When we came into the Nation in the year 1845, we had only slightly more than 40,000 people. One hundred fifty years later, we have 14 million people. Twenty years from now we will have 19 million people. They are occupying the same piece of property with the same environmental circumstances.

Many communities, about 15 to 20 in my State, have said, ''We need to do a better job of protecting our water supply and inappropriate landfills.'' Here is what we are going to do for the citizens of my community with the support of the citizens of my community through their elected representatives to do so. We are now about to say that everybody who did not get on to that train, authorized flow control prior to May 1994, are going to be forever shut off.

I do not understand what public purpose we are advancing by denying them the right to do so.

Mr. CHAFEE. I do not want to quibble over language, but it is not us saying you are forever shut off. If we did nothing, you could be shut off, if we did not pass a piece of legislation here. What Florida is doing now, plus those who want to do it, they would be shut off. I guess I am just trying to see where is the nonaction—if we did no action, nothing would happen, you would not have flow control.

Mr. GRAHAM. I am going to describe in a moment the dilemma that a person like myself is in, because there clearly is an urgency to act for those 15 to 20 communities which had formed an alliance using flow control and committed themselves to these major environmentally and public health protecting measures. But it wounds and offends me that in the same action where we are protecting the past, we are unnecessarily closing off the future for those communities which today, and certainly in a few years, will be exactly like those that have taken advantage of flow control in order to develop these more environmentally and public health protecting measures.

Mr. CHAFEE. Well, the Senator has a good point. The other side of the coin is that once you permit this, you are permitting communities to set up and operate. That may be all well and good. But BFI, or Waste Haulers, or whoever it is, cannot come in there and offer better, cheaper service, and some citizen in that community is being deprived of choice.

Mr. GRAHAM. You are taking the position that we here in Washington have to be the ''big brother'' to protect 260 million Americans. I do not think that the county commissioners of Broward County, FL, or the city council of Providence, RI, are insensitive to the desires of their citizens. They are the ones who wake up every morning in that community. They are the ones who daily deal with these issues which are, in many cases, difficult balancing questions. Yes, you could have cheaper garbage rates in Broward County if everybody just hauled it to the local hole in the ground and dumped it. But you would also be putting your water supply at risk. And so the commissioners of that community made a judgment that they were prepared to ask their citizens to pay higher garbage fees in order to be able to dispose of their solid waste in a more environmentally appropriate manner. Why should they not be making that decision as opposed to our telling them it is a decision that will be unavailable to them?

Mr. CHAFEE. I think this. First, I am not willing to concede that in Broward or Dade County, or wherever it might be, inevitably, if do you not have flow control, your waste is going to end up in an environmentally damaging situation. That does not necessarily follow. We have all kinds of laws on the books dealing with the handling of waste in this country. And if some other outfit comes in—Waste Management, or whoever it is—and hauls it, they cannot just take it and dump it in some lovely field above a ground water area. They have to dispose of it in a proper way.

But the whole root of what we are dealing with is the commerce clause of the Constitution of the United States, which says that there should be free interstate transportation and movement in our Nation. That has served us pretty well. You might say, ''How petty can you get? Why should Miami, or wherever, not be permitted to handle their waste, and if everybody has to take it to one place, and that is the only place, that is the way we want to run our business?'' But the Supreme Court has said that is against the Constitution. I know we can fix it up, and the Supreme Court, as you pointed out, has also said we can straighten it out. So far, we have chosen not to take that extra step.

Mr. GRAHAM. So we are here, Mr. President, making an important political judgment. We have the range of authority to deny totally flow control authority to anybody, including those

communities which have already utilized it and, in reliance upon it, committed themselves to significant financial obligations. That is an alternative that is available to us.

At the other end of the spectrum, we have the authority to grant a very broad license to local governments and States to utilize flow control.

What we have chosen to do—and I underscore the word ''chosen''—we have selected among options what I will call a targeted grandfather approach, in which we have said that for those who were in business as of May 1994, and a rather tight definition of what you had to be doing in May 1994, all of which is outlined on pages 56 through 58 of the legislation, for a specific duration of time, you shall have authority to use flow control. Everybody else you excluded.

Let me, if I could, complete some examples that would give some context as to this theory of who should decide as to the range of local authority. I mentioned earlier a case of Volusia County, Deland, and the largest city, which is Daytona Beach, a fast-growing area in east central Florida. The county currently does not have flow control. The county was wise a number of years ago when it was able to purchase a large piece of land at a low price and has been, in part because of that, extremely successful in keeping its tipping fees—that is the charges to use the landfill—at a low rate, the lowest in the State, and still provide for an integrated solid waste management system.

At this point, they are not facing any particular competition and, therefore, the county has not had a need for flow control. But the director of solid waste in Volusia County is concerned about the future. The director recognizes that he may not be able to effectively address the public safety issues in our State—the threat of ground water contamination—without the ability to control the waste stream, should a private facility decide to open a facility in the area that undercuts the counties' tipping fees.

In addition, the director of solid waste is concerned about the ability of the county to float bonds in the future when it needs to expand its current facilities. Flow control authority would enable the county to have a stronger bond rating. Therefore, the absence of prospective flow control is a serious concern to this rapidly expanding county in Florida.

The dilemma that I mentioned to Senator CHAFEE that many of us feel is that we recognize the sense of urgency to pass legislation that reempowers those communities which had been using flow control and which had relied upon it. We all agree that we must act quickly to address the financial crisis that those communities are facing now.

Again, I use an example in Florida of Dade County. Dade County a number of years ago, utilizing the State authority for flow control in order to carry out its responsibilities for an integrated solid waste system, set up a series of modern landfills and incinerators. Since the Supreme Court action, which has undercut its ability to use flow control to assure that there was a sufficient amount of solid waste going to these facilities in order to generate enough revenue to pay for the cost of operation, maintenance, and debt service on those facilities, the county has been losing 45 percent of its waste, which equates to $53 to $68 million a year in revenue. Moody's Investors Service has recently downgraded Dade County's solid waste revenue bond from an ''A'' to ''Baa1.'' Moody's specifically stated that the significant diversion of waste to out-of-county facilities undermined the current rate structure and that the lack of a long-term strategy jeopardizes the system's continued ability to meet financial obligations.

The county is also faced with an inability to plan for future capacity and to ensure that recycling goals will be met in the future, that is, future planning has been eliminated due to the severity of the current fiscal crisis.

Half of the bulk waste recycling centers in Dade County have now been closed. These centers used to accept old furniture, appliances, tires, and other materials that could be recycled rather than placed in a landfill.

Dade County had extensive school education programs encouraging young people to become involved in appropriate activities for the disposal of solid waste, especially directed at recycling. Those school programs had to be eliminated because of the financial crisis.

Dade County had an active mulching program which has been dramatically scaled back now to a bare minimum. This program in the past provided mulching services to residents who brought yard waste and tree branches, and the mulch was distributed to homeowners and farmers. Now it goes directly to a landfill so that the county can come closer to meeting its waste level requirements.

Elimination of innovative recycling programs has also been a consequence of this financial crisis. Phone books, high-grade trash, tires, and destruction and demolition debris which used to be recycled are now headed for the landfill.

The clean organic waste composting programs are in jeopardy, due to insufficient waste to implement the plan beyond a demonstration phase.

Those are some of the urgent consequences of the Supreme Court's action for a community which had adopted flow control, and based upon flow control, an integrated solid waste management program. They had incurred very substantial, in the case of Dade County, over $100 million of indebtedness in order to pay for all those facilities.

It is because of communities such as that across America that there is an urgency to pass legislation that will provide for reempowering of those communities to utilize flow control and regain control of an important segment of a traditional local government responsibility.

Mr. President, I am concerned that there is a bleak outlook for communities in the future. There are many other communities which are going to want to do what counties like Dade have already done. That is, utilize flow control.

The ability of the local government to direct where its trash will be stored, as unromantic a function as government could engage in, but an important function which touches the lives of every citizen in the community; to allow the people who are elected in that community to make the judgment as to what is most appropriate to meet the variety of needs in that community.

As I mentioned earlier, when my State came in the Union 150 years ago, it was the smallest, the poorest, and the most remote State in the Union, with a population of slightly more than 40,000. Today it has a population of over 14 million. Twenty years from now, at current growth rates, it will have a population nearing 20 million from its current 14 million.

Are we to assume there will not be a similar set of concerns about protecting our ground water supplies, protecting public health 20 years from now, as there was when these communities that today are engaging in flow control adopted their plans? Clearly, the answer to that is no, there will be a similar need for this type of local control of where trash is disposed of in order to meet local environmental and public health circumstances.

I believe strongly that these decisions should be made at the local level by those elected officials who are closest to the situation. This is not a conflict between government control and free market. In fact, in my State, most of the actual work of solid waste management is done by private firms.

As an example in Hillsborough County, the county seat of which is Tampa, waste energy facility is operated by Ogden-Martin; landfill by Waste Management; BFI operates a majority of the residential recycling program. A wonderful example of a public-private partnership. In Lake County in the center of the State, the waste energy facility is also operated by Ogden-Martin, and the county has franchise agreements to haul solid waste with three different private companies.

This is not an issue of the free market versus government control. It is an example of local communities, through locally-elected representatives, taking control of the responsibility for their destiny, particularly protecting one of the most critical resources of that community, its ground water.

Mr. President, I believe that it is urgent that we pass legislation on this subject. I would hope that before we complete our deliberations that we would think seriously about the restraints that we are imposing—I think, unnecessarily—that we would think about the degree to which we are Federalizing what has been a traditional local responsibility, the decision of where to dispose of garbage.

We are going to continue to be engaged as we have over the past several weeks in some fundamental questions of what level of government should decide important public issues and whether those decisions should be made one time here in Washington or should be made 50, or 500, or 5,000 times at State and local levels.

Earlier today, we passed legislation that changed over two centuries of American law relative to product liability. For two centuries that responsibility was placed at the State level. States had the responsibility to understand their own history, culture, politics, economics, and they make a judgment as to how these matters of civil justice should be resolved.

Colorado is a different State than Florida. South Carolina is a different State than South Dakota. I believe in the proposition that the citizens of those individual States should make judgments as to what is appropriate for them today and in the future.

I strongly feel that that is also true of the issue of how to protect natural resources, and how the disposition of solid waste affects the protection of those resources. The situation is different from a relatively arid State in the West than it is in a subtropical environment in my State of Florida. The situation is different in the State with the peaks of Colorado, from the State that is relatively close to its water supply as we are with our high underground surface water in Florida.

I believe that prudent policy for the future should be as it has been in the past. That it is a responsibility of locally-elected officials who are accountable to the people that elect them, to make a judgment as to what is in the best interest. They would have the same range of choices that we would have, but they would be making it based on their understanding of the specific circumstances in their community.

I think that is intelligent federalism which we should apply to this issue of solid waste disposal in the future, as we have in the past. That it is not appropriate for Congress to make a decision here today that two centuries of American tradition will be overturned, and now we are going to federalize into a single decision here in Washington for all of our States and all of our local communities one answer to the question, of how they can dispose of their garbage.

Mr. President, I think the American people feel we have a lot of important things to be dealing with here in Washington. Clearly, one of those is going to be how to bring the Federal budget into balance.

I would suggest that that is a demanding enough responsibility for Senators to make. We do not have much time left over to decide how Quincy or Greeley will dispose of their garbage. We ought to let the people in Greeley, CO, and Quincy, FL, decide how to dispose of their garbage and put our attention to what the public expects Congress to do—how are we going to balance our budget.

If we allocate responsibilities in that way, I think both the citizens of Greeley, the citizens of Quincy, and the citizens of America, would feel as if we were doing the jobs that they expected the Senate to do, and how we were graded on how well we balanced the budget, would hold Senators to account and how well the county and city commissioners of Greeley and Quincy did their job would be the basis upon which they would be held accountable by their vote.

Mr. President, in conclusion, I appreciate the fact that my friend and colleague, the junior Senator from Rhode Island and the chairman of the Environment and Public Works Committee, accepted the amendments which I offered earlier. I hope that during this process we will give serious attention to the question of, do we really want to federalize the issue of disposal of local garbage? Or would we not be more prudent to accept the invitation of the Supreme Court to allow this to continue to be a responsibility of properly elected State and local officials?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I ask unanimous consent that I be permitted to speak as this morning business.

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

THE PRESIDENT'S TRIP TO RUSSIA

Mr. DASCHLE. Mr. President, earlier today Senator MCCONNELL suggested on the Senate floor that the President's trip to Moscow has been a wasted effort—that there has not been a shred of progress made there. I do not want anyone who may have been listening to that statement to be misled by it, for, in my view, it simply is not accurate. It is important to review the reasons President Clinton went to Moscow and to assess his trip to Moscow—which is not yet over—with those goals in mind.

The President went to Moscow to honor the sacrifices of the Russian people to defeat the Nazis and fascism in World War II. Russians lost approximately 20 million people in that war—more than any other Nation. With the end of the cold war, this is the United States first opportunity to convey our appreciation. Our policy's to seek better relations not only with the Russian Government, but with the Russian people as well to help democracy take root there.

The President also went to Moscow to pursue discussion on key issues. The United States expectations were low, and our progress has exceeded those expectations. Among the accomplishments so far—and I emphasize that the trip continues tomorrow—are:

First, with respect to European Security, the Russians agreed to implement two Partnership for Peace agreements that are important to realize our goal of a comprehensive system of security in Europe.

Second, on the issue of theater missile defenses. The Russians agreed to a Statement of Principles that preserves the ABM Treaty and enables us to proceed with deployment of theater missile defense systems.

Third, the Russians agreed not to provide a gas centrifuge enrichment facility to Iran and to continue to review and discuss the proposed sale of light-water reactors. That review will be through a special group created at the March ministerial meeting of Secretary Christopher and Foreign Minister Kozyrev.

Fourth, President Clinton secured an agreement with respect to nuclear materials to enable both countries to cooperate to ensure the safe storage of nuclear weapons and nuclear weapons materials.

Finally, agreement was reached on a statement to guide economic relations between the two countries that is important to our efforts to keep the Russian economic reforms on track.

So, in my view, a substantial degree of progress has been made with regard to Iran, with regard to the ABM Treaty, with regard to a number of issues relating to European security. And, as I indicated, the trip continues.

That list of substantive accomplishments is impressive; to expect more from one trip is, frankly, unrealistic.

Overall, the progress is indicative of the continuing interest of both countries to cooperate where we can and manage our differences constructively.

We should not judge this relationship or this meeting against an arbitrary scorecard, and we must not forget that this is not the old Soviet Union. This is a process to develop our relationship with the new Russia—again, not just its government, but also its people; to build on the potential that resides within that relationship that must be rooted in democracy and a mature and balanced dialog.

It is an important relationship, and the President is wise to invest in it. I applaud his efforts, and the fact that he has accomplished as much as he has in the last 2 days.

Perhaps President Clinton said it best today:

If you asked me to summarize in a word or two what happened today, I would say that we advanced the security interests of the people of the United States and the people of Russia.

I should also note that, regarding Chechnya, the President spoke out strongly and publicly against Russian action in Chechnya at an event at Moscow State University. He has made clear to President Yeltsin and to the Russian people the United States position. Tomorrow he will meet with opposition leaders and with the family of Fred Cuny, the American aid worker still missing in Chechnya.

So I would say the President certainly went to Russia knowing we have serious differences with Russia, but committed to the essential process of supporting democratic roots and institutions in Russia and developing our relationship with the Russian people. The list of accomplishments is impressive, and the trip continues.

I only hope that in the interest of ensuring the greatest degree of success, at least until he returns, we give him the greatest benefit of the doubt, that we offer him our support, that we send the right message to the Russian people that we stand behind this President as he negotiates, as he continues to confront the many very perplexing issues that we must address in our complicated relationship with the people of Russia and certainly Russian leadership.

So, again, I must say I think in 2 days it is remarkable the President has developed the list of accomplishments he has. I hope we could continue to add to that list in the remaining time the President spends in Russia. It was a trip well spent. It was a trip I think we can look on with some satisfaction. I hope as the President continues to travel we can demonstrate our support for him and for his efforts, and wish him well as he continues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I thank the Chair.

(The remarks of Mr. CHAFEE pertaining to the introduction of S. 789 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question before the body is the substitute amendment reported by the Committee on Environment and Public Works to S. 534. Is there further amendment?

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 754

(Purpose: To express the sense of the Senate on taking all possible steps to combat domestic terrorism in the United States)

Mr. SPECTER. Mr. President, I send an amendment to the desk on behalf of myself, Senator CRAIG, Senator GRASSLEY, and Senator BROWN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] for himself, Mr. CRAIG, Mr. GRASSLEY, and Mr. BROWN, proposes an amendment numbered 754.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) There has been enormous public concern, worry and fear in the U.S. over international terrorism for many years;

(2) There has been enormous public concern, worry and fear in the U.S. over the threat of domestic terrorism after the bombing of the New York World Trade Center on February 26, 1993;

(3) There is even more public concern, worry and fear since the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995;

(4) Public concern, worry and fear has been aggravated by the fact that it appears that the terrorist bombing at the Federal building in Oklahoma City was perpetrated by Americans;

(5) The United States Senate should take all action within its power to understand and respond in all possible ways to threats of domestic as well as international terrorism;

(6) Serious questions of public concern have been raised about the actions of federal law enforcement officials including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms relating to the arrest of Mr. Randy Weaver and others in Ruby Ridge, Idaho, in August, 1992 and Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Taxas, between February 28, 1993, and April 19, 1993;

(7) Inquiries by the Executive Branch have left serious unanswered questions on these incidents;

(8) The United States Senate has not conducted any hearings on these incidents;

(9) There is public concern about allowing federal agencies to investigate allegations of impropriety within their own ranks without congressional oversight to assure accountability at the highest levels of government;

(10) Notwithstanding an official censure of FBI Agent Larry Potts on January 6, 1994, relating to his participation in the Idaho incident, the Attorney General of the United States on May 2, 1995, appointed Agent Potts to be Deputy Director of the FBI;

(11) It is universally acknowledged that there can be no possible justification for the Oklahoma City bombing regardless of what happened at Ruby Ridge, Idaho, or Waco, Texas;

(12) Ranking federal officials have supported hearings by the U.S. Senate to dispel public rumors that the Oklahoma City bombing was planned and carried out by federal law enforcement officials:

(13) It has been represented, or at least widely rumored, that the motivation for the Oklahoma City bombing may have been related to the Waco incident, the dates falling exactly two years apart; and

(14) A U.S. Senate hearing, or at least setting the date for such a hearing, on Waco and Ruby Ridge would help to restore public confidence that there will be full disclosure of what happened, appropriate congressional oversight and accountability at the highest levels of the federal government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held before the Senate Judiciary Committee on countering domestic terrorism in all possible ways with a hearing on or before June 30, 1995, on actions taken by federal law enforcement agencies in Ruby Ridge, Idaho, and Waco, Texas.

Mr. SPECTER. Mr. President, the thrust of this amendment is clear on its face; that is to proceed as promptly as possible, but in a reasonable way, to have as comprehensive hearings as possible in the U.S. Senate on ways to combat terrorism.

Pursuant to that general objective, this Senator scheduled hearings in the Subcommittee on Terrorism, a series of four hearings, with a fifth one planned. The first hearing was scheduled for April 27 on legislation which had been pending dealing with terrorism, with its focus on transnational terrorism but also with some focus on domestic terrorism as it related to FBI counterterrorism strategies. A second hearing was scheduled for May 4, with the subject being technical aspects of the legislation and also to provide an opportunity to the American Civil Liberties Union, the American Jewish Congress, the Irish National Caucus, and the National Association of Arab-Americans to be heard on the civil liberties issues raised by the legislation. The third hearing is scheduled for May 11, which is tomorrow, on the subject of the so-called mayhem manuals on how to make bombs being transmitted over the Internet. A fourth hearing is scheduled for May 18, dealing with Ruby Ridge, ID, and Waco, TX. There is a fifth hearing planned, which we may be able to schedule for May 25, which would deal with the growth of the militia movement around the United States.

