

to; whatever standards we hold Albania to; whatever standards we hold Bulgaria to; whatever standards we hold Azerbaijan to; whatever standards we hold Russia to; whatever standards to which we hold all these countries where IRI observed elections without controversy, no matter how minimal those standards are we cannot expect Haiti to meet them.

Mr. President, that is what the Washington Post said today, and it is an injustice. It is an injustice to IRI; to Mr. Porter Goss and all the good and honorable people on IRI's election observation delegation in Haiti.

Most importantly, Mr. President, it is an injustice to the people of Haiti. They are human beings who yearn for freedom like any other nation, and who are capable of building and sustaining the institutions that will protect that freedom. To expect any less of Haiti is, as I said, an injustice. The people who have condescended to Haitians, including the Post editorialists, by asking the world's indulgence of their election's failings, should apologize to the Haitian people, and to those good Americans who they have maligned in the process.

Mr. President, I yield the floor.

#### PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 1478

Mr. D'AMATO. Mr. President, I would like to inquire of my colleagues if any of them have any statements to make with respect to the pending amendment, and how much time they intend to take. Might I ask my colleague how long he believes he will take?

Mr. BROWN. I have a brief statement that I think will be more than completed in 5 minutes.

Mr. D'AMATO. Mr. President, I ask unanimous consent that after the Senator from Colorado makes his statement that I be recognized—it is my intent to make a motion to table. Does the Senator wish to claim time to respond?

Mr. SARBANES. I may. I do not know what he is going to say. Why do we not say 10 minutes evenly divided and go to the vote?

Mr. D'AMATO. That is fine. I ask unanimous consent that after the statement of the Senator from Colorado, which will take 10 minutes equally divided, at that point in time I will ask for the yeas and nays and make a motion to table.

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

The Senator from Colorado.

Mr. BROWN. Mr. President, distributed on our desk is a statement from Abner Mikva, counsel to the President and former Member of this Congress,

who has what I believe is a very distinguished record, as well as a fine record as a judge for this Nation. I have the utmost respect for Judge Mikva, and so it is with seriousness that I view his letter that has been distributed.

It addresses the subject which we are discussing, and the implication is, of course, that this is an important factor in the President deciding whether he will sign this bill. He speaks out strongly on behalf of Senator SARBANES' amendment, I think for no other reason than that it is worth taking a serious look at.

As I read the two standards, I suspect other Members will find it a challenge, as I do, in pinpointing precisely what the difference is. The bill carves out an exclusion; that is, a safe harbor. What we found under current law is that people in business, in order to avoid liability in terms of speculating about their company or commenting on their company's future, simply have clammed up. Their lawyers tell them, "Look, if you say anything and it turns out not to be totally accurate or if you speculate on the future and it goes the other way, you are going to get sued." So to avoid being sued they say, "We don't want you to say anything." Literally, that is what many companies will say.

"How is the weather at your plant?"

"Can't say."

"What do you expect your earnings to be?"

"I don't know."

What this issue revolves around is the fact that we have denied economic free speech. It is a different issue than misleading people. I think everyone here—at least I hope they would—would feel very strongly that if someone intentionally misleads you for their own gain that we give redress for that. We expect people to be honest and that is fair and reasonable. But what we have found is the penalties are so profound and enormous and the ease of bringing a suit is so great that we have tried to address the problem by at least not penalizing people who make reasonable statements about the future of their company. That is what this is all about.

The first thing the bill does is go through a series of instances where some people have been known to make misstatements about a company in the past, and they specifically exclude them from this safe harbor. In other words, they say, Look, if you are convicted of any felony or misdemeanor, you are not going to come under this provision at least for a few years. If you are offering securities by a blank check company, you're not going to come under this safe harbor provision. If you are involved in issuance of penny stocks, you are not going to come under this safe harbor provision. If you are dealing with a rollup transaction, you will not come under the safe harbor provision. If you are dealing with a going private transaction, you will not come under the safe harbor provision.

The bill has said here are some areas, and we understand in the past people

have made misleading statements or false statements, and we are going to specifically exclude them from the safe harbor. Mr. President, I think that is responsible. I want to commend the chairman of the committee for doing that. I think it is a responsible approach. I want to say on this floor that if there are other areas that have had this kind of problem, we ought to pay attention and add them to this section. That is how to deal with this area. If there is a problem, we have to deal with it. What is left, which is considerably reduced, is meant to give some freedom of speech and is meant to allow people to make reasonable statements.

