United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, SECOND SESSION

Vol. 144 WASHINGTON, WEDNESDAY, MAY 13, 1998 No. 60

Senate

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

PRAYER

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

Lord of all life, You have shown us that a great life is an accumulation of days lived to the fullest, one at a time, by Your grace and for Your glory. Thank You for the strength and vitality that surge within us when we open the floodgates of our minds and hearts and allow Your Spirit to empower us. When we invite You to be the unseen but enabling Presence in everything, we experience greater creativity, we think more clearly, we speak more lucidly, and we accomplish more with less strain and stress.

Make us so secure in Your love, Lord, that we live this day with more concern for the future of our Nation than for the future of our careers, with more concern for our success together than for personal success, and with more dedication to honest debate with civility than to winning arguments. We commit ourselves to press on with crucial issues on the agenda. Give us a renewed sense of our calling to serve You and a deeper trust in Your faithfulness to give us exactly what we need in each hour. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the Senator from Mississippi is recognized.

SCHEDULE

Mr. COCHRAN. Mr. President, at the request of the majority leader, I am pleased to advise all Senators of the schedule of legislative business for today's session of the Senate. This morning, between now and 11:30 a.m., the Senate will debate the motion to proceed to the missile defense bill. Following that debate, the Senate will proceed to vote on the motion to invoke cloture on the motion to proceed to the missile defense bill. And following that vote, the Senate will begin consideration of S. 1244, the charitable contributions bill, under a short time agreement. At the conclusion or yielding back of the time, the Senate will proceed to a vote on passage of that bill.

Following that vote, it is the leader's intention to begin consideration of the Department of Defense authorization bill. Therefore, Members should expect votes throughout today's session with the first votes occurring at approximately 11:30 a.m. As a reminder to all Members, several time agreements were reached last night with respect to two high-tech bills, and those may be considered at some point this week.

Mr. President, may I inquire of the Parliamentarian if there is a time agreement for the consideration and debate of the motion to proceed to the missile defense bill.

The PRESIDING OFFICER (Mr. BROWNBACK). The time is to be evenly divided until 11:30 on the motion to proceed, and then there will be a cloture vote.

Mr. COCHRAN. I assume that under that agreement this Senator is in charge of the time for the proponents of the bill and the distinguished Senator from Michigan, Mr. LEVIN, is in charge of the time for the opponents of the motion.

The PRESIDING OFFICER. The Senator is correct.

Mr. COCHRAN. I thank the Chair.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

AMERICAN MISSILE PROTECTION ACT OF 1998—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 1873, and the time until 11:30 a.m. will be equally divided.

The clerk will now report.

The bill clerk read as follows:

Motion to proceed to the consideration of Calendar No. 345 (S. 1873), a bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack.

The Senate resumed consideration of the motion to proceed.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

PRIVILEGE OF THE FLOOR

Mr. COCHRAN. Mr. President, I ask unanimous consent the privilege of the floor be extended to Dr. Anne Vopatek, a fellow on my staff, during the consideration of S. 1873 and all relevant motions thereto.

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

Mr. COCHRAN. Mr. President, it should be noticed by those who are interested in the subject of missile defense that what we are actually debating and deciding this morning is whether or not the Senate should proceed to consider the bill that has been introduced by me and the distinguished Senator from Hawaii, Mr. INOUYE.

This bill is not going to be voted on up or down today; what we will have a vote on at 11:30 is whether or not to proceed to consider the bill. When the majority leader decided to call up this legislation, there was an objection made to proceeding to consider the bill. So under the procedures of the Senate, the majority leader, who is in charge of making decisions about the schedule of the Senate and how we take up legislation in the Senate, was

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obligated to file a motion to proceed to consider the bill. That motion is debatable.

Under notice from the opponents of the bill, it was clear that motion would be debated at length. So to get to the bill, it was decided by the majority leader that a cloture motion should be filed on the motion to proceed, bringing debate on the motion to a close. If we get 60 votes on that cloture motion, then we can proceed to consider the bill and it can be open for amendment, and Senators who have alternative ideas, or think that the current policy is the policy we should have for missile defense, can make those points and the Senate can consider those views. But until this cloture motion is approved, we can't get to that point. We can't get to the point of considering this bill on its merits and considering any amendments which Senators would have.

So I am trying to put in context what is before the Senate, what the issue is here. The issue this morning is whether or not the Senate thinks this is a matter of such seriousness and consequence to our national security that we ought to consider it, that we ought to debate it, that we ought to let the Senate work its will on a proposal to change our policy with respect to national missile defense. I can't think of a more interesting and serious time, given the events which are occurring in the world today, for the consideration of this issue. It is on everybody's mind, Mr. President, because of the tests which have been undertaken in India of a nuclear warhead. India now announces to the world they are prepared to use this as a part of their nuclear weapons arsenal, that they have it available, and that they are a nuclear weapons state. This is a dramatic change in the situation in India. It is a dramatic change in the security interests of the entire world.

At this time, we find the United States relying upon a policy with respect to missile defense of developing a national missile defense system in two stages, unlike any other defense acquisition program that we have ever had, or that we now have. We have a technology program—one that is developing the capabilities to have an effective defense system, but we do not have any policy with respect to ever putting that system in the field, or to integrating it into our national defense structure. That decision hasn't been made. We are suggesting in offering this bill that the time has come for the United States to say to the world we are going to develop and deploy a national missile defense system.

We are going to protect the security interests of the United States and the territory of the United States. As a matter of national policy, the Federal Government is going to obligate itself to undertake to protect the security interests of the citizens of the United States and the United States itself from ballistic missile attack. It seems to me that is an obligation that is very clear for us, in moral terms, as a government.

With India having a missile capability of a range of about 1,400 miles already, according to recent reports that are available to the Senate, Pakistan having tested for the first time on April 6 a new medium-range missile with a range of 1,500 kilometers, and India announcing that it is concerned that Pakistan is a covert nuclear weapon state, although it hasn't announced that, we are seeing evidence that around the world—in North Korea, in Iran, and, of course, in Russia and China—there are nation states that are developing, or now have, longer range missile capabilities than ever before. Some have the added capability of nuclear weapons and, some have other weapons of mass destruction that can be delivered with those long-range missile systems. And the United States is defenseless against attack from long-range ballistic missiles.

It has been our policy up until now to have the capacity to destroy any nation that would think about using a nuclear weapon against us. Russia and the United States have had over a period of time this mutual assured destruction relationship: If you destroy me, you can be assured I will destroy you. That confrontation and that balance of power has prevented any use of a missile system or nuclear weapon against the territory of the United States, even though that is not a very happy relationship to have.

Now, we hope, we are moving toward a better and more stable relationship, but there is still always the chance of an unauthorized launch even from Russia. We are working to destroy and build down the weapons stockpile. That is good. But we are not yet to the point where there is no risk. This is not a risk-free relationship with Russia. There could be an accidental launch. If there is, we have no defense whatsoever.

With respect to China, it is certainly unlikely that we are going to have any missile attack from there. Nonetheless, there is an emerging long-range missile system capability in China that is growing more sophisticated, that is going to continue to grow and develop more lethality and longer ranges, and it presents a threat—unlikely, but, nonetheless, there could be an unauthorized or accidental launch of a missile from China.

Already we are seeing the North Koreans developing—and already deploying—some medium-range missile systems. They are now developing, we are told, a missile with a range of 6,000 kilometers. That missile could reach Alaska. It could reach Hawaii. Who knows what their plans are for continuing to develop missiles with increased ranges.

We found out, through a year-long series of hearings that we conducted last year in our Subcommittee on International Security, Proliferation, and Federal Services, that it is much easier now than ever before for nation states who want to improve and develop their missile systems, and to give them longer ranges, to do so with the access they have to information from the Internet and to experts in Russia and other nation states where they already have the capabilities.

Iran provides an example of the surprises we face. One surprise occurred when we found out that Iran had acquired the technology, the components, and the expertise to put together a medium-range missile system. They are in the process of doing that now. One State Department official said that they could have that missile system available by the end of this year.

Last year, when we had the Director of Central Intelligence before a committee of the Senate talking about the advancements that had been made in Iran, he said that he thought—this is in 1997—that it would be up to 10 years before Iran would have medium-range missile system capability. Then he sent word up, that because of new developments and the acquisition of expertise and components from Russia, Iran had made surprising advances and they would have the capability to deploy such a system much sooner. It is because of gaps and uncertainties, he said, that you can't predict when people are going to get these technologies and other equipment from foreign sources, or how quickly they can develop an ICBM threat—you just can't predict that.

So we have seen in Pakistan now, in India, of course, in China, Russia, in Iran, and in North Korea solid evidence of what we are talking about today. And that is that there is in the world today a real threat to the security of this Nation because of the emerging capabilities and technologies for developing and deploying long-range missiles, that there are available in these countries weapons of mass destruction that can be carried by these missiles over long ranges, and that it is time for the United States to acknowledge this threat and say as a matter of policy that we are going to deploy a national missile defense system.

That is what this bill says. It doesn't set out what kind of architecture the missile defense system should have or any deadlines for doing it. We would rely upon the orderly processes of authorization and appropriation, as we have for all other defense acquisition programs, to determine how soon it is developed and when it is deployed. But what we are saying today is that, as a matter of policy, we are going to deploy a national missile defense system.

I think it is also important to notice that this does not require a violation of any existing arms control agreement. In our early discussions of this legislation, we heard others say that this puts in jeopardy the ABM—the antiballistic missile—agreement. It does not. That agreement contemplates that a party to the agreement could have a national missile defense system. It permits a

single site for interceptor rockets. We have been proceeding under the current administration plan that this is the kind of a system that would be developed, and eventually, if—under the administration's policy—a threat is perceived to exist, then an effort would be made to deploy the system.

So the real difference in what we are presenting to the Senate today is that this is a policy that is announced to the world and to rogue states that may be saying, ''Look, the United States is defenseless. We have an opportunity to put some pressure on them by developing a missile system that is capable of striking the United States. We can coerce them, intimidate them, and blackmail them because they are not at this point considering deploying a defense against intercontinental ballistic missiles.'' We would end that kind of thinking in nations who may be taking that approach by saying, ''Yes, we are. You are not going to see the United States any longer taking a wait-and-see approach.'' And that is what the administration's policy is—to wait and see if a threat develops.

We are saying, ''Mr. President, you have signed Executive orders over the last 4 years, starting in 1994, saying that the United States is confronted with a national emergency because of the proliferation of weapons of mass destruction and missile systems around the world.'' The President has acknowledged that, and he signed Executive orders that say that. But now it is time to say we are going to do something about it, we are going to do something to protect our security interests against this national emergency that exists. Up until now, we have said we will wait and see if there is a real threat. That puts us at risk here in the United States.

I am saying that we had better get busy. We had better get busy and develop and deploy a system. It would be much better for all of us if we deployed a system that may be a year or two years early getting to the field than waiting until it is a year too late.

That is the issue and it is important given what is happening in the world today, given the fact that our intelligence agencies were not able to even detect that this test in India was about to take place, given that they weren't able to detect, as far as I know, that Pakistan was going to test, or even had, the new missile they tested in April, and given they weren't able to detect that Iran was going to be able to put together a medium-range ballistic missile within 1 year rather than within as many as 10 years. The latest assessment was as many as 10 years; now it is perhaps within 1 year. These are not the only surprises, they are just the most recent ones. Some of us have known about these surprises before now, but now the whole world knows about them. They are acknowledged at the highest levels of our Government. If we can't detect that India is about to test a nuclear warhead, if we can't detect that Pakistan has a missile system that has a range five times greater than what we thought they had, if we can't detect that Iran is developing a medium-range missile with technology and components imported from other countries, and they will be able to put that in the field as many as 9 years earlier than we had thought 1 year ago, then we need to change our policy and quit assuming that we are going to be able to detect the development of an intercontinental ballistic missile system somewhere in the world that can threaten the territory of the United States.

That is the point of this legislation. We can't be sure. And if we can't be sure that we can detect the threat, we need to be prepared to defend against that threat. The Senate ought to consider this issue, and so today we are going to vote on cloture on the motion to proceed to consider that issue. I urge the Senate to vote to invoke cloture. We don't need to drag out a debate on a motion to proceed to this issue. Sure, there are other things that are on the schedule for today, and the leader has committed to taking up other bills after this vote, but I am optimistic that we will have enough Senators who understand the seriousness of this and the urgency of this for us to turn to the missile defense bill. I hope Senators will consider this, and I am happy to yield to other Senators.

I know the distinguished Senator from Michigan is in the Chamber. We have had a number of Senators who have asked for time. I hope my friend from Michigan will allow me to yield to the Senator from Oklahoma, who has another commitment at 10 o'clock, for whatever time he may consume between now and 10 o'clock.

Mr. President, I yield to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from the great State of Oklahoma.

Mr. INHOFE. Mr. President, first of all, let me say that I applaud the senior Senator from Mississippi for bringing this up. Yesterday I spent some time in the Chamber and evaluated the arguments against this so that I could respond to those arguments. And I will just take a couple moments because I am supposed to be presiding, and I would like to respond to those objections to this legislation that came from the floor.

First of all—and I think this has been discussed already by the senior Senator from Mississippi—the possible effect this would have on the ABM Treaty. I know he presents a very persuasive case that it would not have any threat. Quite frankly, even if it did have a threat to the ABM Treaty of 1972, I would still be supporting this, because I think when you talk to most people who were around in 1972, back when we had two superpowers—we had the U.S.S.R. and the United States—it was not the threat in the world, quite frankly, that it is now, because it was more predictable; we knew what the U.S.S.R. had, and they knew what we had. We had an agreement that I didn't agree with back then. It was called mutually assured destruction; that is, we agree we won't defend ourself and you agree you won't defend yourself. And then, of course, you shoot us, we shoot you, everybody dies, and nobody is happy.

That was a philosophy we lived by which I didn't agree with at the time. And I have to hasten to say, this came in a Republican administration. This was Henry Kissinger and Richard Nixon. But regardless of how flawed that might have been as a policy at that time, certainly now it should not have any application. In fact, I have quoted many times Henry Kissinger on this floor. When I asked him the question: Do you feel with the changing threat that's out there and the environment we are in right now, with some 25 nations with weapons of mass destruction, biological, chemical and nuclear, that it still makes sense to abide by the ABM Treaty? And he said—this is a quote—''It's nuts to make a virtue out of your vulnerability.''

That is Henry Kissinger. He was the architect of this ABM Treaty. Of course, I was one who voted against the START II Treaty and even said in the Chamber we had no indication that Russia was going to be signing this anyway. And, of course, we know what is happened since that time. So I think that argument on the ABM Treaty, even if it did offend that treaty, I would still support this legislation from the Senator from Mississippi.

The second objection yesterday was the cost. They said—and this is a quote—''We don't know how much it will cost since the bill does not specify any particular system.'' Well, it doesn't. And I am glad this bill does not specify a specific system. I have a preference. Mine would be the upper-tier system. The upper-tier system is very close to where we would be able to deploy this thing. We have a $50 billion investment in 22 Aegis ships that are floating around out there today. They have a capability of knocking down missiles, but they can't go beyond the upper tier. So it doesn't do us any good except with short-range missiles that stay in the atmosphere.

If you have from North Korea a missile coming over here that takes 30 minutes to get here, it is only in the last minute and a half that we would be able to use any current technology to knock it down, and then we couldn't do it because we don't have anything that would be that fast, so we are naked.

And the cost is not that great. The opponents of defending America by having a national missile defense system keep saying over and over again that it is going to cost billions and billions. I have heard $100 billion, a whole range. And I suggest to you that we have some specific costs. With that $50 billion investment, it would be about $4

billion more to reach the upper tier with the Navy upper-tier system. There might be another billion and a half on Brilliant Eyes so we would be able to accurately detect where in the world one would be deployed.

And anyone who is among the 81 who supported last week the expansion of NATO—I was one who did not support it—you might keep in mind that if you are concerned about not having an accurate cost figure for this program to defend America from a missile attack, look what we voted on last week in ratifying NATO expansion. We agreed that we are going to expand that to the three countries, and the cost figures had a range from $400 million to $125 billion. Now, I can assure you we are a lot closer to being able to determine what this cost would be.

The last thing, I think, is that when this is all over and the dust settles, maybe what happened yesterday in India and this morning in India might really be a blessing, because at least now we can diffuse the argument that was quoted of General Shelton when he said there is no serious threat emerging, and he said our intelligence said that we will have at least 3 years' warning of such a threat. Well, that is the same intelligence that did not know what India was doing.

If you try everything else and that does not work, let's just look at what is common sense. We know that we have these countries that have weapons of mass destruction. We know that both China and Russia and perhaps other countries have missiles that will reach all the way to any place in the United States of America today. Using the polar route, they can reach any place in the United States of America. And with that out there, why would we assume that China would not do it, or that it would not be an accidental launch, or with some of this technology they are selling to countries like Iran, that other countries wouldn't use it? I am not willing to put the lives of my seven grandchildren at stake by assuming that somehow we are going to have 3 years' warning. I think that is totally absurd.

Lastly, I would only share with you that I went through a personal experience with our explosion in Oklahoma City, which I think everyone is aware of, that took 168 lives. And as tragic as that was, and what a disaster that was—and as I walked through there and I saw the firemen and all of them risking their lives to try to save one or two people after some time had gone by—and you have to have been there, not just seeing it on TV, to really get the full impact on this—the explosive power that blew up the Murrah Federal Office Building in Oklahoma City is one-tenth the power, the explosive power, of the smallest nuclear warhead known today.

So I just think my only regret is that we didn't do this 3 years ago or 4 years ago, because somebody back in 1983 was pretty smart when they said we need to have a system that could be deployed for a limited attack by fiscal year 1998. Here we are, and we are overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator for his excellent remarks.

Mr. President, if the distinguished Senator from Texas is prepared to speak, I am prepared to yield to her 10 minutes.

I yield to the Senator from Texas.

The PRESIDING OFFICER. The Senator from the great State of Texas is recognized for up to 10 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished senior Senator from Mississippi, who has provided great leadership in this area. In fact, I said to the Senator from Mississippi yesterday, if I am ever going to need a consultant on the timing of introducing bills, I am going to call him immediately, because, of course, what has happened just in the last 5 days, proves how absolutely correct the Senator from Mississippi has been in pursuing this very important legislation. I thank the Senator from Mississippi for his leadership.

It is clear that the greatest security threat the United States faces today is that we do not have a defense for incoming ballistic missiles. In fact, if you look back at the latest war that we have had, the gulf war, the largest number of casualties in that war was from a single ballistic missile attack.

We had the Patriot, and the Patriot was actually a missile that was supposed to hit airplanes. We quickly tried to make the Patriot into something that would hit missiles, and, phenomenally, it actually had a 30-percent success rate. But when we have our troops in the field and we have the capability to do better than 30 percent, how could we even think of not going full force to protect our troops in any theater where they might be, anywhere in the world, and to protect the citizens of the United States within the sovereign territory of our country? How could we be sitting on technology without saying this is our highest defense priority?

Today, we have a chance to say this is our highest defense priority. Because if we cannot protect our citizens in our country and our troops in the field, we are leaving ourselves open. And we don't have to do that. Today, we know that over 30 countries in the world have ballistic missile technology. The Senator from Mississippi has gone through what some of these countries now have. Just in the last 5 days, we have seen North Korea threaten to go back on the agreement they made and refuel their nuclear reactors. We have seen, in the last few weeks, that China has been buying our technology without our permission—except for the President letting people do it, presumably because they contributed to his campaign. Pakistan is now deploying a missile with a 1,500 kilometer range. India, as we know, in the last 2 days has actually—has actually—tested nuclear weapons. So, of course, the arms race between Pakistan and India has been rekindled.

Iraq—we fought the Desert Storm war because Iraq was getting ballistic missile technology, and we know they have chemical and biological weapons. Iran—they are receiving assistance from the Russians to develop missile systems. Russia is willing to export a good part of their scientific basis for nuclear weapons, and we don't know how secure is what is left in Russia.

So, how can we look at the facts and not address them vigorously, if we are doing what is right for the American people? We have the capability to do this if we make it a priority. The Senator from Mississippi is introducing a bill that basically says this is a priority, that we will go forward full bore with the capabilities that we have, doing the technological research, doing the testing. All of us are very disappointed that the recent THAAD test was not successful. But we should not back away from it. We should be going forward full bore to try to make sure that we have a national missile defense system, an intercontinental missile system, and a theater missile ballistic system that would defend against any incoming missiles.

Let me make another argument, and that is, as we are going through all of the countries that we know are now building ballistic missile capability with chemical, biological, and nuclear weapons, what would be the very best deterrence from them making that investment? What would be the best deterrence, so India would not feel that it is necessary for their security to test ballistic missiles? The best deterrence would be the capability to deter a launched missile in its boost phase. Simply put, if we can take a missile as it is just being launched and turn it back on the country that is trying to send that missile, isn't that the best deterrence for that country not to send the missile in the first place? Because, obviously, no country is going to launch a ballistic missile if it is going to come back on its own people.

So, if we can get that defense technology, perhaps that is the best way to stop this arms race. Most certainly, the joint threat to us, and to our allies, should be our highest priority. This bill establishes missile defense as a top priority because it says we are going to fund ballistic missile defenses and we are going to deploy them as soon as the technology is there.

The argument against it is incomprehensible to me, although I do not in any way suggest that those making the argument aren't doing it with good faith. I am positive that they believe they are doing the right thing. But to say that the world's greatest superpower is going to wait and see what other countries might get, what ballistic missile technology, and then set on a program full bore that would defend

against that—they could not be talking as representatives of the only superpower left in the world. They cannot be thinking what a superpower must do, which is to do what no one else in this world has the capability to do. We are the only country that has the capability to put the resources behind a ballistic missile defense capability. We are the only country that can do that. Why would we hesitate for one moment? Why would we leave one of our troops in the field unprotected for one more moment than is absolutely necessary? There is no excuse. Why would we leave the people of our country unprotected for one more moment than is necessary, when we have the resources to go full force?

It is not an argument from the superpower to say when we know that someone has perfected a technology that could reach the United States then we will deploy our full forces. How many people will die or be maimed because we are not going full force right now? What better quality-of-life issue is there for our military than to give them every safety precaution, protecting them in the field that we have the capability to do?

We are the leadership of the greatest superpower in the world. We must say we cannot wait for one more moment for the full priority to be given to missile defense technology and capability for our country, for the people who live here, from potential terrorist attacks, and for anyone representing the United States of America in the field.

When our young men and women pledge their lives for our freedom, how can we not give them every protection they deserve to have when they are, in fact, defending our ability to speak on this floor today?

Mr. President, I hope our colleagues on both sides of the aisle will in a very bipartisan vote say, ''We will not walk away from our responsibility to provide the protection to our people that they expect and the protection of our troops in the field, wherever they might be, fighting for our freedom or for the freedom of oppressed people in other places.'' We must give them the protection that we have the capability to do. It is a very clear-cut issue. Thank you, Mr. President.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I commend the distinguished Senator from Texas for her excellent statement and thank her for her assistance in the development of this legislation and our policies on missile defense.

PRIVILEGE OF THE FLOOR

Mr. COCHRAN. Mr. President, I ask unanimous consent that James Nielsen of Senator KYL's staff be granted the privilege of the floor during the debate on the motion on S. 1873.

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

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 10 minutes.

The bill before us could lessen the security of this Nation, and that is the reason so many of us oppose it. Will the bill add to our security by committing us to deploy a system before it is even developed, threatening the abrogation of a treaty between ourselves and the Russians which have allowed significant reductions in the number of nuclear weapons in this world?

In my judgment—more important, in the judgment of the uniform and civilian military leaders of this country—this bill does not contribute to our security. This bill risks a reduction in the security of this Nation. This bill could contribute to the proliferation of weapons of mass destruction, in this case, nuclear weapons which is the greatest threat that this Nation faces. It is the proliferation of weapons of mass destruction, in this case, nuclear weapons, which is the greatest threat that this Nation faces. And yet this bill, which purportedly is aimed at a defense against ballistic missiles, could, because it threatens a very significant treaty between us and the Russians which has allowed for significant reduction of nuclear weapons, increase the threat to this Nation from nuclear weapons proliferation.

That is not me saying it, although I believe it; that is Secretary Cohen saying it, that is General Shelton saying it, that is the military leadership of this Nation saying it.

I think we all believe in the security of this Nation with equal passion. I don't doubt that for 1 minute. I think everybody in this Chamber, everybody who serves in this Senate has an equal commitment to the security of this Nation. The issue here is how do we contribute to the security of this Nation?

The answer comes, it seems to me, from General Shelton in a letter which he wrote to me on April 21. He is the Chairman of the Joint Chiefs of Staff, as we all know. What he says is the following:

> Thank you for the opportunity to comment on the American Missile Protection Act of 1998 (S. 1873). I agree that the proliferation of weapons of mass destruction and their delivery systems poses a major threat to our forces, allies, and other friendly nations. U.S. missile systems play a critical role in our strategy to deter these threats, and the current National Missile Defense Deployment Readiness Program (3+3) is structured to provide a defense against them when required.
>
> The bill and the NMD program—

And he is referring to our current program—

> are consistent on many points; however, the following differences make it difficult to support enactment.

Then he goes through those differences, why it is that he does not support enactment of the bill before us; why it is that the Chairman of the Joint Chiefs of Staff does not support enactment of this bill.

One of the things that we hear from the proponents of this bill is that there is no policy on missile defense in this country. There is no policy to deploy a missile defense. We hear that over and over. Here is what General Shelton says, as his second reason for not being able to support this bill:

> Second, the bill asserts that the United States has no policy to deploy [a national missile defense] system. In fact, the [national missile defense] effort is currently a robust research and development program that provides the flexibility to deploy an initial capability within 3 years of a deployment decision. This prudent hedge ensures that the United States will be capable of meeting the need for missile defenses with the latest technology when a threat emerges.

So his second reason for not supporting this bill is this bill says we don't have a policy to deploy a system. In fact, General Shelton writes, we have a current robust research and development program that gives us the flexibility to deploy a system at the right time. That is what is called a prudent hedge strategy. That is the 3+3 Program. That is the 3+3 policy which we adopted in the Senate 2 years ago.

Section 233 of that bill says:

> It is the policy of the United States to—
>
> (1) deploy as soon as possible affordable and operationally effective theater missile defenses capable of countering existing and emerging theater ballistic missiles;
>
> (2)(A) develop for deployment a multiple site national missile system that: (i) is affordable and operationally effective against limited, accidental, and unauthorized ballistic missile attacks on the territory of the United States, and (ii) can be augmented over time as the threat changes to provide a layered defense against limited, accidental, or unauthorized ballistic missile threats;
>
> (B) initiate negotiations with the Russian Federation as necessary to provide for the national missile defense systems. . .
>
> (C) consider, if those negotiations fail, the option of withdrawing from the ABM Treaty in accordance with the provisions of Article XV of the Treaty. . .
>
> (3) ensure congressional review, prior to a decision to deploy the system developed for deployment under paragraph (2), of: (A) the affordability and operational effectiveness of such a system; (B) the threat to be countered by such a system; and (C) ABM Treaty considerations with respect to such a system.

There is a policy. And the policy is a prudent hedge strategy. The policy, most importantly, is to develop a national missile defense system as quickly as we can so we can be in a position to make a deployment decision as quickly as possible. We have a policy. That is not me saying it. That is General Shelton saying it.

Our policy is to put the horse before the cart. This bill would put the cart before the horse, because what this bill does is say—not just develop and make a decision after you have developed whether to deploy, depending on the circumstances which exist—this bill says commit yourself now to deploy a system no matter what the consequences are, no matter what the circumstances are, as soon as you have something which is technologically feasible.

Now, what is wrong with that? Why not do what we have never done in history, which is to commit ourselves to

deploy a system before we have even developed it? What is wrong with that? What is wrong with it is that, No. 1, there is no consideration of the costs of the system. We do not even know what the system is. We are developing it as quickly as possible, but we do not know what the costs of that system are. We do not know what the threats are at the time when we have a system developed.

We do know that North Korea could—could—have a capability to hit parts of this Nation as early as 2005. We know that is a possibility. But we do not know that that threat will continue. It depends on whether they can successfully test a long-range missile.

But what is really critical here, in terms of our battle against proliferation, is that what this bill commits us to is to deploy a system which almost certainly will violate a treaty between us and the Russians. Do we care? Do we care if we breach a treaty called the ABM Treaty? Is it just a cold war relic, that ABM Treaty? Or is it a real deal between us and Russia, a deal that matters, and the breaking of which will have consequences? And the consequences will be that they will not ratify START II, will not negotiate START III and will, therefore, not reduce the number of weapons that threaten us.

I ask unanimous consent for an additional 5 minutes.