The hearing scheduled for April 27 became a full committee hearing and proceeded on that basis. Then Senator HATCH, who is on the floor at the moment—I had notified him that I would be presenting this sense-of-the-Senate resolution at about 6:20, as we are doing at this time—wrote to me saying that he believed the May 18 hearing should not be held as scheduled but ought to be held at some time in the future with a date not specified.

It is my view, Mr. President, that it is a matter of urgent public interest that the hearing be held as promptly as reasonably possible, but in any event that a date certain should be set so

that we do not have the vague and indefinite statement as to when a hearing might be held in the future.

This is a matter which I have been concerned about since the incident in Waco, going back to April 1993. I had requested, shortly after the incident in Waco, that the Judiciary Committee hold hearings on the subject. The response which was given at that time was that hearings ought to be deferred until internal agency investigations were concluded. Once that had happened, other matters overtook the Judiciary Committee, and the hearings have never been held. I pursued the matter last year, however, by inquiring of the Justice and Treasury Departments about some of the conclusions they reached in their internal reports.

There is a great deal of public unrest as to what happened at Waco. There has been a report filed pursuant to an investigation initiated by the Department of the Treasury which was highly critical of the actions of law enforcement officials there. An internal investigation by the Department of Justice found little fault, to characterize it, although the report speaks for itself.

The incident at Ruby Ridge drew a tremendous amount of controversy. A deputy Federal marshal was killed; others were killed. There was a Federal prosecution, and the defendant, Mr. Randy Weaver, was acquitted of the most serious charges in that matter.

As specified in the sense-of-the-Senate resolution, there is substantial public concern that the handling of the Waco incident may well have been a triggering factor in the Oklahoma City bombing, with the Oklahoma City bombing coming on April 19, 1995, exactly 2 years after the date of the Waco incident.

Mr. President, it is hard to emphasize it any more strongly than was said in the sense-of-the-Senate resolution, that regardless of what happened at Waco and regardless of what happened at Ruby Ridge, there was absolutely no possible, no conceivable justification for the bombing in Oklahoma City. But there are those who say that the triggering factor at the Oklahoma City bombing was the failure to have appropriate action taken as to what happened at Waco. The media are full of reports of militias being concerned about what is happening in the Federal Government and fears expressed by many people that the Federal Government will infringe on or abolish the constitutional rights of citizens, including their rights under the second amendment.

I believe that it is incumbent upon the Senate to have hearings on this matter so that there may be assurances of full disclosure—let the chips fall where they may—so that there may be public assurance that the Congress of the United States will exercise its oversight responsibilities and that, if we do not act at least to set a hearing date, that this issue will fester and who knows what the consequences may be.

I certainly do not want to make any predictions or have any self-fulfilling prophecies. But I believe as a U.S. Senator, as chairman of the Terrorism Subcommittee, as a member of the full Judiciary Committee, and also as the chairman of the Senate Intelligence Committee—which could conceivably have jurisdiction over these matters, but I think it is more properly a matter for the Judiciary Committee—that action be taken so that the Congress of the United States, the Senate of the United States, in pursuance of its oversight responsibilities, will do everything that it can to investigate and understand the problem of terrorism and to take all action which it can to respond. If we sit by idly without taking as much action as we can to allay the public concerns which have been expressed, that there has not been appropriate action by the Federal Government to hold accountable the Federal officials who were involved in Waco, TX and Ruby Ridge, ID, that certainly we would be responsible if anything happens in the interim which might be attributable, fairly or unfairly, to our inaction.

There had been reports that the Senate was not acting on Ruby Ridge, ID, because of concerns that there might be some interference with the investigation which is being undertaken by the prosecuting attorney of Boundary County, ID. The prosecuting attorney there, Randall Day, is conducting an inquiry to make a determination as to whether there ought to be a State prosecution of Federal officials.

Having had some experience in that particular line and not wanting to interfere with whatever the prosecuting attorney of Boundary County, ID, might want to do, I called Mr. Day and had an extensive conversation with him. There is no objection on Mr. Day's part for Congress to undertake whatever kind of an inquiry we choose to undertake.

Mr. Day advised me that there is a report by the Department of Justice which he has seen, which is not public, and he has a concern that if that report comes into the hands of potential witnesses that there may be some problem with those witnesses. But that would be unrelated to whatever kind of a hearing the U.S. Senate might want to undertake.

Mr. President, the essence of this resolution is that we move ahead with a hearing on Waco and Idaho, as they are, at least in the minds of many, related to the problems of terrorism in the United States. I personally believe it is totally insufficient to deal with this matter by talking about hearings, as Senator HATCH has said, ''in the near future'' or ''after the House completes its hearings.'' That is a framework which is not sufficiently definable or definite, I think, to address this problem as it should be addressed.

My preference is to proceed with a hearing on May 18. I would be delighted to see that hearing in the full committee, as the hearing was held on April 27, after the original notification and purpose was sent out for a Terrorism Subcommittee hearing. So let there be no mistake, a full committee hearing would accomplish all of the purposes which I have in mind.

But I feel very strongly that we should not stand idly by without having the hearing or at least setting a date for the hearing. That is why the resolution is specifically calling for a hearing on or before June 30, which will at least let everyone out there know that there will be oversight and that the Senate will take action to put all the facts on the table and let the chips fall where they may, so that we will be doing everything in our power to understand terrorism and to curtail it to the maximum extent that we can.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Utah.

AMENDMENT NO. 755 TO AMENDMENT NO. 754

(Purpose: To express the sense of the Senate concerning the scheduling of hearings on Waco and Ruby Ridge in the near future)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 755 to amendment No. 754.

The amendment is as follows:

Strike all after the first word and insert the following:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, to investigate and effectuate (or seek to effectuate) the arrest of Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Texas;

(2) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco and Firearms, to investigate, and effectuate (or seek to effectuate) the arrest of Mr. Randy Weaver and others associated with Mr. Weaver, in Ruby Ridge, Idaho;

(3) The Senate has not yet conducted comprehensive hearings on either of these incidents;

(4) The public interest requires full disclosure of these incidents through hearings to promote public confidence in government; and

(5) The public's confidence in government would be further promoted if the timing of the hearings takes into consideration the need for such hearings to be conducted in an atmosphere of reflection and calm deliberation.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held in

the near future, before the Senate Judiciary Committee, at a time and under such circumstances as determined by the Chairman, regarding the actions taken by federal law enforcement agencies and their representatives in the aforementioned Ruby Ridge and Waco incidents.

Mr. HATCH. Mr. President, as usual, I have a lot of respect for the distinguished Senator from Pennsylvania. I know that his intentions are honorable. He would like to have these matters examined, and I believe that they will be examined.

I have to say that there were 12 Federal law enforcement officers and personnel who were murdered in the Oklahoma City tragedy.

I understand that memorial services for those Federal law enforcement personnel will be held next week. Out of respect for those who were victims, I am reluctant to hold hearings on Waco at this time—although I believe Congress must do so. I have to admit that nobody has been more concerned about the Waco incident and the Ruby Ridge incident than I have been. After all, both States are in close proximity to mine. I have a lot of friends in both States, and there has been a considerable amount of pressure on me to hold hearings in the last month or so, and even before that.

I been frank about the fact that I intend to hold Judiciary Committee hearings. When I heard that the House was going to start hearings on Waco and Ruby Ridge, with the agenda that we have in the Senate, which is a very heavy Judiciary Committee agenda, and also with the occurrence at Oklahoma City, I told people that we will hold hearings but that I would like to wait at least a reasonable time and allow the FBI and other law enforcement agencies to do everything they possibly can to catch, convict, and punish those people who were responsible for the Oklahoma City bombing. It is certainly the most tragic terrorist incident in the history of this country. There are others that I can cite, some of which even involve my own forebears. As people will recall, the Mormon Church is the only church in the history of this country where its members had an extermination order against them, issued by a Governor of one of these States, which extermination order was rescinded by none other than one of our colleagues when he was Governor of that respective State.

I have to say that we will hold hearings and I intend to hold them in a reasonable period of time. They will be held, though at the full committee which is the proper jurisdictional setting, as the full Judiciary Committee has retained jurisdiction over the Department of Justice. This issue is a Department of Justice oversight issue, so the full committee should hold these hearings.

One thing I am very concerned about is pulling any FBI leader off of the Oklahoma City case until they wrap up the investigation. They are making great headway. I am updated almost daily by the Director of the FBI, by people at the Justice Department, people in this administration, and others who are on top of what is happening following the Oklahoma City bombing. And I personally believe we should allow our law enforcement community some time—and it may be longer than the middle of next month or the end of June—for them to use every power at their disposal to resolve the investigation and problems in Oklahoma City.

Now, every time we have one of these hearings—and in this particular case, if we hold a hearing, a Department of Justice oversight hearing on Waco and Ruby Ridge, the FBI Director is going to have to be there. Mr. Potts, who is doing an excellent job of running the investigation on Oklahoma City, is getting accolades from everybody involved in this particular investigation. Were we to hold hearings now, Mr. Potts would have to defer his time from Oklahoma City to prepare for and testify at our hearings up here. And there are innumerable other people who may or may not be involved in hearings, but who need to be on the job in Oklahoma City.

That is why I am reticent to calling these hearings during the month of May, and I am reticent to have a due date of June 30, which is what the distinguished Senator has in his sense-of-the-Senate resolution. I will be happy to do whatever the Senate says. But it is my prerogative as chairman of the Judiciary Committee to determine when these hearings are going to be held. I have to say that I hope that the Senate will take into consideration the importance of the work that is being done to try and uncover the problems and catch those responsible for the Oklahoma City bombing.

I personally think it is the wrong thing to do—to try to push hearings too soon on this matter, under these circumstances at this time.

Now, perhaps there is reason to criticize the Senator from Utah for not having held hearings before the Oklahoma City incident, but the Senator from Utah has been studying these matters and we have people looking into them. We do not feel that we are prepared to hold the hearings at this particular time, and we certainly were not prepared before the Oklahoma City incident. Indeed, much of our attention in the Judiciary Committee has been focused on passing the Contract With America.

I want to share with my colleague from Pennsylvania that I have many friends who are very concerned in my home State and in the State of Idaho, my neighboring State, and in the State of Texas, a State I have a great deal of love and respect for, who are very concerned about the fact that the Waco and Ruby Ridge matters have been allowed to drag on as long as they have. When I heard that the House was going to move forward, I thought to myself, good, let them do it and then we will watch that carefully and we will follow up with hearings, if necessary, to do the necessary things to cover all of the matters that were not covered there or that need to be recovered by Members of the Senate.

There is no desire on my part to avoid holding hearings, no desire to ignore these matters. And there is no desire to fight the distinguished Senator from Pennsylvania on this issue. I will be happy to hold hearings, as I informed the Senator. There will be full committee hearings. The distinguished Senator from Pennsylvania will have every right to participate as a distinguished member of the committee. He is a member whom I respect. But it ought to be done, it seems to me, in a reasonable and a considered way, giving consideration to the pressures on everybody, including members of the Judiciary Committee but, most importantly, on the leadership of the FBI at this particular time. Perhaps they will wrap up the Oklahoma City investigation within the next week or so. I imagine it is going to take more time than that. But they are on their way, and they are making great headway and I do not want to pull anybody off from that investigation at this particular time.

If we did, you never know whether some felon or murderer could slip through and escape or find some way out, or cover his or her tracks or their tracks; we just do not know at this point.

So I encourage my colleague from Pennsylvania to work with me on a resolution that will certainly express the sense of the Senate to hold hearings on this matter but to do so in a timeframe that I think will bring people together rather than split us apart. I would like to do that, and I am humble enough to be given advice and to try and follow it. But in this particular case, I feel very deeply that there is a time to hold these hearings and a time not to. And right now is not the time to do it. I believe probably next month will not be the time to do that as well. I certainly hope that we will hold hearings in a short time and in a reasonable time from this particular date.

So I commend the Senator from Pennsylvania for his desire to do this, for his zeal, and for his interest in trying to resolve wrongs that exist or may exist in this country with regard to these two incidents and any other incident. I also believe that if we are patient and wait until we see the outcome of the investigation of the Oklahoma City bombing—if we wait a short while longer, not only will we help the FBI and others to get the job done, but we may be able to uncover some things that will help us to understand improvements that they are making at the FBI with regard to terrorism. And I have no doubt that we will uncover the truth about whether there is no conspiracy of the Government against the American people, or against the

militia movement, or against individual citizens. We know that there have been mistakes made. In Waco, it was a catastrophe; I have said that publicly, and I cannot remember, but I believe I have said it on the floor. Ruby Ridge was one of the great tragedies of our western lives. I believe that hearings are going to be appropriate and we will hold them.

I hope that we will work this out so that we can work together on it rather than work apart.

Let me just add that I think it is the prerogative of the chairman, to determine when hearings within his committee's jurisdiction will be held. I intend to stand by that position—for a reasonable time but not a definite time—until after I see what happens in Oklahoma City. I do not want to put extraordinary pressure on the FBI at a time when they have extraordinary pressure on them anyway.

Especially with the understanding that Ruby Ridge and Waco will not go away, with the understanding that we are studying those matters now, and trying to figure out what would make the most effective and reasonable and worthwhile hearings on the subject, I feel we can withhold on hearings. I have no doubt that the administration and others with whom my colleague from Pennsylvania has spoken have informed him that if the Senate chooses to hold hearings, they will appear. I cannot, however, believe that they would take the position that hearings at this time, in the midst of the largest criminal investigation in history, are a priority for them.

I commend my distinguished colleague from Pennsylvania for his efforts in trying to move this issue forward. I hope he will work with me on it. If he will, we will get farther than if he does not. If he does not work with me, the Senate will vote on a sense-of-the-Senate resolution—a nonbinding resolution. I will determine when these hearings will be held. I just think it would be flying in the face of good law enforcement, flying in the face of reality, flying in the face of the need to hold hearings which are calm and deliberative, and flying in the face of the people who have died in Oklahoma City, who deserve a resolution to their problem, to hold Waco and Ruby Ridge hearings at this time.

Now, there are people who have died in Waco, and people who have died in Ruby Ridge, both law enforcement people and innocent people in those compounds, and they all deserve to have this matter fully reviewed. I intend to do so. But these are matters which require a comprehensive and full review—not a hurried hearing.

I intend to work with every member of the Judiciary Committee so that every member can have an opportunity to be part of the hearings, to have an opportunity to ask the questions, and hopefully they can during the time that will be allotted. It may take more than one day of hearings. In fact, it will probably take more than one day.

I have the commitment from the Director of the FBI and from the people at Justice that they will cooperate in those hearings. I have discussed with them the need to hold hearings and I have made it clear to them that we will hold them. And they, themselves, have indicated to me that they would like a little bit of time to finish the Oklahoma City matter before they have to divert their efforts and come up here for full-blown hearings before any committee of the U.S. Senate and, I believe, even the House of Representatives.

They will do it if we demand they do it. I just believe there is a time to have them do it. That time is not now, under the circumstances of Oklahoma City.

With that, I offer to work with the distinguished Senator from Pennsylvania and see what we can do to resolve this problem. I stand ready to work with him.

Mr. SPECTER. Mr. President, I ask unanimous consent that Senator KEMPTHORNE be added as an original cosponsor of the resolution.

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

Mr. SPECTER. Mr. President, when the Senator from Utah talks about patience, it seems to me that the American people have been patient long enough, since April 19, 1993. There has been ample time to hold these hearings, long ago.

As I said, I had asked for hearings shortly after the event itself. Had they been held in January or February or March or up to mid-April of this year, we would not be looking awaiting further action on Oklahoma City. It may be that we would not have looked at anything at Oklahoma City at all had the hearings been held earlier.

I do not know that that is so, but I think that when there is a request for patience, I think that there has already been an undue amount of patience on the matter. I do not think that it is impatient to say, ''Do it by June 30.'' That is 41 days from May 10, as we stand here at the present time.

I discussed these hearings with the Director of the FBI, Louis Freeh, who was willing to proceed at this time and has no objection. The Attorney General of the United States has publicly stated that she is prepared for hearings.

When the Senator from Utah offers a resolution that ''hearings should be held in the near future,'' my judgment is that is totally, totally, insufficient.

When he talks about time, and he says we should wait until we ''catch and punish those responsible for Oklahoma City''—punishing them may take a matter of years. Some murder cases languish in the courts for up to 20 years. I do not think he necessarily means that, but if he is talking about waiting for punishment, even a trial would take months or more than a year.

When he talks about awaiting hearings in the House, ''We will wait for the hearings in the House, if necessary to see if we proceed,'' the Senator from Utah is not even talking in a definite way about hearings after the House hearings. We will see after the House hearings, if necessary. I firmly believe that the Senate has an independent responsibility. We do not have to get involved in being a bicameral legislature. We have an independent responsibility to undertake these hearings.

When paragraph 12 of the resolution calls to hearings by the U.S. Senate to dispel public rumors that the ''Oklahoma City bombing was planned and carried out by Federal law enforcement officials,'' that is a statement of the Director of the FBI himself. When Director Freeh was at lunch yesterday in the Republican Caucus he talked about rumors that the Federal Government itself had caused the bombing in Oklahoma City, and that he welcomed the hearings to dispel those rumors.

On two occasions the Senator from Utah has said that it is ''My prerogative''—''My prerogative to decide when the hearings would be held.'' I think that that is customarily the situation. When we schedule subcommittee hearings, however, it is the prerogative of the chairman of the subcommittee to schedule the hearings.

Or, as I said, it would be conceivable to have hearings in the Intelligence Committee which has jurisdiction over terrorism matters. And a good bit of what we are considering now in the Judiciary Committee relates to the deportation or aliens, which is clearly a matter within the jurisdiction of the Intelligence Committee. As chairman, I could schedule them there, if we want to talk about prerogatives, but I have not done so because I think this is really a matter for terrorism as it is defined in the Terrorism Subcommittee of the Judiciary Committee. As I say, I would be glad to see the hearings held in the full committee, as was the hearing on April 27 after the notice had been given by the subcommittee for that hearing.

When we talk about the prerogatives of Senators, I think that is a little excessive, even if the Senators are chairmen, when we have a matter of public interest.

I am a little surprised by the statement by the Senator from Utah, again I wrote this down, that even if the resolution passes, ''I am going to determine when to hold these hearings, unless the Senate orders me.''

I do not know of any procedure for having an order or a mandamus, or direction of that sort under our Senate procedures, but the way we determine the will of the Senate is to have a sense-of-the-Senate resolution, which is what I have offered. It gives a lot of latitude as to when the hearings will be held.

So it is a little surprising to hear that the Senator from Utah is going to determine when to hold the hearings,

whatever the sense of the Senate may be, unless the Senate issues some kind of an order. I know of no such procedure for such an order.

Mr. President, I am very much concerned about the officers, the Federal officials, who were murdered in Oklahoma City. I think every American is. I know the area very well.

I went to the University of Oklahoma, which is in Norman, 20 miles away, and have a lot of friends in Oklahoma City. It is a catastrophe of the first order. I think that we can best serve the public interest and best pay our respect to the victims in Oklahoma City and best pay our respect to victims of terrorism everywhere if we act and if we do what we can to clear the air on any notion which may be current in the country that there has been a coverup by the Federal Government, or a failure to act or a failure to look into what happened in Waco and Ruby Ridge.