The problem here is that any time you attempt to forecast earnings, any time you, again, attempt to forecast what is going on, you are probably not going to have any better record of forecasting than the weather bureau has. They are conscientious, honest, and they miss it about half of the time. It does not mean that they are evil. What it means is that it is difficult to forecast. The question we have to answer is, should we simply, by putting tough penalties into place, prevent people from economic forecasting. Maybe we ought to put into law that it is illegal for anybody to come in about the future of their company. The reason we do not is that it probably does not help investors very much.

Mrs. BOXER. Will the Senator yield?

Mr. BROWN. I will yield when I finish my statement. This is an attempt. One says, "knowingly made with a purpose and actual intent of misleading investors." The amendment says, "made with the actual knowledge that it was false or misleading."

Well, "knowingly made" and "actual knowledge" sound similar and have some similarities. I believe, in reading the legislation, the big difference is this: It is in the words of "purpose" and "actual intent." I think as Members try and make a decision about how they can vote, they ought to ask themselves, if somebody makes a statement and it turns out not to be accurate, should we insist, before we penalize them, that they had the purpose and actual intent of misleading someone? Or was it an innocent statement and they did not intend to mislead someone, they did not have that actual intent? I believe the purpose of misleading someone and intent of misleading someone is at the heart of this amendment.

The amendment is offered by a very conscientious, thoughtful legislator. It is endorsed by a very thoughtful and reasonable judge, who acts as counsel to the President. I think the heart of the issue comes down to whether or not we want to extend economic free speech in these areas. Should you have the purpose and intent of misleading people, or should you be allowed to say what is appropriate without that?

Mr. President, I want to pledge one thing. I think the issue raised is appropriate and is a good one. I pledge one thing. If there are additional carved-out areas, exemptions from this that we ought to look at, I want to look at them and support them if they are reasonable. But let me say, Mr. President, that I think it is important that we be very careful about denying economic free speech. It is an important aspect of giving a full picture in describing economic opportunities and economic endeavors.

Mr. D'AMATO. Mr. President, I believe that under the present order we have 10 minutes equally divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. D'AMATO. Mr. President, we have debated this issue for several days and I think the Senator from Colorado stated the concern with this amendment well. If there are areas where we need additional carve-outs—to exempt people from getting this safe harbor, I am willing to look at them. Senator DODD is willing to look at them. Senator DOMENICI is willing to look at them. If there are reasonable suggestions that the SEC has, we will look at them. We are going to go to conference if we pass this bill, and I pledge that we will keep the offer open to look at those suggestions. We have been looking for them for 3 years. If suggestions come up now, because of this legislation, and they make sense, I will certainly consider them. We have worked to modify and strengthen, S. 240, to protect the rights of the legitimate investor and understand their concerns. That is what we attempted to do in drafting this legislation.

I yield the floor.

Mr. SARBANES. Mr. President, I just want to make a couple of comments here at the close of the debate on this amendment. I have to say to my colleagues, I hope everyone understands that they are ignoring the recommendations and judgment of the Chairman of the SEC, the State Securities Regulators, Government Finance Officers Association, and so forth. It may well be that people feel so knowledgeable and have such expertise in this area that that does not trouble them. I have to tell you, it troubles me and would trouble me wherever I found myself on some issues. I would want to be very certain about ignoring those opinions.

Arthur Levitt said:

A carefully crafted safe harbor protection from meritless private lawsuits should encourage public companies to make additional forward-looking disclosure that would benefit investors.

That is what the Senator from Connecticut has been asserting. No one is challenging that. He earlier said, "You are not going to have any safe harbor." Nobody is saying that.

Arthur Levitt goes on to say:

At the same time, it should not compromise the integrity of such information which is vital to both investor protection

and the efficiency of the capital markets—the two goals of the Federal securities law.

He has said about the language that is in the bill, the language we are trying to take out:

I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection.

That is what the issue is. The Government Finance Officers Association has written to us that the safe harbor provision in the bill opens a major loophole through which wrongdoers could escape liability while fraud victims would be denied recovery. That is the issue.

I understand that we need a meaningful safe harbor, but the safe harbor should not be structured in such a way that pirates can find shelter in it. And, as written, the language in the legislation does exactly that. That is why the Chairman of the Securities and Exchange Commission, the Government Finance Officers Association, the North American Securities Administrators Association, which represents the 50 States' security regulators, that is why—the North American Security Administration Association called the provisions in the bill "An overly broad safe harbor making it extremely difficult to sue when misleading information causes investors to suffer losses."