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

Mr. LEVIN. The consequences of committing ourselves to deploy a system which almost certainly will violate that agreement are real-world consequences. They threaten our security. They will contribute to the proliferation of weapons of mass destruction. Is that me saying it? Yes. More importantly, is it Secretary Cohen saying it and General Shelton saying it? Yes.

This is what General Shelton said in his final reason for not supporting this bill. The Chairman of our Joint Chiefs says:

> Finally, the bill does not consider affordability or the impact a deployment would have on arms control agreements and nuclear arms reductions. Both points are addressed [he says] in the [current national missile defense program] and should be included in any bill on [national missile defense].

Our highest military officer is telling us that the impact that a deployment will have on arms control agreements and nuclear arms reductions should be included in any bill on national missile defense.

Well, Mr. President, they are not included in this bill. And they should be. The security of this Nation requires that we at least consider the impact of deployment of a system on arms reduction, because if we commit to deploy a system, and that commitment destroys a treaty between us and the Russians, and leads to nonratification of START II and the reversal of START I and the nonnegotiation of START III—and that is the fear here that General Shalikashvili has expressed in a letter that he wrote when he was Chairman of the Joint Chiefs—we have done severe damage to the security of this Nation.

For what reason would we take that risk? In order to develop a system? No. We are developing that system right now. And we should. We are developing a national missile defense system. And we should. It is the commitment to deploy which risks the security of this Nation without consideration of the impact on arms reduction.

That is the mistake that this bill makes. That is what General Shalikashvili pointed out in his letter to Senator Nunn in May of 1996 when he said:

> . . . efforts which suggest changes to or withdraw from the ABM Treaty may jeopardize Russian ratification of START II and, as articulated in the Soviet Statement to the United States of 13 June 1991, could prompt Russia to withdraw from START I. I am concerned [General Shalikashvili said] that failure of either START initiative will result in Russian retention of hundreds or even thousands more nuclear weapons thereby increasing both the costs and risks we may face.
>
> We can reduce the possibility of facing these increased costs and risks by planning an NMD system consistent with the ABM treaty.

That is General Shalikashvili. Is this resolution consistent with the ABM Treaty? Probably not. It is very unlikely we could deploy a system consistent with the ABM Treaty which defends the entire continental United States. But there is an easy way to do it, if that is the intent of the resolution: Just put down ''treaty compliant'' system in the resolution. Just add those two words, ''treaty compliant'' system. Put the words ''treaty compliant'' before the word ''deployment,'' and that would solve that problem.

Those words are missing, and they are not missing inadvertently. It is obvious that many supporters of this resolution do not care whether or not there would be a violation of the ABM Treaty because they believe that we should unanimously withdraw from that treaty. But such an action will lead to exactly the result which we should dread as much as anything, which is the increase in the number of nuclear weapons on the face of this Earth.

Finally, Mr. President, on the ABM Treaty—how many minutes do I have left?

The PRESIDING OFFICER. The Senator has used his additional 5 minutes. The Senator has 42 minutes remaining.

Mr. LEVIN. I thank the Chair. Mr. President, I yield myself 3 additional minutes.

Mr. President, the ABM Treaty is not some abstract relic. It is a living commitment which has been reasserted at the highest levels at a summit in Helsinki in 1997.

President Clinton and President Yeltsin issued the following joint statement. Now, this isn't some person writing an op-ed piece in some newspaper. These are the Presidents of two nations with the largest nuclear inventories in the world, President Clinton and President Yeltsin, expressing their commitment to strengthen the strategic stability and international security, emphasizing the importance of further reductions in strategic offensive arms, and recognizing the fundamental significance of the Anti-Ballistic Missile Treaty for these objectives, as well as the necessity for effective theater missile defense systems, considered their common task to preserve the ABM Treaty, prevent circumvention of it, and enhance its viability.

Then later in that same statement, both Presidents state that the United States and Russia have recently devoted special attention to developing measures aimed at assuring confidence of the parties that their ballistic missile defense activities will not lead to circumvention of the ABM Treaty, to which the parties have repeatedly reaffirmed their adherence.

This bill before the Senate, where there is a motion to proceed pending, surely will undermine the confidence of Russia that we are adhering to a treaty. Since the commitment which this bill makes to deploy missile defenses will almost certainly—almost certainly—violate that treaty—and again I emphasize, if that is not the intent and if that is to be precluded, then the words ''treaty compliant'' should be added. But I think, as we all know because we debated this issue so many times, that is not the intent of this resolution.

Mr. President, I hope the words of our top military officers will be heeded and that the danger of this bill will be considered. Its intent, obviously, is to contribute to the security, but its effect is to lessen the security of this Nation. We simply cannot afford that risk.

Mr. COCHRAN. Mr. President, I have agreed to yield 5 minutes to the chairman of the full committee at some point. I hope he can be recognized soon.

Mr. LEVIN. How much time does the Senator desire?

Mr. COCHRAN. Five minutes.

Mr. BINGAMAN. Mr. President, I will consume 10 minutes. I have no objection to Senator THOMPSON speaking now if he would like.

Mr. COCHRAN. I thank the Senator. I yield 5 minutes to the distinguished Senator from Tennessee.

Mr. THOMPSON. Thank you.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I thank my colleagues.

Mr. President, in his State of the Union Address, President Clinton underscored the importance of foresight. He said, ''preparing for a far off storm that may reach our shores is far wiser than ignoring the thunder until the clouds are just overhead.'' He was not talking about weapons proliferation

and national missile defense, but he could have been—and he probably should have been.

Well, we are hearing the thunder now. It is coming from Iran, where the Shahab–3 missile program made up years of development time in just one year, reminding us that some countries are more technically clever than we give them credit for, and that outside assistance can dramatically accelerate technical progress.

It is coming from Pakistan which has now launched a missile with five times greater range than their next most capable missile, and five times what the United States had given them credit for just six months earlier.

It's coming from North Korea, where the Taepo-Dong 2, capable of striking Alaska and Hawaii, is nearing flight testing, and where the No-Dong is now being deployed, despite the administration's assurances that North Korea would never deploy that missile after only one flight test.

It is coming from Russia, where the government appears either disinclined, or incapable of controlling the flood of hardware and technical assistance flowing to rogue states around the globe.

It is coming from India, where this week their government exploded five nuclear weapons, to the complete and admitted surprise of the United States policy-making and intelligence community.

It is coming from China, where the government repeatedly breaks its non-proliferation promises, and is then rewarded with technology transfers from the U.S.

Despite these and other ominous examples, the United States continues to maintain a non-proliferation policy of self-delusion and a missile defense policy of vain hope. For years, we convinced ourselves that developing countries could not, or would not, fully develop nuclear and other weapons of mass destruction, or the missiles to effectively deliver. Now we know they have. They continue to hope that maybe rogue states will prove less clever than they have in the past, or that our intelligence community will prove more clever, or that our luck just holds out.

My friends, it is time to wake up. The technology to develop nuclear and other weapons of mass destruction is widely available. Many nations, some quite hostile to the U.S. now possess them and are on a crash course to acquire the missiles to carry them to America. And third countries, Russia and China in particular, appear happy to help. Weapons of mass destruction are not going away. The United States will soon face this threat and it's time to prepare.

When the day arrives that America is handcuffed by our vulnerability to ballistic missile attack, when our world leadership is in question because of that vulnerability, or when—heaven help us—an attack actually occurs, what will we tell the American people? That we had hoped this would not happen? That we believed the threat was not so serious?

It should now be clear to all that our present non-proliferation and missile defense policies are out-dated and insufficient. We must prepare now for that ''far-off storm.'' The first step in doing so is to pass S. 1873, the America Missile Protection Act, and commit the United States to a policy of deploying national missile defenses. I commend Senator COCHRAN for his thoughtful leadership on this bill and the many hours he has spent working as Chairman of the International Security and Proliferation Subcommittee to highlight America's vulnerabilities in this area.

Mr. LEVIN. I yield 10 minutes to Senator BINGAMAN.

Mr. BINGAMAN. Thank you.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent two fellows in my office, Bill Monahan and John Jennings, be given floor privileges during consideration of this bill.

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

Mr. BINGAMAN. Mr. President, I want to join Senator LEVIN in expressing my opposition to Senate bill 1873, the American Missile Protection Act. The policy expressed in this bill of putting the United States in a position where we are required to deploy a national missile defense system as soon as it is technologically possible I think is a major mistake and undermines our long-term security. We are rushing prematurely—if this legislation becomes law, we will be rushing prematurely to deploy a national missile defense system where that is not necessary and where it could undermine our real security interests.

Why do I say it is not necessary? I say it is not necessary to pass this legislation because we already have in place a program to develop a national missile defense for this country. The administration is committed to the development of a national missile defense over 3 years, so that by the year 2000 the United States will be positioned to deploy an initial capability within 3 years after that, if it is warranted by the threat. We need to continue to assess this threat as we move ahead.

The Cochran bill, which we are considering here, seeks to commit our country to deploy the first available missile defense technology, national missile defense technology, regardless of a whole variety of issues. Let me just discuss those briefly.

The first set of issues that this bill would sidestep entirely is the issues that we have required the Pentagon to take into account in all weapons systems that we develop. We have had a long history, even in the time I have been here in the Senate, of developing weapons systems when we had not adequately considered the cost and we find out they are costing substantially more than we committed to, where we had not adequately considered the performance capability of the system and we find out the system doesn't work as we earlier hoped it would. And we have put in place, and we have required the Department of Defense to put in place, procedures to assure that they keep a sensible balance in the development of their weapons programs. There is a Defense Department directive, which is No. 5000.1. It sets out the Department's basic guidance on weapons system acquisition. It spells out the regulations governing procurement and states: ''All programs need to strike a sensible balance among cost, schedule, and performance considerations given affordability constraints.'' What we would be saying in this legislation is that none of that is required with regard to this program. That would be shortsighted and would undermine our real long-term security needs.

The bill threatens to exacerbate the scheduling and technical risks already present in this national missile defense program. The Armed Services Committee, about a month ago, heard testimony from General Larry Welch, who is the former Chief of Staff of the Air Force. He led a panel of experts to review U.S. missile defense programs at the request of the Pentagon. That panel found that pressures to deploy systems as quickly as possible have led to very high levels of risk in the test programs of THAAD, the theater high-altitude air defense system. It is a theater missile defense system, not a national missile defense system. They pointed out the high levels of risk and failure in that program and in other missile defense systems. This confirmed similar findings in a GAO study that Senator LEVIN and I requested earlier.

This Senate bill we are considering today, S. 1873, would generate the same pressures to hastily field a national missile defense system that have resulted in what General Welch referred to as the ''rush to failure'' in the THAAD program. That program is now 4 years behind schedule. It is still waiting for the first intercept, as was proposed when the program was designed. They have had five unsuccessful intercept tests. The most recent was yesterday in my home State of New Mexico, at White Sands Missile Range. Despite the delay in the THAAD development program of over a year since the previous test flights, they still have not been able to have a successful test. Now, national missile defense involves even more complex and technological challenges that will risk failure if we rush to deploy that system as well. What we need to do is to take the lessons General Welch is trying to teach us, by pointing to the problems in the THAAD program, and use those lessons to do better in the development of a national missile defense program.

Secretary Cohen's letter has been referred to by Senator LEVIN and, of course, the position of the Chief of the

Joint Chiefs of Staff. This is one of these cases where the Pentagon clearly is opposed to the legislation we are considering. Yet, we, in our ultimate wisdom on the Senate floor, believe that we know better what is in the national security interests of the country than do the people in charge of implementing that national security policy. I think it is shortsighted on our part.

Senator LEVIN also pointed out that not only does this legislation put us in a position where we are mandating pursuit of this program, regardless of the various factors we believe are important in developing of any system, but we are also pursuing it without adequate consideration of the arms control implications. There is no question that in this world we need to have the cooperation of the Russians in order to effectively limit proliferation of nuclear and other types of weapons of mass destruction. If we take action in this Congress and in this country to abrogate the ABM Treaty at this point, it is almost a certainty that the START II Treaty will not be ratified by the Duma and that our ability to continue to build down the nuclear weapons arsenals of the two countries will be substantially impeded.

I believe it is clearly in our best interest to defeat this bill, to vote against cloture, and not to even proceed to full debate of this bill. The administration has indicated its strong opposition to the legislation, as have the Pentagon and various former members of our national security policy team.

So, Mr. President, I hope that when the final vote comes here—I gather it will be in about 45 minutes or an hour—Senators will join in resisting the effort to move ahead with this legislation.

Mr. President, I yield the floor.

Mr. COCHRAN. Mr. President, I am happy to yield 5 minutes to the distinguished Senator from New Hampshire, Mr. SMITH.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

PRIVILEGE OF THE FLOOR

Mr. SMITH of New Hampshire. Mr. President, first of all, I ask unanimous consent that Mr. Brad Lovelace, a fellow in my office, be granted floor privileges throughout debate on both S. 1873 and S. 2060, the fiscal year 1999 DOD authorization bill.

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

Mr. SMITH of New Hampshire. Mr. President, yesterday, India conducted three underground nuclear tests, further destabilizing relations among Pakistan, India, and China. Today, two more tests were conducted.

The whole world was caught by surprise—including the U.S. intelligence community and the Clinton administration. In fact, administration officials were quoted in the Washington Times yesterday saying that, ''Our overhead [satellites] saw nothing, and we had zero warning.''

The most ominous response came from Pakistan, which recently tested its newest ballistic missile, with a range of 1,500 kilometers, and now says it may conduct a nuclear test of its own.

It is against this very stark backdrop that we are today, this week, considering the American Missile Protection Act of 1998.

I want to commend my colleague, Senator COCHRAN, for his long-time leadership on this issue. He deserves a lot of credit. It is a very timely situation, I must say.

S. 1873 would establish a U.S. policy of deploying a national missile defense system capable of defending the territory of the United States against a limited ballistic missile attack as soon as is technologically possible. How could anyone be opposed to that? It is irresponsible to be opposed to it.

The current administration plan for ''3+3'' means that an NMD system will be developed for 3 years. And when a threat is acknowledged, this system will be deployed in 3 years. It is a naive plan. It assumes that we see all emerging threats and that when we see one, we can confidently deploy a complex system in 3 years. It is just not feasible.

Well, we saw how easy it was to see three nuclear devices that were tested by India yesterday. We didn't know about it. We didn't know they were coming. Even John Pike of the Federation of American Scientists, a long-time critic of missile defense, says it is ''the intelligence failure of the decade.'' Mike McCurry said, ''We had no advance notification of the tests.''

According to administration officials quoted in the Washington Times, the United States has been ''watching this site fairly carefully and on a fairly regular basis.'' If that is careful and regular and we don't know about it, I don't know how we can possibly expect to be able to deploy missiles 3 years after we know they are being produced. If we can't detect in advance activities at facilities that we are watching, what is going on at facilities we don't know anything about and are not watching? This is extremely dangerous policy, Mr. President.

How can this administration continue to believe that we will have advance warning and plenty of time to respond to a missile threat when we cannot even detect in advance three unanticipated nuclear tests?

This week's failure to predict India's nuclear tests is part of a pattern.

Pakistan—in a 1997 U.S. Defense Department report on proliferation, Pakistan was only credited with a missile that could fly 300 kilometers. Yet, they tested one at 1,500 kilometers. Here again, the United States was unable to predict the appearance of a new ballistic missile system.

Iran—the DCI told the Senate a few months ago that the intelligence community was surprised at the progress made on this Shahab-3 because of Iranian indigenous advances and help received from Russia.

The Director of Central Intelligence told the Senate that, ''Gaps and uncertainties preclude a good projection of when the 'rest of the world' countries will deploy ICBM's,'' thereby explaining why we might be surprised in the future.

From an intelligence standpoint, there is nothing fundamentally different between medium- and long-range missiles—nothing. We will be just as surprised by ICBM developments as we have been with Iran and Pakistan's shorter-range missiles.

These questions and failures, combined with yesterday's events in India, completely invalidate the administration's approach to NMD. The fact is, we don't know where all of the threats will come from and how fast they will develop. It is irresponsible to stand on this floor and oppose a policy that says we ought to produce this system when it is technologically feasible.

According to Tom Collina of the Union of Concerned Scientists, India tests were designed to ''finalize a warhead for delivery on a missile.'' Mr. Collina added that ''it will not take long for India to take the next steps to have a fully deployed, fielded system.''

Yet, the administration persists in misleading the American people, and in a Senate hearing on May 1 of this year, the Director of the Arms Control and Disarmament Agency [ACDA] stated that the Defense Department will design a system as the threat emerges, to answer that threat.

How will the Director of ACDA know when the threat is emerging or has emerged?

Trying to deploy an NMD system in 3 years is difficult and extremely risky. It requires doing everything at once—impossible to run a low risk test program to make sure everything fits together first. It leaves no margin for failure or problems—if one thing goes wrong the whole program could collapse. It is a dangerous way to approach defense.

The events in south Asia confirm once and for all that we cannot base the security of the United States on rosy assumptions about our ability to detect and predict existing or emerging threats around the world.

North Korea: In addition to the news out of south Asia, I find that today's New York Times reports that North Korea has announced they are suspending their compliance with the 1994 Nuclear Freeze Agreement that was intended to dismantle that country's nuclear program.

Who will tell the citizens of a destroyed Los Angeles or New York that they were left undefended from ballistic missiles because their Government ''did not see an emerging threat''?

With our inability to track and detect ballistic missile development and nuclear tests, and the inherent challenges of fielding highly complex defense systems, we must support the

American Missile Protection Act of 1998.

I thank my colleague for yielding.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, with the permission of the Senator from Michigan, I yield myself 8 minutes.

Mr. President, I support the strongest possible defense against the most credible threats to our Nation s security. But I do not support this legislation, and I want to explain why.

Nearly 30 years ago, the Department of Defense spent $21 billion in today's dollars on an antiballistic missile system. It was built in my State of North Dakota. The military declared that antiballistic missile system operational on October 1, 1975. On October 2, 1975, the next day, the U.S. House of Representatives voted to close it—mothball it. It was too expensive to run, and it didn't offer us much in the way of more security. It wouldn't protect this country. Mr. President, $21 billion for what?

The bill on the floor today would require us to deploy a system as soon as it is technologically possible. A quarter century ago it was technologically possible to spend $21 billion and build an antiballistic missile site in North Dakota. That system had interceptor missiles with nuclear warheads on them. That was technologically possible. It was completely irresponsible, but it was technologically possible.

I don't know whether this bill relates to that technology. The bill itself doesn't tell us what kind of technology we'd be required to deploy.

I assume it relates to a hit-to-kill technology, where you try to hit one bullet with another bullet. The failure on Monday of a test flight for THAAD, a theater missile defense system, suggests that hit-to-kill is not nearly as possible as some suggest, at least not now.

But I would ask the question: If it was technologically possible to create an antiballistic missile system in Nekoma, ND, a quarter century ago, it is technologically possible now, using the nuclear interceptor approach. Does this bill, then, require immediate deployment?

Let's step back a bit and look at this bill in the context of the security threats this country faces. One threat is, indeed, a rogue nation, or a terrorist group, or an adversary getting an intercontinental ballistic missile and putting a nuclear warhead on it and having the wherewithal to aim it and fire it at this country. That is, in my judgment, a less likely threat than, for example, a terrorist group or a rogue nation getting a suitcase-sized nuclear device, putting it in the rusty trunk of a Yugo, parked on a New York City dock, and saying, ''By the way, we now threaten the United States of America with a nuclear device.''

The threat of a truck bomb or suitcase bomb, is that addressed by this bill's requirement to deploy a national missile defense system? No, this system doesn't defend us against that. How about a chemical weapon attack in the United States? No, this wouldn't defend us against a chemical weapons attack. A biological weapon attack here? No. A cruise missile attack, which is far more likely than an ICBM—a cruise missile attack? Cruise missiles are proliferating all around the world. Putting a nuclear device on the tip of a cruise missile and aiming at this country, would this bill defend us against that? No. It wouldn't defend us against that threat, either. A bomber attack, dropping a nuclear bomb? No. Loose nuclear weapons inside the old Soviet Union that must be controlled and we must be concerned about, does this deal with that? No.

Obviously, this bill deals with one threat. And it is probably the less likely threat—an ICBM with a nuclear warhead aimed at this country by a rogue nation or by a terrorist group.

But this bill tells us to deploy as soon as technologically possible—notwithstanding cost, whatever the cost. No matter that the cost estimates from the Congressional Budget Office range up to nearly $200 billion to construct and maintain a national missile defense system. Cost is not relevant here, according to this bill. It requires us to deploy when technologically possible.

This bill also requires us to deploy notwithstanding the impact on arms control. The fact is that strategic weapons are being destroyed, nuclear weapons are being destroyed. Different systems are being destroyed today in the Soviet Union as a result of arms control: arms control has destroyed 4,700 nuclear warheads; destroyed 293 ICBMs and 252 ICBM silos; cut the wings off of 37 former Soviet bombers; eliminated 80 submarine missile launch tubes; and sealed 95 nuclear warhead test tunnels.

That is an awfully good way to meet the threat—destroy the missile before it leaves the ground. Arms control is giving us missile defense that works right now.

I have shown my colleagues this before, and with permission I will do it again. This is a piece of metal from a silo in Pervomaisk, Ukraine. The silo held a Soviet missile aimed at the United States of America. There is no missile there anymore. The warhead is gone. The missile is gone. The silo is destroyed. And where this piece of metal used to be, in a silo holding a missile aimed at this country, there are now sunflowers planted. Not the missile—sunflowers. How did that happen? By accident? No. By arms control agreements, by treaties.

But this bill says, deploy a national missile defense system notwithstanding what it might mean to our treaties, notwithstanding what it might mean to future arms control agreements, notwithstanding what it might mean to arms reductions that occur now under the Nunn-Lugar money that we appropriate, which has resulted in sawing off bombers' wings, resulted in digging up missiles buried in the soil of Ukraine and Russia.

I just do not understand the rationale here. How can we get this notion of defending against a small part of the threats our country faces? This bill doesn't address the cruise missile threat, or the suitcase bomb threat, or a range of other threats. It just tries to address this sliver of threat.

And this bill requires us to deploy a system as soon as technologically possible notwithstanding any other consideration, notwithstanding how much money we are going to ask the taxpayer to pay, notwithstanding what the credible threat is at the moment, notwithstanding the impact on arms control agreements. I just do not understand that logic.

I must say I have the greatest respect for the author of this legislation. I think he is a wonderful legislator. I hate to oppose him on this, but I just feel very strongly that we should continue with the national missile defense research program. I might add that the Administration is seeking over $900 million for research funding for this program this coming year. We should continue that aggressive research.

We ought to continue working on a range of defense mechanisms to deal with threats, not just ICBMs, but cruise missile threats and a range of other threats, including the terrorist threat of a suitcase nuclear device in this country. But we ought not decide that one of those threats ought to be addressed at the expense of defending against other threats.

Mr. President, let me make one final point. I have told this story twice before on this floor because I think it is important for people to understand what is being done in the area of arms control and missile defense right now—not what is proposed to be done in this bill.

On December 3 of last year, in the dark hours of the early morning, north of Norway in the Barents Sea, several Russian antiballistic submarines surfaced and prepared to fire SS–20 missiles. Each of these missiles can carry 10 nuclear warheads and travel 5,000 miles, and can reach the United States from the Barents Sea.

Those submarines, last December 3, launched 20 missiles that soared skyward, and all of our alert systems knew it and saw them immediately and tracked them at Cheyenne Mountain, NORAD, you name it.

And in a few moments at 30,000 feet all of those missiles exploded.

Why? Because this was not a Russian missile attack on the United States. In fact, seven American weapons inspectors were watching the submarines from a nearby ship. These self-destruct launches were a quick and inexpensive way for Russia to destroy submarine-launched ballistic missiles, which it was required to do under our START I arms reduction treaty.

On the morning of December 3 of last year when, at 30,000 feet, those Russian missiles exploded, it was not an accident. And it was not a threat to our country. It was a result of arms control agreements that said we must reduce the threat of nuclear weapons, we must reduce delivery systems. The fact is, the Nunn-Lugar program, which we fund each year in order to further these arms reductions, is working.

We also should, as we make certain Nunn-Lugar continues, be concerned about the ABM Treaty, be concerned about a range of other threats, and we ought to invest money in research and development on the ballistic missile defense system.

But we ought not under any set of circumstances say a system here must be deployed no matter what its cost, no matter what the threat and no matter what its consequences to arms control agreements. That is not in this country's interests. That is not in the taxpayers' interests.

Does our country need to worry about the proliferation of nuclear weapons? Of course we do. The nuclear tests by India in just the last 2 days demonstrate once again that we have a serious problem in this world with respect to the proliferation of nuclear devices.

But what it ought to tell us is that we need to be very, very aggressive as a Nation to lead in the area of nonproliferation. We need to make certain that this club that possesses nuclear weapons on this Earth does not expand. We need to do everything we possibly can do in foreign policy to try to see that our children and grandchildren are not victims of the proliferation, wide proliferation of nuclear weapons that then hold the rest of the world hostage.

But in dealing with the various threats we face, it seems to me the question for all of us is what kind of threats exist? And what kind of credible defense that is both technologically possible and financially reasonable can be constructed to respond to those threats? This bill is not the answer to those questions.

Mr. President, I yield the floor.

Mr. COCHRAN. Mr. President, I am happy to yield 5 minutes to the distinguished Senator from Arizona, Mr. KYL.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Arizona.

Mr. KYL. I thank the Chair. I thank the Senator from Mississippi.

Mr. President, the administration's position on defending the American people is essentially twofold: One, wait until there is a threat; and, two, we will then develop a defense. There are two things wrong with this approach: First, as the Indian nuclear testing has just demonstrated to us, we won't necessarily know when there is a threat. In fact, we always seem to underestimate the threat. Secondly, it always seems to take longer than we anticipate to develop complex systems, and this is particularly true with respect to missile defenses.

So the legislation introduced by the Senator from Mississippi is a much better idea, to protect the American people, Mr. President. It simply says that it is our policy to deploy a national missile defense as soon as it is technologically possible.

Now, what could be more straightforward and more protective for the American people? The American people demand no less.

I would note that the argument of the Senator from North Dakota just a moment ago illustrates, I believe, the lack of ideas to oppose this simple legislation of the Senator from Mississippi. His primary argument was that we need to continue research because, after all, there are other threats, too, like the suitcase bomb. Of course, there are other threats. And our position has always been to prepare to defend against all of the threats but not to ignore one very big threat just because there are other threats as well.

There have been other charges that the adoption of the American Missile Protection Act is somehow going to wreck arms agreements that the United States has entered into. First, there is the complaint about the ABM Treaty that we heard which is particularly puzzling since the words, ABM Treaty don't appear anywhere in this legislation. The bill doesn't require any violation of the ABM Treaty as a matter of fact. It doesn't specify the number of sites, where they would be, or what kind of interceptors or missiles we would have. So that argument is specious.

Secondly, we have heard the argument that if the United States decides to deploy an NMD even against limited threats, the Russians will refuse to ratify START II or negotiate START III. How many times do we have to pay for START II? I count about eight different things that the Russians have said we have to do in order for them to ratify START II or fully implement START I or START II. And we could list those but I am going to put them in the RECORD.

The point is the United States needs to take its defense into its own hands. We cannot simply rely upon a piece of paper with another country, particularly where in the case of, first, the Soviet Union, and now Russia, after that piece of paper is signed—and remember we are putting our safety in the hands of people across the sea who have signed that piece of paper with us—we find that they have changed their mind and tell us that they can't implement that piece of paper until we do other things.

First of all, it was that we had to address concerns regarding NATO expansion and then the CFE Treaty had to be modified. Then they could not afford to dismantle their weapons, and on and on and on. The point here is we should not place our reliance upon pieces of paper signed with other countries but upon what we can do for ourselves to protect the American people.

We heard the argument that the United States must refrain from exercising our rights under the ABM Treaty to deploy even a limited missile defense lest we upset the Russians, the same Russians who operate the world's only current ABM system. Should we take from this suggestion that the Russians have a right not only to defend themselves but to insist that we do not? And yet that is precisely what the opponents of this legislation are saying.

Mr. President, the defense of America should not be subject to a Russian veto. Linking the deployment of national missile defenses to some hoped-for arms control agreement is to be expected from the Russians, but it is unconscionable to be offered by Representatives of this Congress. Arms control for the sake of arms control is not in the national interest, and the Constitution does not allow us to substitute pieces of paper for the real measures which must be taken to protect America.

Then there is an argument that committing to deploy an ABM system will cause the sky to fall on offensive arms control agreements. Let me quote the Senator from Michigan on this issue:

> Nothing in this bill says that the national missile defense system that it commits us to deploy will be compliant with the Anti-Ballistic Missile Treaty. That is a treaty, a solemn agreement between us and Russia. If we threaten to break out of that treaty unilaterally, we threaten the security of this Nation because that treaty permits Russia to ratify the START II agreement and to negotiate a START III agreement, reducing the number of warheads that they have on their missiles and warheads that could also potentially proliferate around the world and threaten any number of places, including us.