I think this resolution is a very reasonable approach to the issue, deferring from the date of May 18, which the subcommittee has set, and deferring to the full committee. It is not a matter of who conducts the hearings. Let the full committee do it. But let us do it with reasonable promptness.

I think it is important that we not talk about personal Senatorial prerogatives or about being ordered to do something, not talk about conduct them ''if necessary,'' after the House holds it hearings, or not talk about the vagaries of the near future. We need to set a time when at least we will let all Americans know we are going to move ahead, we are not stonewalling, and although we are not having the hearing on May 18, we will at least set a date that will give public assurance—that we will give the public assurance that we will let the chips fall where they may and there will be accountability in America regardless of how high the officials may be.

Mr. CRAIG. Mr. President, I strongly support the call for hearings into the Federal Government's handling of standoffs in Naples, ID and Waco, TX.

Some of my colleagues may remember I have been pushing for many months to get the Government to tell what it knows about the incident in my home State—often referred to as Ruby Ridge. I asked for an investigation of the incident, which was done; I pressed for release of the reports of that investigation, which is presently awaiting the consent of the local Idaho prosecutor; and in January, I asked for hearings in the Senate.

Government agents have already been disciplined for acts and failures to act at Ruby Ridge. Just a few weeks ago, the Deputy Attorney General released a list of problems that she thinks occurred there and asked the heads of three agencies to report how they are addressing these problems.

Yet there still has not been any public accounting as to what happened, nor answers to the questions that continue to multiply.

Mr. President, the public has a right to know. The Senate should hold hearings into this matter and into the handling of the Waco standoff, as well.

There are some who have suggested that now is not the time for these hearings. They say we should wait until Oklahoma City recovers, or until the polls show a more favorable political climate in the country, or some other goal is met.

At the same time, we have been hearing a lot in the press and even in this Chamber about the public's so-called ''paranoia''—fear and mistrust of the Federal Government that is being labeled as irrational.

I should not need to remind my colleagues: fear breeds in ignorance. Mistrust is fueled by rumor. The worst thing this Congress could do to improve the situation would be to put these issues on the shelf or try to drive public discussion underground.

That is not the way a responsive, and responsible, representative body should operate. We depend upon our State and Federal authorities to maintain order and keep the peace, and we trust they will do so in a way that is consistent with the law and in keeping with the trust we have placed in them. Sometimes a line is crossed that runs the risk of breaking the trust and confidence Americans have place in our Federal law enforcement community.

Many across America fear such a line was crossed at Waco and at Ruby Ridge. That fear has only increased, not decreased, as the days and months have passed without an adequate Congressional response.

Surely everyone in this Congress would agree that it would be helpful to have answers to these questions before we respond to Federal law enforcement requests for greater powers and resources. Hearings in this area may well point out areas where additional help is needed; conversely, they may point out areas where additional powers may contribute to the potential for abuse. And if Congress deserves to know the answers to these questions before making such an important policy determination, surely the public also deserves it.

Mr. President, it serves neither the law enforcement community nor the interests of civil liberties or delay addressing these incidents. We should hold hearings and seek answers to the legitimate questions that have been raised—and we should do it now, rather than allow the cancer of suspicion and mistrust to grow.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator's amendment is currently not pending for those purposes. It takes unanimous consent to order the yeas and nays on your amendment, Senator.

Mr. SPECTER. Mr. President, I ask unanimous consent that my amendment be considered as a freestanding resolution which, as I understand from the Parliamentarian, is permissible.

The PRESIDING OFFICER. It does take unanimous consent.

Mr. SPECTER. I ask unanimous consent it be considered as a freestanding resolution.

The PRESIDING OFFICER. In my capacity as a Senator from Minnesota, and acting as Chair, I do object.

Objection is heard.

Mr. SPECTER. I ask unanimous consent that the yeas and nays be ordered.

The PRESIDING OFFICER. Is there objection that it be in order to order the yeas and nays at this time?

Is there a sufficient second?

There is clearly not a sufficient second.

Mr. SPECTER. All Senators on the floor are voting in favor of the yeas and nays.

Come on now, Mr. President, I have seen the yeas and nays ordered with one Senator on the floor asking for the yeas and nays constituting a sufficient second.

The PRESIDING OFFICER. According to the Parliamentarian, a minimum of 11 Senators need to be on the floor for a sufficient second.

Mr. SPECTER. Parliamentary inquiry, Mr. President. Will the Parliamentarian represent that the yeas and nays have not been ordered in any case he has seen where fewer than 11 Members of the Senate have asked for the yeas and nays?

The PRESIDING OFFICER. Senator, there is not a record kept of that, according to the Parliamentarian. So the information would not be available.

Mr. SPECTER. I ask for his best recollection but not necessarily a record, Mr. President.

Mr. President, I ask unanimous consent that the yeas and nays be ordered.

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

The yeas and nays were ordered.

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

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

CLOTURE MOTION

Mr. SPECTER. Mr. President, I send a motion to invoke cloture on the pending matter 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 legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby

move to bring to a close debate on the pending committee substitute amendment to S. 534, the solid waste disposal bill.

John H. Chafee, Bob Dole, Bob Smith, Jim Jeffords, Hank Brown, Kit Bond, Orrin Hatch, Spencer Abraham, Jon Kyl, Larry E. Craig, Kay Bailey Hutchison, Trent Lott, R.F. Bennett, Pete V. Domenici, Dirk Kempthorne, Jesse Helms.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted:)

PRODUCT LIABILITY FAIRNESS ACT

Mr. DODD. Mr. President, today the Senate passed the Product Liability Fairness Act, which I have cosponsored, by an overwhelming vote of 61–37. For those of us who have been working on this issue for a long time—my involvement dates back to 1985—this is an historic day. With passage of this balanced measure, we have taken a huge step toward improving the product liability system for everyone—for the injured people who need fast and fair compensation, for consumers who need quality products to choose from, for those American businesses who are at the cutting edge of international competition, and for workers who depend on a strong economy to support their families.

I commend Senator ROCKEFELLER and Senator GORTON, and their staffs, for their heroic efforts on this measure. From drafting the legislation, to skillfully guiding it through a lengthy debate on the Senate floor, they have worked extremely effectively. Their success is reflected in the broad bipartisan coalition that supported the bill.

I also commend Senator LIEBERMAN, my colleague from my home State of Connecticut. He authored an important section on biomaterials. That provision is designed to ensure that manufacturers of life-saving and life-enhancing medical devices have access to raw materials. In recent years, the supply of raw materials has been threatened by litigation. This is a critical problem, and I commend Senator LIEBERMAN for crafting a promising solution.

Of course, like any compromise, this bill will not please everyone in all respects. I had drafted, for example, an amendment providing a different approach to punitive damages. under my amendment, the jury would determine whether punitive damages are appropriate, and the judge, guided by certain factors, would determine the amount. That procedure, in my view, offers a better approach to punitive damages than one which provides limits, or caps. Senators ROCKEFELLER and GORTON incorporated some aspects of my proposal in the final provision, and I appreciate their efforts on this difficult issue.

The final version of this bill does not contain a provision that I have supported in the past—the Government standards defense. One aspects of that defense, related to approval of drugs and medical devices by the Food and Drug Administration, was passed by voice vote in the House and will, I understand, be considered in conference. I ask unanimous consent that a number of letters supporting this provision be printed in the RECORD at the end of my remarks. As these letters point out, inappropriate punitive damages have convinced many corporate researchers to avoid the search for safer and more effective drugs.

Once again, I commend my colleagues, particularly Senators ROCKEFELLER and GORTON, for their bipartisan efforts on the Product Liability Fairness Act.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
Washington, DC, April 25, 1995.

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

DEAR SENATOR DODD: As a physician volunteer, I treat AIDS patients at the Whitman-Walker Clinic. The suffering that I see—and the threat of an ever-wider epidemic—convince me that the greatest gift anyone could give to society would be an AIDS vaccine. If I were the chairman of a philanthropic foundation, I would invest every dollar in vaccine research.

However, if I were CEO of a pharmaceutical company, knowing that the investment in my company represented the retirement and college savings of many of my stockholders, I wouldn't touch AIDS vaccine research with a ten-foot pole—until the liability issue has been successfully addressed.

Even the safest, most widely accepted vaccines entail risks—and potentially bankrupting liability burdens. Childhood vaccines are available in adequate supply only because Congress passed the Childhood Vaccine Compensation Act. This came about only because several manufacturers got out of the business of manufacturing childhood vaccines due to liability concerns—raising fears of a dangerous scarcity.

In 1975, a man who got polio after changing his baby's diaper sued the manufacturer of the Sabin polio vaccine, which the baby had received. The risk of polio transmission was known, but small—about 1 in 1 million. Nevertheless, the jury awarded punitive damages. The award was later reversed, but only by the narrowest possible margin. The very fact that such a widely acclaimed health advance could expose a manufacturer to punitive damages would certainly give pause to any manufacturer considering research on an AIDS vaccine—which entails special liability risks.

With a preventive AIDS vaccine, people who are vaccinated will probably turn HIV positive—with all the social stigma and threat of job loss or insurance loss that this involves. There is a risk that a very small number of people will get AIDS from the vaccine. Additionally, there is the risk that the vaccine won't ''take'' in all cases and that some people who think they are protected may engage in risky behavior and come down with AIDS. All of these eventualities could result in lawsuits.

In the case of therapeutic vaccines for people who already have the disease, it would be very difficult to distinguish the symptoms of AIDS from any side-effects of the vaccine. And people with AIDS, prodded by unscrupulous lawyers, might easily be tempted to sue vaccine manufacturers.

Unless the liability threat is alleviated—at least by exempting manufacturers of FDA-approved products from punitive damages—developing an AIDS vaccine is decidedly a ''no-win'' proposition. This is outrageous, unfair, tragic—but true.

Sincerely,

JOHN D. SIEGFRIED, M.D.

MAY 2, 1995.

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

DEAR SENATOR DODD: We are writing to ask that you vote in favor of a proposal that we believe will have a positive effect on research and development of new medicines and medical devices. American innovation is in trouble in the courts particularly in the high risk areas of reproductive health. Liability fears have caused the withdrawal of new drugs and medical devices that the Food and Drug Administration (FDA) considers safe and effective. We understand that when S. 565, the ''Product Liability Fairness Act of 1995'' is considered on the Senate floor, an amendment will be offered that would prevent juries from second-guessing the FDA's scientific decisions that a drug is safe insofar as punitive damages are concerned.

The proposed FDA-approval defense to punitive damages would establish a defense to punitive damages in tort actions involving drugs or devices approved by the FDA and subject to FDA regulation. The defense would apply only to punitive damages, and would not be available to a manufacturer that has withheld or misrepresented information to the FDA, including all required post-approval disclosure of unexpected adverse effects.

In the past twenty years, most companies have halted U.S. research on contraceptives and drugs to combat infertility and morning sickness. As a case in point, Bendectin, a morning-sickness drug, was removed from the market by its manufacturer in 1984 after more than 2,000 lawsuits were filed claiming it caused birth defects. Merrell Dow has spent over $100 million defending those suits and is still doing so. Even though almost every court which has looked at the issue has determined that there is no scientific evidence to support the contention that the drug causes birth defects, and even though Bendectin is still approved by the FDA for use in pregnancy, no manufacturer will risk making a morning sickness drug.

The 1970s brought more litigation over oral contraceptives than any other drug. In the early 1970s, there were 13 companies doing research and development on contraceptives. Eight of these were American. Today there are only two major U.S. companies doing such research. In 1990, a distinguished panel of scientists put together by the National Academy of Sciences noted that due to fear of lawsuits, the United States is decades behind Europe and other countries in the contraceptive choices it offers women.

In early 1994, because it had spent tens of millions of dollars defending against suits by people claiming injury from tempero-mandibular joint implants, DuPont announced it would no longer make polymers available to the medical device industry in the United States. These polymers are used in artificial hearts, pacemakers, catheters, hip and knee prostheses, and a host of other implantable devices. We have not even begun to feel the full impact of that decision.

The Senate is taking advantage of an unprecedented opportunity to fix a flawed product liability system. We ask that you include

a reform that will encourage the development of better medical products without impairing the ability of people who are injured from recovering just compensation.

Sincerely,

NANCY SANDER,
Allergy and Asthma Network/Mothers of Asthmatics, Fairfax, Virginia.

PATRICIA TOMPKINS,
National Black Nurses' Association, Washington, DC.

DOROTHY I. HEIGH,
National Council of Negro Women, Inc., Washington, DC.

ADELE BAKER,
Wright, Robinson, McCammon, Osthimer and Taturn, Washington, DC.

SUSAN WALDEN,
Renaissance Women Foundation, Washington, DC.

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION,
Washington, DC, May 1, 1995.

DEAR SENATOR: As the Senate considers S. 565, ''The Product Liability Fairness Act of 1995,'' we urge you to support a provision known as the FDA defense. With the FDA defense, companies would not be held liable for punitive damages in a lawsuit if the drug or medical device involved received pre-market approval from the FDA, and if the company fully complied with the FDA's rigorous requirements, which include specifying the warnings that companies must provide about their products and furnishing post-market reports on adverse reactions.

As an organization dedicated to expanding medical research and increasing access to products that can improve women's reproductive health, we know firsthand the extent to which the current liability system is impeding these important goals. In 1990, a distinguished panel of scientists put together by the National Academy of Sciences noted that due to U.S. Pharmaceutical companies fear of lawsuits, the United States is decades behind Europe and other countries in the contraceptive choices it offers women. An FDA defense would begin to turn the tide on this disturbing trend by encouraging research and development of products women need without impairing the ability of women who are injured by drugs and medical devices to recover just compensation.

We are deeply distressed that opponents of reform are mounting a fear-based campaign directed at women as their strategy to block change. A great deal of misinformation has been circulated concerning the impact of the FDA defense on women. We certainly recognize that women have had a painful history with medical products, such as DES and the Dalkon Shield, which have caused tragic injuries to women and their children. Opponents of an FDA defense are mistaken, however, in claiming this provision would have prevented plaintiffs from collecting punitive damages in these cases. In fact, the Dalkon Shield was on the market before the Medical Devices Amendment was adopted in 1976, and thus, was never approved by the FDA. As for DES, various manufacturers involved are alleged to have defrauded or withheld information from the FDA, and therefore would not be covered by the FDA defense.

The FDA defense would allow plaintiffs to obtain full compensatory damages and non-economic damages, including medical costs, lost wages, loss of functioning, and pain and suffering. We would not support the FDA defense if limited a plaintiff's ability to obtain full compensatory and non-economic damages in any manner. The FDA defense would limit only punitive damages. Also, the FDA defense would not be available to any company that is found to have lied or withheld information from the FDA or otherwise failed to comply with FDA rules.

The FDA defense is crucial given the current legal climate. A quick review of recent events clearly points out the impact of current policies. During the 1970s, there were 13 companies doing research and development on contraceptives. Eight of these companies were American. Today, only two American companies continue to conduct such research.

Given the current legal climate, it is easy to understand why companies are increasingly reluctant to make available products, despite their known therapeutic value. Two cases in point:

Bendectin, a morning sickness drug that was taken by over 30 million American women, was removed from the market by its manufacturer in 1984, after more than 2,000 lawsuits were filled claiming it caused birth defects. The manufacturer has spent over $100 million defending those lawsuits and is still doing so. Even though almost every court that has looked at the issue has determined there is no scientific evidence to support the contention that the drug causes birth defects, and even though Bendectin is still approved by the FDA for use during pregnancy, no other manufacturer will risk making a morning sickness drug.

Norplant, one of the most significant contraceptive developments of the past 20 yeas in the United States, was approved by the FDA in 1990. It is now the target of numerous cookie cutter, mass-produced class action lawsuits fueled by sensationalism and slick advertising directed at women. Despite the fact that Norplant continues to be supported by the medical community—as recently as a March 1995 endorsement by the American Society for Reproductive Medicine—many women have been driven by unwarranted fears away from a safe and effective contraceptive product.

Punitive damages are meant to punish willful, flagrant, malicious or grossly illegal behavior. A company that has compiled in good faith with the FDA's regulations cannot be guilty of such behavior and should not be threatened with punitive damages. Nor should juries be permitted to second-guess the expert judgment of the FDA on whether the benefits of a drug outweigh the risks.

Increasingly, the legitimate concerns for the health and welfare of American women are being sidelined in the pursuit of large financial settlements. It is our view that inclusion of a FDA defense, similar to the one included in the House-passed product liability bill, would provide a much needed incentive for increased investment in women's health research and technologies. We believe this is a measured response and we urge you to adopt an FDA defense in any final product liability legislation.

Sincerely,

JUDITH M. DESARNO,
President/CEO, National Family Planning and Reproductive Health Association.

PHYLLIS GREENBERGER,
Executive Director, Society of the Advancement of Women's Health Research.

DENNIS BARBOUR, J.D.
President, Association of Reproductive Health Professionals.

LINDA BARNES BOLTON, DR. P.H., R.N, FAAN,
President, National Black Nurses' Association, Inc.

SUSAN WYSOCKI, RNC, NP,
President, National Association of Nurse Practitioners in Reproductive Health.

MAY 1, 1995.

HON. CHRISTOPHER J. DODD,
SR–444 Russell Senate Office Building, Washington, DC.

DEAR SENATOR DODD: We have been asked to convey our views with regard to an amendment to H.R. 956, the Product Liability Fairness Act, to establish a defense to punitive damages for FDA-approved drugs and devices. Each of the undersigned has served at some time as Chief Counsel to the Food and Drug Administration. Each of us, in our current professional capacities, advises firms engaged in the manufacture of drugs and devices. However, the views expressed in this letter reflect our shared personal judgment.

The proposed defense to punitive damages for the marketing of medical products that meet applicable federal regulatory requirements makes eminent sense as a matter of public policy and can be expected to facilitate the development and continued availability of important products to treat and prevent serious disease and to address other significant health concerns. We describe below FDA's philosophy of new drug regulation and its powers in this area, which, we believe, strongly support the defense.

FDA exercises sweeping authority over the development, manufacture, and marketing of pharmaceuticals. Indeed, no other industry in this country is subject to such a comprehensive regulatory scheme. Pursuant to its statutory mandate, FDA requires premarket approval of all new drugs. A new drug may not be approved unless it has been shown to be safe and effective under the conditions of use described in its labeling.

In making their approval decisions, FDA physicians and scientists employ a risk-benefit standard. This standard recognizes that all drugs have unavoidable risks, some of them very serious. Therefore, FDA allows drugs onto the market only when the benefits from using a drug outweigh those risks. A drug's labeling is an important factor in making the approval decision. Once a drug is available, the treating physician, apprised of the recognized significant risks of a drug, can make an informed decision whether a drug is appropriate for use in a particular patient.

Inevitably, not all of the risks from a drug can be discovered prior to approval. While manufacturers are required to conduct extensive clinical trials, often in thousands of patients, some adverse events are so rare that they emerge only after a drug is in widespread use after approval. FDA therefore requires manufacturers to report all adverse events to the agency. The most serious of these must be reported within 15 days. FDA and the Justice Department have vigorously enforced the adverse event reporting requirements through a series of widely publicized criminal prosecutions.

FDA has the power to act swiftly and decisively when postmarket surveillance does identify a safety issue. The Secretary of Health and Human Services can immediately suspend approval of a drug that poses an imminent hazard, prior even to granting the manufacturer a hearing. FDA also can compel labeling changes to incorporate new safety information. As a practical matter, formal action under any of these authorities is rarely necessary because, in our experience, companies generally comply voluntarily with agency requests.