The amendment is very simple. The amendment would take out the language in which all of the regulators have seen major problems, in terms of investor fraud, and substitute for it that you do not have protection in a safe harbor if you make a forward-looking statement made with the actual knowledge that it was false or misleading. And no one yet on the floor has explained to me why such statements ought to get protection from liability.

Mrs. BOXER. Will the Senator yield?

Mr. SARBANES. I yield to the Senator from California.

Mrs. BOXER. Mr. President, I think that this is the crux of the matter. And the ranking member is really the conscience of the Senate on this whole matter. I want to ask a very direct question. I am not an attorney, and my learned friend is.

If we vote for S. 240 without the Senator's amendment, is it the Senator's view that a company or an officer of a company, could make a false statement—tell a lie, put it that way—make a false statement, which is tell a lie, that he had actual knowledge was a lie?

In other words, I know I am wearing a yellow suit. If I said I am wearing a blue suit, I am telling a lie. I have to know that this is yellow. Is my friend saying that unless we adopt his amendment we could have a business person make a false statement that he knew was false, and he could still benefit from the safe harbor in S. 240 and hide behind that?

Mr. SARBANES. He could find shelter within the safe harbor even though he had actual knowledge that the

statement was false—even though he had actual knowledge.

Mr. D'AMATO. Mr. President, I have heard many statements in this debate. One particular statement I have heard is about a pirate's cove. The pirate's cove exists today, those pirates are taking investors for a real ride, and they are drowning them. They are drowning companies and they are drowning good people.

All the pirates have to do is allege fraud, and companies find themselves facing millions of dollars in damages or in settlements. If we adopt the standard in this amendment, nobody will be willing to make predictions. They will not take the risk.

Now, look at what S. 240 says. It says, with no exceptions, that the safe harbor does not apply to a forward statement that is knowingly made with the purpose and actual intent of misleading investors.

We think that this standard will encourage people to make statements, make predictions, but will hold them liable if they knowingly, with intent to defraud make a statement that is false. Anything less than this standard will allow the same band of pirates that we have now to continue to bring meritless cases.

S. 240 stops lawyers from being able to pay their professional plaintiffs. They were actually paying people \$10,000, \$15,000, \$20,000 to use their name on the suit. One of these characters has signed up 14 times with the same law firm, the same law firm that is working, lobbying, paying millions of dollars to try and defeat comprehensive reform.

If we want reform and to we want to get rid of these pirates, we need to pass S. 240. This amendment will cause a chilling effect on the ability of people to make projections about the future.

I yield the floor.

Mr. D'AMATO. Mr. President, I move to table the 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 have been 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 bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Indiana [Mr. LUGAR] is necessarily absent.

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

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—50

Abraham	Chafee	DeWine
Ashcroft	Coats	Dodd
Bennett	Cochran	Dole
Brown	Coverdell	Domenici
Burns	Craig	Faircloth
Campbell	D'Amato	Ford

Frist	Jeffords	Reid
Gorton	Kassebaum	Santorum
Gramm	Kempthorne	Simpson
Grams	Kyl	Smith
Grassley	Lieberman	Snowe
Gregg	Lott	Stevens
Hatch	Mack	Thomas
Hatfield	McConnell	Thompson
Helms	Nickles	Thurmond
Hutchison	Packwood	Warner
Inhofe	Pressler	

NAYS—48

Akaka	Feinstein	Mikulski
Baucus	Glenn	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Harkin	Murkowski
Boxer	Heflin	Murray
Bradley	Hollings	Nunn
Breaux	Inouye	Pell
Bryan	Johnston	Pryor
Bumpers	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cohen	Kerry	Roth
Conrad	Kohl	Sarbanes
Daschle	Lautenberg	Shelby
Dorgan	Leahy	Simon
Exon	Levin	Specter
Feingold	McCain	Wellstone

ANSWERED "PRESENT"—1

Bond

NOT VOTING—1

Lugar

So the motion to lay on the table the amendment (No. 1478) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. D'AMATO. Mr. President, I would propound a unanimous-consent request which I believe will deal with all of the outstanding amendments. I believe there are six amendments, three on each side, and it would be my intent to ask that we stack those votes so we could give our colleagues the opportunity to arrange their evening schedule. Possibly, with the concurrence of the two leaders, we can agree to time limits on all of those amendments, so we can take them up tomorrow morning and then proceed to final passage. That is my intent, to see if we can reach that agreement. I bring this up because some of my colleagues have asked what the schedule will be. If we can work out that agreement, it would be my hope that we would dispose of all of the amendments this evening and then start voting at a certain time tomorrow morning.