This statement is incorrect in several ways. First, the ABM Treaty is not a ''solemn agreement between us and Russia.'' The ABM Treaty was signed by the United States and the Soviet Union. That country no longer exists, and the administration spent four years in negotiations to see who would replace the Soviet Union as parties to that treaty. The President has certified that he will submit the results of those negotiations to the Senate for advice and consent. When and if the Senate agrees, then the ABM Treaty may become ''a solemn agreement between us and Russia,'' but not until then.

Second, S. 1873 does not require ''break out'' from the ABM treaty. In fact, as I have already pointed out, it allows for deployment of exactly the system being developed under the administration's so-called 3+3 program. And there is nothing in any legislation that calls for that system to be treaty compliant. To the contrary, a non-compliant system is explicitly contemplated by the Defense Department. Here is what the Department of Defense said about its 3+3 program in the Secretary's 1998 report to Congress: ''a

deployed NMD system either could be compliant with the ABM Treaty as written, or might require amendment of the treaty's provisions.'' So according to the Secretary of Defense, the system DoD is developing now may not comply with the ABM treaty. And so this arms control argument is nothing but a strawman, erected to be knocked down though it bears no resemblance to anything in this bill.

Senator LEVIN cites as an authority for this odd proposition, the Chairman of the Joint Chiefs of Staff, who, in a letter commenting on S. 1873, said the bill doesn't consider ''the impact a deployment would have on arms control agreements and nuclear arms reductions.'' Let's think about what General Shelton is saying here. The United States has a right to deploy a national missile defense system under the ABM Treaty, and S. 1873 merely calls for a commitment to exercise that right. But General Shelton is saying that our decision to exercise that right should be conditioned on the possible impact a deployment would have on future arms control agreements, meaning, presumably, Russian objections. So General Shelton is saying that our right to deploy a system to protect our citizens—even the severely constrained right embodied in the ABM treaty—should be subject to further negotiation with, and the approval of, the Russian Federation.

I would find this an extraordinary argument under any circumstances, and extraordinarily disturbing coming from the Chairman of the Joint Chiefs of Staff. It can't be comforting to the people of the United States to know that their Chairman believes their defense should be subject to the veto of the Russians. When one considers that the Russians have exercised their right to defend themselves with the only operational ABM system in the world, the position of the Chairman becomes downright bizarre.

The complaints about arms control from opponents of the Cochran-Inouye bill are without merit. They spring from this administration's infatuation with paper agreements, no matter how disconnected from reality those agreements may be. We have a paper arms control agreement called START I, which the Russians are routinely violating. We have START II, which was negotiated, then renegotiated to give the Russians a better deal, and still it lies before the Duma unratified. Yet opponents of this bill would have the United States forego the defense of its people against a threat wholly unrelated to any of these agreements, simply because they fear the Russians will insist upon it.

Mr. President, I urge my colleagues to support S. 1873, the American Missile Protection Act. This is a simple bill which merely states that due to the increasing ballistic missile threat we face, ''It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).'' Outside of the title and findings of the legislation, this is the only sentence in the bill.

As a matter of fact, S. 1873 is noteworthy for the things it does not say. The bill does not say what kind of system architecture the missile defense system should have. It does not say where such a system should be located, or more generally, whether it should be based on land, at sea, or in space. It does not specify a date by which such a system should be deployed, or when we believe specific missile threats to the United States will materialize.

And the bill is silent on arms control issues. It does not address whether continued adherence to the ABM Treaty is in the best interests of the United States or whether the treaty should be modified. Nor does the bill discuss the merits of any future arms control agreements. All of these issues will have to be debated another day. I am disappointed, however, that we are still debating whether the United States should deploy a national missile defense system at some point in the future.

THE THREAT

The ballistic missile threat facing the U.S. is real and growing. Russia and China already have ballistic missiles capable of reaching our shores and several other nations, including North Korea and Iran are developing missiles with increasing ranges.

CHINA

In November 1997, the Defense Department published a report titled, Proliferation: Threat and Response in which it said China already has over 100 nuclear warheads deployed operationally on ballistic missiles. According to this report, Beijing has ''embarked on a ballistic missile modernization program,'' and ''while adding more missiles and launchers to its inventory, [is] concentrating on replacing liquid-propellant missiles with mobile solid-propellant missiles, reflecting concerns for survivability, maintenance, and reliability.''

Details about this modernization program have been published in the press. The Washington Times reported on May 23, 1997, that a new Chinese road-mobile ICBM, called the Dong Feng-31, is in the late stages of development and may be deployed around the year 2000. This missile's 8,000 kilometer range is sufficient to reach the entire U.S. West Coast and several Rocky Mountain states and it will reportedly utilize reentry vehicle decoys, complicating missile defense. China is also developing the JL–2 SLBM with a 7,300 kilometer range, according to Defense Week. That publication reported last April that the JL–2 is likely to be deployed by the year 2007 and will allow China to target the U.S. from operating areas near the Chinese coast. And finally, on May 1st, the Washington Times disclosed that a Top Secret CIA report indicated 13 of China's 18 nuclear-tipped CSS–4 ICBM's are targeted at American cities. These missiles are reportedly being improved as well, with the addition of upgraded guidance systems.

In addition to its modernization efforts, I am also concerned that Beijing has shown a willingness to use ballistic missiles to intimidate its neighbors. For example, during Taiwan's national legislative elections in 1995, China fired six M–9 ballistic missiles to an area about 160 kilometers north of the island. Less than a year later, on the eve of Taiwan's first democratic presidential election, China again launched M–9 missiles to areas within 50 kilometers north and south of the island, establishing a virtual blockade of Taiwan's two primary ports.

RUSSIA

Russia retains over 6,000 strategic nuclear warheads, which still pose the greatest threat to our nation. While we do not believe Russia has hostile intentions, we must be cautious because its evolution is incomplete. For example, Russia is continuing to modernize its strategic nuclear forces. According to the Washington Times, Russian R&D spending on strategic weapons has soared nearly six-fold over the past three years and Moscow is developing an upgraded version of the SS–25 ICBM, as well as a new strategic nuclear submarine armed with a new nuclear-tipped SLBM.

At the same time Russia is spending precious resources on its modernization effort, its nuclear command and control complex continues to deteriorate. Although unlikely, the threat of an unauthorized or accidental launch of a Russian ICBM has increased in recent years as Russia's armed forces have undergone difficult changes. For example, last March the Wall Street Journal reported that, according to Russian colonel who spent much of his 33 year career in the Strategic Rocket Forces, Russian nuclear command and control equipment began breaking down 10 years ago and on several occasions parts of system spontaneously went into ''combat mode.'' Even more troubling were comments made by Russian Defense Minister Rodionov last February, who in a departure from previous assurances that Moscow's nuclear forces were under tight control stated, ''Today, no one can guarantee the reliability of our systems of control . . . Russia might soon reach the threshold beyond which its rockets and nuclear systems cannot be controlled.''

ROGUE NATIONS

Although Russia and China are the only countries that currently possess missiles capable of reaching the United States, several rogue states such as North Korea and Iran are aggressively developing long-range ballistic missiles.

NORTH KOREA

According to the Defense Department's November report, since its missile program began in the early 1980's,

''North Korea has pursued an aggressive program which has steadily progressed from producing and exporting Scud short range ballistic missiles (SRBMs) to work on development of medium and long range missiles.'' North Korea has deployed several hundred Scud B and C missiles with sufficient range to target all of South Korea, and has completed development of the 1,000 kilometer range No Dong MRBM, which can reach targets in nearly all of Japan, according to the report. In addition, recent press reports indicate North Korea has begun deploying the No Dong missile.

More ominously, North Korea is developing the Taepo Dong 1 missile with an estimated range of 2,000 kilometers which will be capable of striking U.S. military bases in Guam and the Taepo Dong 2 missile, with an estimated range of 4,000 to 6,000 kilometers that could reach Alaska and Hawaii. On April 27th, the Washington Post reported that development of the Taepo Dong 2 missile could be completed ''within the next several years.''

IRAN

Iran has an ambitious missile program and is currently capable of producing both the 300 kilometer range Scud B and the 500 kilometer range Scud C missiles. This program is becoming increasingly advanced and less vulnerable to supply disruptions. As the Defense Department said in its November 1997 report, ''Iran has made significant progress in the last few years toward its goal of becoming self-sufficient in ballistic missile production.''

Tehran has made particularly rapid progress over the past year, however, due to the infusion of Russian hardware and know-how which has significantly accelerated the pace of the Iranian program. This Russian assistance has been well documented in the press.

According to these reports, numerous institutes and companies that once were an integral part of the state-owned military complex of the former Soviet Union have provided a variety of equipment and material that can be used to design and manufacture ballistic missiles. They are also helping Iran develop two new ballistic missiles, the Shahab-3 and Shahab-4. The Shahab-3 is reportedly based on North Korea's No Dong ballistic missile and will have a range of 1,300 kilometers with a 700 kilogram payload, sufficient to target Israel and U.S. forces in the region. Seven months ago, on September 18, 1997, Assistant Secretary of State for Near Eastern Affairs Martin Indyk testified to the Senate that Iran could complete development of the Shahab-3 in as little as 12 to 18 months.

The Shahab-4 is reportedly based on the Russian SS–4 medium-range ballistic missile and will have a range of 2,000 kilometers with a payload over 1,000 kilograms. When completed, the Shahab-4's longer range will enable Tehran to reach targets as far away as Central Europe. According to the Washington Times, an Israeli intelligence report indicates the Shahab-4 could be completed in as little as three years. Israeli intelligence sources reportedly also told Defense News that the long-term goals of Iran's missile program are to develop missiles with ranges of 4,500 and 10,000 kilometers. The latter missile could reach the East Coast of the United States.

OTHER NATIONS

In addition to North Korea and Iran, roughly two dozen other countries, including Iraq and Libya either possess or are developing ballistic missiles. The clear trend in these missile programs is toward systems with greater ranges, and as Iran has demonstrated, foreign assistance can greatly reduce the time needed to develop a new missile.

RESPONDING TO THE MISSILE THREAT

The time has come for the United States to defend itself from the increasing missile threat that I have just described. The Cochran bill is the first step on this path.

Some opponents of the bill have pointed to the Administration's so-called ''3+3'' program as a better way to deal with the missile threat. I have grave concerns about the basic premise of the ''3+3'' program, which essentially states that the United States should continue to experiment with a variety of missile defense technologies indefinitely, and then, at some time after the year 2000, deploy an NMD system within three years. It is significant that the ''3+3'' program is the only Major Defense Acquisition Program that takes this wait-and-see approach and assumes a deployment can occur within three years of a decision to deploy.

The development of a complex weapons system, such as a new fighter aircraft or an NMD system can be technically challenging, which is why we structure development programs with clear goals and milestones. We do not continue to tinker indefinitely with the technology needed for the F–22, which will be the next-generation fighter aircraft for the Air Force, or the technology for the next version of the M–1 Abrams tank until some future date awaiting a decision to deploy. Why should we adopt this approach for national missile defense?

Studies on the ''3+3'' program have faulted the Administration's plan and its execution. For example, a recent study chaired by retired Air Force General Larry Welch criticized the ''3+3'' program stating that a successful NMD program should have ''a clear set of requirements, consistent resource support (which includes an adequate number of test assets), well-defined milestones, and a rigorous test plan. The study group believes that the current NMD program is not characterized by these features and is on a high-risk vector.''

Last December, the GAO published a study that also was critical of the ''3+3'' program due to its high risk and its acquisition schedule, which the study said was half as long as that for America's Safeguard national missile defense system that was developed between 1963 and 1975 and deployed at Grand Forks, North Dakota. The GAO stated that the acquisition schedule for the ''3+3'' program was ''shorter than the average time projected to acquire and field 59 other major weapon systems that we examined'' and went on to note, ''these systems are projected to take an average of just under 10 years from the beginning of their development until they reach an initial operating capability date.''

Mr. President, the general approach underlying the ''3+3'' program is flawed and due to the delays the program has already encountered I do not think we should stake our future on the premise that the system can be fielded within three years after a decision to deploy. As the GAO said in its study, ''Since the 3+3 program was approved, BMDO [the Ballistic Missile Defense Organization] has experienced a 7-month delay in establishing the joint program office to manage the acquisition and a 6-month delay in awarding concept definition contracts leading to the selection of a prime contractor. Also, a sensor flight-test failure resulted in a 6-month testing delay.''

As my colleagues know all too well, unfortunately, it is not uncommon for U.S. weapons development programs to experience delays. For example, despite the best efforts of the Congress and the Administration to quickly field the THAAD theater missile defense system, that program is currently projected to reach its first unit equipped milestone 13 years after development began. Experience tells us that we cannot keep national missile defense technology in a circling pattern and expect to snap our fingers and successfully move to deployment in a very short period of time. Nothing in our history suggests this is a sensible approach.

Mr. President, we need to get on with the task of constructing an effective missile defense system to protect the American people. Like other Senators, I have strong views on the disadvantages of the ABM Treaty and other related missile defense issues, but unfortunately those debates will have to wait for another day. The United States government has a fundamental obligation to provide for our citizens defense. The bill offered by Senator COCHRAN will help ensure that we fulfill this obligation, by committing us to deploying a defense against the growing ballistic missile threat we face. I urge my colleagues to support its passage.

Mr. KERRY. Mr. President, in the early hours yesterday morning on the New Mexican desert, there was an event that brought home in a very practical way one of the series of considered arguments made against the legislation the Senate is considering this morning.

The Army Missile Command, the prime contractor, and dozens of subcontractors had been painstakingly

preparing for the fifth intercept test of the Theater High Altitude Area Defense, or THAAD, theater missile defense system. No effort was spared in these preparations, because program officials and Department of Defense officials acknowledged openly that this would be widely viewed as a ''make or break'' test for the system following its unfortunate string of previous intercept failures.

To the dismay of all involved, this fifth test, too, was a failure.

Mr. President, we nominally are debating a different matter this morning. The bill before the Senate involves an immediate decision to abandon the so-called ''3 plus 3'' strategy for national missile defense and establish a policy to move as rapidly as possible not only to develop an effective national missile defense technology, but to deploy such a system at the earliest possible time. But the White Sands test yesterday morning should be hoisting another red flag for the Senate to consider as we vote on this bill.

I take a back seat to no one in my support for development of effective missile defense technology. I have a strong record of support for developing and fielding theater missile defense systems, for the protection of our ground forces, our naval forces, and other national interests in theater. We know—and we hear and read on virtually a daily basis—of the efforts underway in a number of nations to develop ever more capable short range ballistic missiles capable of carrying weapons of mass destruction, nuclear, chemical, or biological. Missiles of this type have been used previously. This threat is real, it is immediate, and it is substantial.

But this legislation, Mr. President, does not address either of these key policy matters. We have in place an established policy to develop and field as rapidly as possible theater missile defense systems. The Administration and the Congress have increased the funding for this effort again and again. We have in place an established policy to develop and perfect as rapidly as possible the technology that would be necessary for a national missile defense system, and to bring that effort to a stage where, in three years from a green light, it could be fielded and operational.

As has occurred not infrequently in the course of human history, our aspirations are getting ahead of our scientific expertise and our ability to manipulate the laws of physics to accomplish our objectives. Some may mistakenly believe, Mr. President, that developing effective anti-missile technology is a simple proposition, and that wishing for it is to obtain it. Unfortunately that is not the case. To grossly oversimplify this, this is a task of spotting a warhead, or fragments of a warhead, hundreds if not thousands of miles away, and while it moves at several thousand miles per hour, determining which is the real target, launching another missile in its direction, guiding that missile also traveling at hypersonic speed to a collision point in the great expanse just inside or outside of the upper reaches of the earth's atmosphere, and precisely maneuvering the interceptor to collide with the warhead.

It should be self evident that this is a daunting challenge, given that billions of dollars, thousands of hours of the most capable scientists and program managers our military and private sector can focus on this task, and the most advanced equipment and technology money can buy have produced five successive failures in the THAAD program.

Those who have spoken before me today have identified a host of reasons why we should not rush to judgment today to decide we will spend somewhere between $30 and $60 billion to deploy a national missile defense system that has neither been developed nor proven. If the Senate moves to proceed to the consideration of this legislation, I expect to have something to say about many of those other considerations.

But at this moment, I want to mention to the Senate only two of those considerations. The first is that it would be irresponsible to make a decision of this magnitude—which might cost U.S. taxpayers upwards of $50 billion—before the Senate knows that there is a workable technology. That is even more irresponsible in my judgment when one looks at the intelligence estimates of the ballistic missile threat that faces the U.S. The simple truth, Mr. President, is that only Russia and China have such missiles, and despite the fact that some rogue nations such as North Korea have been working to develop more advanced ballistic missiles, our intelligence and military leaders do not expect those threats to materialize for a decade or more.

Let me reiterate, Mr. President, that the choice the Senate will make today is not about whether we should make a herculean effort to develop anti-missile technology. We are doing that and spending multi-billions of dollars to do it as rapidly and well as our best minds can do so. The vote today will not alter that mission or our commitment to it.

The vote today is about whether—at a time before a real ballistic missile threat from sources other than Russia and China exists, at a time before we perfect the anti-missile technology on which we have been energetically working for years so that we know it is ready to be deployed—we will make a national commitment of scores of billions of dollars to field the nonexistent system against nonexistent threats.

That, Mr. President, would be an unwise decision of great magnitude, particularly at a time when we face very real threats to our national security and when we are struggling to provide the resources to ensure our military and intelligence capabilities are both appropriate and adequate to address those threats. It also ignores the possibility that we will rush pell mell to deploy a national missile defense system based on today's technology when, if we delay the deployment decision until we believe a real threat is looming, we can then deploy the latest technology—the most reliable technology then available—to meet the threat.

The urgency that the bill's proponents are voicing is a false urgency, Mr. President. I hope the Senate will look at this carefully and will choose the prudent course by rejecting the bill before us.

Mr. ALLARD. Mr. President, I rise today as a co-sponsor and supporter of S. 1873, The American Missile Protection Act of 1998. This important legislation will remove present barriers to the deployment of an effective, reliable missile defense system, so that our citizens will be free from the threat of an attack by missiles launched from across oceans. Prudence demands that we deploy a domestic missile defense system as soon as we possess the technology to do so.

Missile technology developed during the Cold War has forever neutralized what was once our greatest domestic security asset—distance. As a result, today many of our citizens have never known a world in which nuclear missiles were not pointed at their families.

It is unconscionable that now, after years of being in the shadow of nuclear threat, the most powerful nation in the world still cannot defend its own soil against even one ballistic missile attack.

In the post-Cold War era, a multiple array of new threats exist. Not only do we still face the possibility of accidental launch from a nuclear state—a possibility not without precedent—but now the proliferation of missile components and technology compounds the threat beyond even Cold War-levels. The capability of a rogue state to bypass years of development by clandestinely obtaining nuclear, chemical, and biological materials and long-range ballistic missile technology poses a new, more sinister threat. Procurement by rogue nations—especially by those who have a demonstrated desire to use force outside their own borders—cripples our ability to calculate emerging strategic threats with any degree of certainty.

Just as a policy of total vulnerability will no longer suffice, neither will a policy characterized by the ''gaps and uncertainty'' due to the underestimation of the technological capabilities of states like North Korea, Iran, Iraq, China, and now India.

Refusing to implement a National Missile Defense system as soon as it is technologically possible will render Americans vulnerable to the whims of any rogue regime that manages to procure ICBM technology.

Bearing in mind that this bill itself violates no treaties, nor seeks to mandate the particulars of implementing a

missile defense system, S. 1873 is important bipartisan legislation that should be passed. By eliminating a dependence on underestimated capabilities, this bill is a decisive affirmation that our country is indeed committed to ensuring the security of the American people.

I urge all my colleagues to support S. 1873.

Mr. MURKOWSKI. Mr. President, I rise today in support of S. 1873, the American Missile Protection Act. This bill is simple; but extremely important. It makes it clear that it is the policy of the United States to deploy, as soon as technologically possible, a national missile defense system which is capable of defending the entire territory of the United States against limited ballistic missile attack.

Alaskans have been justifiably concerned with this issue for some time. I ask unanimous consent to have printed in the RECORD at this time a resolution passed by the Alaska State Legislature which calls on the Administration to include Alaska and Hawaii in all future assessments of the threat of a ballistic missile attack on the United States. More than 20% of our domestic oil comes from Alaska, all of it through the Trans-Alaska Pipeline. Alaskans are concerned, as should the rest of the country be concerned, that a strike at the pipeline could have dire consequences to our domestic energy production.

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

LEGISLATIVE RESOLVE NO. 36

Whereas Alaska is the 49th state to enter the federal union of the United States of America and is entitled to all of the rights, privileges, and obligations that the union affords and requires; and

Whereas Alaska possesses natural resources, including energy, mineral, and human resources, vital to the prosperity and national security of the United States; and

Whereas the people of Alaska are conscious of the state's remote northern location and proximity to Northeast Asia and the Eurasian land mass, and of how that unique location places the state in a more vulnerable position than other states with regard to missiles that could be launched in Asia and Europe; and

Whereas the people of Alaska recognize the changing nature of the international political structure and the evolution and proliferation of missile delivery systems and weapons of mass destruction as foreign states seek the military means to deter the power of the United States in international affairs; and

Whereas there is a growing threat to Alaska by potential aggressors in these nations and in rogue nations that are seeking nuclear weapons capability and that have sponsored international terrorism; and

Whereas a National Intelligence Estimate to assess missile threats to the United States left Alaska and Hawaii out of the assessment and estimate; and

Whereas one of the primary reasons for joining the Union of the United States of America was to gain security for the people of Alaska and for the common regulation of foreign affairs on the basis of an equitable membership in the United States federation; and

Whereas the United States plans to field a national missile defense, perhaps as early as 2003; this national missile defense plan will provide only a fragile defense for Alaska, the state most likely to be threatened by new missile powers that are emerging in Northeast Asia;

Be it Resolved, That the Alaska State Legislature respectfully requests the President of the United States to take all actions necessary, within the considerable limits of the resources of the United States, to protect on an equal basis all peoples and resources of this great Union from threat of missile attack regardless of the physical location of the member state; and be it

Further Resolved, That the Alaska State Legislature respectfully requests that Alaska be included in every National Intelligence Estimate conducted by the United States joint intelligence agencies; and be it

Further Resolved, That the Alaska State Legislature respectfully requests the President of the United States to include Alaska and Hawaii, not just the contiguous 48 states, in every National Intelligence Estimate of missile threat to the United States; and be it

Further Resolved, That the Alaska State Legislature urges the United States government to take necessary measures to ensure that Alaska is protected against foreseeable threats, nuclear and otherwise, posed by foreign aggressors, including deployment of a ballistic missile defense system to protect Alaska; and be it

Further Resolved, That the Alaska State Legislature conveys to the President of the United States expectations that Alaska's safety and security take priority over any international treaty or obligation and that the President take whatever action is necessary to ensure that Alaska can be defended against limited missile attacks with the same degree of assurance as that provided to all other states; and be it

Further Resolved, That the Alaska State Legislature respectfully requests that the appropriate Congressional committees hold hearings in Alaska that include defense experts and administration officials to help Alaskans understand their risks, their level of security, and Alaska's vulnerability.

Copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Ted Stevens, Chair of the U.S. Senate Committee on Appropriations; the Honorable Bob Livingston, Chair of the U.S. House of Representatives Committee on Appropriations; the Honorable Strom Thurmond, Chair of the U.S. Senate Committee on Armed Services; the Honorable Floyd Spence, Chair of the U.S. House of Representatives Committee on National Security; and to the Honorable Frank Murkowski, U.S. Senator, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Mr. MURKOWSKI. Mr. President, last year North Korean defectors indicated that the North Korean missile development program already poses a verifiable threat to American forces in Okinawa and seems on track to threaten parts of Alaska by the turn of the Century. The Taepodong missile, which is under development, would have a range of about 3,100 miles. From certain parts of North Korea, this weapon could easily target many of the Aleutian islands in western Alaska, including the former Adak Naval Air Base.

The Washington Times reported last week that the Chinese have 13 of 18 long-range strategic missiles armed with nuclear warheads aimed at American cities. This is incredible, Mr. President. Opponents to the motion to invoke cloture somehow fail to understand that this threat is real and that we have a responsibility to protect the United States from attack, be it deliberate or accidental. Without question, the threat of an attack on the United States is increasingly real, and we must act now so that we can construct a national missile defense system with the capability of intercepting and deterring an aggressive strike against American soil from all parts of the United States.

Mr. President, I support the motion to invoke cloture and hope that my colleagues will vote overwhelmingly in favor of this legislation in the near future.

Mr. KENNEDY. Mr. President, I oppose this legislation and I urge the Senate not to invoke cloture.

Star Wars was a bad idea in the 1980s, and it is a bad idea today. Developing and deploying a national missile defense system has an enormous cost—billions of dollars a year to develop the system, and billions more to deploy it.

In addition, it ignores more likely threats to our security, especially the danger of terrorist attacks on our territory and our citizens.

Intelligence estimates suggest that there will not be a new, intercontinental ballistic missile threat from any rogue nation until at least 2010. At a time when we are trying to balance the budget and meet the essential readiness and modernization needs of our armed forces, it would be a mistake to spend additional billions of dollars on the proposed missile defense system.

Throughout the Cold War, when the Soviet Union had a far larger nuclear arsenal than today, we decided not to deploy missile defenses because the cost did not justify the protection provided. Now, the Cold War is over. We have far more cooperative relations with Russia and other nations of the former Soviet Union, and they have a much smaller nuclear arsenal. The Secretary of Defense and the Joint Chiefs of Staff tell us that now is not the time to deploy a national missile defense. It makes no sense to reject that advice and push ahead on this costly system.

Declaring our intention to deploy a missile defense system now will also put U.S. policy on a collision course with the Anti-Ballistic Missile Treaty. Such a step would send a strong signal to Russia that cooperation on nuclear arms reductions is not a U.S. priority.

In fact, members of the Russian Parliament have stated that they will oppose ratification of the START II Treaty if the United States begins to develop or deploy ballistic missile defenses in violation of the ABM Treaty. By endangering the prospects for START II ratification by Russia, this bill will ensure that we will face many

thousands more Russian nuclear weapons in the near future than we will face if arms reductions are implemented.

This bill also fails to address the most pressing threats to American security. As the World Trade Center bombing and the Oklahoma City bombing make clear, we do face a serious threat of terrorist attacks. But, it is far more likely, for example, that a terrorist will use nuclear, chemical or biological weapons on American soil than that we will be the target of an ICBM attack from a foreign nation. Loose controls on nuclear materials in the former Soviet Union raise the serious threat that such materials can find their way into the hands of extremists bent on using them. This bill fails to address these far more likely threats.

We should continue to do all we can to prevent the spread of nuclear weapons materials. The Nunn-Lugar Cooperative Threat Reduction Program has removed thousands of nuclear warheads from former Soviet arsenals, destroyed hundreds of missile launchers, and has safeguarded vulnerable stockpiles of nuclear materials. The nuclear tests conducted by India earlier this week are a wake-up call to the United States and all nations that our efforts to prevent nuclear proliferation are inadequate. We should do nothing to undermine that high priority even further.

This body has also rightly funded systems to protect our troops from ballistic missile threats and cruise missile threats. To deal with the possibility of future ballistic missile threats to U.S. territory, we have worked with the Administration to prepare a plan that will give us ample time to deploy a missile defense system if the need is clear. Our military leaders continue to agree that this plan is the most sensible way to protect the nation against potential future missile threats.

We need a strong defense, but we must give the highest priority to meeting the most serious threats. Failure to do so will waste billions of taxpayer dollars, and leave the nation less secure. I urge my colleagues to oppose this bill.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. Mr. President, we reserve the remainder of our time on this side of the aisle.

The PRESIDING OFFICER. If neither side yields time, then time will be charged equally to both sides.

Mr. COCHRAN. Mr. President, I appeal to the Chair for a different ruling on that. We are prepared to use our 5 minutes and then proceed to hear from the other side. If I speak now, we have used up our 5 minutes and then they have 20 minutes to complete debate. That is not fair.

The PRESIDING OFFICER. The ruling of the Chair reflects the precedence of the Senate.

Mr. COCHRAN. Mr. President, under the ruling of the Chair, if we do not speak, then we are not going to have any time to speak in about 10 minutes. That is the way I understand the ruling of the Chair.

I ask unanimous consent the running of the time be charged against the opposition, the opponents of the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DASCHLE. 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. 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, first of all, let me compliment the distinguished manager of the bill and the ranking member for the level of debate that has already occurred on this important piece of legislation. I have extraordinary respect for both Senators and I appreciate the manner in which they have presented this critical matter to the U.S. Senate.