With this context, the desirability of the punitive damages defense is readily apparent. Where manufacturers have complied with all of FDA's approval, labeling, and safety reporting requirements, they should not be open to punishment through the imposition of punitive damages. This defense does nothing to restrict the availability of

compensatory damages. Injured persons will still be made whole for their losses under the law. And they will even be able to recover punitive damages in cases where their injuries were caused by violations of FDA regulations. The defense simply recognizes—as a clear rule—that manufacturers who comply with FDA's comprehensive regulatory process do not manifest the type of willful misconduct that could merit punitive damages.

While we recognize that the imposition of punitive damages is a comparatively rare (but by no means unknown) event, the threat of punitive damage awards skews the entire litigation process and, with it, the process for developing new drugs and making them available to the public. Pharmaceutical manufacturers have withdrawn beneficial products from the market and have ceased promising research because of this threat. Congress is now in the position to remove this obstacle and thereby to make a genuine contribution to the public health. We therefore urge you to support the FDA approval amendment to H.R. 956.

Sincerely,

THOMAS SCARLETT,
Hyman Phelps & McNamara, Chief Counsel—1981–89.

NANCY L. BUC,
Buc Levitt & Beardsley, Chief Counsel—1980–81.

RICHARD A. MERRILL,
Covington & Burling, Chief Counsel—1975–77.

RICHARD M. COOPER,
Williams & Connolly, Chief Counsel—1977–79.

PETER BARTON HUTT,
Covington & Burling, Chief Counsel—1971–75.

CONGRATULATING SENATOR DOLE ON THE EISENHOWER LEADERSHIP PRIZE

Mrs. KASSEBAUM. Mr. President, last night my colleague from Kansas, Senator DOLE, received the prestigious Eisenhower Leadership Prize in recognition of his distinguished service to the United States. I have long admired Senator DOLE for his leadership and dedicated service and am pleased that the Eisenhower World Affairs Institute and Gettysburg College recognized him with such a high honor.

This prize is made all the more notable because Dwight D. Eisenhower, the award's namesake, is a fellow Kansan and Senator DOLE's hero. I add my voice to the many who congratulate him on this honor and ask unanimous consent that the remarks Senator DOLE gave last night be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

I want to thank the Trustees of The Eisenhower World Affairs Institute and Gettysburg College for this honor.

I am truly humbled to receive this award. And I thank the Awards Committee for dipping down in the military ranks. The first Leadership Prize went to General Scowcroft. The second to General Colin Powell. Last year you honored Major Lloyd Bentsen. And this year, you're down to Lieutenant Bob Dole. I guess there's still hope for all you Privates out there.

A special word of thanks to my colleagues from the 10th Mountain Division who joins us this evening. I've always wondered why they assigned a kid from the plains of Kansas to the 10th Mountain Division. But I've never wondered about the men I served beside. You are all heroes in my book.

A few years back, the 10th Mountain veterans formed a national association. Over the years, there have been five Presidents of the Association, and I am honored that all five are here this evening. At least they got to be President of something.

I am also honored by the presence of many friends and colleagues of President Eisenhower and of several members of the Eisenhower family.

I have been privileged to get to know John on several occasions—including the Eisenhower Centennial in Abilene in 1990, and a few years ago in the Capitol when we unveiled the sign which marks the Eisenhower Interstate Highway System.

Elizabeth and I are very proud to call David and Julie Eisenhower our friends. We've also had the pleasure of meeting their children, and can tell you that David and Julie are as good as parents as they are authors.

And Mary Eisenhower Atwater was the one who came to my office last year to inform me of my selection as the recipient of this prize. The only promise I had to make to her was that my acceptance remarks would be brief.

In fact, I am tempted to do this evening what Ike did one evening when he was President of Columbia University. At the end of a long evening of speeches, Eisenhower's turn came. After being introduced, he stood up and reminded his audience that every speech, written or otherwise, had to have a punctuation. He said, ''Tonight, I am the punctuation. I am the period.'' And he sat down. He later said that was one of the most popular speeches he ever gave.

It is a bit intimidating to talk about President Eisenhower and his legacy before family members and friends and who knew him much better than I.

I can say, however, that, like countless Kansans and countless Americans, I not only ''liked Ike,'' I regarded him as a hero. I will never forget the first time I saw him. It was the spring of 1952. I had just finished law school, and was serving in the Kansas House of Representatives. General Eisenhower had come home to Abilene to officially launch his Presidential campaign, and I was in the rain-soaked audience that greeted him.

That campaign was, of course, wildly successful. And I took it as a good omen that my official announcement in Topeka on April 10 had to be moved indoors because of rain.

I did have the privilege of meeting my hero on several occasions during his lifetime, but the truth is I knew him no better than the countless soldiers who called him our general, and the millions of Americans who called him our President.

Eisenhower succeeded as a soldier and as a President for many reasons. Intelligence. Courage. Honesty. Leadership. The ability to place the right people in the right spots. These were all qualities Ike possessed.

But as I look at the Eisenhower statue in the reception area of my Capitol office, or the painting of Ike that hangs behind my desk, one word often comes to mind. And that word is ''Trust.''

Ike inspired trust as no leader has before or since. Millions of Americans may have voted for Adlai Stevenson in 1952 and 1956, but everyone trusted President Eisenhower to do what was best for America.

And there's a simple reason why America's citizens trusted Ike. And that's because he trusted America's citizens. Don't get me wrong. President Eisenhower believed in government—our Interstate Highway System is proof of that. But, moreover, Ike believed in citizens. He believed in the wisdom of the American people.

When Ike looked at America's people he saw himself. According to David Eisenhower, the title that meant the most to his grandfather was not ''Supreme Commander,'' or ''President;'' rather it was the simple title that all Americans share: The title of ''citizen.''

And David reminded me of a speech Ike made in London the month after VE Day. Ike said, ''To preserve his freedom of worship, his equality before law, his liberty to speak and act as he sees fit, subject only to provisions that he trespass not upon similar rights of others—a Londoner will fight. So will a citizen of Abilene.''

Throughout World War II, Ike saw himself as someone who would do what any American citizen would do when freedom was at risk. And throughout his Presidency, Ike spoke of how all of us shared with him the responsibility of guiding our country.

As Ike said in his first Inaugural address, ''We are summoned to act in wisdom and in conscience, to work with industry, to teach with persuasion, to preach with conviction, to weigh our every deed with care and with compassion. For this truth must be clear before us: Whatever America hopes to bring to pass in the world must first come to pass in the heart of America.''

What do those words mean in the America of 1995? I believe they mean we should rededicate ourselves to remembering the duties of citizenship: To keep informed and to become involved in the decisions that affect the life and future of all the citizens of our country.

And they also mean that government should trust the American people with decisions that matter most—the decisions that affect their families and their businesses.

To be sure, the 1950's weren't perfect. And as we look to the 21st century, we should not seek to return to those times. But what I hope America can return to is a relationship of trust between the people and their government. And if that's to happen, then we must rein in the federal government. It's too big, too intrusive, and makes too many decisions. I carry a copy of the 10th Amendment with me wherever I go. It's only 28 words long. And it basically states that all powers not specifically delegated to the federal government should be given to the states, and to the people. Dusting off that amendment, and restoring it to its rightful place in the Constitution is my mandate as Majority Leader, and I like to think that it's a mandate that Ike would have heartily endorsed.

Perhaps Ike said it best when he responded to those who were urging bigger and bigger government, all in the name of providing Americans with security.

''If all that Americans want is security, they can go to prison,'' Ike said. ''They'll have enough to eat, a bed, and a roof over their heads.

But he went on to say that citizens want more than security. We also want freedom. We want dignity. We want control of our lives. We want our government to trust us. And the lesson that Ike taught us is that if the American people believe our government trusts us, then we will trust our government in return.

Americans also trusted Ike because he trusted us with the truth. As Supreme Commander, Ike never hid the truth from his soldiers. If a mission was dangerous * * * if some wouldn't be coming home, then Ike laid it on the line. And, with his Kansas candor, he spoke about issues that many in Washington today shy away from. One of those was the federal budget.

How much stronger our country would be if our leaders took to heart the prophetic words that Eisenhower spoke in his 1961 farewell address to the American people:

Ike said, ''As we peer into society's future, we must avoid the impulse to live only for today, plundering for our own ease and convenience the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, and not to become the insolvent phantom of tomorrow.''

As always, Eisenhower matched his words with actions. There have been four balanced federal budgets in the last half century. And Ike gave us three of them. He knew that it was easy to be popular. It is easy to say ''yes'' to every federal program. But he also knew that more important than being popular for a moment is to provide leadership that stands the test of time.

Along with trusting the American people, Ike also trusted the values that built our country, and that were instilled in him by his parents in Abilene. Values like hard work. Honesty. Personal responsibility. Common sense. Compassion for those in need. And, above all, love of family, God, and country.

These are the values that built America, and they are values that must never go out of fashion, or be regarded as ''politically incorrect,'' by our government or by those in our entertainment industry.

Along with trusting our citizens, and trusting our values, there's one final lesson about trust that Eisenhower's life and career can teach us. And that's the fact that the world must always be able to count on American leadership.

And that's a lesson I hope we especially remembered yesterday, the 50th anniversary of VE Day. It was American leadership that built the arsenal of democracy which made that victory possible. It was American leadership that held the Allies together during the darkest days of the war. And it was American leadership which conquered the forces of tyranny and restored liberty and democracy to Europe.

Make no mistake about it, leadership carries a price. It did during World War II. It did during the Eisenhower Administration. And it does today. But it is a price worth paying. As Ike said in his Second Inaugural Address, ''The building of * * * peace is a bold and solemn purpose. To proclaim it is easy. To serve it will be hard. And to attain it, we must be aware of its full meaning—and ready to pay its full price.

And Ike never forgot just what that full price meant. He said that whenever he returned to Normandy after the war, his foremost thoughts were not with the planes and the ships or the guns. Rather, he said, ''I thought of the families back home that had lost men at this place.''

I was privileged to walk the beaches of Normandy and to return to the hills of Italy where I saw action during the D-Day commemorations last June. And I, too, thought of the families back home that had lost men, and how we must never forget the cause for which they fought and died. And the only way to ensure that future generations of Americans will not be buried on foreign land, is to continue to provide leadership whenever and wherever it is needed.

Ladies and gentlemen, I am honored by the confidence bestowed in me through this leadership award and will do my best to meet the high expectations left by the legacy of Dwight Eisenhower.

In closing, I want to share with you a few more words of this American hero—and they were words he spoke on that rainy day in Abilene 43 years ago.

Returning home led Ike to think about growing up in Kansas, and he said ''I found out in later years we were very poor, but the glory of America is that we didn't know it then: all that we knew was that our parents * * * could say to us, ''Opportunity is all about you. Reach out and take it.''

By working together and trusting one another, we can ensure that for generations yet to come, America's parents will still be able to say those words to their sons and daughters. This is what we owe to the memory of people like Dwight Eisenhower and all the GIs of World War II we remembered yesterday. But ultimately, we owe it to ourselves, to our children, and to the future of the country we love.

FREEDOM SHRINE FOR THE HOT SPRINGS VA MEDICAL CENTER

Mr. PRESSLER. Mr. President, an exciting event recently took place in the southern Black Hills of South Dakota. The Freedom Shrine, a collection of documents from U.S. history, was dedicated at the Hot Springs VA Medical Center in Hot Springs, SD.

I commend Maurice Wintersteen, the Exchange Club of Rapid City, and Hot Springs VA Director Dan Marsh, for their efforts to bring the Freedom Shrine to Hot Springs. Late last year, Maurice Wintersteen approached the Exchange Club of Rapid City about sponsoring a freedom shrine in the local VA Hospital. The Exchange Club of Rapid City agreed to his request, and Director Marsh threw his full support behind the project.

As a result of their dedicated efforts, the Freedom Shrine became a reality and was placed in the rotunda of the VA Domiciliary Building. The Freedom Shrine displays reproductions of 28 historic American documents, including the U.S. Constitution, President Lincoln's Gettysburg Address, and President Kennedy's Inaugural Address. It is my understanding the Hot Springs VA Hospital is the only VA facility in the Nation to have such a freedom shrine.

It is very fitting that the Freedom Shrine was dedicated on the 50th anniversary of the death of President Franklin Roosevelt—the man who led a worldwide alliance against a tyranny that threatened freedom-living people throughout the world. The Freedom Shrine serves as an essential reminder to all Americans that the freedom we enjoy today is the direct result of the enormous effort and sacrifice of our forefathers, from the pioneers who first settled the Nation, to the veterans who gave their lives to defend it and the values we stand for. We must never forget the precious gift they gave us. It is ours to preserve for future generations.

Inspired by the Freedom Train that toured the United States with American historical documents after the Second World War, the National Exchange Club resolved to display documents from U.S. history in communities throughout the Nation so that Americans of all ages would have easy access to the rich heritage of their past. Since 1949, many freedom shrines have been installed by exchange clubs in various communities across the Nation, Puerto Rico, and at American outposts around the world. From State capitols to U.S. warships, and hundreds of schools across the Nation, freedom shrines serve as an invaluable reference for students and other citizens seeking information or inspiration from these historic treasures.

Again, I congratulate the Exchange Club of Rapid City, Maurice Wintersteen, Hot Springs VA Director Dan Marsh, and all our veterans for their ongoing commitment to the preservation of American principles. Their deep pride in the history, traditions, and values of our great State and Nation are reflected in the Freedom Shrine. Most important, they have given present and future generations of South Dakotans a precious and lasting gift. I salute everyone involved with this inspiring project.

THE FUTURE OF THE B–1B BOMBER IS SECURE

Mr. PRESSLER. Mr. President, last week the Pentagon released a much-anticipated report by the Institute for Defense Analyses [IDA] on our Nation's heavy bomber force structure. This report, the heavy bomber study, examined the deployment options of our long-range heavy bomber forces—in association with additional tactical forces—under the circumstances of two hypothetical, nearly simultaneous world conflicts. To date, the IDA study is the most comprehensive, in-depth analysis of the use of our Nation's three heavy bombers—the B–1 bomber [B–1B], the B–2 stealth bomber, and the B–52—in a conventional war-fighting role.

I am pleased that the IDA study confirmed what I have said for quite some time: The B–1B is an efficient and effective long-range bomber, and it can be used successfully as the centerpiece of American airpower projection. The IDA study suggests that planned conventional upgrades to the B–1B would be more cost-effective than purchasing 20 additional B–2 bombers. Further, the study recommends that remaining B–2 bomber production preservation funds should be reallocated to other weapons and conventional upgrades. That would allow for a total bomber force consisting of 95 B–1B's, 66 B–52's, and 20 B–2's.

As my colleagues know, the B–1B was developed and built at the height of the cold war. Thus, it was anticipated that its function would be limited to meeting one of several nuclear options. However, the B–1B has shown to be an effective conventional force component—a testament to designers, Air Force strategists and pilots who recognized the versatility of this aircraft.

Time and again, the B–1B has had to meet new challenges. For example, the 1994 congressionally mandated assessment test of the B–1B, performed by the 28th Bomber Wing at Ellsworth Air

Force Base and code named the Dakota Challenge, measured the readiness rate of one B–1B bomber wing when provided fully with the necessary spare parts, maintenance equipment, support crews, and logistics equipment. The Dakota Challenge found that a fully funded B–1B wing could maintain an unprecedented 84 percent mission capable rate. In addition, improvements were seen in other readiness indicators, including the 12-hour fix rate—a measure of how often a malfunctioning aircraft can be repaired and returned to the air within one half day.

By meeting a number of different challenges, the B–1B has earned justifiably the designation as the workhorse of the heavy bomber fleet.

Based on the analysis of the IDA report, the B–1B should assume a prominent role in our Nation's defense. The study recognizes that maintaining the B–1B as the workhorse of the heavy bomber fleet would yield the highest return on our defense investment and render the most cost-effective contribution to our Nation's heavy bomber requirements. With continued investments in weapons upgrades, I believe the B–1B will be an outstanding and effective conventional heavy bomber capable of projecting America's air power into the next century.

Mr. President, over the next several decades, the United States increasingly will be forced to respond rapidly and decisively to regional security threats around the globe. Holding 36 world records for speed, payload, and distance, the B–1B is uniquely suited to meeting our Nation's present and future defense challenges. In this period of budget constraints, I urge my colleagues to consider carefully the recommendations in the IDA Heavy Bomber Study before casting their vote on any defense measures affecting our heavy bomber force structure.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let us do that little pop quiz once more. You remember—one question, one answer:

Question: How many million dollars are in $1 trillion? While you are arriving at an answer, bear in mind that it was the U.S. Congress that ran up the Federal debt that now exceeds $4.8 trillion.

To be exact, as of the close of business Tuesday, May 9, the exact Federal debt—down to the penny—stood at $4,853,699,696,611.41. This means that every man, woman, and child in America now owes $18,424.73 computed on a per capita basis.

Mr. President, back to the pop quiz: How many million in a trillion? There are a million million in a trillion.

HONORING MARGARET STANFILL FOR BRAVERY AND SERVICE DURING WORLD WAR II

Mr. ASHCROFT. Mr. President, I rise today to salute a Missourian who has distinguished herself for her bravery while in service to her country, Margaret Stanfill of Hayti, MO. As a nurse serving in the U.S. Army Nurses Corps during the Second World War, Margaret served her country with unprecedented bravery and dedication while participating in some of the greatest Allied successes of the war.

Margaret Stanfill was documented as the first American nurse to arrive on the beaches of Normandy during the Allies' D-day invasion of France on June 6, 1944. The wire service accounts of the invasion reported that the first nurses to arrive by barge, ''waded ashore while battle-weary soldiers blinked in astonishment.'' The nurses, led by Margaret Stanfill and clothed in two layers of men's uniforms with steel helmets, went to work immediately setting up dressing stations in pup tents and ministering to the wounded. Many of the wounded were paratroopers injured as part of the initial assault. I rise today to salute Margaret's bravery and leadership, not only at Normandy, but throughout her life.

Margaret Stanfill grew up in Hayti, in the bootheel of Southeastern Missouri near the Tennessee border, graduating from Hayti high school in 1938. While in high school Margaret was a 4-year member of the basketball team, serving 1 year as team captain. She was also a 4-year member of the Hayti high school tennis team and was county high school's girls singles champion. After graduation, Margaret entered nurses training at the Baptist Hospital in Memphis, TN, graduating from there in 1940. After a year in private nursing, Margaret felt the call of service end entered the U.S. Army Nurses Corps, training at Camp Tyson.

Margaret arrived in England for additional training on August 1, 1942. By November of that year, she was among the first nurses to arrive on shore during the Allied invasion to liberate North Africa. The scenes of Margaret and her surgical operating unit being carried ashore from barges on the shoulders of their male colleagues appeared in news reels shown around the world. Her unit followed the Allied advance through North Africa into Sicily, where Margaret followed the infantry onto European soil at the invasion of Italy before returning to England for further training preceding the D-day Invasion.

Margaret Stanfill returned from the war and married Wick P. Moore, an Army captain she served with during the North Africa campaign. They settled down in Texas and had three children, two sons and a daughter. I once again salute Margaret Stanfill Moore for her service and bravery in playing a role in some of the most crucial events in the history of our Nation and our world. Her love of freedom and willingness to give of herself and her talents for her country sets an example of service of which all of us can be proud.