I yield the floor.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I rise to speak on the bill.

DISTURBING EVENTS IN HAITI

Mr. COVERDELL. I wish to comment specifically on the remarks that were made earlier by the Senate majority leader and the Senator from Arizona with regard to the disturbing events we have witnessed in Haiti.

Mr. President, we have received reports that voting tally sheets were being intentionally altered and ballots

were being substituted with newly marked ballots. While widespread violence had been deterred, there has been a lack of visible security, and closed individual polls have forced Haitians to go home without casting their vote. There have been long delays in the opening of polls in many areas and a shortage of electoral material. Many ballot boxes were not sealed properly before being turned over to the regional centers. Observers found a few cases of ballot stuffing.

In short, we have a serious situation. I conferred with the majority leader with regard to these events, and want to announce to the Senate we will conduct hearings on the week we return in the subcommittee of the Foreign Relations Committee, specifically the Western Hemisphere Subcommittee. I wanted to make that known to the Senate. Mr. President, I yield the floor.

Mr. DODD. Mr. President, I ask unanimous consent that I may speak as if in morning business.

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

EVENTS IN HAITI

Mr. DODD. I was not in Haiti this past weekend as part of an observer group, but as I think most of my colleagues know, I have been there on numerous occasions. In fact, I lived on the border of that country for 2½ years and have a more than passing interest in the awareness of Haiti.

As I have listened this afternoon to several speeches now made about the events in Haiti over the past several days, I find it stunning in many ways. My colleagues, by their remarks, almost imply that the situation in Haiti would have been preferable had there not been an election or had there not been the decision by the administration in previous months to go back to intercede, along with the support of the international community, to try to restore the democratically elected government of that country.

This was not a perfect election in Haiti. There were serious problems. But, remember, this is a country that can count free elections on one hand—fewer fingers in fact—that they have had over the years. The last free one was 4 or 5 years ago when President Aristide was elected. And then we watched that election be ripped from the people of that country through a coup.

President Clinton, the administration, took the courageous decision to restore President Aristide to power in that country. And I recall back in those days during that debate the almost apparent disappointment that there was not more of a tragedy. We did not lose a single soldier in that effort. In fact, the President deserves great commendation, mind you, for the courage he showed in making an unpopular move. It was not popular at the time. Today, interestingly, the ma-

majority of people in this country think the President did the right thing.

Now, over the weekend, they had an election. It is a poor country with a tremendous level of illiteracy and staggering economic problems. So it did not look like a perfect election in this country. But it is an effort of poor people to get out and freely choose its leadership, literally hundreds and hundreds of candidates for local office and national office in that country. And rather than castigate and denounce the effort for the shortcomings that certainly were obvious and apparent, why are we not applauding the fact that this country was trying to embrace democracy and do so in a noble way?

Granted they had problems with ballot boxes and people abused the process. Votes were not counted. There were shortcomings, to put it mildly, in the process. All of that I accept. But instead of picking this process apart, there ought to be at least some underlying statements that indicate that we support this effort. We hope it is not just a one-time effort, but that in coming months and years we will see democracy take hold in this poor, little country to our south.

And so I have been disappointed. It is just a continuum of almost the disappointment people expressed over the last year over the President's decision to go in and restore President Aristide, which was a success. It seems to be a continuation of that. I am disappointed by these remarks. This is working. It is not perfect. We have watched what happened in other countries, including what we are watching in the former Soviet Union, the New Independent Republics. Countries that are struggling to find their democratic feet do not do so instantaneously. It takes time.

So I commend President Aristide and commend the people of Haiti for the courageous attempt to have a free and fair election. I am terribly disappointed it did not meet our high standards of a perfect election. But rather than spend our time denouncing the imperfections, we ought to take a moment out and commend these people. Some people walked literally miles and miles to get to a polling place in order to exercise their rights. Most of them are illiterate, cannot read or write. They have to vote by looking at colors or symbols on a ballot in order to choose their party or candidates. And to watch people get out with, I think, the returns somewhere around 60 or 70 percent—in our elections in 1974 we had 38 percent that turned out to vote.

So with all its imperfections, I think the people of Haiti deserve our applause, our commendation for their efforts. And certainly the Government of Haiti does, as well, for conducting this election. And albeit with its shortcomings, my hope is in coming years we will see better results and less imperfections in the process. But they do not deserve to be denounced, in my