In listening to the debate on S. 1873, I am struck by the appearance that rigid adherence to ideology seems to be trumping the sound judgment of this Nation's senior military leaders.

The proponents of this latest attempt to deploy ballistic missile defenses at any cost have entitled this bill the American Missile Protection Act. But I think it is important that we be clear as to what this really legislation does. The only thing S. 1873 protects, is the opportunity for defense contractors to move far ahead of where we ought to be with regard to a commitment to develop and deploy national ballistic missile defenses. As stated by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff in their letters opposing S. 1873, deployment of national missile defenses at this time is unnecessary, premature and could end our arms control efforts.

S. 1873, in spite of my great admiration for its author and the manager of this bill, is the wrong bill at the wrong time, and I ask my colleagues, this morning to vote against cloture.

S. 1873 would commit the United States to deploy national missile defenses based on a single criterion—technical feasibility.

Quoting from the bill, the United States should ''deploy as soon as is technologically possible an effective national missile defense system.''

In the eyes of the sponsors of this bill, the only standard that must be met in deciding whether to deploy defenses is that they be technologically possible.

Mr. President, I cannot find a clear definition of effective defenses in S. 1873.

And yet, many of the same people who demand that important domestic programs meet stringent standards before they can receive funding stay strangely silent when it comes to establishing even the most minimal performance requirements for ballistic missile defenses.

This irony is not lost on just this Senator. In fact, the proponents' attitude is cavalier even by the standards of defense programs. Research by the Department of Defense shows that S. 1873 would make history. For the first time ever, we would be committing this nation to deploy a weapons system before it had even been developed, let alone thoroughly tested.

We need look no further than today's Washington Post to see the folly of this approach.

In a story entitled, ''Antimissile Test Yields 5th Failure In a Row,'' it is pointed out that the THAAD system, a high priority theater anti-missile defense effort, failed yet again and is now 0 for 5 in tests.

Supporters of national defense may argue that the fifth consecutive failure of a theater missile defense system is not relevant to a debate on national missile defenses.

However, as underscored in the Post article, ''the repeated inability to demonstrate that THAAD's interceptors can hit incoming warheads has implications beyond battlefield defense. The same hit-to-kill concept is at the core of the even more ambitious national antimissile system.''

Moreover, most experts believe that a rush to judgment on ballistic missile defenses will not necessarily lead to the deployment of the most effective system.

According to General John Shalikashvili, former Chairman of the Joint Chiefs of Staff,

> if the decision is made to deploy a national missile defense system in the near term, then the system fielded would provide a very limited capability. If deploying a system in the near term can be avoided, the Defense Department can continue to enhance the technology base and the commensurate capability of the missile defense system that could be fielded on a later deployment schedule.

Not a word in S. 1873, Mr. President, about the costs of this system. The Congressional Budget Office estimates that deployment of even a very limited system could cost tens of billions of dollars.

Given that so much of the technology necessary remains unproven, history tells us the real cost could be much more. Despite the hefty price tag and the technological uncertainty, the proponents of this bill essentially say, ''costs be damned, full speed ahead''.

Yet, when it comes to proven proposals to improve our nations' schools, increase the quality of health care, or enhance our environment, the first question out of the mouths of many of the proponents of S. 1873 is, ''how much does it cost?''

Not a sentence in this bill, Mr. President, about the need for this defense system or the threats it is designed to counter. According to the intelligence community, deployment of defenses is not justified by the rogue nation ballistic missile threat.

In his Annual Report to the President and Congress, Secretary Cohen stated that, with one possible exception, ''no country will develop or otherwise acquire a ballistic missile in the next 15 years that could threaten the United States.''

The only possible exception is North Korea, a country that is on the verge of collapsing upon itself. Even here, the intelligence community rightly says the probability of North Korea acquiring such a missile by 2005 is, ''very low.''

Mr. President, S. 1873 says absolutely nothing about how a U.S. deployment of missile defenses would affect existing and future arms control treaties. It is clear from statements made by Russian President Yeltsin and other top officials that if the United States unilaterally abrogates the ABM Treaty, the Russians will effectively end a decades-long effort to reduce strategic nuclear weapons. They will back out of START I. They will not ratify START II. And they will not negotiate START III.

In other words, unilateral U.S. deployment of missile defenses could end the prospect for reducing Russia's nuclear arsenal from its current level of about 9,000 weapons down to as few as 2,000. This is much too steep a price to pay for a course of action that is unproven, unaffordable, and unnecessary.

Finally, Mr. President, I would like to say a few words about the procedure by which this bill is being brought to the floor.

All too frequently these past few months, we have seen bills taken from the Republican agenda and immediately scheduled for floor time under parliamentary procedures that severely limit debate and the opportunity to offer amendments.

When Democrats try to bring up issues important to all Americans—reducing school class size and protecting patients from insurance company abuses—we are told there is no time or they resort to these same parliamentary tactics to stifle our efforts.

The decision to bring up S. 1873 is only the latest manifestation of this practice. Just one day after refusing to set a date to take up patient protection legislation, we find the Senate has time to vote on a bill that should be known as ''Son of Star Wars.''

Mr. President, I ask my colleagues to reflect on the advice of the Secretary of Defense and the Joint Chiefs of Staff and vote against cloture on S. 1873.

Let us think carefully and thoughtfully about its ramifications. Let us recognize the dangerous implications for arms control, for the federal budget, and, because of the necessity to choose priorities within this budget, for what it means to the Defense Department itself. This is the wrong bill at the wrong time, and I hope we will defeat cloture when the opportunity presents itself, in 10 minutes.

Mr. President, I ask that my time be taken from my leader time, and not from the time accorded the debate on the motion.

The PRESIDING OFFICER. The Senator has that right.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. Mr. President, may I inquire how much time remains on each side?

The PRESIDING OFFICER. The Senator from Mississippi has 5 minutes and the Democratic side has about 12 minutes remaining.

Mr. COCHRAN. I yield 3 minutes to the distinguished Senator from Virginia, Mr. WARNER.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the manager of the bill.

Mr. President, the world has been working in a responsible way for years to try to halt the proliferation of weapons of mass destruction—nuclear, biological and chemical. India's decision both yesterday and today to detonate five underground nuclear explosions has blown a hole in the dyke of the world's nonproliferation efforts. The flood waters are now running. This tragic development should bring into sharper focus both the threat that our nation, and indeed all nations of the world, face from the spread of weapons of mass destruction; and the need for defenses to protect us from that threat. The bill before us offers such protection.

Mr. President, on April 21, the Senate Armed Services Committee voted to favorably report to the Senate S. 1873, the American Missile Protection Act of 1998. I am proud to be an original cosponsor of this legislation. This bipartisan bill, whose principal sponsors are Senator COCHRAN and Senator INOUYE, currently has 50 cosponsors in the Senate. I regret to say that the vote in the Armed Services Committee was along party lines.

The American Missile Protection Act which is before the Senate today is very simple. It states that, ''It is the policy of the United States to deploy as soon as is technologically possible a National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized or deliberate).''

This bill is a compromise—a step back from earlier Republican national missile defense (NMD) efforts in that it does not specify a date certain for deployment of an NMD system. As my colleagues will recall, the National Missile Defense Act of 1997, introduced last January by the Majority Leader, called for deployment of an NMD system by 2003. Many Republicans joined the Majority Leader in his effort last year. Would we still like to see a system deployed by 2003? Of course we would. But the intent of this year's legislation is to build a more bipartisan consensus for deploying a national missile defense system capable of defending the United States.

I have long been a strong supporter of providing Americans here at home, and our troops deployed overseas, with the most effective missile defense systems possible. In my view, there is no greater obligation of a government than to provide for the protection of its people. The Persian Gulf War should have made clear to all Americans our vulnerability to the proliferation of ballistic missiles around the world, and the dire need to develop and deploy effective defenses as soon as possible.

What are the objections to this simple, and seemingly obvious goal? The arguments we have heard from Members on the other side of the aisle are mainly three-fold: (1) a threat does not currently exist—and may not exist for the foreseeable future—that would justify the deployment of an NMD system; (2) we should not commit ourselves to the deployment of such a system when we do not know what that system would cost; and (3) we may be locking ourselves into a technologically inferior system by making a deployment decision today. I will respond to these arguments in turn.

First and foremost, the threat. I respectfully disagree with my Democrat colleagues. In my view, the threat exists today and is growing. Recent events in India are but the latest proof.

In my view, the biggest current threat we face is instability in Russia and the impact that instability could have on Russian command and control of the thousands of intercontinental ballistic missiles capable of reaching this country. A recent segment on ABC's ''World News with Peter Jennings,'' highlighted this problem. I quote one statement: ''A crushing lack of funds means Russia's entire 30-year-old nuclear command and control system is becoming unreliable.''

I remind my colleagues that with this legislation we are not seeking to deploy a Star Wars-type umbrella over the U.S. which would protect us from a massive strike by the Russians. We are seeking protection from a very limited, unauthorized or accidental attack. That scenario, unfortunately, could happen today.

And what of threats beyond Russia? By the Administration's our admission, the North Koreans will be able to deploy—in the near term—a ballistic missile with a range capable of striking Alaska and Hawaii. And other rogue nations are clamoring to get this type of technology. According to a recent report by the Air Force, ''Ballistic missiles are already in widespread use and will continue to increase in number and variety. The employment of weapons of mass destruction on many ballistic missiles vastly increases the significance of the threat.''

I believe we have proof enough today that a threat exists which justifies deploying an NMD system. But what if—for the sake of argument—we are wrong? What if a system is not needed for many more years? I would rather err on the side of deploying defense

sooner than they might be needed, rather than being caught defenseless if nations move even faster than the Administration expects to develop the capability to attack our shores.

Many of my Democrat colleagues are—quite properly—very concerned about what an NMD system might cost. My reply to that is, what is the cost of not deploying a system? What if even one ballistic missile strikes the United States? What is the cost in terms of loss of life and damage to our nation? That is a cost which must be factored into this debate. That is a cost we should never have to pay.

Who would we answer to the American people in the aftermath of such an attack when they ask why their government failed to provide them with any defenses? We know the threat exists—it will only grow in the years ahead. It is time to stop debating, and time to deploy systems to protect our people.

And finally, the issue of technology. The argument has been made that we should put off a deployment decision until we have the best possible technology for an NMD system. Well, that is an argument that will result in putting off a deployment decision indefinitely. There will always be better technology down the road. That is true for all of our weapons systems. That should not be used as an excuse for not deploying a system which is needed. Our focus instead should be on designing a system which can incorporate technological advances as they become available.

Another point which we must keep in mind as we debate this legislation is that we are not locking ourselves into a particular architecture or a deployment decision that will then just go on ''auto-pilot.'' We are making a broad policy statement that the U.S. should deploy a National Missile Defense system as soon as possible. That is our goal. Subsequent Congresses will decide—through the normal authorization and appropriation process—the details of the type of system to be deployed and the cost of that system. This bill is not the end of the process—it is the beginning.

And finally, there has been discussion about the impact of this bill on arms control agreements with the Russians—particularly the 1972 ABM Treaty. Dire consequences have been predicted if we were to pass this bill which, according to one of our Committee Members, would ''violate the ABM Treaty.'' I would just point out that a statement of policy does not—in and of itself—violate a treaty. Until actual deployment of a system were to take place—which would be years in the future—no violation of a treaty would occur. In the meantime, the United States should be talking to the Russians about modifying the ABM treaty to deal with current realities.

We are no longer living in the world envisioned by the ABM Treaty—a world with two superpowers with missiles targeted on each other. Russia is no longer the only threat we face. We are in a world where an increasing number of nations are acquiring the means to strike others with ballistic missiles. If the Russians would look around their borders they would realize that they have just as much, if not more, need for effective missiles defenses as we do. Regardless, if the Russians do not agree to modifications of this 26-year old treaty, we should not let this document stand in the way of protecting our people from attack.

I urge my colleagues to join us in our effort to provide effective defenses for our country.

Mr. President, in summary, the Nation owes a debt of gratitude to the Senator from Mississippi, Mr. COCHRAN, and the Senator from Hawaii, Mr. INOUYE, for, again, showing the leadership to bring America closer and closer to a system which is absolutely essential for our defense.

When the tragic news unfolded about the resumption of testing by India, I think in the hearts of most Americans two thoughts came about: First, ''Well, that's far away, no threat to us;'' secondly, ''Well, we already have a system which will protect us.''

Neither is true, and this tragedy brings into sharper focus the need for the U.S. Senate to move forward on this issue. I hope that sharper focus induces Senators to support moving this bill forward.

Another argument that is frequently brought up is, ''Well, what about Russia and the ABM Treaty?'' The ABM Treaty in 1972 is against a background of two superpowers who possessed arsenals. That is not the case today. Unfortunately, as a consequence of proliferation, the arsenals that we find in many countries, and with the news in India, that could even expand now the number of countries. Why should not Americans have their prayers answered: Just give us what is necessary to protect against a limited attack from a single or two or three missiles as a consequence of terrorism, as a consequence of a miscalculation, as a consequence of failure of equipment? To me, that is a very reasonable request, and that is the essence of this legislation. I urge it be supported.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I yield 5 minutes to my friend from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Thank you, Mr. President.

Mr. President, S. 1873 calls for deployment of a limited national missile defense system as soon as is technologically possible.

Although a case can be made for near-term deployment of this type of capability, I do not believe it is a wise policy to pursue a limited national missile defense system absent any considerations of costs, cost-effectiveness, or treaty implications. In fact, if this legislation were to become law in its current form and unilaterally breach the ABM Treaty, the international condemnation India is receiving for its nuclear testing during the last 48 hours could quickly shift to the United States.

There is no question that an accidental or unauthorized ICBM or SLBM launch by the Russians or PRC, however remote the possibility, would have devastating consequences. Such a threat alone, it could be argued, merits a limited national defense system. Indeed, there were extensive debates in the late eighties in the Senate regarding ALPS, or accidental launch protection system, as proposed by Senator Nunn.

But even in the debate over ALPS, it was understood that we should only go forward if it could be made affordable and cost-effective and deployed within the constraints of the ABM Treaty or a variant of this treaty, as agreed to by the Russians.

Admittedly, the threat situation has changed since the late 1980s. A new ICBM threat, such as a North Korean capability, could present itself in less than 20 years—a relatively short timeframe for deploying and refining a system as complex as a national missile defense. Such threats would become even more ominous in the event technology were transferred in part or in whole to a rogue regime, which is unlikely but not impossible.

Having a viable national missile defense system would not only provide a limited capability for meeting these threats but, far more importantly, it could serve to deter a rogue regime from even expending scarce resources on developing a long-range delivery system.

And rogue regimes would not be the only nations deterred. One of the most troubling strategic developments of the next century will be the rapid expansion of the PRC's strategic nuclear force through MIRVing—placing multiple warheads on each of its ICBMs—thus multiplying its nuclear strike capability many times over. This is not a remote possibility. MIRV technology is over 20 years old, and press reports indicate that, in fact, the Chinese are testing a MIRV capability. Facing a limited U.S. missile defense system which could, if necessary, be expanded to meet a potential Chinese threat, Beijing might choose to abandon any thought of pursuing this destabilizing course.

A limited national missile defense could also serve to deter a breakout by signatories, including the United States, Russia, China, Britain, and France, to future arms limitation agreements, especially those involving a very low number of offensive systems where temptations could be high for rapidly rebuilding capabilities in a crisis.

But we cannot simply dictate deployment of a national missile defense without consideration of costs and

treaty implications. Despite decades of multibillion-dollar research and development and testing efforts, we have not yet demonstrated an ability to effectively and consistently hit a bullet with a bullet in either our national or theater missile defense programs, as was demonstrated even yesterday, even in controlled settings against relatively easy threats.

The reality may be that we can get there only with exorbitant expenditures that will siphon funding excessively from U.S. military programs for other more pressing threats. S. 1873 makes no account of costs and is, therefore, not, in my judgment, a prudent policy.

A limited capability could probably be achieved within the confines of the ABM Treaty or a slightly modified treaty. But to call for a defense system without regard to the arms control consequences is very shortsighted.

If our rush to deploy a national missile defense system undermines Russian ratification of START II and, worse yet, pushes the Russians to abrogate START I, the gains of a national missile defense system will be offset overwhelmingly by a restoration of a very costly and destabilizing offensive nuclear arms race. This, again, supports the condition that S. 1873 is simply not a prudent policy.

Legislation similar to S. 1873, but calling for a cost-effective and treaty-compliant limited national missile defense system, would be a much more sensible and responsible approach.

Mr. President, I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining.

Mr. LEVIN. I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. Mr. President, I thank the Senator from Michigan.

Mr. President, there are good ideas and bad ideas. There are timely ideas and untimely ones. Whatever our views on a nation-wide ballistic missile defense, S. 1873 is both bad and untimely.

I urge my colleagues—on both sides of the aisle—to look closely at this bill and ask whether we should really be spending our time on it. Once they consider its implications we can reject cloture and get back to real work.

What would it mean to make it U.S. policy ''to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate)''?

For starters, we would have to deploy a national missile defense even if broke the bank, the budget agreement, and the U.S. economy. And it might do just that, especially if the bill is interpreted as requiring defense of U.S. territories in addition to every square inch of the 50 states.

This bill would also require deployment before we know the precise nature of the threat—indeed, before we are actually threatened by any strategic missiles other than Russia's and China's, which have posed that threat for years. That raises the distinct risk that we would deploy the wrong defense for the real threats we may someday face.

Worse yet, we would spend the taxpayer's hard-earned money on the first technology, rather than the best technology. And the first technology may not stop missiles with penetration aids, which Russia and others already have.

In addition, by putting pressure on the Pentagon to deploy the first feasible technology, this bill will very likely worsen what General Welch's panel recently called a ''rush to failure.'' Yesterday's fifth consecutive test failure with one of our theater defense missiles is a reminder of how difficult it is to develop any middle defense. Opting to deploy the first system that looks feasible is simply not a prescription for success.

Worst of all, this bill does not require—or even permit—consideration of negative consequences resulting from deployment.

Will the march to deployment destroy the Anti-Ballistic Missile Treaty? Too bad. That's precisely what some of our colleagues want.

Will the adoption of this objective torpedo implementation of START II and block any further reduction of strategic missiles or nuclear warheads? Too bad, again. Some people find ''star wars'' an easier solution than the hard, patient work of reducing great power armaments and stabilizing our forces.

Will renunciation of the ABM Treaty and the START process lead to a collapse of the Non-Proliferation Treaty? That is a real risk. But once again, too bad.

Do not focus on the Non-Proliferation Treaty's failings, and overlook its successes. What would the world be like if the countries that have stopped short of developing nuclear weapons were to give up on the commitment of the nuclear powers to reduce their forces? Would we really be safer if all those other countries were to go nuclear?

That is a real risk, if we march willy-nilly to deploy a national missile defense. Remember: when Egypt developed a better defense against Israeli attack on its forces, it was able to mount an offensive attack in the Yom Kippur War. The same thing applies to a national missile defense. We may see it as a defense. But the rest of the world will see it as a second-strike defense that enables us to mount first-strike nuclear attacks.

Some day, we may really need a nation-wide ballistic missile defense. That is why the Defense Department is pursuing the 3+3 policy of finding a technology that would permit deployment within three years of determining that there was a serious threat on the horizon.

Some of my colleagues truly believe that we can't wait for that, and I respect their views—although I respectfully believe that they are wrong. Others may be frustrated because they feel the President is trying to steal their issue. ''Life is unfair,'' as another Democrat once said.

But frustration and distrust do not make for good policy. And the policy that this bill would establish is simply too much, too soon. Let's get behind 3+3—make it effective, rather than forcing the Defense Department into an even more unrealistic schedule.

Sensible policy on ballistic missile defense is perfectly feasible. But S. 1873 isn't it. Let's stop wasting the Senate's time with it.

Mr. President, I am confused as the devil what my friends from Mississippi, Virginia, and others are doing here. Again, there are good ideas, there are bad ideas, there are timely ideas and untimely ideas. This is a bad, untimely idea. I truly am confused.

No. 1, we don't have any system that works. No. 2, there is no clear analysis of what the threat is that we are going to defend against. That usually goes hand in hand. We say we are going to build a system and here is the threat.

My friend, the senior Senator from Virginia, says, ''Well, you know, the threat may come from terrorist organizations or from specific rogue countries and single-warhead systems.'' Fine, that is one kind of system. My friend, the junior Senator from Virginia, stands up and points out, if we come up with a missile defense system for a single warhead that is able to be dealt with, do you think the Chinese are not going to sit there and say, ''You know, by golly, we're not going to build any MIRV'd warheads, we're not going to do that''?

Right now they may not do that. It is clearly against their interests.

We have this treaty with the Russians, the former Soviet Union, to do away with all multiple warhead missiles because we know they are so pernicious. This will encourage the Chinese to move. No. 1, we don't have an analysis of a threat. No. 2, my conservative friends, who are all budget-conscious guys, like we all are here, have no notion what the cost will be. They are ready to sign on and say, ''Deploy. As soon as we find it, deploy it. If it breaks the budget deal, if it causes a deficit, if it breaks the bank, deploy.'' No. 3, the idea that the ABM Treaty may or may not be impacted upon by this seems to be of no consequence. And No. 4, my friend, the senior Senator from Virginia, and others stood up on the floor when we were dealing with NATO expansion and said, ''JOE, JOE, JOE, the Russians, let's worry about how the Russians are going to think about being isolated; let's worry about how this could impact on Russia. Look, JOE, if you go ahead and do this and expand, what's going to happen is that all arms control agreements are going to come to a screeching halt.''

Well, let me tell you something. You want to make sure they come to a

screeching halt? Pass this, pass this beauty. This will be doing it real well. Bang. All of a sudden, the Duma saying, ''Now look, we are going to commit to go to START II, which means we have no multiple warhead weapons, which means we're only going to go to single warhead weapons, which means that, by the way, the U.S. Senate''—and they think we are even smarter than we think we are—''the U.S. Senate just said, 'Go ahead and deploy as soon as you have a feasible system.'''

Now, what do you think those good old boys in the Duma are going to do? They are going to say, ''You know, let's continue to destroy our multiple warhead weapons. The only thing we know for sure, these guys can't stop.''

Look, what is viewed as good for somebody is viewed as poison for other people on occasion. And let me point out to you, we are sitting here thinking—and we mean it—that what we want to do is we are going to defend the American people. And we do. But you sit there on the other side of the ocean, the other side of the world, and say, ''These guys, these Americans, the only people, by the way, who ever did drop an atomic weapon, these guys are building a system that is going to render them impervious to being hit by nuclear weapons. We think they are building that system for a second-strike capability. They can affirmatively strike us knowing they can't be struck back.''

Now, don't you think the guys that don't like us might think that? Don't you think that might cross their minds as reasonable planners? And what are we doing this for? What are we doing this for? We have no technology that works now. We are spending $3 billion a year, which I support, on theater and national missile defense research—$3 billion a year. I am for it. We should not get behind the curve so there is a breakout. But to deploy as soon as feasible? So I have only come to one conclusion here, Mr. President. This has to do with either trying to get rid of ABM, which is one of the reasons why some of my friends on the right think it is a bad idea or, No. 2, the President stole the march on the missile defense from them and they are not going to let it happen. This makes no sense.

I thank the Chair.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Does the Senator from North Dakota want a minute at this point? I yield a minute to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise as a strong supporter of national missile defense. I have introduced legislation on this subject. I strongly believe in it. Just as strongly, I oppose what is before us. I oppose it because, No. 1, I believe it undermines congressional responsibility. I believe there are common-sense criteria we need to apply on any decision of what we deploy. We need treaty compatibility. The ABM and START must not be jeopardized. We need affordability. A balanced budget must be maintained. We should have maximum utilization of existing technology to prevent increased costs.

Mr. President, S. 1873 gives the Pentagon no guidance on all of these issues. In addition to that, our military leadership is telling us that S. 1873 might undermine our Nation's security.

The PRESIDING OFFICER. The Senator has spoken for 1 minute.

Mr. CONRAD. I ask for an additional 30 seconds.

Mr. LEVIN. I ask unanimous consent for an additional minute for this side.

Mr. COCHRAN. No objection.

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

Mr. CONRAD. Mr. President, let us listen to our leadership, our military leadership, General Shelton, the current Chairman of the Joint Chiefs of Staff.

The effect NMD ''deployment would have on our arms control agreements and nuclear arms reductions * * * should be included in any bill on national missile defense.''

General Shalikashvili, the former Chairman of the Joint Chiefs: Efforts that imply ''withdrawal in the ABM Treaty may jeopardize Russian ratification of START II and * * * could prompt Russia to withdraw from START I. I am concerned that failure of either START initiative will result in Russian retention of hundreds or even thousands more nuclear weapons, thereby increasing both costs and risks we may face.''

Mr. President, I am in favor of NMD, national missile defense. I am opposed to this legislation.

The PRESIDING OFFICER. The Senator from Michigan has 1 minute 30 seconds remaining.

Mr. LEVIN. Mr. President, this is more of an ''NMC'' bill than an NMD. This is a ''Never Mind the Consequence'' bill.

General Shelton, our top military leader in the uniform of this country, has said he cannot support this bill for a number of reasons.

The question has been asked, ''How can anybody oppose this bill?'' A lot of people oppose this bill for a lot of reasons. But the people who support this bill ought to ask themselves, ''How is it that our top military leadership oppose it?'' And General Shelton, for many reasons, says he cannot support it. And one of the reasons is the one that Senator CONRAD just read. And I want to repeat it. Any bill should ''consider affordability [and] the impact a deployment would have on arms control agreements and nuclear arms reductions.''

When you commit to deploy a system which will breach in almost dead certainty a treaty between us and the Russians, and cause them to quit cutting the number of nuclear weapons and to start increasing again, we are jeopardizing the security of this Nation and contributing to the proliferation of nuclear weapons.

That is one of the big problems of this bill. That is why our top military leadership do not support this bill.

I ask unanimous consent, Mr. President, that the letters of General Shelton, General Shalikashvili and Secretary Cohen in opposition to this bill be printed in the RECORD.

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

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, April 21, 1998.

Hon. CARL M. LEVIN,
Ranking Minority Member, Committee on Armed Services, Washington, DC.

DEAR SENATOR LEVIN: Thank you for the opportunity to comment on the American Missile Protection Act of 1998 (S. 1873). I agree that the proliferation of weapons of mass destruction (WMD) and their delivery systems poses a major threat to our forces, allies, and other friendly nations. US missile systems play a critical role in our strategy to deter these threats, and the current National Missile Defense (NMD) Deployment Readiness Program (3+3) is structured to provide a defense against them when required.

The bill and the NMD program are consistent on many points; however, the following differences make it difficult to support enactment. First and most fundamental are the conditions necessary for deployment. The bill would establish a policy to deploy as soon as technology allows. The NMD program, on the other hand, requires an emerging ballistic missile threat as well as the achievement of a technological capability for an effective defense before deployment of missile defenses.

Second, the bill asserts that the United States has no policy to deploy an NMD system. In fact, the NMD effort is currently a robust research and development program that provides the flexibility to deploy an initial capability within 3 years of a deployment decision. This prudent hedge ensures that the United States will be capable of meeting the need for missile defenses with the latest technology when a threat emerges.

Third, I disagree with the bill's contention that the US ability to anticipate future ballistic missile threats is questionable. It is possible, of course, that there could be surprises, particularly were a rogue state to receive outside assistance. However, given the substantial intelligence resources being devoted to this issue, I am confident that we will have the 3 years' warning on which our strategy is based.

Fourth, the bill uses the phrase ''system capable of defending the territory of the United States.'' The NMD program calls for defense of only the 50 states. Expanding performance coverage to include all US territories would have considerable cost, design, and location implications.

Finally, the bill does not consider affordability or the impact a deployment would have on arms control agreements and nuclear arms reductions. Both points are addressed in the NMD Deployment Readiness Program and should be included in any bill on NMD.

Please be assured that I remain committed to those programs that discourage hostile

nations from the proliferation of WMD and the missiles that deliver them. In that regard, I am confident that our current NMD program provides a comprehensive policy to counter future ballistic missile threats with the best technology when deployment is determined necessary.

Sincerely,

HENRY H. SHELTON,
Chairman, Joint Chiefs of Staff.

CHAIRMAN OF THE
JOINT CHIEFS OF STAFF,
Washington, DC, May 1, 1996.

Hon. SAM NUNN,
U.S. Senate, Committee on Armed Services, Washington, DC.

DEAR SENATOR NUNN: In response to your recent letter on the Defend America Act of 1996, I share Congressional concern with regard to the proliferation of ballistic missiles and the potential threat these missiles may present to the United States and our allies. My staff, along with CINCs, Services and the Ballistic Missile Defense Organization (BMDO), is actively reviewing proposed systems to ensure we are prepared to field the most technologically capable systems available. We also need to take into account the parallel initiatives ongoing to reduce the ballistic missile threat.