NONPROFIT HOSPITALS

Mr. SPECTER. Mr. President, many may believe that health care reform is not an issue in the 104th Congress. But I have been advocating reform in one form or another throughout my now 15 years in the Senate, and I continue to do so. I have come to the floor on 14 occasions over just the last 3 years to urge the Senate to address health care reform. On the first day the Congress was in session in 1993 and again on the first day in 1995, I introduced comprehensive health care legislation. The Health Care Assurance Act of 1995, S. 18, which I introduced on January 4 of this year, is comprised of reform initiatives that our health care system needs and can adopt immediately. They are reforms which can both improve access and affordability of coverage and health care delivery and implement systemic changes to bring down the escalating cost of care. Today, I again address my colleagues on the issue of health care access. I want to bring to the Senate's attention a particular component of our health care delivery system which is uniquely poised to provide innovative services which respond to the particular needs of individual communities, but which is in jeopardy—nonprofit hospitals.

In my view it is indispensable that there be comprehensive affordable, accessible health care for all Americans. I believe the essential question is whether we have sufficient resources, that is medical personnel and hospital, laboratory, diagnostic and pharmaceutical facilities to deliver services. I think we do; and nonprofit hospitals are an important resource of innovative, community-based care. Well over 80 percent of the hospitals in this country have been and are nonprofit institutions. Most nonprofits were founded decades ago and arose from religiously or ethnically identified groups and so were dedicated to serving a particular community. Most have adhered to this dedication to community and all of them serve without restriction or preference. There are approximately 80,000 voluntary trustees, leaders in their respective communities giving freely of their time, their energies, and their money to raise the level of health care in those communities. However, I am concerned that recent trends in the health care market, including the growth of large for-profit hospital systems, and the emphasis on costs and profits of many managed care organizations as they become economically dominant, threaten the community health focus of nonprofit hospitals.

We stand at the threshold of dramatic breakthroughs in understanding, preventing, and treating a variety of diseases. Clinical application of the breakthroughs in research will yield wondrous results which will alleviate

human suffering, prolong life, and produce enormous savings in medical costs in the United States. Nonprofit hospitals are essential to the application of these breakthroughs for the prevention and treatment of disease. The community outreach programs typical of nonprofit hospitals demonstrate their dedication to the needs of their particular communities. They are uniquely attuned to the most fiscally and personally debilitating diseases of a community and therefore provide the services for treatment and prevention most demanded in the community. Prevention is the most successful method of containing the costs associated with disease as it is the first step toward controlling disease. But the health care system today appears to be making it more difficult for the nonprofit community hospital to be dedicated to prevention and accessible treatment for the survival of patients.

While the demand to be competitive is increasing, hospitals' resources are dwindling. Changes in the health care system have reduced hospital occupancy, and have therefore reduced revenue. The Washington Post reported on March 14, 1995, that hospitals have quadrupled the number of out-patient surgical procedures and same-day procedures now exceed the number requiring overnight stays. Health care experts cite technological advances as well as cost-cutting efforts by insurance companies as two key factors which have encouraged the growth in outpatient services. For-profit hospitals tend to exclude those from coverage and service who cannot afford to pay and minimize nonrevenue generating outreach programs.

On the other hand, nonprofits are committed to their missions to provide high-quality service, thus increasing expense, but not necessarily increasing revenue. The limited revenues which once could be used for outreach and prevention are being reallocated to meet today's specialized care needs, and at the same time hospitals are being forced to compete with one another to maintain their existence.

As we continue to discuss the reform of our health care system, we must reconcile the two forces which drive provision of hospital care today, that is profitability and quality. Hospitals should be able to continue to operate as a community resource, to provide preventive medicine, not only curative medicine. As I have said, prevention is the most economical cure for what ails our health care system, that is escalating costs for short- and long-term treatment. Prevention and early detection are the most successful methods of controlling costs associated with disease as they are the first steps toward preventing the inevitable need for costly treatment incurred by disease.

In S. 18 I have taken such steps through streamlining the statutory provisions related to the right to decline treatment, increasing Federal support for clinical trials at the National Institutes of Health, and increasing public health programs at the State and local levels. I look forward to working and reconciling the competing forces in our health care system today to ensure the continuation of community-based and -focused prevention and treatment services, such as those historically provided by nonprofit hospitals.

CHINA'S OBLITERATION OF TIBET

Mr. LEAHY. Mr. President, 7 years ago I visited Tibet, a land of striking beauty whose people are among the most inspiring and interesting I have ever had the privilege to meet. Most of the photographs of Tibet, I had seen before my visit, were of the jagged Himalayan Mountains, Buddhist monks, and a sleepy, poor country of subsistence farmers and their herds of yaks. There is another Tibet, which many people may not be aware of.

It was with great sadness that I and my wife Marcelle saw first hand the effects of China's ruthless, systematic campaign to obliterate Tibetan culture and Tibetan life. We met some of the Tibetans who had suffered under Chinese occupation, and saw the empty palace of the His Holiness the Dalai Lama, who lives in exile in India and who I have had the honor of meeting several times. Since our visit, and despite international condemnation, China's campaign of cultural annihilation has steadily progressed.

A recent article in Newsweek magazine describes the genocide. Tibet is being overrun by the Chinese. According to the article, Lhasa, Tibet's capital, is now at least 50-percent non-Tibetan. Buddhist monasteries have been destroyed, the Tibetan language is suppressed, and Tibet's natural resources have been plundered.

There are 60,000 Chinese troops in Tibet, whose job is to instill fear and quell any dissent. Public gatherings are monitored with video cameras, and protesters are quickly arrested before they attract attention.

Mr. President, Tibet is perhaps the most vivid example of why the Chinese Government is widely regarded as among the world's most flagrant violators of human rights. A decade from now, if current trends continue, the only thing left of Tibetan culture may be a memory. Even today it may be too late to prevent that result, since it would take a major, international campaign to turn back the Chinese tide. I, for one, would welcome such a campaign, because I believe we have a responsibility to try to protect endangered peoples whose existence is threatened with cultural genocide.

I ask unanimous consent that the Newsweek article be printed in the RECORD.

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

[From Newsweek, Apr. 3, 1995]

CHINA INVADES TIBET—AGAIN

(By Melinda Liu)

Chip * * * chip. That's the sound of Tibetan civilization being hacked away. Below Lhasa's imposing Potala Palace, home of the exiled Dalai Lama, Chinese stonemasons chisel granite that will pave a vast new plaza with government monuments. The ancient downtown, some of it dating from the seventh century, has already suffered a terminal face-lift. The 1,000-room Potala is now surrounded by hair-dressing salons, chain-smoking prostitutes and karaoke bars blaring Madonna music. Streets that once housed traditional Tibetan tea shops have given way to rows of greasy Chinese eateries run by recent arrivals from China's interior. Just outside the capital, young Tibetan boys scavenge at a new open dump piled high with trash. ''The Chinese keep coming,'' complains one Lhasa resident, ''especially those who can't find jobs anywhere else.''

The Chinese are invading Tibet—again. Four decades after the People's Liberation Army seized the kingdom and crushed an uprising by the followers of the Dalai Lama, Beijing has found a more effective method of conquest: money. In 1992 the government lifted controls on Chinese migration to Tibet, then made it worthwhile by offering jobs that paid two or three times the rate of the same work in China's interior. Last year alone Beijing invested some $270 million in 62 projects—including the plaza near the Potala and a solar-powered radio and TV station that will broadcast Communist Party propaganda in Tibetan. As a result of these inducements, Lhasa's population is now at least 50 percent non-Tibetan, according to Western analysts.

Locals might not mind so much if they thought they were getting more of the economic benefits. Tibet—which means ''Western treasure house'' in Mandarin—has long been plundered for its gold, timber and other resources and remains unremittingly poor. Many Tibetans still live a nomadic hand-to-mouth existence. Working herds of shaggy yaks in the summer and retreating to the capital in the winter to seek alms until the winter snows subside, they earn less than $100 per year. But now maroon-robed monks compete with Chinese beggars for spare change. Lhasans also grumble that most new entrepreneurial opportunities go to outsiders. Government funds are ''inextricably linking Tibet's economy with the rest of China,'' argues Prof. Melvyn Goldstein, a Tibet scholar at Case Western Reserve University. ''This has also resulted in non-Tibetans controlling a large segment of the local economy at all levels, from street-corner bicycle repairmen to electronic-goods-store owners and firms trading with the rest of China.''

Gawking nomads: Newcomers have a significant advantage over locals—connections in the Chinese interior. In landlocked Tibet, the best consumer goods were smuggled in from Nepal only a decade ago. Now Chinese Muslim (Hui) peddlers in the vegetable market hawk chicken eggs trucked in from Gansu province, bananas from coastal Guangdong and Lux soap made in Shanghai. Chinese shopkeepers prefer to sell to other Chinese and seem openly disdainful of Tibetans, sometimes grabbing a broom to shoo out gawking nomads who spend too much time fiddling with the merchandise.

The tension inevitably erupts. Recently a local sat down in a Hui restaurant to a meal—and pulled from his plate of dumplings what Xinhua news agency called ''a long fingernail.'' The disgusted diner shouted to his friends, ''They're serving human flesh!'' After the enraged restaurateur attacked

them with a metal bar, some Khampas from eastern Tibet joined the brawl. The fighting spilled into the street for a while, and resumed the next day. When it was over, several Hui shops had been vandalized; a dozen Tibetans were arrested. The provocations continue. On Lhasa's streets, Chinese vendors sometimes prepare dog meat in plain view of passersby—an outrageous affront to Tibetans, who believe that dogs are reincarnated as people. ''The potential for overreaction,'' says a Western diplomat in Beijing, ''is great.''

Government officials dismiss the idea that China is obliterating Tibetan culture. ''That's sheer fabrication,'' snaps Raidi, deputy Communist Party secretary of Tibet, who is Tibetan. He claims that Chinese people constitute less than 3 percent of Tibet's population of 2.2 million—neglecting to mention the 60,000 PLA troops and 50,000 or more migrants in the region. The official press blames Tibet's troubles on a ''psychology of idleness.'' There are now more monks and nuns than high-school students, the Tibet Daily, a Communist Party mouthpiece, recently pointed out. ''Such a huge number of young, strong people are not engaged in production. * * * The negative influence on economic and ethnic cultural development is self-evident.''

But Beijing continues to undermine Tibet's self-sufficiency. Designated as an ''autonomous region,'' Tibet is anything but. Its religious life, as well as its economic and political fate, depends entirely on Beijing. Chinese authorities recently dropped a commitment to mandate the use of the Tibetan language in government offices. ''Tibetans can speak Tibetan at home and at work,'' says a Lhasa intellectual who has a government job. ''But in order to get ahead, you must speak Chinese.''

The influx of Chinese people has a political purpose, too—to muffle calls for independence. Many Lhasa residents blame Hui shopkeepers for harboring police during separatist demonstrations back in 1989, and for supporting the brutal crackdown that followed. Today, closed-circuit video cameras monitor activities at major intersections in the Tibetan quarter, around the markets near the fabled Jokhang temple, even in the altar rooms of the Potala Palace. Police pounce on protesters before they can attract crowds. The intimidation seems to be working. ''The Chinese are more clever than we Tibetans,'' says an educated Lhasan. ''So they get all the good jobs. They work very hard, even moving mountains when they want to.'' Beijing's most potent weapon is to make Tibetan culture seem worthless—even in a Lhasan's eyes.

REPORT ON THE EMERGENCY WITH SERBIA AND MONTENEGRO—MESSAGE FROM THE PRESIDENT—PM 46

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the emergency declared with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), as expanded to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, is to continue in effect beyond May 30, 1995.

The circumstances that led to the declaration on May 30, 1992, of a national emergency have not been resolved. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) continues to support groups seizing and attempting to seize territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence. In addition, on October 25, 1994, I expanded the scope of the national emergency to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina. The actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and the authorities in the territory that they control pose a continuing unusual and extraordinary threat to the national security, foreign policy interests, and the economy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to apply economic pressure to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and to the Bosnian Serb forces and the authorities in the territory that they control to reduce their ability to support the continuing civil strife in the former Yugoslavia.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

REPORT OF PROPOSED LEGISLATION ENTITLED ''THE GUN-FREE SCHOOL ZONES AMENDMENTS ACT OF 1995''—MESSAGE FROM THE PRESIDENT—PM 47

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary.

To the Congress of the United States:

Today I am transmitting for your immediate consideration and passage the ''Gun-Free School Zones Amendments Act of 1995.'' This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in *United States* v. *Lopez*.

In a 5–4 decision, the Court in *Lopez* held that the Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified at 18 U.S.C. 922(q). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of *Lopez* and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has ''moved in or the possession of such firearm otherwise affects interstate or foreign commerce.''

The addition of this jurisdictional element would limit the Act's ''reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce,'' as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have ''moved in * * * commerce'' before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm ''otherwise affects interstate or foreign commerce,'' this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have ''moved in * * * interstate or foreign commerce,'' its possession nonetheless has a sufficient nexus to commerce.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm ''has moved in or the possession of such firearm otherwise affects interstate or foreign commerce.'' The defendant must know only that he or she possesses the firearm.

I am committed to doing everything in my power to make schools places where young people can be secure, where they can learn, and where parents can be confident that discipline is enforced.

I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

MESSAGES FROM THE HOUSE

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill; in which it requests the concurrence of the Senate:

H.R. 1139. An act to amend the Atlantic Striped Bass Conservation Act, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution; in which it requests the concurrence of the Senate:

H. Con. Res. 64. Concurrent resolution authorizing the 1995 Special Olympics Torch Relay to be run through the Capitol Grounds.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1139. An act to amend the Atlantic Striped Bass Conservation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation; pursuant to the order of May 9, 1995, that if and when reported by the Committee on Commerce, Science, and Transportation the bill be referred to the Committee on Environment and Public Works for a period not to exceed 20 session days to report or be discharged and placed on the calendar.

The following bill, previously ordered held at the desk, was referred to the Committee on Foreign Relations:

S. 770. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–93. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Agriculture, Nutrition, and Forestry.

''ENGROSSED HOUSE JOINT MEMORIAL 4004

''Whereas, approximately two-thirds of the farmgate value of agricultural production in Washington State is based on minor crops; and

''Whereas, Washington State is one of the most diverse agricultural states in the nation, growing a large number of relatively small but specialized crops of great significance to the American consumer; and

''Whereas, the continued production of these crops and their availability to consumers is dependent on the ability to safely and effectively control insects, weeds, diseases, and other pests; and

''Whereas, an essential tool in the control of pests in either a conventional or an integrated pest management strategy is the availability of pesticides; and

''Whereas, without the availability of a full array of safe and adequate pest management tools, there is likely to be a number of negative consequences including: Decrease in the exports of food products to other countries; increase in imports of less wholesome food products; farming communities will have less diversified economies and will be subject to more economic volatility; decrease of yield; increase in price; decrease in food supply and variety; decrease in ability to meet state and national produce quality standards; increase in incidents of food safety hazards; and an increase in use of products that have greater impact on human health due to higher toxicity than the products that were previously in use; and

''Whereas, the production of food in several states is similarly affected due to the lack of availability of pest control products for the production of minor crops;

''Now, therefore, your Memorialists respectfully pray that the appropriate committees of the United States Congress inquire into the effects of the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act on the availability of pesticides for the protection of minor crops and that legislation be introduced and voted upon that has considered the following provisions:

''(1) Extend the registrants' exclusive data rights by ten years, thereby increasing the time period over which pesticide registrants have to recoup the cost of registration;

''(2) Establish specific time periods for the Environmental Protection Agency to act on minor crop registrations as an incentive to registrants to pursue additional registrations for minor uses;

''(3) Provide for an extension in the time for registrants to submit data equal to the time it takes for the Environmental Protection Agency to act upon a request for a waiver, so that registrants are not inadvertently forced to develop data during the time the Environmental Protection Agency is deliberating on the waiver request;

''(4) Provide additional time for registrants to generate the necessary residue data for reregistration of pesticides for minor crop uses, or if the registrant is unwilling to finance the generation of the data, to give time to find other methods to generate the required data; and

''(5) Provide a temporary extension of registration for unsupported minor uses so that, if the current registrant declines to request the reregistration, other organizations have the time to comply with registration requirements before cancellation of the registration.

''*Be it resolved*, That copies of this Memorial be immediately transmitted to the Honorable Bill Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, each member of Congress from the State of Washington, the Secretary of the United States Department of Agriculture, the Administrator of the United States Environmental Protection Agency, and the National Association of State Departments of Agriculture.''

POM–94. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Appropriations.

''ASSEMBLY RESOLUTION NO. 124

''Whereas, the President of the United States' Fiscal Year 1996 budget proposal includes a significant reduction in funding for ongoing shore protection, beach restoration and flood control projects in New Jersey; and

''Whereas, the completion of these projects is essential to preserving a State and national resource, and can be accomplished only with the assistance of the federal government; and

''Whereas, new Jersey, in establishing a $15.0 million annual Shore Protection Fund, has clearly committed State funding to assist in the replenishment and preservation of beaches along the New Jersey shore; and

''Whereas, tourism is the State's second largest industry, and the annual $10.0 billion in tourism spending in the coastal area constitutes approximately one-half of the total tourism spending in the State; and

''Whereas, the proposed budget reduction, if realized, would have a disastrous effect on the shore tourism economy, including the potential loss of hundreds of thousands of jobs directly and indirectly related to the tourism industry, on property values and on State and local tax revenues; Now, therefore, be it

''*Resolved by the Assembly of the State of New Jersey:*

''1. The President and the Congress of the United States are respectfully urged to restore funding in the Fiscal Year 1996 federal budget for beach stabilization and flood control projects along the Jersey Shore.

''2. Copies of this resolution, signed by the Speaker of the Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice President of the United States, the Majority Leader of the United States Senate, the Speaker of the House of Representatives, the Commander and Chief of Engineers of the United States Army Corps of Engineers, every member of Congress elected from the State, the Governor of the State, and the Commissioner of Environmental Protection.''

POM–95. A resolution adopted by the Council of the City of Fairview Park, Ohio relative to telecommunications; to the Committee on Commerce, Science, and Transportation.

POM–96. A resolution adopted by the City of Brook Park, Ohio relative to telecommunications; to the Committee on Commerce, Science, and Transportation.

POM–97. A resolution adopted by the Council of the City of Barberton, Ohio relative to cable television; to the Committee on Commerce, Science, and Transportation.

POM–98. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on Commerce, Science, and Transportation.

''SENATE CONCURRENT MEMORIAL 1003

''Whereas, the globalization of the United States economy has resulted in the expansion of international trade and tourism; and

''Whereas, the international trade and tourism are dependent on an efficient transportation system, including the availability of direct international flights with multiple destinations; and

''Whereas, the travel and tourism industry is one of the largest industries in the United States; and

''Whereas, international trade is key to the economic health of this nation and contributes directly and indirectly to more than sixty per cent of new jobs created in the United States in recent years; and

''Whereas, international air service is an important component of international trade and the travel and tourism industry; and

''Whereas, international air service is becoming increasingly important to the economic well-being of states and cities; and

''Whereas, increased international air service results in local job development, an enlarged tax base, access to new markets for local products, increased foreign investment, enhanced cultural exchange and increased visibility on the world stage; and

''Whereas, international air service is regulated by treaties negotiated between sovereign nations of the world; and

''Whereas, with the passage of the North American Free Trade Agreement the flow of goods and people will greatly increase among this country, Canada and Mexico, as well as the rest of the world; and

''Whereas, individual states have fought hard and committed resources to securing

and bolstering international trade and tourism between themselves and other nations thereby increasing their own exports by over seventy per cent in recent years; and

''Whereas, federal regulations governing the negotiations of international flight routes impinge on the power of states to enter into their own agreements, impede state attempts to compete in the international market place and hamper the economic development efforts of individual states; and

''Whereas, the positions and views of individual communities should play an increasing role in decisions by the United States government with respect to international air service negotiations; and

''Whereas, more liberal international air route regimes between the United States and its trading partners are necessary; and

''Whereas, the easing of certain federal processes would hasten new international air service and the benefits associated with such air service. Wherefore your memorialist, the Senate of the State of Arizona, the House of Representatives concurring, prays:

''1. That the Congress of the United States enact legislation to reduce federal regulations restricting the ability of states to participate in the negotiation of international flight routes.

''2. That the Secretary of State of the State of Arizona transmit copies of this Concurrent Memorial to the President of the United States Senate, the Speaker of the United States House of Representatives and to each Member of the Arizona Congressional Delegation.''

POM–99. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Commerce, Science, and Transportation.

''SENATE JOINT MEMORIAL NO. 103

''Whereas, Amtrak provides mobility to citizens of many smaller communities poorly served by air and bus services, as well as to those senior citizens, disabled people, students and persons with medical conditions preventing them from flying who need trains as a travel option; and

''Whereas, Amtrak is nine times safer than driving on a passenger-mile basis, and operates even in severe weather conditions; and

''Whereas, Amtrak travel rose forty-eight percent from 1982 to 1993 and Amtrak dramatically improved coverage of its operating costs from revenue; and

''Whereas, expansion of Amtrak service by using existing rail rights-of-way would cost less and use less land than new highways and airports, and would further increase Amtrak's energy-efficiency advantage; and

''Whereas, federal investment in Amtrak has fallen in the last decade while it has risen for airports and highways; and

''Whereas, states may use highway trust fund money as an eighty percent federal match for a variety of nonhighway programs, but they are prohibited from using such moneys for Amtrak projects; and

''Whereas, Amtrak pays a fuel tax that airlines do not pay; and

''Whereas, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak;

Now, therefore, be it resolved by the members of the First Regular Session of the Fifty-third Iadho Legislature, the Senate and the House of Representatives concurring therein, That we urge the Congress of the United States to take the following steps to insure the continued operation of the Amtrak transportation system: That federal funding of Amtrak not be reduced, that Amtrak be excused from paying fuel taxes that airlines do not pay, that states be given the flexibility to use federal highway trust fund moneys on Amtrak projects if they so choose, that federal officials include a strong Amtrak system in any plans for a National Transportation System.

''*Be it further resolved,* That the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, and the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.''

POM–100. A resolution adopted by the Assembly of the State of New York; to the Committee on Commerce, Science, and Transportation.

''LEGISLATIVE RESOLUTION ASSEMBLY NO. 374

''Whereas, Amtrak is energy-efficient and environmentally beneficial, consuming about half as much energy per passenger mile as airlines and causing less air pollution; and

''Whereas, Amtrak provides mobility to citizens of many smaller communities, poorly served by air and bus services, as well as to those senior citizens, disabled people, students and persons with medical conditions, who are prevented from flying and who depend on trains as a travel option; and

''Whereas, Amtrak is nine times safer than driving, on a passenger-mile basis, and operates even in severe weather conditions; and

''Whereas, Amtrak travel rose 48 percent, from 1982 to 1993, and Amtrak dramatically improved coverage of its operating costs from revenues; and

''Whereas, Amtrak provided service to 7,422,288 riders in New York State in fiscal year 1994; and

''Whereas, Expansion of Amtrak service through the use of existing rail rights-of-way would cost less and use less land than new highways and airports, and would further increase Amtrak's energy-efficiency advantage; and

''Whereas, The State of New York has made significant investments to ensure the continuation of certain Amtrak services, as well as for capital improvements to rail infrastructure; and

''Whereas, Federal investment in Amtrak has fallen in the last decade, while it has risen for airports and highways; and

''Whereas, States may use highway trust fund money as an 80 percent Federal match for a variety of non-highway programs, while Amtrak is prohibited from using moneys for such projects; and

''Whereas, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak; and

''Whereas, Amtrak adds to the New York State economy by expending more than $23 million for goods and services (in fiscal year 1993), employing over 3,250 New York State residents whose annualized earnings total approximately $95 million; Now, therefore, be it

''*Resolved,* That this Legislative Body pause in its deliberations to memorialize Congress and the President of the United States to take the following steps to insure adequate funding and regulatory support of Amtrak: maintain current funding levels for Amtrak; provide Amtrak the same exemption on fuel taxes as that provided to the airline industry; provide states with the flexibility of utilizing federal highway trust funds for Amtrak projects; and provide federal officials with the appropriate authority and regulatory support necessary to make Amtrak a strong component of a National Transportation System; and be it further

''*Resolved,* That copies of this Resolution, suitably engrossed, be transmitted to President William J. Clinton, the President of the Senate of the United States, the Speaker of the House of Representatives, the members of the New York State Congressional Delegation, and the Save Amtrak Coalition.''

POM–101. a resolution adopted by the Senate of the Legislature of the Commonwealth of Puerto Rico; to the Committee on Commerce, Science, and Transportation.

''S.R. 1491

''The government of Puerto Rico has stated that among its priorities is the need to effectively attend to the problems of antisocial conduct which threatens our quality of life and harmonious existence. To achieve this, it is essential to incorporate prevention strategies which avoid the promotion of aggressiveness and violence in the citizenry, especially in our children and youths. The government's action and private initiative must direct their best efforts to programs directed to strengthen the family and to propitiate a wholesome upbringing of Puerto Rican children and youths.

''The scientific community has indicated that there is a relationship between exposure to violence on television and aggressive behavior. Televised violence conditions the mind and physical skills of children and adolescents. It also teaches and develops antisocial values and attitudes. In Puerto Rico, studies conducted by distinguished professionals have established the negative effect on human behavior produced by the messages of violence transmitted in the communication media. It has been stated that the mass communication media could be considered as the main vehicles of social conditioning. From said studies, it has also been revealed that in Puerto Rico almost all the population has access to television, and that during infancy, the exposure to this medium is grater than exposure to schooling.

''Within this context, the Senate of Puerto Rico deems it essential to adopt measures which contribute to make television programming more wholesome and to improve the quality and content of the messages received by television viewers. Government action and private initiatives should be directed to prevent our children and youth from being exposed to violent situations and harmful activities that lead to delinquent and antisocial conduct at home, school and the community.

''With the objective of promoting affirmative action on the effects of television programs with a high content of violence, and showing of adult situations, this Body is, at present, considering Senate Bill No. 507. This measure has the purpose of creating an Advisory Board attached to the Department of Consumer's Affairs, with the function of designing a television program classification system to serve as a guide for commercial stations. It would be adopted voluntarily and through self-regulation, fixing the parameters of scheduling and content.

''However, when analyzing the possible options of the Legislature of Puerto Rico to determine the feasibility of adopting regulations on the content of the programming, we find that within our juridical frame, television constitutes an activity which affects interstate commerce. The Congress of the United States has directed that the Federal Communications Commission is the agency responsible for regulating the same. That is, the Federal Government has primary jurisdiction over this matter. The courts have interpreted that in matters of regulating interstate communications, the field is preempted by the Federal Communications Act. It is understood that the Congress has preempted the field completely, in radio as well as television communication.

''With each passing day, American citizens are more aware of the damage that arises from the continuous and repetitive violence transmitted through the communications media. With the conviction that the voluntary initiatives of the media have not been sufficient to fight the problem of televised violence, Senator Kent Conrad filed S. 332 before the United States, which provides resources to limit the exposure of children to television programs with a high content of violence.

''The measure proposes to adopt what is known as the 'Childrens' Media Protection Act'. In essence, the bill requires all manufacturers to install on every new television set, a device which allows the blocking of those programs that are not fit for minors. With this resource at hand, parents can make a decision as to the type of program their children will be exposed to.

''The legislation also contains provisions regarding the classification of programs of violent content. The Federal Communications Commission, upon consulting with broadcasters of television stations and cable retransmitters, private groups and interested citizens, is required to promulgate rules to classify the levels of violence in television programming.

''The measure provides additional safeguards which require the Federal Communications Commission to adopt rules to prohibit commercial television, the Cable TV industry and the public telecommunications entities from transmitting programs and commercials which contain unnecessary violence, from 6:00 a.m. to 10:00 p.m.

''The Senate of Puerto Rico recognizes that the approval of S. 332 shall have a positive effect on the programming that is broadcast locally by commercial channels and Cable TV. To such ends, we support the efforts of the United States Senate directed to reducing televised violence and improving the quality of the programming, for the benefit of our children and youths. Therefore, through this Resolution, the Senate of Puerto Rico respectfully exhorts the Senate of the United States to proceed with, and approve the 'Childrens' Media Protection Act' contained in S. 332.

''Be it resolved by the Senate of Puerto Rico:

''Section 1.—To express the United States Senate the support of the Senate of Puerto Rico to the approval of S. 332, filed in that Body by Senator Kent Conrad, for the purpose of establishing the 'Childrens' Media Protection Act', providing the mechanisms to limit the exposure of children to television programs with a high content of violence.

''Section 2.—The Secretary of the Senate of Puerto Rico is hereby directed to remit a copy of this Resolution, in both of our official languages, to the Senate of the United States, to the Majority and Minority Floor Leaders of the Senate of the United States, to the Chairperson and members of the Committee on Commerce, Science and Transportation that has for its consideration S. 332, to Senator Kent Conrad, author of said legislative initiative, and to the Resident Commissioner, Carlos Romero Barceló.

''Section 3.—This Resolution shall take effect immediately after its approval.''

POM–102. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

''HOUSE JOINT MEMORIAL 4008

''Whereas, harbor seal and sea lion populations have greatly expanded in recent years due to the almost absolute protection afforded them under the federal Marine Mammal Protection Act; and

''Whereas, seals and sea lions are active predators upon anadromous fish such as salmon and steelhead trout; and

''Whereas, anadromous fish populations are significantly reduced in numbers throughout Washington state, and some stocks have been listed as threatened or endangered species; and

''Whereas, many more anadromous fish stocks are likely to be listed as threatened or endangered; and

''Whereas, in order to allow certain salmon and steelhead populations to recover to and be sustained at viable levels, it will be necessary to have more flexibility to manage seals and sea lions in identifiable areas where they cause unacceptable mortality levels in specific fish runs; and

''Whereas, while recent amendments to the federal Marine Mammal Protection Act to allow for lethal removal of problem seals or sea lions, the process established to do so in cumbersome and time-consuming and will do little to protect the fish; and

''Whereas, seal and sea lion predation of anadromous fish is a problem that has been going on for some time and needs to be addressed with some urgency;

''Now, therefore, Your Memorialists respectfully pray that the Marine Mammal Protection Act be modified to allow for a more common-sense approach to managing predacious seals and sea lions, including provision for reasonable, balanced, and prudent population levels of seals and sea lions in Washington state and provision for the active management of abundant populations at set levels determined with modern wildlife management science by federal and state management agencies, including use of a less cumbersome lethal removal option when and where necessary. In asking for these amendments, it is not our intention to decimate or eliminate seals and sea lions but to find balance between protection of marine mammals and protection of anadromous fish.

''*Be it resolved*, That copies of this Memorial be immediately transmitted to the Honorable Bill Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.''

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance:

Jeffrey M. Lang, of Maryland, to be Deputy U.S. Trade Representative, with the rank of Ambassador, vice Rufus Hawkins Yerxa, resigned.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CHAFEE (for himself and Mr. PELL):

S. 786. A bill to designate the United States Post Office building located at 24 Corliss Street, Providence, Rhode Island, as the ''Harry Kizirian Post Office Building'', and for other purposes; to the Committee on Governmental Affairs.

By Mr. BURNS:

S. 787. A bill to provide an exemption from certain hazardous material transporation regulations for small cargo tank vehicles with a capacity of not more than 3,500 gallons that transport petroleum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 788. A bill to delay the effective date of trucking deregulation under the Federal Aviation Administration Authorization Act of 1994; to the Committee on Commerce, Science, and Transportation.

By Mr. CHAFEE (for himself, Mr. MOYNIHAN, and Mr. KYL):

S. 789. A bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE (for himself and Mr. PELL):

S. 786. A bill to designate the United States Post Office building located at 24 Corliss Street, Providence, Rhode Island, as the ''Harry Kizirian Post Office Building,'' and for other purposes; to the Committee on Governmental Affairs.

THE HARRY KIZIRIAN POST OFFICE BUILDING ACT OF 1995

Mr. CHAFEE. Mr. President, I send to the desk a bill for Senator PELL and myself. This deals with the designation of the U.S. Post Office building located on 24 Corliss Street in Providence. Under the new designation it becomes the ''Harry Kizirian Post Office Building.''

Mr. President, today Senator PELL and I are introducing legislation to name the post office at 24 Corliss Street in Providence, RI after a renowned Rhode Islander and a proud American—Harry Kizirian. Representatives JACK REED and PATRICK KENNEDY are introducing identical legislation in the House of Representatives. The Rhode Island congressional delegation is united in its desire to honor Harry Kizirian for his years of service to our State.

Mr. President, just a word about Harry Kizirian. He is a celebrated citizen in our State. For many, many years he has been postmaster of our principal post office. He is a community leader.

Harry Kizirian is a household name in Rhode Island because of his lifelong career in the Postal Service but, even more so, because of his involvement with and commitment to his community. He has served on the board of directors of Butler Hospital, Big Brothers of Rhode Island, the Providence Human Relations Commission, Rhode Island Blue Cross, and the Rhode Island Heart and Lung Associations. Over the years he has earned countless awards

and citations for his community involvement. He was inducted into the Rhode Island Hall of Fame and received the Roger Williams Award. He served on advisory boards for Rhode Island College, Providence Heritage Commission on R.I. Medal of Honor Recipients, the Disabled American Veterans, and the Marine Corps League. Harry Kizirian is a husband, a father, a grandfather, a Postmaster to Rhode Island, and a decorated World War II hero.

The lessons learned from Harry Kizirian are lessons of fortitude, valor, strength of character, and perseverance.

While Harry was just a boy in school, at Mt. Pleasant High School in Providence, he went to work part-time as a postal clerk. He was 15 years old and his father had died, so Harry took responsibility for supporting his family. He did so while keeping his grades up and participating in athletics. Twenty years later, at 35, Harry was named Postmaster of Rhode Island, a position he held for more than 25 years.

Like many young men at the time, Harry's job was interrupted by World War II. The day after high school graduation Harry enlisted in the Marine Corps.

After going through training, he ended up with the marines that were invading Okinawa.

He fought on Okinawa with the 6th Marine Division. He was awarded the Navy Cross—the second highest honor a Marine can receive—for his valor on Okinawa. What did he do for it?

Harry and a group of Marines were pinned down by a Japanese machine gunner. Harry got up and ran toward the machine gun. He was shot in the legs. Despite his injuries, he pulled himself forward and eliminated the enemy position. This extraordinary act of valor sent Harry Kizirian, a teenage boy, to a hospital in Guam with the Navy Cross, a Bronze Star, and a Purple Heart with a gold star.

Harry Kizirian was seen by millions of Americans as the face of the war in the Pacific. Before he was injured, a news photographer captured his image, the image of a boy in battle—by that time he was the age of 19—for the cover of the New York Times Sunday Magazine. Last November, I was present when Harry was honored by his old Atwood-Bucci Detachment of the Marine Corps. The famous photograph was prominently displayed on the podium. It has been 50 years since that picture was snapped and many have glorified the war, but not Harry. Harry's message to young people, and to all of us, is that ''war is awful. There's no way to describe it. Nobody wins a war.''

After the war, Harry returned to Providence and to his job at the post office. He was a substitute clerk. By 1954 he was made foreman. He was named Assistant Superintendent during the transition from the old postal system to the turnkey mechanization system. The Providence post office on Corliss Street was the first post office in the country to use the turnkey system. The turnkey system was the first fully automated system for sorting the mail. Until that point, all of the mail was sorted by hand. The new system was not easily implemented, but once again Harry persevered. In 1961, Harry was rewarded for his hard work and dedication. He was named Postmaster of Rhode Island.

What better way to honor the life and lessons of Harry Kizirian than to name the Post Office on Corliss Street for him. I am pleased to introduce this bill today with Senator PELL and hope that it will receive speedy consideration by the Subcommittee on Post Office and Civil Service of the Governmental Affairs Committee.

So it seems very fitting, Mr. President, that this post office in our capital city should be named after Harry Kizirian.

Mr. PELL. Mr. President, I join with my friend and colleague, Senator CHAFEE of Rhode Island, in introducing legislation to designate the U.S. Post Office building at 24 Corliss Street, Providence, as the Harry Kizirian Post Office Building.

I am enthusiastic about this designation. I can think of no more fitting tribute. Harry Kizirian has made extraordinary contributions to the United States, to Rhode Island and to Providence.

A very brief review of his contributions is instructive. Harry enlisted in the U.S. Marine Corps after graduating from Mt. Pleasant High School. He subsequently became Rhode Island's most decorated marine.

He fought in Okinawa and was shot in battle. He earned the Navy Cross, the Bronze Star with a ''V'', the Purple Heart with a Gold Star and, finally, the Rhode Island Cross.

Upon his return to Rhode Island, he went to work at the post office, where he had worked as a 15-year-old to support his widowed mother. He worked his way up through leadership positions in the Postal Service.

He was confirmed by the U.S. Senate as postmaster in 1961, a position he held for 25 years. In addition to his military service and his work in the Postal Service, he has served on numerous committees and boards in Rhode Island.

Harry served on the board of directors of Butler Hospital, Big Brothers of Rhode Island, the Providence Human Relations Commission, Rhode Island Blue Cross and Rhode Island Heart and Lung Associations.

He also was a member of the Community Advisory Board of Rhode Island College, the Providence Heritage Commission, the Commission on Rhode Island Medal Honor Recipients, DAV and the Marine Corps League.

Harry Kizirian already is a Rhode Island landmark. His name has become synonymous with the qualities he exemplifies—dedication, loyalty, leadership and hard work.

The Harry Kizirian Post Office Building will be an entirely appropriate testament to his remarkable life and friendships.

By Mr. BURNS:

S. 787. A bill to provide an exemption from certain hazardous material transportation regulations for small cargo tank vehicles with a capacity of not more than 3,500 gallons that transport petroleum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE HAZARDOUS MATERIALS REGULATORY RELIEF ACT OF 1995

• Mr. BURNS. Madam President, today I am introducing legislation to reduce yet another regulatory burden on many petroleum marketers and other small businesses across the country. My bill would prohibit the Department of Transportation's Research and Special Programs Administration [RSPA] from enforcing an unwarranted and unnecessary regulation on operators and owners of small cargo tanks of 3,500 gallons or less and return that authority back to the States where it belongs. Specifically, my bill would repeal a regulation promulgated by RSPA which requires cargo tank operators and owners to comply with cumbersome Federal testing inspections and retrofitting mandates.

Members of the Montana-Western Petroleum Marketers Association and the Petroleum Marketers Association of America have been especially negatively impacted with RSPA's requirements. The cost of the regulation to small businesses often costs thousands of dollars, with little additional safety protection. In addition, the Federal inspection requirements often force cargo tank operators to travel great distances to comply with the regulations. It is time that we force regulators to be responsible and establish justification before the implementation of such regulations. I think we could send a clear message by passing my proposed legislation.

Many of the cargo tank owners and operators are owned by small ''mom and pop'' businesses, who operate on a slim profit margin. The cost of compliance can be devastating to their business. For years, States had the authority to inspect small cargo tank vehicles. Not only was this more convenient for owners and operators, but States had the ability to structure the program to benefit their constituents. I think we should return this authority to the States and allow them to make decisions which best suit their needs.