In this regard, efforts which suggest changes to or withdrawal from the ABM Treaty may jeopardize Russian ratification of START II and, as articulated in the Soviet Statement to the United States of 13 June 1991, could prompt Russia to withdraw from START I. I am concerned that failure of either START initiative will result in Russian retention of hundreds or even thousands more nuclear weapons thereby increasing both the costs and risks we may face.

We can reduce the possibility of facing these increased cost and risks by planning an NMD system consistent with the ABM treaty. The current National Missile Defense Deployment Readiness Program (NDRP), which is consistent with the ABM treaty, will help provide stability in our strategic relationship with Russia as well as reducing future risks from rogue countries.

In closing let me assure you, Senator Nunn, that I will use my office to ensure a timely national missile defense deployment decision is made when warranted. I have discussed the above position with the Joint Chiefs and the appropriate CINCs, and all are in agreement.

Sincerely,

JOHN M. SHALIKASHVILI,
Chairman, Joint Chiefs of Staff.

THE SECRETARY OF DEFENSE,
Washington, DC, April 21, 1998.

Hon. STROM THURMOND,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in response to your request for the views of the Department of Defense on S. 1873, the American Missile Protection Act of 1998.

The Department of Defense is committed to ensuring that we properly protect the American people and America's national security interests. This requires that we have a carefully balanced defense program that ensures that we are able to meet threats to our people and vital interest wherever and whenever they arise. A key element of our defense program is our National Missile Defense (NMD) program, which as you know was restructured under Secretary Perry and with the support of Congress as a ''3+3'' deployment readiness program. Under this approach, by 2000 the United States is to be in a position to make a deployment decision if warranted by the threat, and if a decision to deploy were made at that time the initial NMD system would be deployed by 2003. If in 2000 the threat assessment does not warrant a deployment decision, improvements in NMD system component technology will continue, while an ability is maintained to deploy a system within three years of a decision.

The Quadrennial Defense Review reaffirmed this approach, although it also determined that the ''3+3'' program was inadequately funded to meet its objectives. Accordingly, I directed that an additional $2.3 billion be programmed for NMD over the Future Years Defense Plan. It must be emphasized, though, that even with this additional funding, NMD remains a high risk program because the compressed schedule necessitates a high degree of concurrency.

I share with Congress a commitment to ensuring the American people receive protection from missile threats how and when they need it. S. 1873, however, would alter the ''3+3'' strategy so as to eliminate taking into account the nature of the threat when making a deployment decision. This could lead to the deployment of an inferior system less capable of defending the American people if and when a threat emerges. Because of this, I am compelled to oppose the adoption of the bill.

Please be assured, however, that I will continue to work closely with the Senate and House of Representatives to ensure that our NMD program and all of our defense programs are designed and carried out in a manner that provides the best possible defense of our people and interests.

Sincerely,

BILL COHEN.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, there are two criticisms of this bill that I have heard during the debate from the opponents. The distinguished Senator from Michigan says that the bill should include the words ''treaty compliant'' and that it is therefore vulnerable to criticism and ought to be rejected. The distinguished Democratic leader says the bill uses the phrase ''effective national missile defense system.'' He says ''effective'' is not defined in the bill.

Well, my suggestion is, if amendments ought to be offered to this bill we should vote for cloture so that we can get to the bill and amendments will be in order. Criticizing the bill because we are not considering amendments at this time is begging the question. The question is, should the Senate turn to the consideration of the American Missile Protection Act? We are suggesting yes. But the Democrats objected.

It is like when President Clinton, 2 years ago with the authorization bill before the Congress, held the bill up, held it up arguing over missile defense because there was a provision in it that suggested we ought to have a national missile defense, we ought to develop and deploy. They changed the words finally to ''develop for deployment,'' and then that was taken out of the bill in conference.

The point is this administration is taking a wait-and-see attitude, wait until there is a threat. The reality is the threat exists now. We need to debate this issue. We need to debate this bill. The Democrat leadership are opposing that. We hope the Senate will vote cloture. Let us proceed to the consideration of the American Missile Protection Act. If Senators have amendments, suggestions, that is when they will be in order. They cannot be considered now until we invoke cloture. I hope the Senate will vote to invoke cloture on the motion to proceed to consider the bill.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill 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 motion to proceed to Calendar No. 345, S. 1873, the missile defense system legislation:

Trent Lott, Thad Cochran, Strom Thurmond, Jon Kyl, Conrad Burns, Dirk Kempthorne, Pat Roberts, Larry Craig, Ted Stevens, Rick Santorum, Judd Gregg, Tim Hutchinson, Jim Inhofe, Connie Mack, R.F. Bennett, and Jeff Sessions.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is: Is it the sense of the Senate that debate on the motion to proceed to S. 1873, the missile defense bill, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The bill clerk called the roll.

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

The yeas and nays resulted—yeas 59, nays 41, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—59

Abraham	Frist	Mack
Akaka	Gorton	McCain
Allard	Gramm	McConnell
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Roth
Burns	Hatch	Santorum
Campbell	Helms	Sessions
Chafee	Hollings	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Collins	Inhofe	Snowe
Coverdell	Inouye	Specter
Craig	Jeffords	Stevens
D'Amato	Kempthorne	Thomas
DeWine	Kyl	Thompson
Domenici	Lieberman	Thurmond
Enzi	Lott	Warner
Faircloth	Lugar	

NAYS—41

Baucus	Dodd	Kerrey
Biden	Dorgan	Kerry
Bingaman	Durbin	Kohl
Boxer	Feingold	Landrieu
Breaux	Feinstein	Lautenberg
Bryan	Ford	Leahy
Bumpers	Glenn	Levin
Byrd	Graham	Mikulski
Cleland	Harkin	Moseley-Braun
Conrad	Johnson	Moynihan
Daschle	Kennedy	Murray

Reed	Rockefeller	Wellstone
Reid	Sarbanes	Wyden
Robb	Torricelli	

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, let me yield to my colleague from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask that the Senate now proceed to the consideration of S. 1244 under the consent order.

RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT OF 1998

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1244) to amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Religious Liberty and Charitable Donation Protection Act of 1998''.

SEC. 2. DEFINITIONS.

Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

''(3) In this section, the term 'charitable contribution' means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

''(A) is made by a natural person; and

''(B) consists of—

''(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

''(ii) cash.

''(4) In this section, the term 'qualified religious or charitable entity or organization' means—

''(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

''(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.''.

SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''(1) made'' and inserting ''(A) made'';

(3) by striking ''(2)(A)'' and inserting ''(B)(i);

(4) by striking ''(B)(i)'' and inserting ''(ii)(I)'';

(5) by striking ''(ii) was'' and inserting ''(II) was'';

(6) by striking ''(iii)'' and inserting ''(III)''; and

(7) by adding at the end the following:

''(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

''(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

''(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.''.

(b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(1) by striking ''(b) The trustee'' and inserting ''(b)(1) Except as provided in paragraph (2), the trustee''; and

(2) by adding at the end the following:

''(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.''.

(c) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (e)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)'';

(2) in subsection (f)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)''; and

(3) in subsection (g)—

(A) by striking ''section 548(a)(1)'' each place it appears and inserting ''section 548(a)(1)(A)''; and

(B) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''.

SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS.

(a) CONFIRMATION OF PLAN.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting before the semicolon the following: '', including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made''.

(b) DISMISSAL.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following: ''In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).''.

SEC. 5. APPLICABILITY.

This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in the amendments made by this Act is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

The PRESIDING OFFICER. Under the previous order, there are 10 minutes equally divided on each side.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I rise in strong support of S. 1244, The Religious Liberty and Charitable Donation Protection Act, which I introduced in October of last year.

When I held hearings on this bill before my subcommittee, I learned that churches and charities around the country are experiencing a spate of lawsuits by bankruptcy trustees trying to undo tithes or charitable donations. Under provisions of the Bankruptcy Code originally designed to fight fraudulent transfers of assets or money on the eve of bankruptcy, bankruptcy trustees have begun to sue churches when one of their parishioners declares bankruptcy, charging that tithes are fraud.

Of course, this puts the fiscal health of many churches at serious risk. Most churches and charities don't have big bank accounts. Having to pay back money that has been received and already spent is a real hardship for churches which often live on a shoestring budget. S. 1244 will protect against that.

Protecting churches and charities from baseless bankruptcy lawsuits will protect key players in the delivery of services to the poor. What do churches do with tithes? What do charities do with contributions?

They feed the poor with soup kitchens. They collect used clothing and help provide shelter for the homeless. And they do it with a minimal amount of Government assistance. In this day and age, where Congress is seeking to trim the Federal Government to its appropriately limited role, we must protect the important work of churches and charities. Mr. President, S. 1244 is a giant step in that direction.

This bill doesn't amend Section 548(A)(1) of the Bankruptcy Code. This means that any transfer of assets on the eve of bankruptcy which is intended to hinder, delay or defraud anyone is still prohibited. Only genuine charitable contributions and tithes are protected by S. 1244. Accordingly, a transfer of assets which looks like a tithe or a charitable donation, but which is actually fraud, can still be set aside. For example, if someone who is about to declare bankruptcy gives away all of his assets in donations of less than 15 percent of his income, that would be strong evidence of real fraud and real fraud can't be tolerated.

Mr. President, my legislation also permits debtors in chapter 13 repayment plans to tithe during the course of their repayment plan. Under current law, people who declare bankruptcy under chapter 13 must show that they are using all of their disposable income to repay their creditors. The term disposable income has been interpreted by the courts to allow debtors to have a reasonable entertainment budget during their repayment period. But these

same courts won't let people tithe. So, a debtor could budget money for movies or meals at restaurants, but they couldn't use that same money to tithe to their church. This is a direct and outrageous assault on religious freedom. And I think it's quite clearly contrary to Congress' intent in enacting chapter 13. I doubt anyone would have supported the idea that debtors could pay money to a gambling casino for entertainment but could not give the same money to a church as a tithe.

Mr. President, S. 1244 is necessary at this time because the Supreme Court struck down the Religious Freedom Restoration Act as unconstitutional last summer. A badly-divided panel of the Eighth Circuit Court of Appeals has recently ruled that RFRA protects tithes, even after the Supreme Court case. But that decision is being appealed to the Supreme Court. No matter what the Court does, we need to pass this bill now, and to subject churches to uncertainty and harassment by bankruptcy trustees.

Mr. President, I think it's important to remember that my bill protects donations to churches as well as other types of nonprofit charities. I did this because many well-respected constitutional scholars believe that protecting only religiously-motivated donations from the reach of the Bankruptcy Code would violate the establishment clause of the first amendment.

Now a concern was recently raised that S. 1244 doesn't protect unincorporated churches. That just isn't so. Professor Douglas Laycock, perhaps the leading scholar on religious freedom, has written to me on this topic and has concluded that unincorporated churches would in fact be protected. I ask unanimous consent that his letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. GRASSLEY. Mr. President, I would like to close on this note. When I chaired a hearing on tithing and bankruptcy before my subcommittee late last year, I heard from the pastor of Crystal Free Evangelical Church. This church is the one fighting right now in the Eighth Circuit Court of Appeals to keep the bankruptcy court out of its church coffers. Pastor Goold testified in a very compelling way about the practical difficulties his church has faced because of the Bankruptcy Code. As Pastor Goold put it, when there's a conflict between the bankruptcy laws and the laws of God, we should change the bankruptcy laws because God's laws aren't going to change.

Whether someone believes in tithing or not, it's clear that many Americans feel that tithing is an act of worship, required by divine law. It's completely unacceptable to have the bankruptcy code undo an act of worship.

EXHIBIT 1

UNIVERSITY OF TEXAS AT AUSTIN,
SCHOOL OF LAW,
Austin, TX, May 6, 1998.

Hon. CHARLES E. GRASSLEY,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRASSLEY: The question has arisen whether S. 1244 and H.R. 2604 would protect unincorporated churches. The answer is yes; unincorporated churches would be protected.

These bills protect organizations defined in §170(c)(2) of the Internal Revenue Code, which includes any ''corporation, trust, or community chest, fund, or foundation'' organized and operated exclusively for charitable, religious, or other listed purposes. The Internal Revenue Code defines ''corporation'' to include an ''association.'' 26 U.S.C. §7701(a)(3). An unincorporated association may also be a ''fund.''

The language of §170(c)(2) dates to shortly after World War I. Related sections drafted more recently use the word ''organization,'' which more obviously includes unincorporated associations. See, e.g., §170b and §§502–511. The implementing regulations under §170 and §501(c)(3) also used the word ''organization.'' 26 C.F.R. §§1.170 and 1.501. ''Organization'' does not appear to be a defined term. But Treasury Regulations define ''articles of organization'' in inclusive terms: ''The term articles of organization or articles includes the trust instrument, the corporate charter, *the articles of association*, or any other written instrument by which an organization is created.'' 26 C.F.R. §1.501(c)(3)(b)(2) (emphasis added) ''Articles of association'' clearly seems designed to include unincorporated associations.

The clearest statement from the Internal Revenue Service appears to be Revenue Procedure 82–2 (attached), which sets out certain rules for different categories of tax exempt organizations. Section 3.04 provides a rule for ''Unincorporated Nonprofit Associations.'' This Procedure treats the question as utterly settled and noncontroversial.

Tax scholars agree that §170 includes unincorporated associations. The conclusion appears to be so universally accepted that there has been no litigation and no need to elaborate the explanation. The leading treatise on tax-exempt organizations states: ''An unincorporated association or trust can qualify under this provision, presumably as a fund or foundation or perhaps, as noted, as a corporation.'' Bruce R. Hopkins, The Law of Tax-Exempt Organizations §4.1 at 52 (7th ed. 1997).

Borris Bittker of Yale and Lawrence Lokken of NYU says: ''Since the term corporation includes associations and fund or foundation as used in IRC §501(c)(3) is construed to include trusts, the technical form in which a charitable organization is clothed rarely results in disqualification.'' Boris I. Bittker & Lawrence Lokken, 4 Federal Taxation of Income, Estates and Gifts ¶100.1.2 at 100–6 (2d ed. 1989).

Closely related provisions of the Code expressly cover churches. I.R.C. §170(b)(1) states special rules for a subset of organizations defined in §170(c), including ''a church, or a convention or association of churches.'' I.R.C. §508(c)(1) provides that ''churches, their integrated auxiliaries, and conventions or associations of churches'' do not have to apply for tax exemption. These provisions plainly contemplate that churches are covered; they also prevent the accumulation of IRS decisions granting tax exempt status to unincorporated churches. These churches are simply presumed to be exempt.

There are tens of thousands of unincorporated churches in America. I am not aware that any of these churches has ever had difficulty with tax exemption or tax deductibility of contributions because of their unincorporated status. I work with many church lawyers and religious leaders, and none of them has ever mentioned such a problem. There are no reported cases indicating litigation over such a problem. If unincorporated churches were having this problem, Congress would have heard demands for constituent help or corrective legislation.

The fact is that legitimate unincorporated churches that otherwise qualify for tax deductibility under §170 and for tax exemption under §501(c)(3) are not rendered ineligible by their failure to incorporate. There is so little doubt about that that neither Congress, the IRS, nor the courts has ever had to expressly elaborate on the rule that everyone knows. This is a question that can be safely dealt with in legislative history affirming Congress's understanding that unincorporated associations are included in §170(c)(2) and Congress's intention that they be protected by these bills.

I consulted informally with Deirdre Halloran, the expert on tax exempt organizations at the United States Catholic Conference, and with tax professors here and elsewhere, who confirmed these conclusions. Ms. Halloran would be happy to respond to inquiries from your office if you need a second opinion.

Very truly yours,

DOUGLAS LAYCOCK.

Mr. GRASSLEY. I yield the floor.

Mr. HATCH. I compliment the distinguished Senator from Iowa and the distinguished Senator from Illinois for their work on this bill.

This is called the Religious Liberty and Charitable Donations Act of 1998, and I urge all of my colleagues to vote for its passage.

S. 1244 will help spell out the safe harbors for tithe-payers or others who contribute to charitable organizations and then find themselves in bankruptcy. It will work, together with the Religious Freedom Restoration Act in this area, to relieve burdens on often strained organizations that provide important services to our society. It will relieve an untenable burden on the religious rights of tithe-payers throughout America.

Mr. President, the issue of the status of tithes paid to churches by religiously motivated Americans who find themselves in bankruptcy proceedings has vexed tithe-payers and our courts for a number of years now. Vigilant, and some might say over-zealous, bankruptcy trustees have tried to recover tithes paid to churches as fraudulent conveyances under the bankruptcy code. Hundreds, if not thousands, of such claims for recovery against churches have been filed over the last few years. This has imperiled many churches, which operate on the offerings they receive as they come in. By the time a bankruptcy claim is filed, the money has been spent feeding the poor or otherwise serving the needs of the congregation. Many churches find it very difficult to make up money that has already been spent, and when they can, it weakens their ability to do the charitable and spiritual work that is part of the grand tradition of religious charity in America.

Not only are the churches themselves imperiled, but many believers are told by the government that they can no longer pay tithes once they have been in bankruptcy, even if a believing debtor wishes to forgo allowable entertainment expenses to pay the tithing they believe God requires of them. This is an unsupportable interposition of Uncle Sam and the bankruptcy system between believing Americans and God.

I believe we fixed the problem in 1993, when we passed the Religious Freedom Restoration Act (''RFRA''), which gave greater protections to religious activities across the board than the courts were affording at that time. An early bankruptcy case under that law, however, and the position the Clinton Justice Department took in that case, risked undermining those protections. Under pressure from me and others in Congress, the Justice Department reversed itself on direct orders from the President. And, luckily, the 8th Circuit Court of Appeals applied RFRA's stronger protections to the case. When that decision was appealed to the Supreme Court, however, it was vacated and remanded by the Supreme Court for further proceedings in light of the Court's decision in *City of Boerne* v. *Flores*,—U.S.—,117 S. Ct. 2157 (1997), in which it held that RFRA was unconstitutional as applied to the states. Upon the review of the Young case, I filed an amicus brief in the 8th Circuit, arguing with others that Boerne had no effect on questions of federal law such as bankruptcy, and so RFRA was constitutional and should apply in the bankruptcy context. I am pleased to report that the case of *Christians* v. *Crystal Evangelical Free Church*, 1998 WL 166642 (8th Cir. (Minn.)), decided last month, held RFRA to be constitutional for federal law purposes and protective of tithes in bankruptcy proceedings.

The uncertainty caused by Boerne accelerated the challenging of tithes as fraudulent conveyances, and in turn spurred our efforts to clarify the law. I am glad that RFRA will continue to be of service in this area, but I am also pleased that we will have targeted legislation to clear up any remaining confusion without undue confusion during further litigation. S. 1244 will help spell out the safe harbors or tithe payers or others who contribute to charitable organizations and then find themselves in bankruptcy. It will relieve burdens on often-strained organizations that provide important services in our society, and relieve an untenable burden on the religious rights of tithe payers across America.

Let me thank all of those who worked on this legislation, especially Senator GRASSLEY and Senator DURBIN, who are leaders on bankruptcy issues on the Judiciary Committee, and, in the case of at least Senator GRASSLEY and I believe Senator DURBIN, are strong supporters of the religious rights of our people. I thank both of them for the work in this area. We have worked to make this legislation useful and efficacious. So I urge all of our colleagues to vote for its passage.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. GRASSLEY. I yield to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I rise to speak on behalf of the Religious Liberty and Charitable Donation Protection Act of 1998. It is an honor to work with my good friend from Iowa on this important piece of legislation, and I thank him for his leadership on this issue.

In an important 1970 Supreme Court case upholding tax exemptions for churches, Chief Justice Burger spoke of the Government's relationship with religion as being a relationship of ''benevolent neutrality''. It seems more and more that the Government's ''benevolent neutrality'' is becoming harder to discern, often being replaced with what appears to be ''outright hostility''.

A good example of this is found in Federal bankruptcy law. In the 1995 case of ''In re Tessier,'' a couple filed for bankruptcy under Chapter 13. Out of their net monthly income of $1,610, they proposed to continue making contributions to their church in the amount of $100 per month. This couple had deeply-held religious convictions about donating to the church as part of the exercise of their religious faith. They proposed spending only $200 per month on food, and nothing on entertainment, recreation, health insurance, life insurance, cable television, telephone, or even electrical utility service. Nevertheless, the Bankruptcy Court ruled that during the 5 year duration of their Chapter 13 plan, this couple could not make the proposed contributions to their church. This was in spite of the fact that the Court would probably have allowed them to spend that sum of money on entertainment or recreational expenses.

The matter of pre-bankruptcy contributions to a church or charity is also a matter of much concern. Several courts have actually interpreted the bankruptcy law to require churches to refund donations made to them in the year prior to a debtor filing bankruptcy. In making such rulings, the courts hold that donations to the church are ''fraudulent conveyances''—that is, by giving the money to the church without (according to the courts) receiving something economically valuable in return, they are defrauding their creditors. In reality, there is no fraud involved. And of course you can imagine the potential burden on small churches that may be just getting by financially—churches that have done nothing wrong—to find that they are required to repay a year's worth of contributions received from a faithful contributor.

The Grassley-Sessions bill is a commonsense bill that would clarify the Bankruptcy law to ensure that our courts will no longer make the sort of rulings that I have described.

Under our bill, contributions of up to 15% of a person's income, or a higher amount that is consistent with an individual's past practice of giving, will not be considered fraudulent when made during the year prior to filing bankruptcy. Consequently, innocent churches and charities would not have to repay such contributions.

Secondly, our bill will allow debtors under Chapter 13 repayment plans to make charitable contributions of up to 15% of their income. If bankruptcy law allows for spending on recreational expenses while under a Chapter 13 repayment plan, it should also allow an individual to tithe to their church or make reasonable charitable contributions.

Mr. President, this is an important bill which will help to restore the Government to its rightful position of benevolent neutrality toward religion. It will provide necessary legislative guidance in an area of bankruptcy law that has gotten off track. I urge my colleagues to join with me in support of this legislation.

Mr. President, I am honored to support this legislation. Senator GRASSLEY has done an excellent job in identifying an unfair component of the Bankruptcy Act. If an individual pays money to a nightclub, a casino, or to any other recreational activity whatsoever, that person who received the money does not have to give it back to the bankruptcy court. If they had given money to a charitable enterprise or a church, they could be required to give it back. And in chapter 13 where an individual pays out their debts on a regular basis, the courts have denied them the right to give money to charitable institutions as part of their regular payments while at the same time allowing them substantial amounts of money for recreational expenditures. We think that is unfair. We think this bill is a sound way to correct that problem.

I am honored to work with Senator GRASSLEY and support him in this effort.

Mr. DURBIN. Mr. President, it is a pleasure to stand in support of this legislation. Senator GRASSLEY and I have worked on it, but I want to give him the lion's share of the credit because this was his notion, his concept, and he has developed it into a very good piece of legislation.

We work closely together on these bankruptcy issues, and for those who are interested in bankruptcy stay tuned; there is more to follow. But I think you will find this bill noncontroversial and certainly one everyone should be able to support.

The bottom line here is whether or not you are dealing with a fraudulent conveyance. Someone in anticipation of bankruptcy may give away money and it is said by the court that you cannot do that; if you are going to give money away for nothing, then we are

going to come back later on in the bankruptcy court and recover it. But Senator GRASSLEY has pointed out, I think appropriately, the situation where people give money to a charity or a church, and he says that should be considered in a different category. And I agree. As he has mentioned in the opening statement, there is a limitation in the law of 15 percent of your annual income that can be given in this fashion. So we don't anticipate any type of abuse in this area.

I thank Senator GRASSLEY. It is a pleasure to serve with him and work with him. We have more to follow on the bankruptcy issue, but I am anxious to encourage my Democratic colleagues today to join with us in voting for this legislation.

Mr. SARBANES. Will the Senator yield?

Mr. DURBIN. I will be happy to yield to the Senator from Maryland.

Mr. SARBANES. I am prompted by something the ranking member of the subcommittee said which leads me to put an inquiry to him and to Senator GRASSLEY.

There are a number of bankruptcy districts in the country that are facing very serious problems in handling their caseload. I have been in frequent communication with the subcommittee about this, and obviously my district is one of them. It has consistently now, for 4 or 5 years, ranked at the very top of case overload of all bankruptcy districts in the United States. Every study that has been made has recommended additional bankruptcy judges, and I note for a fact that the existing bankruptcy judges in my district are severely overworked. This is denying economic justice to both creditors and debtors. It is a matter which needs to be addressed. It is a pressing crisis.

Now, the House sent over to us some time ago legislation providing for some additional judges based on comprehensive studies undertaken by the Administrative Office of the Courts and by others. This session is moving along. If we don't get some relief, we are going to continue to have this extraordinary situation which exists in quite a number of districts across the country in terms of reducing their backlog. It is a very severe problem in a number of districts.

I am prompted by Senator DURBIN's reference, and Senator GRASSLEY's assent to it, as I understood it, there is more to follow. So I just put the inquiry whether this is one of the matters to follow. I would certainly hope so.

Mr. DURBIN. Mr. President, if I might say in response to my friend, the Senator from Maryland, I agree with him completely. We now know that the caseload in bankruptcy courts has been growing every single year. It really taxes the system, and if not in this legislation, in the following bill I hope we will provide the resources to make sure the bankruptcy courts can respond.

Mr. GRAMS. Mr. President, I rise in strong support of Senator GRASSLEY's bill, S. 1244, which exempts individual tithes to churches from bankruptcy proceedings. The exemption is up to 15 percent of income to prevent abuse.

This problem was brought to my attention by the Crystal Evangelical Free Church in Minnesota, which prompted my cosponsor of this important legislation. The Church was sued and required to repay tithes given to it by individuals who had declared bankruptcy. Churches depend on tithes for their income to operate effectively. They should not be liable for debt repayment of their parishioners.

This legislation is needed to protect churches from this kind of abuse. It is the right thing to do. I commend the Senator from Iowa for his effective leadership on this issue.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the bill.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There seems to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the committee amendment is agreed to and the bill is read the third time. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—99

Abraham	Faircloth	Lott
Akaka	Feingold	Lugar
Allard	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bryan	Hagel	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roberts
Byrd	Helms	Rockefeller
Campbell	Hollings	Roth
Chafee	Hutchinson	Santorum
Cleland	Hutchison	Sarbanes
Coats	Inhofe	Sessions
Cochran	Inouye	Shelby
Collins	Jeffords	Smith (NH)
Conrad	Johnson	Smith (OR)
Coverdell	Kempthorne	Snowe
Craig	Kennedy	Specter
D'Amato	Kerrey	Stevens
Daschle	Kerry	Thomas
DeWine	Kyl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Enzi	Lieberman	Wyden

NAYS—1

Kohl

The bill (S. 1244), as amended, was passed.

Mr. SESSIONS. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

MORNING BUSINESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business until the hour of 2 p.m. today, with Senators permitted to speak for up to 10 minutes each.

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

UNANIMOUS CONSENT AGREEMENT—S. 1260

Mr. DOMENICI. Mr. President, I ask unanimous consent that at 2 o'clock, the Senate begin consideration of S. 1260 under the consent agreement.

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

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 2072 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DOMENICI. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

EQUITY IN PRESCRIPTION AND CONTRACEPTION COVERAGE ACT

Mr. REID. Mr. President, yesterday's USA Today headline: ''Viagra heightens insurance hopes for comfort care.'' The first paragraph says:

> While health insurers try to decide whether to pay for the impotence drug Viagra, a poll shows half of Americans think men should pay for it themselves.

Mr. President, I will bet those half are women. Women have really been treated unfairly in this. Senator OLYMPIA SNOWE and I introduced legislation last May, the Equity in Prescription and Contraception Coverage Act, which in effect said that health care providers that provide prescription drugs should also provide contraceptives.

We have waited a year. We have not been able to even get a hearing on this. The reason I am here today is to speak for American women who have been treated so unfairly by male-dominated legislatures for the last many decades.

Women pay about 70 percent more for their health care than do men, mostly related to reproductive problems. We have a situation where we have 3.6 million unintended pregnancies in this country every year. And 45 percent of them wind up in abortions. We find these insurance companies, these health care providers, will pay for a tubal ligation, they will pay for abortions, they will pay for a vasectomy, but they will not provide money for the pill.

An average pregnancy, unintended pregnancy, in this country costs an average of about $1,700. I say, why can't

we talk about something other than what helps men? Viagra is in all the newspapers, trying to make a decision as to whether or not insurance companies should pay for this. Why don't we talk about why insurance companies shouldn't pay for contraceptives, health care providers shouldn't pay for contraceptives? It seems that would be a step in the right direction. Over half of the insurance companies, health care providers, do not cover this.