Up until 1991, RSPA provided an exemption of cargo tanks carrying 3,500 gallons of petroleum product or less. However, since that time, RSPA has decided that no tank is too small to regulate and that all cargo tank operators should operate under the same rules. In theory this may sound reasonable, but, in reality, small cargo tanks are very different from larger tanks and should be treated as such. I ask for

your support of my legislation and introduce it today to restore some common sense into the Federal bureaucracy.●

By Mr. CHAFEE (for himself, Mr. MOYNIHAN, and Mr. KYL):

S. 789. A bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly traded stock to certain private foundations, and for other purposes; to the Committee on Finance.

GIFTS LEGISLATION

Mr. CHAFEE. Mr. President, today I am introducing legislation on behalf of myself, Senator MOYNIHAN, and Senator KYL, which would permit the full value deduction for gifts of appreciated stock to private foundations.

Since 1984, donors have been allowed to deduct the full fair market value of certain gifts and publicly traded stock given to private foundations. In other words, if an individual has a private foundation that he has set up, and he has some stock—in General Electric, for example, that has appreciated substantially—when he makes a gift of that stock to the foundation, and General Electric, say, is trading at 58, that the full value of that stock, namely each share at the present value of 58, is a deductible contribution by the donor.

Clearly, if an individual made such a contribution to Yale University or to the United Way, whatever it was, the full value of the stock would be a deductible contribution.

And the question here is, what about now, the contribution of that stock to a private foundation? Up until January 31, 1994—in other words last January—December 31—it has been possible to get a full deduction for the contribution of stock to a private foundation.

Unfortunately, on that date, the action which provided for the full deductibility terminated. It sunsetted.

Mr. President, I would like to stress that private foundations are nonprofit organizations. They support charitable activity. They have to do that or they are not allowed an exemption. They provide support for making grants to other nonprofit agencies.

In other words, sometimes a private foundation has the capacity to make a charitable contribution itself to the United Way or Nature Conservancy or the Sierra Club or whatever it might be. They provide support for such things as scholarships and disaster relief. Also, they make grants to individuals.

Now, foundations are created by endowments, money given by individuals or by families or by corporations. They make grants and operate programs with the income earned from investing the endowments. Since most foundations have permanent endowments, they do not have to raise funds each year from the public in order to continue their work.

Most functions, charitable activities every year have to go out and raise money so they are reluctant to get into long-term commitments, but foundations such as the Ford Foundation with a substantial amount of money that they know is there—realizing the income is going to be there next year, they are not dependent upon annual donations—act as the research and development arm of our society.

In a 1965 Report on Private Foundations, the Treasury Department recognized the special nature of foundations by describing them as ''uniquely qualified to initiate thought and action, experiment with new and untried ventures, dissent from prevailing attitudes, and act quickly and flexibly.'' Indeed, foundations reflect the innovative spirit of the individuals and corporations that endow them.

There are more than 30,000 private foundations in America today that provide over $10 billion annually to support innumerable projects, large and small. Among other things, they help the poor and disadvantaged, advance scientific and medical research, and strengthen the American educational system.

Let me give you a few examples of some of the medical advances that have occurred as a result of the financial assistance provided by private foundations:

The polio vaccine developed by Dr. Jonas Salk in 1953 after the Sarah Scaife Foundation provided him with the money he needed to establish and equip his virus laboratory.

With the help of the Commonwealth Fund, Dr. Papanicolaou discovered in 1923 that cervical cancer could be diagnosed before a woman presented any symptoms. That breakthrough led to the basic and now routine diagnostic technique known as the Pap smear.

In 1951 Dr. Max Theiler received the Nobel prize in medicine for his work in developing the yellow fever vaccine. That effort was the direct result of a 30-year, all-out commitment by the Rockefeller Foundation to eradicate this disease.

But, Mr. President, private foundations have been involved in many more aspects of our daily lives than simply funding medical advances. Dr. John V.N. Dorr was an engineer in the early 1950's. He speculated that many accidents occurring on our Nation's highways during inclement weather were the result of drivers hugging the white lines painted in the middle of the road. Dorr believed that if similar lines were painted on the shoulder side of the road, lives could be saved.

Dorr convinced transportation engineers in Westchester County, NY, to test his theory along a particularly treacherous stretch of highway. The dropoff in accidents along this part of the road was dramatic, and Dr. Dorr used his own foundation to publicize the demonstration's results nationally. Today, although State funds are now used to paint white lines on the shoulder side of the Nation's highways, every person traveling in a motor vehicle is indebted to Dorr and his foundation for implementing this life-saving discovery.

As these examples indicate, private foundations provide a great many benefits to our society. By permanently extending this tax incentive, we can continue to encourage individuals to dedicate a substantial portion of their wealth to public, rather than private purposes. I hope my colleagues will support this legislation.

● Mr. MOYNIHAN. Mr. President, I am pleased to join my distinguished colleague, Senator CHAFEE, in introducing a bill to restore a full, fair-market-value deduction for gifts of publicly traded stock to private foundations. This was in fact the law through 1994, but the provision in the tax code providing for a charitable deduction measured by the fair market value of stock donated to a private foundation expired on December 31, 1994.

As many in this body will recall, I worked for many years to restore a full, fair-market-value deduction for gifts of appreciated property to public charities. That deduction had been limited in 1986 tax legislation for taxpayers subject to the alternative minimum tax, so that they could only deduct the ''basis''—usually, the original purchase price—of property donated to public charities, such as college and universities, museums and other charitable institutions that receive the larger share of their support from the public at large. Happily, the full, fair-market-value deduction for all such gifts—personal property, real estate and intangible property such as stock—was restored on a permanent basis in the 1993 budget legislation, the Omnibus Budget Reconciliation Act of 1993.

The bill we introduce today concerns charitable gifts to private foundations, which unlike public charities, receive their support from, and are often controlled by, a limited group of individuals. A full, fair-market-value deduction for gifts of publicly traded stock had been available in the case of private foundations over the past 10 years under a special rule enacted in 1984 and scheduled to expire on December 31, 1994. This automatic expiration was intended to provide Congress an opportunity to review the private foundation contribution rule with the benefit of several years of practical experience under it. I believe that most commentators have concluded that the private foundation rules are working relatively well, and that the rule providing for fair-market-value deductions for gifts of publicly traded stock has not been a source of compliance problems. As a result, there is no reason to provide different treatment for gifts of publicly traded stock to private foundations that is currently provided for such gifts to public charities. The bill we introduce today would conform the rules for both.

Mr. President, private foundations are an important aspect of America's

nonprofit, independent sector. The contributions made by nonprofit institutions to our society in the areas of education, health, disaster relief, the advancement of knowledge and the preservation of our history and cultural artifacts is vast. I daresay it is often not fully understood or appreciated, particularly the extent to which nonprofit institutions perform functions that are typically governmental undertakings in other societies. Nonprofit institutions are a part of our culture that we should take care not to lose, and government has a role in insuring that they thrive. The legislation we introduce today is a part of that role.●

ADDITIONAL COSPONSORS

S. 324

At the request of Mr. WARNER, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 324, a bill to amend the Fair Labor Standards Act of 1938 to exclude from the definition of employee firefighters and rescue squad workers who perform volunteer services and to prevent employers from requiring employees who are firefighters or rescue squad workers to perform volunteer services, and to allow an employer not to pay overtime compensation to a firefighter or rescue squad worker who performs volunteer services for the employer, and for other purposes.

S. 334

At the request of Mr. MCCONNELL, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 334, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a law enforcement officers' bill of rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

S. 490

At the request of Mr. GRASSLEY, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 490, a bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes.

S. 524

At the request of Mr. WELLSTONE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 524, a bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence, and for other purposes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 768

At the request of Mr. GORTON, the names of the Senator from Virginia [Mr. WARNER], the Senator from Mississippi [Mr. LOTT], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 768, a bill to amend the Endangered Species Act of 1973 to reauthorize the act, and for other purposes.

S. 770

At the request of Mr. GRAMM, his name was added as a cosponsor of S. 770, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. DEWINE, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. DOLE, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Mississippi [Mr. LOTT], the Senator from Utah [Mr. HATCH], the Senator from Indiana [Mr. COATS], the Senator from Montana [Mr. BAUCUS], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 770, supra.

S. 772

At the request of Mr. DORGAN, the names of the Senator from Nebraska [Mr. EXON] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 772, a bill to provide for an assessment of the violence broadcast on television, and for other purposes.

S. 607

At the request of Mr. WARNER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 753

At the request of Mr. BAUCUS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 753, a bill to allow the collection and payment of funds following the completion of cooperative work involving the protection, management, and improvement of the National Forest System, and for other purposes.

AMENDMENTS SUBMITTED

THE INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT OF 1995

WELLSTONE AMENDMENT NO. 750

Mr. WELLSTONE proposed an amendment to the bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes; as follows:

On page 56, line 10, strike ''is imposed'' and insert ''had been exercised prior to May 15, 1994, and was being implemented on May 15, 1994,''

On page 56, line 12, insert '';'' after ''subdivision'' and strike ''in effect on May 15, 1994''

On page 60, lines 4–5, strike ''was in effect prior to'' and insert ''such authority was imposed prior to May 15, 1994 and was being implemented on''

KEMPTHORNE AMENDMENT NO. 751

Mr. SMITH (for Mr. KEMPTHORNE) proposed an amendment to the bill S. 534, supra; as follows:

On page 69, line 13, strike the word, ''remote''.

On page 69, line 19, after the word, ''infeasible'', insert the word, ''or''.

On page 69, lines 21 and 22, strike the words, ''the unit shall be exempt from those requirements'' and in lieu thereof insert the words, ''the State may exempt the unit from some or all of those requirements''.

On page 69, line 22, add the following new sentence: ''This subsection shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.''.

GRAHAM AMENDMENTS NOS. 752–753

Mr. GRAHAM proposed two amendments to the bill S. 534, supra; as follows:

AMENDMENT NO. 752

On page 63, strike line 4 and all that follows through page 64, line 2, and insert the following:

''(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

''(1) was responsible under State law for providing for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the country;

''(2) is required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

''(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through the adoption or execution of a law, ordinance, regulation, contract, or other legally binding provision; and

''(4) had incurred, or caused a public service authority to incur, significant financial expenditures to comply with State law and

to repay outstanding bonds that were issued specifically for the construction of solid waste management facilities to which the political subdivision's waste is to be delivered.

''(5) the authority under this subsection shall be exercised in accordance with Section 401z(b)(4)''.

AMENDMENT NO. 753

On page 65, line 10, strike ''or (d)'' and insert ''(d), or (e)''.

On page 65, line 3, strike ''or (d)'' and insert ''(d), or (e)''.

SPECTER (AND OTHERS) AMENDMENT NO. 754

Mr. SPECTER (for himself, Mr. CRAIG, Mr. GRASSLEY, Mr. KEMPTHORNE, and Mr. BROWN) proposed an amendment to the bill, S. 534, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) There has been enormous public concern, worry and fear in the U.S. over international terrorism for many years;

(2) There has been enormous public concern, worry and fear in the U.S. over the threat of domestic terrorism after the bombing of the New York World Trade Center on February 26, 1993;

(3) There is even more public concern, worry and fear since the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995;

(4) Public concern, worry and fear has been aggravated by the fact that it appears that the terrorist bombing at the Federal building in Oklahoma City was perpetrated by Americans;

(5) The United States Senate should take all action within its power to understand and respond in all possible ways to threats of domestic as well as international terrorism;

(6) Serious questions of public concern have been raised about the actions of federal law enforcement officials including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms relating to the arrest of Mr. Randy Weaver and others in Ruby Ridge, Idaho, in August, 1992 and Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Texas, between February 28, 1993, and April 19, 1993;

(7) Inquiries by the Executive Branch have left serious unanswered questions on these incidents;

(8) The United States Senate has not conducted any hearings on these incidents;

(9) There is public concern about allowing federal agencies to investigate allegations of impropriety within their own ranks without congressional oversight to assure accountability at the highest levels of government;

(10) Notwithstanding an official censure of FBI Agent Larry Potts on January 6, 1994, relating to his participation in the Idaho incident, the Attorney General of the United States on May 2, 1995, appointed Agent Potts to be Deputy Director of the FBI;

(11) It is universally acknowledged that there can be no possible justification for the Oklahoma City bombing regardless of what happened at Ruby Ridge, Idaho, or Waco, Texas;

(12) Ranking federal officials have supported hearings by the U.S. Senate to dispel public rumors that the Oklahoma City bombing was planned and carried out by federal law enforcement officials;

(13) It has been represented, or at least widely rumored, that the motivation for the Oklahoma City bombing may have been related to the Waco incident, the dates falling exactly two years apart; and

(14) A U.S. Senate hearing, or at least setting the date for such a hearing, on Waco and Ruby Ridge would help to restore public confidence that there will be full disclosure of what happened, appropriate congressional oversight and accountability at the highest levels of the federal government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held before the Senate Judiciary Committee on countering domestic terrorism in all possible ways with a hearing on or before June 30, 1995, on actions taken by federal law enforcement agencies in Ruby Ridge, Idaho, and Waco, Texas.

HATCH AMENDMENT NO. 755

Mr. HATCH proposed an amendment to amendment No. 754 proposed by Mr. SPECTER to the bill S. 534, supra; as follows:

Strike all after the first word and insert the following:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, to investigate and effectuate (or seek to effectuate) the arrest of Mr. David Koresch and others associated with the Branch Davidian sect in Waco, Texas;

(2) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco and Firearms, to investigate, and effectuate (or seek to effectuate) the arrest of Mr. Randy Weaver and others associated with Mr. Weaver, in Ruby Ridge, Idaho;

(3) The Senate has not yet conducted comprehensive hearings on either of these incidents;

(4) The public interest requires full disclosure of these incidents through hearings to promote public confidence in government; and

(5) The public's confidence in government would be further promoted if the timing of the hearings takes into consideration the need for such hearings to be conducted in an atmosphere of reflection and calm deliberation.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held in the near future, before the Senate Judiciary Committee, at a time and under such circumstances as determined by the Chairman, regarding the actions taken by federal law enforcement agencies and their representatives in the aforementioned Ruby Ridge and Waco incidents.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 10, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to consider the nomination of James J. Hoecker to be a member of the Federal Energy Regulatory Commission.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 10, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 2 p.m. The purpose of this hearing is to receive testimony on the Federal Energy Regulatory Commission's notice of proposed rulemaking and supplemental notice of proposed rulemaking, ''Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities'' (Docket No. RM95–8–000), and ''Recovery Stranded Costs by Public Utilities and Transmitting Utilities'' (Docket No. RM94–7–001).

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

COMMITTEE ON FINANCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Wednesday, May 10, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on the World Trade Organization Dispute Settlement Review Commission Act and on the nomination of Jeffrey Lang to be Deputy U.S. Trade Representative.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 2:30 p.m., to hold a hearing on ''The Role of the Military in Combating Terrorism.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 2 p.m., to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces of the

Committee on Armed Services be authorized to meet at 3 p.m., on Wednesday, May 10, 1995, in open and closed session, to receive testimony on tactical intelligence and related activities in the Army and Air Force in review of S. 727, the National Defense Authorization Act for Fiscal Year 1996, and the future years defense program.

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

SUBCOMMITTEE ON IMMIGRATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Immigration Subcommittee of the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 9:30 a.m., to hold a hearing on ''Verification of Applicant Identity for Purposes of Employment and Public Assistance.''

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

ADDITIONAL STATEMENTS

AN ETHICAL DILEMMA

● Mr. SIMON. Mr. President, there is a lot of emotion and not much rationality to the question of whether we use fetal tissue to assist people who have problems, particularly with Parkinson's disease.

It is interesting that in the U.S. Senate, many of those who support the use of fetal tissue comprise those who are totally opposed to abortions.

I believe their stand makes sense, much more sense than those who emotionally oppose use of fetal tissue.

If for a reason of taste, or culture, or religion, people are opposed to any transplant, I understand it.

When I die, if my eyes or any part of me can be used to be of assistance to someone else, I want that done.

I would think most people who have had an abortion would want the same.

The requirements are very strict. You cannot make any money on it. You cannot designate to whom the tissue would go. You cannot even know to whom it is going.

Joan Beck has written a column in the Chicago Tribune that outlines the situation clearly, and I ask that it be printed in the RECORD.

The column follows:

[From the Chicago Tribune, April 30, 1995]

AN ETHICAL DILEMMA—IN DEFENSE OF FETAL TISSUE TRANSPLANTS TO TREAT NEUROLOGICAL DISORDERS

(By Joan Beck)

He was 59 years old and he had had Parkinson's disease for eight years. His body was becoming increasingly rigid and immobile. He had trouble moving and talking clearly. He had tremors he couldn't stop and he had to give up his job.

The medication that had helped early in the onset of the illness could no longer give him much relief, despite increasing doses. As the disease inexorably progressed, he decided to try a new, experimental treatment, despite the intense political and medical controversy that has marked its development.

Surgeons inserted several grafts of fetal tissue into one side of his brain. A month later, they repeated the procedure on the other side. The transplants came from seven donors, aborted babies from 6½ to 9 weeks old.

Within a few weeks after the surgery, the man's condition improved markedly, according to a report in the current issue of the New England Journal of Medicine. He could once again handle daily activities, even take part in an active exercise program. He needed less medication, but now it was much more effective.

A year and a half after the first transplant, the patient had surgery on his ankle to repair damage from a fracture years earlier. As he was recovering from the operation, he suffered a massive pulmonary embolism and died.

Studying his brain after death, doctors found conclusive evidence that the transplants had worked as hoped. The fetal neurons had survived, grown and were functioning, replacing the patient's damaged brain cells, just as the improvement in his symptoms had indicated.

An estimated 200 transplants of fetal tissue into human brains have been done over the past several years. Some have been performed in other countries, some under scientifically questionable circumstances. Results have been uneven and often discouraging.

The case reported this week is important because it is the first to prove that fetal tissue transplants can survive and function and that they can be linked to a patient's improvement.

The long-range implications are medical, political and ethical. The success story offers eventual hope for hundreds of thousands of patients, not only with Parkinson's disease but also with Huntington's disease, Alzheimer's disease and other disorders caused by brain cell impairment and destruction for which no good treatment or cure is now available.

Much research is still necessary, however. More data are needed about optimal size of the grafts, whether the tissue can be frozen in advance, which patients are likely to benefit, how long improvement will last, whether the underlying disease will eventually destroy the new brain cells.

Fetal tissue is considered necessary for transplants because it can survive and grow where grafts of more mature cells do not. It can take on new biological functions, unlike other cells. And the recipient's body is not so likely to reject it.

But the research has been slowed in the past for political and ethical reasons.

The problem is that such transplants almost always must come from abortions—and that has raised fierce and intractable opposition from pro-life forces. They see the possibility that women will deliberately get pregnant and have an abortion to provide a graft for a loved one—or even worse, sell the tissue on some sort of medical black market.

Even with tight controls, abortion opponents argue, using tissue from aborted fetuses will make it easier for women to decide to have an abortion because they can rationalize that some desperately ill person could benefit and that might ease any guilt feelings they may have.

Should fetal transplants eventually prove to be of great medical benefit and become widely used, it will be even harder to rally the nation to oppose abortion—the source of such grafts—pro-life leaders fear.

In response to anti-abortion fervor, the Reagan administration prohibited the use of federal funds for research using fetal tissue for humans, a major setback because most research grants are based on federal approval. Some experiments did continue, however, using private money, and in other countries.

Under mounting pressure from Congress, President Bush attempted a compromise. He authorized a grant of more than $2 million to study whether fetal tissue obtained as a result of miscarriages and ectopic pregnancies—not deliberate abortions—could be used for transplants.

The answer turned out to be no. Out of 1,500 such fetuses tested, all but seven were unsuitable because of chromosome errors (a major cause of miscarriage) or problems with bacteria and virus contamination.

In 1993, President Clinton finally lifted the ban on federal funding for fetal tissue research. The use of such transplants is carefully governed by state and federal laws and government and medical guidelines similar to those that cover other transplants, including the Uniform Anatomical Gift Act which has been adopted in all states.

The stark facts remain. Abortion is legal in the United States. About 1.5 million abortions occur every year. Aborted tissue is now discarded, even though it holds the potential for successfully treating several terrible, intractable diseases.

Abortion is a tragedy, as is death from gunshot wounds and traffic accidents. But the success of fetal tissue grafts isn't going to encourage abortion any more than organ transplants increase car crashes and murders.

Research is under way to find other means to treat neurological disorders, some of it building on findings from fetal tissue studies. But until these experiments are successful, surely it is more ethical and merciful to try to use fetal tissue than simply destroy it.●

TRIBUTE TO THE GREEN MOUNTAIN BOY SCOUTS

● Mr. JEFFORDS. Mr. President, I rise today to pay tribute to the Green Mountain Boy Scouts and congratulate the Boy Scouts of America on their 85th anniversary. It seems fitting, indeed, that the Green Mountain Boy Scouts of America will hold its statewide camporee on the historic Rutland fairgrounds. While 10,000 Vermont scouts and 4,000 adult volunteer leaders will be marking the 85th anniversary of the Boy Scouts of America in June, the Rutland Fairgrounds prepares to celebrate the 150th anniversary of the Vermont State Fair.

To these fairgrounds in 1861 came 1,000 young men to form the First Vermont Regiment of infantry, the initial unit sent from Vermont to fight in the Civil War. It is my understanding that the first night in camp, a chill wind came down off Pico and Killington flattening many of their tents. It was a strong omen, for hard times were ahead for the Vermonters who went off to fight in that war. Before it was over, nearly 35,000 young men from Vermont would serve, and more than 5,000 would give their lives.

Those lads, every one of them volunteers, established a model of service from which Vermont did not falter during four bloody years. It is a model that we still find personified by the young people, and their leaders, who fill the ranks of scouting in Vermont.

Not only do scouts well serve the communities in which they live, they are constantly acquiring knowledge and skills which will serve them well in later years—and make them better citizens. In scouting lies much of the hope for America in the fast approaching next century.

It is reassuring to know that Vermont still has within its borders able young people willing to serve in the best interests of their State and Nation, as did the boys of the long ago Civil War days.

I want to congratulate the Boy Scouts of America on their 85 years of excellent service to the United States and welcome the Vermont boy scouts to my home city of Rutland for their celebration. Rutland is where I served in my youth as a boy scout. I hope the Vermont camporee is as enjoyable and successful as it is historic.●

WORKING FAMILIES ANXIETY OVER EDUCATION CUTS

● Mr. DODD. Mr. President, we should never lose sight of the meaning of the decisions we make here for ordinary Americans and their families. This point was brought home to me by an article in Monday's New York Times, ''Families Await News on Cuts in Education Aid.'' I ask that this article be printed in the RECORD at the conclusion of my remarks.

This is a difficult time of year for parents of college-age children. Along with their sons and daughters, they anxiously await college acceptance or rejection letters and financial aid offers. They worry about children away from home for the first time, about summer jobs, about SAT scores and grades and about the job market for college graduates. But for the vast majority of parents, the biggest worry is how they will be able to make it all possible for their children.

This year, unfortunately, there is another gnawing worry for millions of families who rely on Federal student financial aid to make college possible. Serious cuts in these programs are being proposed. The Contract With America calls for the elimination of one of the key pillars of Federal support for college students—the in-school interest subsidy on guaranteed Federal loans. The Domenici budget plan calls for the elimination of this subsidy for graduate students, but it goes on to proposes overall education cuts so severe that the subsidy for all students is called into question.

In addition, campus-based aid programs and other higher education programs are endangered by the severe cuts proposed in discretionary spending for educational activities. This casts a shadow over the future of the College Work Study Program, the Supplemental Education Opportunities Grant Program, the State Student Incentive Grant Program, and the Perkins Loan Program.

Mr. President, education has always been one of the most solidly placed rungs on the ladder of economic opportunity. For generations, American families have sacrificed to assure their access to the best education possible. That has paid off for us as individuals and for us as a nation. And yet many in Congress are prepared to turn their backs on this record of success.

As we debate the budget resolution in committee this week and on the floor as early as next week, there is clearly a great deal hanging in the balance, not the least of which are the hopes and dreams of American families for their children's future. I urge all my colleagues to read this excellent article and consider our country's future.

The article follows:

[The New York Times, May 8, 1995]

FAMILIES AWAIT NEWS ON CUTS IN EDUCATION AID

(By Lynda Richardson)

These are uncertain times for the family of David and Maureen Grau of St. Paul, Minn. As they await final word on financial aid for the colleges that three of their eight children attend, they worry what sacrifices will need to be made, and even which child might not go.

The Graus know that some cuts in Government aid are likely. In the next several weeks, Congress will begin considering the strongest assault in recent years on the array of college loans, grants and work-study programs that many lower- and middle-class families have relied on since passage of the nation's first major Federal student aid program, the Higher Education Act of 1965.

And across the nation, governors and legislatures are cutting the state university budgets and considering deep reductions in aid for impoverished students.

But in the absence of decisions on what will be cut, the most the Graus can do—like thousands of other Americans—is make contingency plans and hope for the best. Two daughters will cram three extra courses into their full college loads next year so they get through school faster, saving tuition. And all three will work full time—or more—this summer.

Baby-boomers, the Graus were themselves beneficiaries of Federal student loans and grants back in the 70's. Mr. Grau, 44, is now a registered nurse; his wife, 42, is a homemaker. With an annual income of $36,500, they save and scrimp. They have not bought new furniture, other than a couch, in 23 years.

The Graus hold many of the bedrock American beliefs that swept the new Republican leadership into office. They go to Mass every Sunday. They are anti-abortion. Each child has a chore at home. Now, they say they are feeling betrayed.

''We never questioned whether or not college education was available to us,'' Mrs. Grau said. ''Loans, grants and college work-study were there for the taking. All that was truly needed was a desire, and now you have a lot of hurdles.''

House Republicans have called for $1.7 billion in cuts in money already appropriated in the $34 billion Department of Education budget for the 1995 fiscal year. They have proposed $20 billion in higher education cuts over the next five years.

The largest cut would come from ending the Government subsidy of interest on loans while students are in college, which could save $12 billion in five years. Currently, a student who borrows $5,000 for freshman year owes $5,000 at graduation. Under the proposal, interest would be added to the principal each month, so the $5,000 would become $6,000 or so in debt at graduation. Students would see an average of 20 percent to 25 percent more debt when they graduate, financial aid officers say.

Republican leaders, in their first 100 days, also suggested dismantling Federal aid programs that are managed by colleges, including the Perkins loans for needy students, Supplemental Educational Opportunity Grants and work-study programs in which the Federal government pays 75 percent of a student's salary and the institution pays the rest.

''It is safe to say that every low- and middle-income family with a student in college and hoping to send a child to college has a stake in the outcome of the debate that Congress is holding now and will be holding for the next few months,'' said Terry Hartle, spokesman for the American Council on Education, a Washington-based association of 1,700 colleges and universities. ''Many families would find their plans for college disrupted, fundamentally changed or eliminated by major changes in Federal student aid.''

But the Republicans who have proposed them say the cuts are necessary for the financial health of the nation. Bruce Cuthbertson, a spokesman for Representative John R. Kasich, the Ohio Republican who chairs the House Budget Committee, said of loan subsidies, ''We think it's a matter of fairness. We just put this on equal footing with all other types of loans one would receive.''

The potential cuts have stirred public protests and private anguish. In the Bronx, Elba Velez, a single mother of three, worries that the cuts will halt her family's fragile upward mobility.

''The programs that are being cut are for the people who need them the most,'' said Ms. Velez, who left welfare behind after getting her degree in the 70's. Her son is a freshman at Wesleyan University.

Carmen Vega Rivera and her husband, John, worry that their high school senior will never go to college. Financial aid was crucial to Mrs. Rivera's education. She now heads an East Harlem tutorial program.

THE PRESENT—BEING MARRIED WITH CHILDREN

The three Grau college students are among the nearly half of all 14.7 million college students who receive student aid. Two daughters attend Concordia College, a small liberal arts school in St. Paul, and the third is at the University of St. Thomas there. Besides the subsidized loans, the young women get a wide array of aid from the Federal Government, the state and the college, and both work during the school year.

At Concordia, Amy, a sophomore, who lives at home, received $12,305 in aid this year. Her sister, Sarah, a freshman who lives on campus, was awarded $13,308. The total cost of Concordia is $15,550 for dorm students and $14,500 for students living off campus. The Graus pay the rest.

Their older sister, Rochelle, a junior who plans to attend graduate school, is interested in biomedical ethics and philosophy. She received $17,028 in aid this year to pay for books, fees and other expenses at St. Thomas, which has an average student cost of $16,263.

Rochelle and Amy are lining up full-time summer jobs, as counter help at a fast-food restaurant and as an office administrator. Sarah will work as a counselor at a day camp.

''They are thinking maybe a part-time evening and weekend job also,'' said her

mother, Maureen Grau, 42. This would rule out summer courses, but the women want enough money to pay their expenses all year.

Mrs. Grau received a degree in health and physical education at the College of St. Catherine in town. Mr. Grau received a degree in English and education at St. Thomas. He taught, then worked as a mechanic. Four years ago, he returned to college to become a nurse.

Mr. Grau says he and his wife are not in a position to help their college-age daughters because they have five more children at home, ages 8 to 17. ''How am I going to educate them?'' he asked. ''I don't know.''

THE PAST—ERECTING A LADDER OF OPPORTUNITY

For the Graus, the commitment to college education goes back three generations on Mrs. Grau's side; four on her husband's. But for hundreds of thousands of low-income Americans, like Elba Velez of the Bronx, the ''War on Poverty'' in the 1960's brought access to college degrees for the first time. Federal student-aid programs began small but expanded under the Nixon, Carter and Reagan Administrations.

Not since the G.I. Bill, after World War II, had the Federal Government played so strong a role in insuring that a specific segment of the population got a chance to go to college. Minority enrollment, in particular, showed a dramatic increase.

''The generation that preceded this one has tremendously benefited from Governmental assistance to attend college,'' said Jamie P. Merisotis, the president of the Institute for Higher Education Policy in Washington. ''Both for individuals and the nation, the payoff is clear.''

Ms. Velez was on welfare in the 1970's when she decided to go to college. She had considered a job in Manhattan's garment district but said that when she saw the assembly lines of uneducated women hunched over heavy machinery, ''I looked around and said, 'This is not for me. I'm going to take charge of my life. I'm not going to let anyone tell me what I am going to be.' ''

Ms. Velez enrolled at Bronx Community College in 1979. With the support of Federal Pell grants—created in 1972—and state tuition aid for needy students, she received a bachelor's degree in business administration from Baruch College in 1983.

''I have more power,'' she said. ''I am able to provide for my children, but I'm also able to give back to the community.''

But she is concerned about her children's future, with the cost of private colleges averaging $9,995 last year. ''I just want my children to have an opportunity to go on to school,'' she said.

Her 19-year-old son, Daniel, a bookish young man interested in science and creative writing, gets a $13,975 scholarship from Wesleyan University in Middletown, Conn. In a work-study job that pays $1,400 a year, Daniel re-stocks and cleans the salad bar in the dining hall. He also receives $7,825 annually in subsidized loans, as well as Pell and Supplemental Educational Opportunity grants. He and his mother contribute about $2,090 a year to make up the rest of Wesleyan's $26,790 tuition and board costs.

To offset college costs next year, Daniel hopes to find summer work at a fast-food restaurant.

His sister, Felicia, a senior at Central Park Secondary School in East Harlem, was recently accepted at Syracuse University. Her financial package covers only $19,000 of the school's $25,000 cost. Felicia cannot expect much help from her mother.

And just last week, Ms. Velez learned that she may be laid off at Bronx Community College as part of the cost cutting proposed for the city university system.

THE FUTURE—$93,000 A YEAR AND STILL WORRIED

Walking into a noncredit class at New York University more than two decades ago, Carmen Vega Rivera remembers the sea of mostly Hispanic and black faces. Like Mrs. Rivera, many also were first-generation college students.

She and the others were enrolled in the state's Higher Education Opportunity Program, created in 1969 for students with both academic and financial need who wanted to go to private colleges. Gov. George Pataki proposes cutting that, along with similar programs at state and city universities, though many legislators are fighting to restore the programs. H.E.O.P. alone would save $22.5 million this fiscal year, the Governor's office said.

Mrs. Rivera was 49th of 500 students at the High School of Art and Design in midtown Manhattan but scored poorly on the verbal portion of the Scholastic Assessment Test. ''My chance of coming through the traditional admissions was not likely,'' she said.

With intensive counseling, emotional support and tutoring in the special N.Y.U. class, Mrs. Rivera received her bachelor's degree in education and the arts in 1976.

Now, at 41, she earns $65,500 a year as executive director of the East Harlem Tutorial Program. Her husband, John, who manages a commercial building, only recently began a $27,000-a-year job. He had stayed at home for the last decade to look after their son, Jaime, now 10.

Still, even with a $93,000 combined income, Mrs. Rivera said her family lives from paycheck to paycheck, renting an $800-a-month apartment near Yankee Stadium. There are bills for medical problems and deaths in their extended family, and they support a 17-year-old daughter, Taina, and her 7-month-old child.

If Mrs. Rivera had her dream, Taina would attend New York University, she said. But as the family now explores state and city universities, everything seems up in the air.

''As a parent, it's eating up my mind all the time,'' she said. ''I'm thinking, 'How am I going to pull it off? Is it all going to work out?' ''●

TRIBUTE TO AVIS B. BAILEY

● Mr. BUMPERS. Mr. President, I rise today to pay tribute to a fellow Arkansan, Avis B. Bailey. Avis is the owner of Avis Nissan in Fayetteville, and I am proud to say, was honored last week by the U.S. Small Business Administration as the 1995 Arkansas Small Business Person of the Year. I had a chance to visit with Avis and her husband last week on the Capitol steps, and I was immediately convinced that this honor is richly deserved.

Avis Bailey was born and raised in Prairie Grove, AR. The youngest of six, she married right out of high school and then moved with her husband to Tulsa, OK. Twelve years later and a single parent, she returned to northwest Arkansas and settled in Fayetteville, where she worked in her brother's transmission repair shop. In 1971, Avis took another job as a cashier at Hatfield Pontiac and Cadillac, one of Arkansas' oldest and most respected Cadillac dealerships. This became job No. 3 for her. However, in less than 2 years Avis was out from behind the cashier's desk crunching numbers and in the showroom selling Cadillacs. It was not long before she became one of the State's top salespersons for automobiles and, within 10 years, manager of the dealership.

Avis told me she could remember when new Cadillacs started selling for over $10,000. It was at that time that her father told her she needed to get out of the business. He said no one would pay that much for a car. Mr. President, 20-some-odds years and many success stories later, Avis B. Bailey bought that Pontiac-Cadillac dealership where she started as a cashier. I know many people who still dream of owning a Cadillac someday, and here is Avis with a whole parking lot full. Her whole career is a testament to what hard work and dedication can accomplish. She has truly risen through the ranks of the small business world.

In 1991, Avis bought a Nissan dealership that was nearly bankrupt. Its standing in the community was down, but Avis took the initiative and the gamble to take that failing business and turn it around. Within 3 years, she more than doubled the volume of sales and her number of employees. Sales totaled $11.7 million in 1994 for Avis Nissan. Avis and her partners have also bought four more automobile dealerships in Arkansas, adding both to the economy and to the community. She and her partners are now owners of Mazda and Ford dealerships in northwest Arkansas as well.

Mr. President, we need more people like Avis Bailey in this country. She is more than a shrewd business woman. She is filled with a spirit that can make a difference. Avis avidly supports the athletic programs of the University of Arkansas, she is a member of both the Fayetteville and Springdale Chamber of Commerce, and she's a friend to area grade schools, working to furnish school supplies and clothing. We need more people who aren't afraid to roll up their sleeves, work hard, and make a difference in their communities. Mr. President, I hope you will join me in congratulating Avis Bailey on being named the Arkansas Small Business Person of the Year for 1995.●

THE MISSING SERVICE PERSONNEL ACT

● Mrs. FEINSTEIN. Mr. President, I am pleased to cosponsor the Missing Service Personnel Act of 1995, introduced by Senators DOLE and LAUTENBERG earlier this year.

The Missing Service Personnel Act is a significant and an appropriate piece of legislation. It would establish new methods for determining the status of missing service personnel and improving the means by which full accountability is achieved. Due in part to the handling of POW/MIA cases by the Department of Defense and the United States Government since the Vietnam war, existing procedures have been criticized as being unresponsive to the

needs of effected families. In fact, current law does not adequately address issues that have emerged over the past 25 years regarding how missing persons and their families are treated by Government officials. S. 256 would implement procedures which foster a sense of trust and credibility between the Government and families of missing personnel, while attempting to ensure fairness to all involved.

Considering the tremendous sacrifices our men and women make when facing combat, maintaining credibility and trust are crucial. Soldiers face the terrible prospect of capture and, in turn, their loved ones face the horrible possibility of intense anguish and heartache. We must assure our armed services personnel and their civilian counterparts that the United States will do everything possible to return them home safely in the event they turn up missing in action. At the same time, they must also be assured that more open and fair procedures will be established to determine their exact status. S. 256 takes concrete steps to achieve these objectives.

There are, however, some issues with the bill that I think still need to be reviewed. For instance, S. 256 restricts identification of recovered remains to licensed practitioners of forensic medicine. Utilization of personnel in disciplines other than medicine which may be appropriate are not permitted. According to DOD, such a requirement would be unreasonable during combat operations or on the battlefield. Moreover, as this legislation would be retroactive to World War II, DOD may be required to review thousands of cases. The Defense Department has indicated that it does not have the personnel or budget to handle such a workload. These are some issues that I hope the Senate Armed Services Committee will look into when reviewing this legislation.

Overall, I believe that S. 256 is an important and noteworthy bill. The Government has been perceived as being unresponsive to the needs of families whose loved ones are classified as missing in action. This legislation would safeguard the rights of missing armed service members while addressing the concerns of their effected families and the Federal Government. I am pleased to cosponsor the Missing Service Personnel Act.●

ORDERS FOR THURSDAY, MAY 11, 1995

Mr. SPECTER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 a.m. on Thursday, May 11, 1995; that following the prayer, the Journal of proceedings be deemed approved, the time for the two leaders be reserved for their use later in the day, and the Senate then immediately resume consideration of S. 534, the Solid Waste Disposal Act.

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

PROGRAM

Mr. SPECTER. Mr. President, for the information of all Senators, the Senate will resume consideration of the Solid Waste Disposal Act tomorrow. Further amendments are expected to the bill, therefore Senators should anticipate rollcall votes throughout Thursday's session of the Senate, and a late night session could occur with votes into the evening. A cloture motion was filed on the substitute this evening. It is the hope of the leader, Senator DOLE, that the Friday vote could be vitiated if an agreement can be reached to conclude the bill by Friday. Otherwise, a cloture vote will occur Friday morning.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the following Senators as members of the Senate delegation to the Mexico-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Tucson, AZ, May 12–14, 1995: the Senator from Iowa [Mr. GRASSLEY]; the Senator from Alaska [Mr. MURKOWSKI]; and the Senator from Washington [Mr. GORTON].

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SPECTER. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:08 p.m., recessed until Thursday, May 11, 1995, at 9:30 a.m.