Our legislation, that of the senior Senator from Maine and me, would require insurers, HMOs, and employee health benefit plans that offer prescription drug benefits to cover contraceptive drugs approved by the FDA. This is long overdue.

I am just telling everyone here that if we do not have the benefit of some hearings on this—the senior Senator from Maine and I have written letters, and we have asked people, and we cannot get the benefit of a hearing. This should not be. It would seem to me we should have a hearing with the Labor and Human Resources Committee.

I have had the benefit of speaking to the senior Senator from Pennsylvania, who has been very concerned about issues like this in the past. And at last resort, we will go to the Appropriations Committee and have a hearing there. We should not have it there, but at last resort we will have it there. I do not think it is appropriate that we have to legislate on appropriations bills, but as a member of the Appropriations Committee, on this, I am going to offer an amendment on the appropriate bill if we do not get some action by the proper authorizing committee. This is simply unfair—unfair—what is going on.

The same newspaper yesterday, in a different article, said:

> Health insurers that cover the new impotence drug Viagra but don't pay for female contraception are guilty of ''gender bias,'' says the American College of Obstetricians and Gynecologists today.
>
> ''Pregnancy is a medical condition, just like impotence. And the cost benefit of preventing pregnancy is much greater than treating impotence,'' says ACOG spokeswoman Luella Klein of Emory University.

Mr. President, it simply is unfair. Over this last decade, we have moved forward a little bit with the help of the junior Senator from Maryland, Senator MIKULSKI. She and I have worked together. We now have a program at the National Institutes of Health that deals with women's conditions.

But, Mr. President, over the years diseases that afflict women have been ignored. Interstitial cystitis—it is a disease that afflicts 500,000 women in America, a very serious disease of the bladder—until 8 years ago, there was not a penny spent on it for research. They said it was in a woman's head. They learned that is not the case. Now, as a result of work done at the National Institutes of Health, they have a drug that cures the effects of this on 40 percent of the women.

Multiple sclerosis, intercervical and ovarian cancer, and breast cancer, and lupus—these diseases, for research, are basically ignored because they are diseases basically related to women principally.

I am saying here, this is really unfair what is going on here. We are spending so much time with all kinds of jokes on all the talk radio programs, all the TV programs, about Viagra. But it is not a joke that we have over 3.6 million unintended pregnancies, with 44 percent ending in abortion, in this country. And a lot of them are caused simply—in fact, the majority of them—simply because women cannot afford things like the pill.

We have to do something. Not only does it affect that, Mr. President, but a reduction in unintended pregnancies will lead to a reduction in infant mortality, low-birth-weight babies, and maternal morbidity. In fact, the National Commission to Prevent Infant Mortality determined that, ''Infant mortality could be reduced by [more than] 10 percent if all women not desiring pregnancy used contraception.''

So I think it is, again, unfair that tubal ligation, abortion, vasectomies, are covered and the pill, contraceptives, and contraceptive devices are not covered. In my opinion, we need to move this forward. We have the support of approximately 35 Senators in this body. We need a hearing, and we need to have this legislation passed.

I express my appreciation to the Senator from New York for allowing me to go before him.

The PRESIDING OFFICER. The Senator from New York is recognized.

NUCLEAR TESTING IN INDIA

Mr. MOYNIHAN. Mr. President, as the Senate will know, the Government of India has announced that two further underground nuclear tests occurred at 3:51, eastern daylight time, this morning. These follow the three underground explosions announced on Monday.

Now, this might at first seem a reckless act on the part of the Government of India. But, sir, I would call attention to a statement in an Associated Press report which reads, ''The Government said its testing was now complete and it was prepared to consider a ban on such nuclear testing.''

Sir, this could be a statement of transcendent importance. It would be useful at this time, when tempers—and I use the word ''temper''—are rising in the West, to recall the outrage when France carried out a series of underwater tests in the South Pacific in Mururoa Atoll on September 5, 1995, to the indignation of many other nations, but thereupon signed the Comprehensive Test Ban Treaty the following year. And, sir, it has not only signed that treaty, it has ratified it.

The United States was among the convening nations in 1996 that signed the treaty, but this Senate has not ratified the treaty. The People's Republic of China followed much the same course in completing a series of tests and then agreeing to the test ban treaty.

Just now the press is reporting all manner of administration officials are distressed that the Central Intelligence Agency did not report indications that these tests were about to take place and that somehow we were taken off guard. But I repeat a comment I made to Tim Weiner of the New York Times yesterday that it might help if the American foreign relations community would learn to read.

The BJP Party, the Bharatiya Janata Party—now in office for essentially the first time—leads the ruling coalition and has long been militantly asserting that India was going to be a nuclear power like the other great powers of the world. It is the second most populous nation. In the election platform—technically, a manifesto in the Indian-English usage—issued before the last election, the BJP had this to say: ''The BJP rejects the notion of nuclear apartheid and will actively oppose attempts to impose a hegemonistic nuclear regime. . . We will not be dictated to by anybody in matters of security requirements and in the exercise of the nuclear option.''

This is hugely important, as is indicated by the enormous ground swell of support in India itself in the aftermath of Monday's explosion.

In the platform put together by the coalition that now governs in India, there is a statement, not quite as assertive, but not less so. This is the National Agenda for Governance, issued 18 March 1998. It says, ''To ensure the security, territorial integrity and unity of India we will take all necessary steps and exercise all available options. Toward that end we will reevaluate the nuclear policy and exercise the option to induct nuclear weapons.'' That is an Indian-English term, ''induct,'' as in induction into the military. It means to bring them into an active place in the Nation's military arsenal.

Now, the President, who is in Germany, announced today that we would impose the sanctions required under law, the Glenn amendment of 1994, directed against non-declared nuclear nations that begin nuclear testing. This is the law and the Indians knew it perfectly well, even if we have, perhaps, been insufficiently attentive to bringing to their minds the implications of the law. Chancellor Kohl—Germany being a large supplier of aid to India—was with President Clinton when this was said. We should not underestimate the degree to which this might just arouse further resentment in India.

The law is there, but also the resentment is there. In this National Agenda for Governance that I just recited, there are a number of platform ''planks,'' you might say principles. The second on economy reads: ''We will continue with the reform process to give a strong Swadeshi thrust to ensure that the national economy grows

on the principle that India shall be built by Indians.'' Swadeshi is a turn of the century term of the independence movement meaning self-reliance, use indigenous materials, sweep imports out.

They are not going to be as intimidated by sanctions as we may suppose. This is the first Hindu government in India in perhaps 800 years. We tend to forget that. When we go to visit India, distinguished persons are taken to view the Taj Mahal, the Red Fort, the India Gate. All those are monuments by conquerors —Islamic, then English. It is something we don't notice. They do. And after 50 years of Indian independence, founded by a secular government which denied all those things, there is now a Hindu government and its sensibilities need to be attended to if only as a matter of common sense.

Do we want India in a system of nuclear arms control or don't we? I think we do. I think we ought to encourage them and explore the implications of the statement reported by the Associated Press. And while we are at it, it would do no great harm to ratify the Comprehensive Test Ban Treaty ourselves.

I see my friend from Nebraska is on the floor. I look forward to a comment he might make.

Mr. KERREY. Mr. President, I want to ask the Senator a question. First of all, I don't think there is anybody in the Senate who has been more consistently critical of the Central Intelligence Agency and has been more diligent in trying to change the way we classify documents. I find both of them to be a bit connected to his comments.

One of the concerns I have in all this is that we look for a scapegoat. Now, one of the things that citizens need to understand is that increasingly we are getting our intelligence through open sources. That is good because when you get your information through open sources there is a debate. Is what somebody said true or not true—and you debate such things.

I quite agree with what the Senator said earlier that for us to be going at the CIA right now because they didn't report this is a little ridiculous. All we have to do is read articles of John Burns over a half dozen months.

Mr. MOYNIHAN. Of the New York Times.

Mr. KERREY. If we head in the direction of finding a scapegoat here what we will miss is an opportunity to debate what our policy ought to be toward the largest democracy on Earth. In addition to the other things that the Senator said about India, this is also the largest democracy. A billion people live in India. Not an easy country to govern.

They have a Hindu nationalist party that campaigned on a platform, and that platform was that nuclear testing would resume. They were not secretive about that. They did not operate in the shadows on that. They were upfront and they followed through.

It seems to me we should blame ourselves for not paying attention to what is going on there and blame ourselves for not giving enough consideration or concern about the direction of the largest democracy on Earth.

The PRESIDING OFFICER. The Chair advises the Senator his 10 minutes has expired.

Mr. MOYNIHAN. I ask for an additional 5 minutes.

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

Mr. KERREY. I am at the end of my question, Mr. President.

I just wanted, in addition to making the point that the distinguished Senator has been very critical of the CIA—and I think he is quite right in this particular instance to say though we may need some questions answered, the biggest question is why didn't anybody in either the administration or in this Congress notice that the Hindu nationalist party had campaigned on a promise to make India a nuclear power. What does the distinguished Senator from New York think this Congress needs to do to make certain that we are paying attention in the aftermath of these sanctions to what India is doing, to make certain that, first, we don't miss an opportunity to get them to ratify this treaty, and in addition, to get them to do a number of other things that not only would be in their best interests, but to be in our best interests, as well, since a third of the Earth's population lives between India and China in this very, very volatile region to which we obviously have not paid a sufficient amount of attention.

Mr. MOYNIHAN. Well, I would say to my gallant, able friend that the Intelligence Committee could do worse than inviting some of the administration officials who are so indignant that the CIA didn't tell them what was going to happen up to say: have you read any Indian newspaper recently? Do you happen to know what the largest democracy in the world is and who they elected in the last election? Have you looked into their party platforms.

Mr. KERREY. Personally, I think it would be a waste of money to direct the CIA to read the New York Times and report to us what is contained in there relevant to any part of the world, let alone in India.

Mr. MOYNIHAN. I much agree. May I say to my friend that I was Ambassador to India on May 18, 1974, when the Indians exploded a ''peaceful'' nuclear explosion, as they said, in India on the same testing grounds used this time. It fell on me to call on then Prime Minister Gandhi to express our concerns. I have to say that Secretary Kissinger was mild; he toned down the indignation that came from the Department of State in his draft statement. I did say to Mr. Gandhi on that occasion, speaking for myself, without instructions, that India had made a great mistake, that it was the No. 1 country in south Asia, the hegemonic country in South Asia, Pakistan No. 3, if you like, then you go down to the Maldives, Bangladesh, and Sri Lanka; but in 25 years time there would be a Mongol general in Islamabad with a nuclear capacity, saying, I have got four bombs and I want the Punjab back and I want this region or that region, the Kashmir, or else I will drop them on what was then Bombay, New Delhi, Madras and Calcutta.

Well, something like that is happening and we better see that it doesn't go forward. So to explore the Indian offer here, suggesting the offer, seems to me, a matter of huge importance. We could see the end of the cold war, followed by a nuclear proliferation of a kind we never conceived. We can see China, North Korea, and Pakistan arming in nuclear modes against India and Russia and us looking at an Armageddonic future that we had felt was behind us.

Mr. KERREY. Mr. President, I know the distinguished Senator from Pennsylvania has come here for other reasons. He used to be chairman of the Intelligence Committee. I know from listening to him that he has an active interest in this issue as well. I have heard him comment many times. In fact, he asked the administration officials why they don't attempt to resolve the conflicts between India and Pakistan and India and China, and why do we not pay more attention to it. I suspect the Senator from Pennsylvania would rather not spend too much time commenting on it, but by coincidence, we have another individual on the floor who has an active interest in this issue.

Mr. MOYNIHAN. Mr. President, I thank my friend. I ask unanimous consent that the time from 1:45 p.m. to 2 o'clock be reserved for the Senator from Minnesota, Mr. WELLSTONE.

The PRESIDING OFFICER (Mr. GREGG). Is there objection?

Without objection, it is so ordered.

Mr. MOYNIHAN. I thank the Chair and yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

NUCLEAR PROLIFERATION

Mr. SPECTER. Mr. President, I commend my colleague from New York for his comments about the problems with nuclear proliferation. I thank my colleague from Nebraska for commenting about discussions that we have had over the years about the issues of proliferation of weapons of mass destruction.

I intend to speak directly to a subject that I had talked to the Senator from Nebraska about, and that is the need to have activism by the President of the United States in trying to deal with nuclear proliferation on the subcontinent. In fact, Senator Hank Brown and I had visited with Indian Prime Minister Rao in August of 1995 and also with Pakistani Prime Minister Benazir Bhutto. I then wrote to the President on this precise subject. I

intend to discuss that at some length during the course of the remarks that I am about to make.

I believe that the nuclear detonation in India makes it more important than ever that the United States move ahead with leadership to try to defuse the proliferation of weapons of mass destruction, and that the Senate should act promptly to ratify the Comprehensive Test Ban Treaty.

We have had, already, in the course of the last 24 hours, indications of a chain reaction. We have had a response from Pakistan that they may well, too, test nuclear weapons. We have had a report from North Korea, which appears in this morning's press, that ''North Korean officials have announced that they are suspending their efforts to carry out the 1994 nuclear freeze agreement that was intended to dismantle North Korea's nuclear program. United States officials said the program was intended to produce weapons in North Korea.''

So we see what is happening on the international scene. There needs to be a very positive response by the United States to the likes of these very, very threatening developments.

As I started to comment earlier, Mr. President, Senator Hank Brown and I had occasion to meet with both the Indian Prime Minister and the Pakistani Prime Minister back on August 26 and 27 of 1995. It is summarized best in a letter that I wrote to the President from Damascus, dated August 28, 1995, which reads as follows:

I think it important to call to your personal attention the substance of meetings which Senator Hank Brown and I have had in the last two days with Indian Prime Minister Rao and Pakistan Prime Minister Benazir Bhutto.

Prime Minister Rao stated that he would be very interested in negotiations which would lead to the elimination of any nuclear weapons on his subcontinent within ten or fifteen years including renouncing first use of such weapons. His interest in such negotiations with Pakistan would cover bilateral talks or a regional conference which would include the United States, China and Russia in addition to India and Pakistan.

When we mentioned this conversation to Prime Minister Bhutto this morning, she expressed great interest in such negotiations. When we told her of our conversation with Prime Minister Rao, she asked if we could get him to put that in writing.

When we asked Prime Minister Bhutto when she had last talked to Prime Minister Rao, she said that she had no conversations with him during her tenure as Prime Minister. Prime Minister Bhutto did say that she had initiated a contact through an intermediary but that was terminated when a new controversy arose between Pakistan and India.

From our conversations with Prime Minister Rao and Prime Minister Bhutto, it is my sense that both would be very receptive to discussions initiated and brokered by the United States as to nuclear weapons and also delivery missile systems.

I am dictating this letter to you by telephone from Damascus so that you will have it at the earliest moment. I am also telefaxing a copy of this letter to Secretary of State Warren Christopher.

When the news broke about the action by the government of India in detonating the nuclear weapon, I wrote to the President yesterday as follows:

With this letter, I am enclosing a copy of a letter I sent to you on August 28, 1995, concerning the United States brokering arrangements between India and Pakistan to make their subcontinent nuclear free.

You may recall that I have discussed this issue with you on several occasions after I sent you that letter. In light of the news reports today that India has set off nuclear devices, I again urge you to act to try to head off or otherwise deal with the India-Pakistan nuclear arms race.

I continue to believe that an invitation from you to the Prime Ministers of India and Pakistan to meet in the Oval Office, after appropriate preparations, could ameliorate this very serious problem.

I am taking the liberty of sending a copy of this letter to Secretary Albright.

Sincerely.

When I discussed the meeting which Senator Brown and I had with both Prime Ministers in late 1995, the President said that was an item which he would put on his agenda following the 1996 elections. Since those elections, I have had occasion again to talk to the President about this subject, and he expressed concern as to what the response of the Senate would be and what would happen with respect to the concerns of China. I expressed the opinion to President Clinton that I thought our colleagues in the Senate would be very interested in moving ahead to try to diffuse the obvious tension between India and Pakistan on nuclear weapons.

That is all prolog. What we have now is a testing of a nuclear device by India as a matter of national pride. And I think that is what it is.

The new Government of India did give adequate notice, although, here again, I believe there might have been some sharp focus of attention by the CIA. Perhaps it is necessary to talk to the White House even about columns which appear in the New York Times, or some formal way to warn of this threat in a more precise and focused manner, although I quite agree with what the Senator from Nebraska, Senator KERREY, said—that it was obvious what the Government of India had intended to do.

But as I say, that is prolog. Now I think there is an urgent necessity for leadership from the President to try to diffuse this situation. At the same time, Mr. President, I think there is an urgent need that the Senate of the United States proceed to the consideration and ratification of the Comprehensive Test Ban Treaty. The essence of that treaty provides that it is an obligation not to carry out any nuclear weapon test explosion or any other nuclear explosion. That treaty has been considered by a number of countries, has been ratified by many countries, but it is still awaiting action by the United States.

The Senate Governmental Affairs Subcommittee on International Security, Proliferation and Federal Services held a hearing on this subject on October 27, of last year and March 18, of this year, and the Senate Appropriations Subcommittee on Energy and Water Development held a similar hearing on October 29 of last year. But as yet, there has been no action by the Foreign Relations Committee. It seems to me imperative that the matter be brought to the Senate floor as early as possible and whatever hearings are deemed necessary be held so that the Senate may consider this matter.

There are some considerations as to objections to the treaty as to whether we can know in a comprehensive way the adequacy of our nuclear weapons. But it seems to me that whatever the arguments may be, they ought to be aired in a hearing process before the Foreign Relations Committee and on the floor of this Senate and then brought for a vote by the U.S. Senate.

This is a matter of life and death. When we talk about nuclear weapons, we are talking about the force and the power which can destroy civilization as we know it. During the tenure that I had as chairman of the Senate Intelligence Committee, I took a look at the governmental structure in the United States on weapons of mass destruction, saw that some 96 separate agencies had operations, and, in conjunction with the then-Director John Deutch, inserted the provision to establish the commission to consider the governmental structure of the United States in dealing with weapons of mass destruction. That commission is now in operation. John Deutch is the chairman and I serve as vice chairman.

But it is certainly necessary that matters of this magnitude receive early attention at all levels of the government, including the President and the U.S. Senate. Where there is concern in the Senate on the subject of testing to know the capabilities of our weapons, it should be noted that article X of the Comprehensive Test Ban Treaty does provide for the right to withdraw if the Government decides that extraordinary events relating to the subject matter of this treaty would jeopardize the supreme interests, referring to the supreme interests of any nation. President Clinton has stated that he would consider withdrawing if we came to that kind of a situation.

President Clinton signed the Comprehensive Test Ban Treaty on September 24, 1996. Now we are more than a year and a half later without any real significant action having been taken by the U.S. Senate.

The 149 states have signed the treaty, and 13 have ratified it as of April of 1998. There is obviously a problem with what is going to happen with Iraq, Iran, or other countries which seek to develop nuclear weapons. There is obviously a problem with other nations which have nuclear weapons. But the ban on nuclear testing would certainly be a significant step forward in diffusing the situation and in acting to try to have comprehensive arms control on this very, very important subject.

I urge the President to take action, to use his good offices with sufficient preparation, as noted in my letter to him of yesterday, for a meeting in the Oval Office. Very few foreign leaders decline meetings in the Oval Office. That should be of the highest priority on the President's agenda, and similarly on the Senate agenda. Consideration and ratification of the Comprehensive Test Ban Treaty ought to be a very high priority on the Senate's agenda.

Mr. President, in the absence of any other Senator on 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. 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.

SECURITY OF ISRAEL

Mr. SPECTER. Mr. President, I have again sought recognition to comment on the issue relating to the conditions which have been set by the U.S. Government on a further meeting with Israeli Prime Minister Netanyahu and the difference of opinion of what is adequate to handle the security interests of the State of Israel. It is my view that it was inappropriate and counterproductive for the U.S. Government to deliver what I consider to be an ultimatum to Prime Minister Netanyahu that he accept the further redeployment of Israeli forces as a precondition to come to Washington to meet with the President on last Monday, May 11.

Secretary of State Albright briefed a number of Senators yesterday in a room, S. 407, where we have secret discussions, and at that time the Secretary of State said that she had not delivered an ultimatum but instead had stated conditions which would have to be met before the United States would continue to carry forward with the peace process on the current track.

I responded to the Secretary of State that I thought it wasn't even a difference of semantics to say that a condition on further discussions did not constitute an ultimatum, that in fact it was clearly an ultimatum in those discussions.

If the diplomacy is carried out in a quiet way, so be it. But when diplomacy is carried out publicly and where the Prime Minister of another country is put in the position where the Prime Minister has to back down, it seems to me totally counterproductive and unlikely to produce a result where there will be agreement or compliance even if Prime Minister Netanyahu had wanted to do that.

When it comes to the question of the security interests of Israel, I do not believe that anybody can second-guess the security interests of Israel except the Israelis and their Government. The view from the Potomac is a lot different than the view from the Jordan River as it has been said on many, many occasions. And Israel has been fighting more than 100 million Arabs for more than 50 years. They have won quite a number of wars, but they only have to lose one war before it is all over.

Secretary of Defense William Cohen appeared today before the Defense Appropriations Subcommittee, and I asked the Secretary of Defense whether he or anybody in his department had carried out an analysis as to the adequacy of security for Israel if Israel agreed to the proposal of the administration. I commented in the course of that question that I would not think, even if the United States had made that kind of a determination, it would be binding and might not even be relevant as to what Israel thought was necessary for its own security. Secretary of Defense Cohen said that no such analysis had been made on his part. But it would seem to me that as an indispensable prerequisite for the U.S. Government to take a position that Israel ought to have certain withdrawal at least there ought to be a professional determination that the withdrawal would be consistent with Israel's security interests. But as I say, the Secretary of Defense had not undertaken that kind of an analysis.

I submit that the issue of Israel's security is something that has to be judged by the Government of Israel. There is no doubt about the friendship and support of President Clinton's administration for Israel. I do not question that for a minute. But where you have the negotiations at a very, very critical point and public statements are made as a precondition which is realistically viewed an ultimatum, pure and simple, that is totally wholly inappropriate. It is my hope that these peace negotiations can be put back on track. I know that the Secretary of State is going to be meeting with Prime Minister Netanyahu later today. The Appropriations Committee has a meeting scheduled with Prime Minister Netanyahu tomorrow. I hope we can find our way through these negotiations and put the peace negotiations back on track.

I think it is a very difficult matter because while the administration is pressing Israel for a certain level of withdrawal, there are many items which are not being taken care of by the Palestinian authority.

Last year, Prime Minister Netanyahu had said that Arafat had given a green light to certain terrorist activities by the Palestinian Authority. And when Secretary of State Albright was before the Foreign Operations Subcommittee, I asked the question as to whether there had been, in fact, a green light given by Chairman Arafat, as charged by Prime Minister Netanyahu. Secretary of State Albright made the statement that it wasn't a green light, but there wasn't a red light either.

I think it is mandatory that the Palestinian Authority give such a red light. They cannot be guarantors, but a red light and their maximum effort to stop terrorism is required. Under the provisions of an amendment introduced by Senator SHELBY and myself, that kind of a maximum effort against terrorism is a precondition for getting any aid from the United States.

So, these matters are obviously delicate. They require a lot of diplomatic tact. It is my hope that the current stalemate can be surmounted, but I think it can be surmounted only if there is a recognition, as former Secretary of State Warren Christopher had, that security is a matter for the discretion of Israel—it is Israel's security—and that no ultimatum be issued, or at least no precondition be issued, before the Prime Minister of Israel can proceed to have a meeting or negotiations with the United States.

In the absence of any other Senator on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COATS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL URBAN LEAGUES ENDORSES FAIR MINIMUM WAGE

Mr. KENNEDY. Mr. President, President Clinton and Democrats in Congress strongly support a fair increase in the minimum wage. The economy is in a period of record growth. The stock markets are at an all time high. Unemployment continues to fall to its lowest level in a quarter century. Yet, too many workers on the bottom rungs of the economic ladder are not receiving their fare share of this prosperity.

Most Americans recognize that the minimum wage is not yet a living wage. According to an April NBC/Wall Street Journal Poll, 79 percent of those questioned support an increase.

Time and again, opponents state that increases in the minimum wage are harmful to the economy, and especially harmful to minority communities. But such statements have no basis in fact, as the current evidence makes clear.

In his recent ''To Be Equal'' column published in over 300 African-American newspapers across the country, Hugh Price, President of the National Urban League, strongly endorses the increase in the minimum wage that many of us have proposed, from its current level of $5.15 an hour to $5.65 an hour on January 1, 1999 and to $6.15 an hour on January 1, 2000. The National Urban League has played a prominent role in the civil rights community for over 80 years. Its 114 affiliates in 34 states and the District of Columbia are at the forefront of the battle for economic and social justice for all Americans.

Raising the minimum wage is a central part of the civil rights agenda to improve the economic condition of the working poor. I am proud that our legislation has the strong support of this renowned organization, and I ask unanimous consent that Hugh Price's column be printed in the RECORD.

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

A DECENT INCOME FOR LOW-WAGE WORKERS

(By Hugh B. Price)

With all the hurrahs over the astonishing current performance of the American economy—the so-called Long Boom—it's easy to forget that portion of the nation's workforce which has hardly shared in the general prosperity: the 12 million Americans who wages range from the current minimum wage of $5.15 an hour up to $6.14 an hour.

That sum, earned by people who work in such low-skill positions as fast-food worker and teacher's aide, adds up to a paltry annual income indeed. The average American worker's hourly wage is $12.64 an hour. But an individual working at the minimum wage for 40 hours a week, 52 weeks a year, earns only $10,712 annually—an income that is $2,600 below the federal government's poverty line for a family of three.

That fact, coupled with recent cuts in welfare and Food Stamps programs, has driven increasing numbers of the working poor to emergency food banks and pantries: A 1996 U.S. Conference of Mayors survey found that 38 percent of those seeking emergency food aid hold jobs, up from 23 percent in 1994; and more and more private charities are saying they can't meet the greater demand on their resources.

We must help Americans who work but often endure great privation move closer to a decent, livable wage. We can do that by supporting legislation in Congress raising the minimum wage to a threshold of $6.15 an hour. Senator Ted Kennedy (D.-Mass.) will try to bring the measure, which has President Clinton's backing, before the Senate after Memorial Day Congressional recess. Representative David Bonior (D.-Mich.) will lead the effort for it in the House. The proposed law would raise the minimum wage by 50 cents each year for 1999 and 2000.

We should raise the minimum wage because it's only fair: hard work deserves just compensation at the bottom as well as the top of the salary ladder.

We know from the experience of the 90-cents minimum-wage hike President Clinton signed into law in 1996 that minimum-wage increases benefit the people who need it most—hardworking adults in low-income families. Based on federal labor department statistics, the Economic Policy Institute, a Washington think tank, found that nearly 60 percent of the gains from that minimum wage hike has gone to workers in the bottom 40 percent of the income ladder. Raising the minimum wage by $1 will help insure that parents who work hard and play by the rules, and who utilize the Earned Income Tax Credit, can bring up their children out of poverty.

Contrary to a widespread view, federal statistics show that most workers earning the minimum wage are adults, not teenagers. Half of them work full time, and another third work at least 20 hours a week. Sixty percent of those earning the minimum wage are women; 15 percent are African-American, and 14 percent are Hispanic.

Our recent experience has shown that raising the minimum wage in an era of strong and balanced economic expansion won't undermine job growth. The hike President Clinton signed into law in August 1996 increased the wages of 10 million workers. Since then, the economy has created new jobs at the very rapid pace of 250,000 per month, inflation has declined from 2.9 percent to 1.6 percent, and the unemployment rate has fallen to 4.6 percent—its lowest level in nearly 25 years.

Some have expressed concern that raising the minimum wage will make it even harder than it routinely is for young black males to find work. Of course, the unemployment rate of black males 16 to 19 years of age remains dangerously high: for 1997 it was 36.5 percent. But the minimum wage itself is hardly a significant cause of this decades-old problem, as we've noted before. Keeping the wages of all low-income workers at subsistence levels will likely only exacerbate the employment problems of young black males—and of the communities they live in.

Increasing the minimum wage now would restore its real value to the level it last held in 1981, before the inflation of the 1980s drove it down. We further recommend that Congress index the minimum wage to inflation starting in the year 2001 to prevent a further erosion of its value. Low-wage workers should be treated no differently than other, higher-income workers who annually receive at least cost-of-living increases in their salaries. With our economy in such glowing health, there could be no better time to raise the minimum wage. As President Clinton urged in his State of the Union Address: ''In an economy that honors opportunity, all Americans must be able to reap the rewards of prosperity. Because these times are good, we can afford to take one simple, sensible step to help millions of workers struggling to provide for their families: We should raise the minimum wage.''

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, May 12, 1998, the federal debt stood at $5,491,841,497,777.68 (Five trillion, four hundred ninety-one billion, eight hundred forty-one million, four hundred ninety-seven thousand, seven hundred seventy-seven dollars and sixty-eight cents).

One year ago, May 12, 1997, the federal debt stood at $5,334,445,000,000 (Five trillion, three hundred thirty-four billion, four hundred forty-five million).

Five years ago, May 12, 1993, the federal debt stood at $4,245,570,000,000 (Four trillion, two hundred forty-five billion, five hundred seventy million).

Ten years ago, May 12, 1988, the federal debt stood at $2,510,382,000,000 (Two trillion, five hundred ten billion, three hundred eighty-two million).

Fifteen years ago, May 12, 1983, the federal debt stood at $1,258,875,000,000 (One trillion, two hundred fifty-eight billion, eight hundred seventy-five million) which reflects a debt increase of more than $4 trillion—$4,232,966,497,777.68 (Four trillion, two hundred thirty-two billion, nine hundred sixty-six million, four hundred ninety-seven thousand, seven hundred seventy-seven dollars and sixty-eight cents) during the past 15 years.

Mr. WELLSTONE. Mr. President, I believe that I have reserved 15 minutes, up to 2 o'clock, to speak. I ask unanimous consent that I be able to use this 20 minutes, up to 2, to speak as in morning business.

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

Mr. WELLSTONE. Mr. President, there are two topics that I would like to cover. I have been trying to get to the floor for 2 days. I will not give either one of them the justice they deserve, but I shall do my best.

The PRESIDING OFFICER. The Senator is recognized.

THE MIDDLE EAST PEACE PROCESS

Mr. WELLSTONE. Mr. President, as a long-time supporter of Israel and her security, and as a fierce advocate of the Middle East peace process, I commend President Clinton, Secretary Albright, Ambassador Ross, and Assistant Secretary Indyk for their ongoing efforts to preserve and even reinvigorate the stalled peace process. As a member of the Foreign Relations Committee, as a Jewish Senator, as someone who loves Israel, I have followed this latest round of negotiations carefully. I care fiercely about what happens. And I thank the administration for staying engaged and for making a commitment to a peace process that Prime Minister Rabin gave his life for. I will never forget my visit to Israel for his funeral service. It was so moving to hear his granddaughter speak about him. I really hope and pray that we will have a peaceful resolution in the Middle East. I think it will be important for the Israeli children and the Palestinian children, and the children of other Middle Eastern countries as well.

I have watched with growing concern, over the past several weeks, as some critics of the administration's policy toward Israel here in the Congress have launched fierce partisan attacks on the policy. Speaker GINGRICH last week was even quoted as saying, in a press conference in which he criticized the administration's recent handling of the peace process, ''America's strong-arm tactics would send a clear signal to the supporters of terrorism that their murderous actions are an effective tool in forcing concessions from Israel.''

Mr. President, I think that is a demagogic accusation leveled at the President. I believe that the administration is trying to do the right thing. I point out that public opinion polls show that the majority of the people in our country believe that the administration is doing the right thing by continuing to put proposals out there, by trying to get this peace process going.

The administration has presented no ultimatums. It cannot force either party to do what it has no intention of doing. But I think this is courageous on the part of the administration. Quite often I am critical of this President, but I believe they are doing the right thing. The majority of the people

in the country believe so, and the majority of the American-Jewish community, of which I am proud to be a member, also believe they are doing the right thing.

President Netanyahu is meeting with Secretary Albright. It is my hope that they will have fruitful discussions. I think it is terribly important that this happen.

Let me make three points by way of conclusion: First of all, the administration, as I mentioned a moment ago, is not issuing threats. However, the Bush administration—and I don't mean this as a partisan point, but the Bush administration in connection with policy on settlements did threaten to cut off aid to Israel. There have been no conditions of this kind, putting aside whether the Bush administration was right or wrong to do that.

I also remind colleagues that this peace process is critically important, that it is important that we bridge the gaps, that the United States be a neutral mediator, that we continue to be a third party to which both parties can speak.

Finally, I will simply say that all of us ought to contemplate for a moment what will happen if the administration does not press to preserve this process and if this peace process collapses. I think the alternative scenario, which I shudder to think about, would be an escalation of terrorist attacks, with Israel facing newly hostile Arab neighbors on all sides and increased pressure from the Arab street for violent action against her. It is frightening to consider. I don't think that stalemate or the status quo is acceptable—I believe it is unthinkable. I think it is terribly important the United States continues to show leadership in this process.

Mr. President, this recent crisis in the peace negotiations coincides with Israel's celebration of her 50-year jubilee, an occasion of great joy for all of us who love Israel.

With the founding of modern Israel, the children of Abraham and Sarah, survivors of over 2,000 years of persecution and exile, were home at last and they were free at last. But the dream of Israel's founder, David Ben-Gurion, and that of his allies was not simply to provide a safe haven from centuries of Jewish suffering, it was also about fulfilling Isaiah's prophecy of making Israel ''a light unto the nations,'' a powerful sign and symbol of justice and compassion to all people of the world.

Although it is fitting to pause to celebrate what all the people of Israel have accomplished over the last 50 years, we must also look forward to the tasks which face her in the next millennium, chief among them the task of building a just, secure and lasting peace.

It is my deepest prayer that our children and grandchildren, 50 years from this year, will be able to say with gratitude that we were the generation which overcame ancient hatreds and enabled them to achieve a just and lasting peace which has by then embraced the entire region and all the peoples. That is a vision worthy of Israel's founder and of all of us who come after. It is a vision for which we should and we must be willing to struggle, to fight for and for which all of us must take risks.

I come to the floor to say that I do not believe there would be anything more important than to forge a just and lasting peace for the region. This would truly be worthy of the dream of Israel's founder.

Mr. President, I speak out on the Middle East peace process, again, because I think there has been entirely too much personal attack and I believe it is terribly important that all of us who are committed to the peace process not be silent.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2074 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. WELLSTONE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has approximately 2 minutes left.

Mr. WELLSTONE. In the 2 minutes I have left, I am going to take advantage of being on the floor of the Senate. After all, I always say to my family, you know, I get to speak on the floor of the Senate. That is a huge honor.

PERSECUTION IN INDONESIA

Mr. WELLSTONE. Mr. President, let me just point out to colleagues that six students were murdered by the Suharto regime. I came out on the floor 2 days ago and talked about the fact that this could happen. These students committed no crime except to courageously say there ought to be freedom in that country. They have had the courage to challenge this government and to speak up for freedom for citizens in Indonesia and for democracy, and to end the persecution against people. And for that, they now have been murdered.

I believe that our Government ought to—we ought to use our maximum leverage with international institutions, the International Monetary Fund, the World Bank, to make it clear to Suharto that he does not get financial assistance when he murders his citizens.

We ought to, as a government, speak up on this. We should not be silent. And we should support these courageous students in Indonesia. I want those students to know they have my full support as a Senator from Minnesota.

I yield the floor.

UNANIMOUS CONSENT AGREEMENT—S. 1723

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S. 1723. I further ask consent that there be 2 hours of general debate on the bill, equally divided in the usual form.

I further ask consent that the following be the only first-degree amendments in order, other than the committee-reported substitute, that the first-degree amendments be subject to relevant second-degree amendments; that with respect to any time limit on the first-degree amendment, any second-degree thereto be limited to the same time limits:

Bingaman, relevant;

Bumpers, EB5 visas, 90 minutes equally divided;

Kennedy, layoffs, 40 minutes equally divided; recruit home, 40 minutes equally divided; whistle-blower protection;

Reed of Rhode Island, strike SSIG provision;

Reid of Nevada, international child abduction;

Wellstone, job training;

McCain, relevant;

Warner relevant;

That upon disposition of all amendments the committee substitute be agreed to, the bill be read a third time, and the Senate then proceed to vote on passage without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 1260.

The assistant legislative clerk read as follows:

A bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securities Litigation Uniform Standards Act of 1998''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Private Securities Litigation Reform Act of 1995 sought to prevent abuses in private securities fraud lawsuits;

(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

(3) this shift has prevented that Act from fully achieving its objectives;

(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities

regulators and not changing the current treatment of individual lawsuits.

SEC. 3. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

"SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), a class action described in paragraph (2) of this subsection that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(2) PERMISSIBLE ACTIONS.—A class action is described in this paragraph if it involves—

''(A) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(B) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(i) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(ii) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) DEFINITIONS.—For purposes of this section the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

(2) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(1) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(2) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) CLASS ACTION.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

SEC. 4. APPLICABILITY.

The amendments made by this Act shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, today we begin consideration of S. 1260, the Securities Litigation Uniform Standards Act of 1998.

The Banking Committee reported this bill on April 29 by an overwhelming vote of 14–4. This bill has strong bipartisan support. It comes as no surprise to anybody who has followed the progress of this legislation. This bill is the product of a great deal of hard work. It has been refined through the incorporation of comments from many sources, including the Securities and Exchange Commission. As a result of this process, this bill not only has been improved, but it actually enjoys the support of the Securities Exchange Commission and the White House.

Mr. President, I am not going to ask unanimous consent now that letters

from the SEC and the White House be printed in the RECORD as if read, which is something we generally do. I think it is so important that I am going to take the time to refer to both letters and read what has been said, so that my colleagues can hear, and those who are interested in this debate can follow.

This is a letter, dated March 24, from the Securities and Exchange Commission, addressed to me as Chairman of the Banking Committee; Senator GRAMM, Chairman of the Subcommittee; and Senator DODD, who is the ranking member.

Let me read it:

Dear Chairman D'AMATO, Chairman GRAMM, and Senator DODD:

You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments.

The purpose of this bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards.''

I think that is important, Mr. President. We should understand that those securities traded on national exchanges are governed by a uniform standard. I think that makes ample sense.

While preserving the right of individual investors to bring securities lawsuits wherever they choose. . .

So we should underscore that, as a premise, the SEC says, we are going to look for a single standard, but we will preserve the rights of individuals to bring securities lawsuits wherever they choose.

. . . the bill generally provides that class actions can be brought only in Federal Court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities market. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

So, Mr. President, we have a concern that was expressed as it existed in the 1995 law, and what the Securities and Exchange Commission said is, look, we want in the new proposal, as it relates to uniform standards, to clearly identify that you did not do away with, but will recognize the scienter standards. That has been accomplished. And I will go back to that.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believe was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee markup, as attached to your letter, will successfully resolve these issues.

So I think it is obvious that there has been considerable ongoing dialog and work between the Chairman of the Subcommittee, Senator GRAMM of Texas, the ranking member, Senator DODD, the Banking Committee staff and the SEC, to look and to deal with what is not only the proposals that we put forth for the first time, but to deal with some of the imperfections and some of the unintended consequences that may have evolved as a result of the 1995 act.

The ongoing dialog between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with its important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely, Arthur Levitt, Chairman; Isaac C. Hunt, Commissioner; Laura S. Unger, Commissioner.

At this time, I ask unanimous consent that the letter be printed in the RECORD so that it can be viewed in its entirety.

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

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1997, and amendments to the legislation which you intend to offer when the bill is marked up by the Banking Committee. This letter will present the Commission's position on the bill and proposed amendments.*

The purpose of the bill is to help ensure that securities fraud class actions involving certain securities traded on national markets are governed by a single set of uniform standards. While preserving the right of individual investors to bring securities lawsuits wherever they choose, the bill generally provides that class actions can be brought only in federal court where they will be governed by federal law.

As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we were gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Our October 1997 testimony also pointed out that S. 1260 could be interpreted to preempt certain state corporate governance claims, a consequence that we believed was neither intended nor desirable. In addition, we expressed concern that S. 1260's definition of class action appeared to be unnecessarily broad. We are grateful for your responsiveness to these concerns and believe that the amendments you propose to offer at the Banking Committee mark-up, as attached to your letter, will successfully resolve these issues.

The ongoing dialogue between our staffs has been constructive. The result of this dialogue, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act. This will help to diminish confusion in the courts about the proper interpretation of that Act and add important assurances that the uniform standards provided by S. 1260 will contain this vital investor protection.

We support enactment of S. 1260 with these changes and with this important legislative history.

We appreciate the opportunity to comment on the legislation, and of course remain committed to working with the Committee as S. 1260 moves through the legislative process.

Sincerely,

ARTHUR LEVITT,
Chairman.
ISSAC C. HUNT, JR.,
Commissioner.
LAURA S. UNGER,
Commissioner.

Mr. D'AMATO. Mr. President, I took the time to go through this because I think it is important that we understand that this has not been the product of one staff or two staffs. This has not been the product of just the Banking Committee and those in industry who have come to express their concern as to how it is that their class actions are being brought in a frivolous manner, using the State courts to get around what Congress debated and what Congress voted overwhelmingly to bring, which is a standard of conduct that will discourage a race to the courthouse, simply to bring a suit and simply to extort moneys from those who have deep pockets, because these suits can be long, they can be frivolous, and they can be dragged out. The cost factor to the people being sued is enormous—the time, the distraction, particularly to startup companies, and particularly those who want to let people know what they are doing, but who felt restricted as a result of the suits that were brought.

I am not going to bother going into the history and the comments that have been made by many. But indeed

*We understand that Commissioner Johnson will write separately to express his differing views. Commissioner Carey is not participating.

there have been many, which clearly are a stain on the rightful practice of law to ensure the rights of those who have been aggrieved and would hold people responsible for actions that are not tortious, malicious, malevolent, and indeed when there are no actions that should be sustained under any court, but because of the cost involved would have insurance carriers, accountants firms, securities firms, manufacturers, and others, be held to a situation where they have to settle. Who do they settle with? They settle with the moneys that come from the little guy—their stockholders. So while we say ''stockholder derivative actions,'' the people hurt are indeed the stockholders.

Mr. President, I mentioned two letters. Let me read a second letter.

The second letter is dated a month later to myself as Chairman of the Banking Committee, Senator GRAMM as Chairman of the Subcommittee on Securities, Senator DODD as ranking Member of that Committee, from the White House, dated April 28, 1998.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: We understand that you have had productive discussions with the Securities and Exchange Commission (SEC) about S. 1260, the Securities Litigation Uniform Standards Act of 1997. The Administration applauds the constructive approach that you have taken to resolve the SEC's concerns.

We support the amendments to clarify that the bill will not preempt certain corporate governance claims and to narrow the definition of class action. More importantly, we are pleased to see your commitment, by letter dated March 24, 1998, to Chairman Levitt and members of the Commission, to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the Scienter standard for securities fraud actions.

As you know, uncertainty about the impact of the Reform Act on the scienter standard was one of the President's greatest concerns. The legislative history and floor statements that you have promised the SEC and will accompany S. 1260 should reduce confusion in the courts about the proper interpretation of the Reform Act. Since the uniform standards provided by S. 1260 will provide that class actions generally can be brought only in federal court, where they will be governed by federal law, it is particularly important to the President that you be clear that the federal law to be applied includes recklessness as a basis for pleading and liability in securities fraud class actions.

So long as the amendments designed to address the SEC's concerns are added to the legislation and the appropriate legislative history and floor statements on the subject of legislative intent are included in the legislative record, the Administration would support enactment of S. 1260.

Sincerely,

BRUCE LINDSEY,
Assistant to the President and Deputy Counsel.

GENE SPERLING,
Assistant to the President for Economic Policy.

Mr. President, I make note that the SEC informed the Banking Committee and the Subcommittee Chairman and ranking member on March 24. It was fully a month thereafter, on April 28, that again the President reaffirmed his support for this action, and in so doing went out of his way to point out that we, indeed, will improve the present state of the law because of the colloquy that will take place and because of the manner in which the law was written.

So here the President of the United States and the SEC and his Commissioner are saying you are improving upon the law as it stands now, in addition—we will talk about that—to closing a loophole that has been used by those who rush to the courts to bring suits because they are looking to enrich themselves, not to protect the little guy or the small investors. They are costing the little guy and small investors money. I think the broad-based support that this bill enjoys is a tribute to Senator GRAMM. I want to say that for the record. He is here. He worked hard. His staff has worked hard. They have been reasonable. The chief sponsors of this legislation, Senators GRAMM and DODD have put together a tight bill intended to address a specific serious problem.

The problem to which I refer is a loophole that strike lawyers have found in the 1995 Private Securities Litigation Reform Bill which was fashioned again on the most part by Senators GRAMM, DODD, and DOMENICI.

Mr. President, the 1995 Act was passed in the last Congress in response to a wave of harassment litigation that threatened the efficiency and the integrity of our national stock markets, as well as the value of stock portfolios of individual investors. That is what is being hurt—the little guy, the small individual investor in whose companies they had a share in were diminished in value as a result of these suits. This threat was particularly debilitating to the so-called high-tech companies who desperately needed access to our capital markets to raise the money needed for research, development, and production of cutting-edge technology. These companies, which have spearheaded our economy's resurgence, are particularly susceptible to strike suits because of the volatility of the price of their stock. Strike lawyers thrive on stock price fluctuations regardless of whether there is even a shred of evidence of fraud.

Mr. President, this is the crux of the matter: That ultimately the cost of strike suits are borne by shareholders, including ordinary people saving for their children's education, or for their retirement. The average American goes into the stock market for long-term appreciation—i.e., to earn solid rates of return. They do not buy a stock simply to be positioned for a class action when the stock's price drops. It is those people, the ordinary investors, who foot the bill for high-priced settlements of harassment litigation.

We are not talking about preventing legitimate litigation. Real plaintiffs with legitimate claims deserve their day in court. And we preserve that in this bill. But what we have seen in our Federal courts, and what we are now seeing in our State courts is little more than a judicially sanctioned shakedown that only benefits the lawyers. We are talking about lawsuits in which we have nominal plaintiffs, and the lawyers are the only real winners. One of these strike lawyers drove this point home best, one of the biggest and one of the largest, when he bragged that he had ''the perfect practice''. Why did he say that? He bragged about it. He said he has the ''perfect practice.'' This is the fellow who has the largest, has brought more suits, hundreds of millions of dollars, who said he has ''the perfect practice'' because he has ''no clients.''

Isn't that incredible? He has no clients. He recovers hundreds of millions of dollars. When it is recovered, who gets most of it? The lawyers do. The so-called clients get hurt because the company which they have stock in loses value. It loses time. It pays millions of dollars. It has higher insurance costs, higher costs for auditing. The auditors have to charge more because they get sued. The insurance companies have to charge more for their premiums because they wind up paying more. Who do you think gets hurt? The little guy. Who benefits? The fellow who says ''I have got the perfect practice.''

Now, let me say this to you. This is a very, very, very small part of the law practice, is very specialized, relatively a handful of attorneys who have this, but let me tell you they hold hostage the companies of America, the private sector of America, as a result of what they can do by bringing these suits, suits that have no merit.

As I have previously mentioned, harassment lawyers found a loophole in which to ply their trade—the State court system. In the time since the 1995 Act was passed, we have seen these class-action lawyers rush to State courthouses. One witness before the Securities Subcommittee summarized this phenomenon well when he testified that the single fact is that State court class actions involving nationally traded securities were virtually unknown. In other words, prior to our 1995 Act, they just were not known. Now they are brought with some frequency.

This is a national problem. Regardless of where class actions are brought, they impact on the national stock markets. Money is moved away from job-creating, high-tech firms. Money is taken from shareholders in the form of stock price decline as a result of litigation. And where does this money go? It goes into the pockets of a very select cadre of these attorneys.

In addition, these lawsuits have a chilling, a chilling effect on one of the most important provisions in the 1995 Act and that is called the safe harbor provision. Until this loophole is closed, no company can safely risk issuing any

forecast, even though the market desperately wants it. So you cannot get a company to say: ''This is what we predict; this is what we see,'' because they are subject to litigation. To do so is to invite a class action and a high-dollar settlement.

If someone makes a prediction and he is off by a little bit, he is sued. If someone makes a prediction, he says: ''We think we are going to increase profits or sales by one-third,'' and he doesn't hit that target, he has a smaller than anticipated increase, that company is going to be sued. And so you cannot get the kind of advice that investors are looking for.

That is not what we want today. The bill's detractors are wrong. It will not prevent shareholder derivative actions or individual lawsuits or lawsuits by school districts or municipalities or State securities regulator enforcement actions or lawsuits relating to ''microcap'' or ''penny'' stock fraud. Those actions will still be permitted.

This is important legislation, and it is narrowly drawn to address a specific and serious problem. Time is short. There are very few legislative days remaining in the session, and I encourage my colleagues on both sides of the aisle not only to support this bill and to support the sponsors of this bill, but also that we move forward in a manner which can see that it is speedily enacted. Every day that we delay occasions more of these suits which needlessly cost consumers and stockholders and the American public millions and millions of dollars.

Again, I commend the architects of this legislation, Senators DODD, GRAMM, and DOMENICI, and I also, again, would point out that we have worked very closely with the Securities and Exchange Commission and with the White House in coming to this point.

I yield the floor.

Mr. SARBANES. Mr. President, I think it is important at the outset of this debate to try to dispel three misconceptions that surround S. 1260. The first is that class-action lawsuits alleging securities fraud have migrated from Federal court to State court since 1995 and the enactment of the earlier legislation.

In fact, as I will describe in some detail shortly, every study indicates that the number of securities fraud class actions brought in State courts, while it increased in 1996, then declined in 1997. So the numbers do not support that assertion.

The next misconception is that this bill would preempt only class-action lawsuits from being brought in State court. In fact, this bill likely will deprive individual investors of their own opportunities to bring their actions in State courts separate and apart from class actions.

The final misperception about this bill, which is suggested, is that it enjoys widespread support. In reality, a broad coalition of State and local officials, senior citizen groups, labor unions, academics, and consumer groups oppose this bill. They oppose it because it goes too far. It will deprive defrauded investors of remedies.

Once again, we have this classic example of being able to sort of try to address a problem and, instead of narrowly dealing with the problem, swinging the pendulum well beyond the problem and taking the so-called corrective legislation so far out that in and of itself it creates additional problems.

Let me turn to the first misperception, the notion that securities fraud class actions are being brought in State court in order to avoid the provisions of the Litigation Act of 1995.

It is correct that the number of such cases went up in 1996, the first year the Litigation Act was effective, but every available study shows that the number declined in 1997. For example, a study done by the National Economic Research Associates, a consulting firm, found that the number of securities class-action suits filed in State courts during the first 10 months of 1996 increased to 79 from 48 filed during the same period in 1995.

In an update released in the summer of 1997, however, NERA found that the number of securities class actions filed in State courts during the first 4 months of 1997 declined to 19, down from 40 in the same period in 1996. So the number actually declined very significantly by more than half the first 4 months of 1997.

These numbers are cited in a report that was prepared by the Congressional Research Service. In July 1997, Professors Joseph Grundfest and Michael Perino of Stanford University Law School testified before the Securities Subcommittee, and in their testimony they show that the number of issuers sued only in State class actions declined from 33 in 1996 to an annualized rate of 18 in 1997. A Price Waterhouse securities litigation study posted by that accounting firm on its Internet site corroborated NERA's findings. Using data compiled by Securities Class Action Alert, based on the number of defendants sued, Price Waterhouse reported that the number of State court actions increased from 52 in 1995 to 66 in 1996 but then declined to 44 in 1997. That was lower than the number of such actions in 1991 or 1993.

The study went on to find that the total number of cases filed in 1997 showed little or no change—little or no change—from the average number of lawsuits filed in the period 1991 through 1995.

Data provided to the committee by Price Waterhouse on February 20, 1998, also demonstrated that State court filings declined in 1997. Measured by the number of cases filed, the number of State securities class actions declined from 71 in 1996 to 39 in 1997. So much for this assertion of a rising number of suits being brought in the State courts. This really is a piece of legislation in search of a problem. And when you look at the facts, when you look at the numbers, the problem is not there.

Now let me turn to the notion that this bill addresses only class-action lawsuits. I think most people understand a class-action lawsuit to refer to lawsuits brought by one person on behalf of himself and all other people similarly situated, an anonymous and potentially large group of people. For class actions to be certified in Federal court, the Federal Rules of Civil Procedure require that the class be so numerous that joinder of all members is impracticable. In Federal court, a judge normally must find that common questions of law and fact predominate over questions only affecting individual members.

Class actions are a tool that allow plaintiffs to share the cost of a lawsuit when it might not be economical for any one of them to bring an action. But, because they can be brought on behalf of potentially an enormous class, they also carry with them the possibility of being misused to coerce defendants into settlement.

This is the sort of situation that is ordinarily described by the proponents of such legislation as requiring a legislative enactment. But when you examine the legislation that comes in behind that assertion, you invariably find that the breadth of the legislation far exceeds this problem which they have identified, and which they constantly use in the discussion and the debate as the example of what they are trying to deal with. If we could limit the legislation to the examples that are cited, we might really come close to obtaining a consensus in this body about corrective measures. But the legislation goes far beyond the examples that are ordinarily used as constituting the basis for legislative enactment, and it is that expanded application of the legislative language, not the specific examples that are generally used, which creates the problem.

This bill is another example of that. It addresses more than the type of class-action case which is ordinarily cited as constituting a potential abuse of the legal process. This bill contains a definition of class action broad enough to pick up individual investors against their will. The bill would amend the Federal Securities laws to include a new definition of class action. It would include as class action any group of lawsuits in which damages are sought on behalf of more than 50 persons if those lawsuits are pending in the same court, involve common questions of law or fact, and have been consolidated as a single action for any purpose.

Even if the lawsuits are brought by separate lawyers without coordination—in other words, you have 50 different investors who feel they have been cheated and want to bring a lawsuit—there is no interplay or interaction amongst them, even if the common questions do not predominate—

which is a requirement in class-action suits, but weakened in this legislation—those lawsuits, under this legislation, may qualify as a class action and thus be preempted.

So if an individual investor chooses to bring his own lawsuit in State court, to bear the expenses of litigation himself, he can be forced into Federal court. He can be made to abide by the Federal Rules if 50 other investors make the same decision about bringing a lawsuit, 50 other separate investors. Indeed, the bill provides an incentive for defendants to collude with parties to ensure that the preemption threshold is reached. Such a result goes well beyond ending abuses associated with class-action lawsuits. It deprives individual investors of their remedies.

The definition of class action in the bill would preempt other types of lawsuits as well. It includes as a class action any lawsuit in which damages are sought on behalf of more than 50 persons and common questions of law or fact predominate. The bill specifies that the predomination inquiry be made without reference to issues of individualized reliance on an alleged misstatement or omission. This would ensure that the investor receives the worst of both worlds. While the investor could not bring a class action under State law, because each investor must prove his or her reliance, they nonetheless constitute a class action under the bill and their suit is preempted.

Finally, let me turn to the assertion that there is little or no opposition to this bill. In fact, the bill is opposed by State and local officials very vigorously, as a matter of fact. I note there that Orange County has just begun the first of its recoveries, in terms of being defrauded. Senior citizens groups, labor unions, consumer groups, columnists and editors, legal practitioners and academics have all weighed in on this debate. The headline of a column by Ben Stein in USA Today on April 28, summarizes this opposition: ''Investors, beware: Last door to fight fraud could close.''

''Investors, beware: Last door to fight fraud could close.'' He wrote of this bill, the legislation before us:

> State remedies would simply vanish, and anyone who wanted to sue would have to go into Federal court where impossible standards exist.

He warns:

> This is serious business for the whole investing public.

Mr. President, I ask unanimous consent that this entire column be printed in the RECORD.

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

[From USA Today, Apr. 28, 1998]

INVESTORS, BEWARE: LAST DOOR TO FIGHT FRAUD COULD CLOSE

(By Ben Stein)

If you come home from vacation and find that your house has been broken into, you know who to call. You call the police and then your insurance agent to make up the loss.

If someone misuses your credit card, you also know what to do. You call MasterCard or Visa or whoever it is, and the company takes the fraudulent charge off your card.

But what if you open the newspaper one day to find you have been defrauded about the stocks and bonds you own? Who do you call for help if management of a company in which you hold stock has lied to the world about a product or its prospects, induced you to buy stock, and then fled with your money?

You can file a report with the Securities and Exchange Commission, but we all know how slowly even the best bureaucracies work. You can go to your state securities commission. They might be great people, but they also work slowly—in general taking years or decades—and they often are geared more to punishing the wrongdoer than to getting a recovery for the victims.

Also, both the feds and state bureaucracies will be totally overwhelmed and understaffed as a matter of course. You could sue the fraudmeisters yourself, but that kind of suit costs a fortune, literally millions of dollars, and that exceeds most people's losses, not to mention their life savings.

So, who will possibly stand up for you and sue to get your money back? The private class-action securities bar.

These people are not Matt Dillon or Wyatt Earp, but their livelihood is wholly dependent upon getting results for defrauded investors. They aggregate claims by all of the cheated investors in a corporation and sue to get redress. They almost never make any money unless they get a chunk for the defrauded little guy. They are not angels, and they are not saints. They do it for the money. But they get money when you do, so they have to be persistent, aggressive and ruthless against the cheaters.

The people who have done the fraud hate class-action lawyers. So, even more, do accountants and insurance companies. Accountants have often been involved in the fraud or at least ignored it or missed it. They're still around when the business management has gone, so they—the accountants—often get sued successfully. Likewise, the companies that insure accountants for malpractice totally hate the class-action bar for the same reason.

In the 1980's, there was a national upheaval in fraud—junk bonds, S&Ls high-tech fraud. There were some large federal class-action suits under decades-old consumer protection laws from New Deal days. Naturally, these upset the accountants, the insurers and the high-tech firms. There were some large recoveries.

No surprise, then, that the accountants, high-tech firms and insurance companies did what any smart and government-wise group of rich, unhappy people would do. They lobbied Congress, giving immense contributions to representatives and senators. And they got the federal law changed drastically so that it became extremely hard to sue for securities fraud as a class. There was a bar on suits against accountants except in very rare cases, stringent limits on discovering evidence of fraud, and an almost totally impossible level of pleading about how much defendants had to have known.

When those who wanted to protect the small investor—and there were such principled men and women in Congress—complained, the friends of the accountants and fraud makers said, ''Hey, maybe the federal law is a bit harsh, but no problem. You can still sue in state court. You still have state remedies.'' President Clinton vetoed the bill, but it was passed, over his veto, by a Republican Congress that I generally love but that sold out totally here. That was in 1995.

There has yet to be a single recovery for investors in a suit brought under the 1995 law. Now it's 1998, and guess what's happening: congress is racing toward passage of a law proposed by Chris Dodd, senator for Hartford, Conn., insurance capital of the world. The bill, which Congress is to vote on before summer, would spring the trap opened in 1995: It would bar all state class-action securities cases.

The state remedies that were supposed to remain in place would simply vanish, and anyone who wanted to sue would have to go into federal court, where those same impossible standards exist. The excuse of the accountants and high-tech pooh-bahs is that there has been a huge upsurge in state class-action cases since the 1995 law went into effect. The uncontroverted fact, however, is that the number of state court cases of class-action suits has fallen—not risen—since 1995 in the nation and has fallen in all but three states since 1995.

Of course, if you have money in Congress, you don't need no stinking facts. And, the juggernaut of the accountants in Congress is powerful, indeed. They have even managed to get the chairman of the Securities and Exchange Commission, Arthur Levitt, to change his mind. Levitt in recent weeks was saying that state remedies should stay in place until he saw how the 1995 law worked out. He now endorses closing the state courthouse door to small class-action litigants if some changes in the standard of reckless misconduct required for liability are altered slightly.

This is not abstruse stuff for law teachers. This is serious business for the whole investing public. The goal of the accountants and their pals in Hartford is to simply kill the class-action bar. They're gambling that their contributions, plus a general resentment against lawyers, will do the trick. But if it does, next time you're defrauded, you'll be plumb out of luck. You can call, but the phone will just ring and ring and ring, and you'll be all alone at 3 a.m., wondering how you can possibly have such a bitter loss without anyone to help.

Mr. SARBANES. A number of groups representing State and Government officials, including the National League of Cities, the National Association of Counties, the Government Finance Officers Association, and the U.S. Conference of Mayors, oppose this bill, as do the National League of Cities National Association of Counties, Government Finance Officers Association, and the U.S. Conference of Mayors. I ask unanimous consent that a May 11, 1998, letter from these and other groups be printed in the RECORD.

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

> GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA), MUNICIPAL TREASURERS' ASSOCIATION (MTA), NATIONAL ASSOCIATION OF COUNTIES (NACO), NATIONAL ASSOCIATION OF COUNTY TREASURERS AND FINANCE OFFICERS (NACTFO), NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS (NASRA), NATIONAL CONFERENCE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS (NCPERS), NATIONAL LEAGUE OF CITIES (NLC), U.S. CONFERENCE OF MAYORS (USCM),
>
> *May 11, 1998.*

Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building,
Re: S. 1260, Securities Litigation Uniform Standards Act of 1998.

DEAR SENATOR SARBANES: The state and local government organizations listed above

write in opposition to S. 1260, the Securities Litigation Uniform Standards Act of 1998, as reported by the Senate Committee on Banking, Housing and Urban Affairs, which we understand will be considered by the full Senate this week. We urge you to support amendments to the bill which would (1) narrow the definition of class action to follow the Federal Rules of Civil Procedure; (2) allow plaintiffs to carry state statute of limitations laws with them in cases filed in state court which are removed to federal court; and (3) provide an exemption for classes comprised of state and local governments. We also ask that you oppose this legislation if the final version too closely resembles the current version of S. 1260. Our most significant concerns are the following:

The consequences for public pension funds and state and local governments which are unable to recover losses in state courts will be significant. If defrauded state or local pension funds are barred from recovering from corporate wrongdoers in state court (having already had many remedies foreclosed in federal court), the state or local government and its taxpayers may be required to make up losses in the fund. Not only would this jeopardize general revenue, leading to a likely loss of jobs and services to the public, but it could also severely damage a jurisdiction's credit rating. This could result in a higher cost of borrowing in the debt market to fund capital and operating expenses.

S. 1260 fails to reinstate liability for secondary wrongdoers who aid and abet securities fraud. Despite two opportunities to do so since the Supreme Court struck down for private actions aiding and abetting liability for wrongdoers who assist in perpetrating securities fraud, the current version of S. 1260 does not reinstate such liability. An amendment offered in the Banking Committee which would have allowed defrauded investors to carry with their federal claim the state law regarding aiding and abetting was defeated.

S. 1260 fails to reinstate more a reasonable statute of limitations for defrauded investors to file a claim. As in the case of aiding and abetting, Congress has now had two opportunities to reinstate a longer, more reasonable statute of limitations for defrauded investors to bring suit. Many frauds are not discovered within this shortened time period, but the Banking Committee again missed an opportunity to make wronged investors whole by defeating an amendment that would have allowed defrauded investors to carry with them in federal suits the state statute of limitations.

The definition of ''class action'' contained in S. 1260 is overly broad. The definition of class action in S. 1260 would allow single suits filed in the same or different state courts to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in federal court are belied by this provision.

There have been few state securities class actions filed since the Private Securities Litigation Act (PSLRA) passed. Despite the claims of the bill's proponents, tracking by the Price Waterhouse accounting firm shows that only 44 securities class actions were filed in state court for all of 1997, compared with 67 in 1994 and 52 in 1995. Most of these cases were filed in California, indicating that, if there is a problem in that state, it is one which should be dealt with at the state level. Citizens of the other 49 states should not be penalized as a result of a unique situation in a single state.

The PSLRA was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both issuers of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect state and local government investors who are defrauded in securities transactions. The full impact of that statute on investor rights and remedies remains unsettled because even now many parts of the PSLRA have not been fully litigated; however, this untested law would now be extended to state courts.

The above organizations believe that states must be able to protect state and local government funds and their taxpayers and that S. 1260 inhibits these protections. We urge you to oppose preemption efforts which interfere with the ability of states to protect their public investors and to maintain investor protections for both public investors and their citizens.

Mr. SARBANES. Why are these public officials concerned about this bill? Why are these associations that represent public officials all across our Nation concerned about this bill? Because these public officials invest taxpayers' funds and public employees' pension funds in securities. And they fear they will be left without remedies if they are defrauded.

Testifying before the Senate Banking Committee, Mayor Harry Smith of Greenwood, MS, warned:

The most potent protection investors have is the private right of action. To remove that protection could have grave consequences. We oppose taking such a risk. We oppose preemption of traditional State and local rights created to protect our citizens and taxpayers. This bill is inconsistent with Congress' renewed commitment to the preservation of federalism, and reduces protections for our retirees, employees, and taxpayers.

Over two dozen law professors, including such nationally recognized securities law experts as John Coffee, Jr., Joel Seligman and Marc Steinberg, expressed their opposition in a letter earlier this year. I ask unanimous consent that letter be printed in the RECORD.

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

JANUARY 23, 1998.

DEAR SENATORS AND MEMBERS OF CONGRESS: We are professors of securities regulation and corporate law at law schools throughout the United States. Our teaching and scholarship focus on the coexistent federal and state systems for the regulation of securities, an extraordinary example of cooperation between the public and private sectors that has created for American businesses the largest capital market in the world, and for investors one of the safest. As events elsewhere in the world over the past few weeks so aptly demonstrate, the stability and integrity of our capital markets is one of our most important national accomplishments.

We are very concerned about legislation now pending in Congress that would preempt private rights of action for securities fraud in class actions brought under the statutes and common law of all fifty states.[1] This sweeping federal preemption of state law is being proposed less than one year after the National Securities Markets Improvement Act of 1996 preempted state ''merit review'' of most securities offerings, and two years after the federal litigation system itself was overhauled by the Private Securities Litigation Reform Act of 1995 (the ''1995 Act''), which made it more difficult for investors to recover for securities fraud in federal court. Defendants in securities fraud suits now argue that the 1995 Act contained a ''loophole'' because it did not overturn Congress's decision in 1933 and 1934 to leave state fraud remedies intact.[2]

Arthur Levitt, the Chairman of the Securities and Exchange Commission, however, has strongly urged Congress to wait until more is known about the impact of the 1995 Act on litigation in federal and state courts before considering legislation preempting state rights of action.[3] We also believe that Congress should wait to ascertain the effects of the 1995 Act, as well as the direction of state law, before enacting any legislation that would undercut the longstanding role that state law has had in protecting investors from securities fraud. The complex relationship between federal and state securities laws needs to be more fully understood before investors are denied the protection of either body of law.

We therefore urge you and your colleagues at this time not to support S. 1260, HR 1689, or any other legislation that would deny investors their right to sue for securities fraud under state law.

Very truly yours,

Ian Ayres, Yale University; Stephen M. Bainbridge, University of California at Los Angeles; Douglas M. Branson, University of Pittsburgh; William W. Bratton, Rutgers University; John C. Coffee, Jr., Columbia University; James D. Cox, Duke University; Charles M. Elson, Stetson University; Merritt B. Fox, University of Michigan; Tamar Frankel, Boston University; Theresa A. Gabaldon, George Washington University; Nicholas L Georgakopoulos, University of Connecticut; James J. Hanks, Jr., Cornell Law School; Kimberly D. Krawiec, University of Tulsa; Fred S. McChesney, Cornell Law School; Lawrence E. Mitchell, George Washington, University; Donna M. Nagy, University of Cincinnati; Jennifer O'Hare, University of Missouri, Kansas City; Richard W. Painter, University of Illinois; William H. Painter, George Washington University; Margaret V. Sachs, University of Georgia; Joel Seligman, University of Arizona; D. Gordon Smith, Lewis and Clark; Marc I. Steinberg, Southern Methodist University; Celia R. Taylor, University of Denver; Robert B. Thompson, Washington University; Manning G. Warren III, University of Louisville; Cynthia A. Williams, University of Illinois.

[1] See S. 1260, 105th Congress, 1st Sess. (1997) (the Securities Litigation Uniform Standards Act of 1997) (the ''Gramm-Dodd bill''); and HR 1689, 105th Congress, 1st Sess. (1997) (the ''White-Eshoo bill'').

[2] See Section 16 of the 1933 Act, 15 U.S.C. §77p (1996), and Section 28(a) of the 1934 Act, 15 U.S.C. §78bb(a) (1996).

[3] Prepared Statement of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission Before the Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Securities Concerning the Impact of the Private Securities Litigation Reform Act of 1995, July 24, 1997.

Mr. SARBANES. These distinguished law professors stated:

We . . . believe that Congress should wait to ascertain the effects of the 1995 Act, as well as the direction of state law, before enacting any legislation that would undercut the longstanding role that state law has had in protecting investors from securities fraud.

These distinguished academics oppose any legislation that would deny

[2] Footnoes at end of letter

investors their right to sue for securities fraud under State law.

Similarly, the New York State Bar Association opposes this bill. A report prepared by the Bar Association Section on Commercial and Federal Litigation concluded: ''The existing data does not establish a need for the legislation,'' and, ''the proposed solution far exceeds any appropriate level of remedy for the perceived problem.''

Let me repeat that quote from the report prepared by the New York State Bar Association Section on Commercial and Federal Litigation:

> The proposed solution far exceeds any appropriate level of remedy for the perceived problem.

The opposition goes on. As additional examples, I cite a March 30, 1998, editorial from the National Law Journal entitled ''What's the Rush?'' This editorial concludes:

> The Senate should pause before it neutralizes State laws that still stand as a bulwark protecting investors against flimflam artists.

Mr. President, I ask unanimous consent that this editorial from the National Law Journal entitled ''What's the Rush?'' and concluding by saying, ''The Senate should pause before it neutralizes State laws that still stand as a bulwark protecting investors against flimflam artists,'' be printed in the RECORD.

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

[From the National Law Journal, Mar. 30, 1998]

WHAT'S THE RUSH?

You would expect Congress to think long and hard before passing laws that foreclose the right of potential litigants to bring their complaints in the courts. But Capitol Hill is moving swiftly on legislation that would block investor class actions in the state courts, though principles of federalism are in themselves reasons for Congress to proceed with caution.

Bills to amend the Private Securities Litigation Reform Act of 1995, which put strict limits on federal class actions, have enormous support: The Senate bill, S. 1260, already has 30 sponsors, and a virtually identical bill in the House, H.R. 1689, has 193 sponsors. The Senate Banking Committee is expected to mark up the bill this month, and Senate Majority Leader Trent Lott, R-Miss., has promised to bring the bill to a floor vote before the Easter recess, which begins April 3.

The Senate should slow down—and take a careful look at the evidence. Lobbyists for the high-technology companies that have been pushing for pre-emption claim that plaintiffs' lawyers such as San Diego's William S. Lerach, of New York's Milberg Weiss Bershad Hynes & Lerach L.L.P., are making an ''end run'' around the federal law by bringing their lawsuits in state court. But data collected by Price Waterhouse Inc., a key supporter of pre-emption, show a steep drop in the number of suits brought in state court: In 1996, 71 class actions were filed; in 1997, the number dropped to 39.

But this is more than a numbers story. The federal courts have just begun to interpret the 1995 law, which passed after rancorous debate in the House and Senate, and only after Congress overrode a presidential veto. A ruling in one of the first cases filed under the new law, a class action that Mr. Lerach brought against Mountain View, Calif.'s Silicon Graphics Inc., threatens to wipe out ''recklessness'' as a sufficient standard of intent in securities fraud cases.

The Securities and Exchange Commission is supporting Mr. Lerach's appeal of this ruling to the 9th U.S. Circuit Court of Appeals, but the court won't hear arguments until next year. By then, Congress may have already blocked state court suits, leaving plaintiffs in investor suits without a forum to assert reckless conduct and, ergo, leaving corporate wrongdoers free to behave irresponsibly.

Other protections available in state court would also be lost. In 33 states, the statutes of limitation on filing suit are longer than the one-year federal limit. Liability for ''aiding and abetting'' a securities fraud—which was eliminated in federal court actions by a 1994 U.S. Supreme Court ruling—also exists in most states.

Before the Senate rushes to wipe out state fraud actions, it should recall the words of Sen. Pete V. Domenici, R-N.M., who co-sponsored the 1995 act. Addressing criticisms that the new law would allow financiers like Lincoln Savings & Loan's Charles V. Keating to escape liability, Senator Domenici pointed out that Mr. Keating had been sued under many provisions of state law—''laws untouched'' by his proposed reforms.

The Senate should pause before it neutralizes state laws that still stand as a bulwark, protecting investors against flimflam artists.

Mr. SARBANES. Mr. President, I would like to point out also the opposition of the American Association of Retired Persons, the Consumer Federation of America, the AFL–CIO, the American Federation of State, County and Municipal Employees, and the United Mine Workers. I ask unanimous consent that letters from these groups expressing their opposition to this bill be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AFL–CIO,
Washington, DC, May 11, 1998.

DEAR SENATOR: Labor unions have an enormous stake in protecting workers' hard-earned retirement savings from securities fraud. Over $300 billion in union members' pension assets are invested in the stock market. Thus, as shareholders and investors, unions and employees count on the protection of both state and federal laws and regulations to protect their investments and to preserve the integrity of the market. For this reason, the AFL–CIO urges you to oppose S. 1260, the Securities Litigation Uniform Standards Act.

State laws can and do provide even greater protection for small investors than is provided by the federal securities laws. Until now, it has been up to each state to decide whether and how to offer enhanced antifraud protections to its citizens.

This well established, dual system of state and federal protection is now threatened, however, S. 1260 preempts investor-friendly state laws and substitutes the federal Private Securities Litigation Reform Act (PSLRA), which would significantly limit the liability of fraud defendants.

In particular, the bill would hurt individual investors, including workers and pensioners, by denying them the ability to pursue effective redress through a class action. In broadly held publicly traded companies, class action litigation is the only economically feasible way in which shareholders can bring security fraud claims. Generally, even the largest institutional shareholders will not pursue a valid claim individually, because their possible individual benefit will not compensate for the costs incurred in bringing such litigation. In light of the SEC's limited resources, private class action litigation has always been the primary means for both institutions and individual shareholders to recoup losses from securities fraud and has been a powerful deterrent to managerial impropriety.

Tampering with the state's antifraud authority would place at risk the retirement savings of tens of millions of Americans. Aside from the obvious flaws, the proposed legislation also disturbs the state/federal balance by removing an important state role in the antifraud field without any sound justification. The AFL–CIO asks you to oppose this bill.

Sincerely,

PEGGY TAYLOR,
Director,
Department of Legislation.

CONSUMER FEDERATION OF AMERICA,
Washington, May 7, 1998.

DEAR SENATOR: It is our understanding that the Senate will vote next week on S. 1260, ''The Securities Litigation Uniform Standards Act of 1997.'' I am writing on behalf of Consumer Federation of America to reiterate our strong opposition to this anti-investor legislation and to urge you to oppose it.

Our opposition is based on a simple principle: Congress should not extend federal standards to securities fraud class action lawsuits being brought in state court until we know whether those federal standards are preventing meritorious cases from being brought or reducing victims' recoveries. Caution is particularly warranted in this case since both the Securities and Exchange Commission and the state securities regulators opposed the Private Securities Litigation Reform Act on the grounds that it would tip the balance too far in favor of fraud defendants.

The jury is still out on the PSLRA, since its major provisions have yet to be defined in court and there has yet to be a single recovery for investors under the 1995 law. It would be nothing short of irresponsible, in our view, for Congress to preempt state laws without first knowing the full effects of the federal law on meritorious lawsuits.

Supporters have made much of the fact that Securities and Exchange Commission Arthur Levitt now supports S. 1260, having announced his change of heart at his confirmation hearing in April. It is important to understand that nothing in the few cosmetic changes negotiated by Chairman Levitt alters the fundamentally anti-investor nature of this bill.

Furthermore, even as he made his unfortunate decision to endorse the legislation, Chairman Levitt did not withdraw earlier statements that the current federal law tilts the balance too far in favor of securities fraud defendants. Nor did he withdraw statements that this legislation is premature based on the limited data now available. Most importantly, he did not withdraw his assessment, expressed in October testimony before the Senate Banking Committee ''. . . that the bill would deprive investors of important protections, such as aiding and abetting liability and longer statutes of limitation, that are only available under state law'' and that ''great care should be taken to safeguard the benefits of our dual system of federal and state law, which has served investors well for over 60 years.''

During the Banking Committee's mark-up of the bill, amendments were offered that would have allowed defrauded investors to rely on longer statutes of limitations and aiding and abetting liability where they were available in state law and would have prevented state courts from consolidating individual lawsuits brought against a common defendant for the purposes of forcing the case into federal court. While these amendments alone cannot alter the fundamental flaws in this legislation, they would ameliorate some of the bill's most onerous effects. CFA believes these pro-investor changes are the minimum necessary to provide a modicum of balance to the bill. Should similar amendments be offered on the Senate floor, we urge you to support them.

As you consider this legislation, keep in mind that just under half of all American households now invest in the stock market directly or through mutual funds. Their primary reason for investing is to provide a decent standard of living for themselves in retirement. When the current bull market comes to its inevitable end, and the frauds that have been perpetrated under its cover are exposed, investors who find their retirement savings decimated by fraud should not be left without any means of recovering those losses.

Because it threatens to further restrict defrauded investors' access to justice, CFA urges you to vote against S. 1260.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection.

Mr. SARBANES. Mr. President, much will be made during the debate on this bill of the support it is asserted it enjoys from the Securities and Exchange Commission. But it seems to me that citing the support of the SEC tells only part of the story—only part of the story.

First, SEC Commissioner Norman Johnson has written to express his opposition to the bill. His March 24, 1998, letter concludes:

I believe that much more conclusive evidence than currently exists should be required before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.

I ask unanimous consent to have Commissioner Johnson's letter printed in the RECORD.

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

SECURITIES AND
EXCHANGE COMMISSION,
Washington, DC, March 24, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Hart Office Building, Washington, DC.

Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities, U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR CHAIRMAN D'AMATO, CHAIRMAN GRAMM, AND SENATOR DODD: It is with regret that I find myself unable to join in the views expressed by my esteemed colleagues in their letter of today's date. For that reason I feel compelled to write separately to express my own differing views.

Consistent with the opinion the Commission and its staff have repeatedly taken, I believe that there has been inadequate time to determine the overall effects of the Private Securities Litigation Reform Act of 1995, and that the proponents of further litigation reform have not demonstrated the need for preemption of state remedies or causes of action at this time.

In the last few years, we have experienced a sustained bull market virtually unmatched at any time during this nation's history. I therefore question the necessity of the displacement of state law in favor of a single set of uniform federal standards for securities class action litigation. The Commission is the federal agency charged with protecting the rights of investors. In my opinion, S. 1260, the Securities Litigation Uniform Standards Act of 1997, does not promote investors' rights. I share in the views of 27 of this country's most respected securities and corporate law scholars who have urged you and your colleagues not to support S. 1260 or any other legislation that would deny investors their right to sue for securities fraud under state law.

In addition, data amassed by the Commission's staff, compiled in unbiased external studies, indicate that the number of state securities class actions has declined during the last year to pre-Reform Act levels. Indeed, a report by the National Economic Research Associates concluded that the number of state court filings in 1996 was ''transient.'' Under these circumstances, S. 1260 seems premature at the least.

This country has a distinguished history of concurrent federal and state securities regulation that dates back well over 60 years. Given that history, as well as the strong federalism concerns that S. 1260 raises, I believe that much more conclusive evidence than currently exists should be required before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.

Sincerely,

NORMAN S. JOHNSON,
Commissioner.

Mr. SARBANES. Secondly, the SEC supports changes to the Federal antifraud standard to make it more protective of investors. In other words, if the SEC is going to be cited, as the proponents of this legislation have done, in support of their position, surely then they ought to pay attention to the SEC position which has been asserted seeking changes in the Federal antifraud standard to make it more protective. Let me give you a few examples.

The SEC supports a longer statute of limitations so that fraud artists do not escape liability by successfully concealing their frauds. The SEC supports the restoration of liability for aiders and abetters of securities fraud so that those who give substantial assistance to fraud artists do not escape liability.

The SEC supports codification of liability—codification of liability—for reckless conduct to ensure that professionals, such as accountants and underwriters, carry out their responsibilities under the Federal securities laws. In fact, Chairman Levitt reiterated his support for these provisions as recently as 6 weeks ago when he appeared before the Banking Committee for his renomination hearing. Nonetheless, these provisions are nowhere to be found in this bill.

The supporters of this legislation argue the desirability of a uniform antifraud standard for securities traded on national securities exchanges, but they fail to address directly the question which we need to ask, whether the current Federal antifraud standard, as reflected by the 1995 act, deserves to be the uniform standard. Is the current antifraud standard, which they are now going to use to bring cases up from the State courts and deny investors the remedies under the State systems, is that standard adequate to protect investors?

I voted against the 1995 act because I was concerned that it did not establish an appropriate standard. I was worried that it did not strike the proper balance between deterring frivolous securities suits and protecting investors who are victimized by securities fraud. None of us is in favor of frivolous securities suits, these so-called strike suits. But at the same time, I, for one, at least, do not want to go so far in trying to deal with that problem that I cease to protect investors who are victimized by securities fraud. There is a line in between, actually, I have asserted many times, I think, on which a consensus can be reached, but the legislation that keeps coming forward always overreaches—it overreaches—and therefore, I think, jeopardizes the protections that are available to investors who are innocent victims of securities frauds.

A number of securities law experts warn that the safe harbor for forward-looking statements enacted by that act could protect fraud. In addition, the proportionate liability provisions leave innocent victims suffering a loss while shielding those who participate in securities fraud. Of course, the 1995 act omitted the statute of limitations in aiding and abetting provisions recommended by the SEC, still recommended by the SEC, and, of course, not included in this legislation.

Since the reform act was enacted, another concern has developed. Some district courts have relied on the legislative history of that act in concluding that the act's pleading standards eliminated liability for reckless conduct. Imagine, eliminating liability for reckless conduct.

If that view prevails in the circuit courts, and if the Congress preempts, as this legislation proposes to do, causes of action under State laws, investors will be left with no remedies—I underscore that, with no remedies—against those whose reckless conduct makes a securities fraud possible.

It is for these reasons that the associations and various commentators I have cited are opposing this bill. They oppose this bill both because of its overly broad reach—clearly because of its overly broad reach—and because its sponsors fail to take this opportunity to correct the flaws of the earlier legislation. If the sponsors are going to eliminate recourse in the State courts, it becomes even more incumbent upon them to correct the Federal standard with respect to the shortcomings which

have been identified in it and continue to be identified by the Securities and Exchange Commission.

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

Mr. SARBANES. I yield to my colleague.

Mr. BRYAN. The question I have is with reference to the Senator's observation about standard for reckless misconduct.

As I understand, we have actual knowledge, we can have simple or ordinary negligence, we can have gross negligence, and then we can have a standard of reckless conduct which is an utter disregard of the facts. Is the Senator saying that the legislation that we are processing today does not clarify in the findings of this committee that we want to reaffirm that reckless misconduct ought to be a cause of action for those who are defrauded by investors?

Mr. SARBANES. I say to my colleague, as I understand it, this is what transpired. The 1995 act was being interpreted at the district court level, the Federal district court level—the legislative history of it—that the act's pleading standards eliminated liability for reckless conduct.

Now, the SEC has come to us and said we should codify a reckless conduct right of action into the Federal standard. The legislation before us does not have such a codification.

Now, there is language in the report, but we do not have a codification. So you have the problem about the legislative history for the 1998 act. And it is not quite clear to me how it will supplant the legislative history for the 1995 act. A codification would do that but that is not in this bill.

Mr. BRYAN. We are talking about, if I understand, conduct that is more egregious even than gross negligence. We are talking about an utter disregard of the facts and the consequences that flow from that?

Mr. SARBANES. That is right. If you want to talk about where you put the balance, how in the world would you drive the balance so far over that an investor who was the victim of reckless conduct would not have a remedy? It just defies any equitable striking of the balances with respect to, quote, ''frivolous'' lawsuits on the one hand, and investor protection on the other.

Mr. BRYAN. So if I understand the Senator's position, if S. 1260 is passed, we preempt State class actions so that small investors would not have the advantage of a longer statute of limitations that a number of States—I believe 33 out of the 50—provide to investors suing at the State level class actions.

We would deprive the small investor of his or her opportunity to go against the accomplices, the lawyers, the accountants, and others who conspired with the primary perpetrator of fraud. That protection is taken away. And we also eliminate the ability to move and to obtain a joint and several liability judgment against those offenders. They are all things which I understand currently exist to the benefit of small investors as class actions at the State level in most States, if I am not mistaken.

Mr. SARBANES. The Senator is correct. Currently, what happened is we set a Federal standard in the 1995 act in the Federal courts. That still left to an investor the option of going into a State court to seek remedy.

Now the proponents of this bill said, ''Well, everyone who is going into Federal court bringing the so-called frivolous suits are now going to migrate into the State courts.'' The numbers show that has not happened. You have a little increase in 1996. The numbers came back down in 1997. The projected numbers are down. So you do not have that flood of litigation into the State courts, and yet investors had available to them State court remedies.

Well, now what they are going to do is they are going to preempt the ability to bring the action in the State courts. Well, then, the proponents will say, ''Well, we are just preempting it for these class actions. If you are an individual investor and you want to hire your lawyer, you will still be able to go into State court.'' But they define a class action in this bill in such a way, so broadly that it will sweep up individual investors who are really not part of a class-action suit.

Those individual investors will then discover—I mean, what is going to happen here, my prediction on this is that what is going to come before the Congress down the road, if this legislation passes, is small investors showing up in the Congress and saying, ''This happened to me. And now I discover, because of the legislation which you all enacted, I can't get any remedy. And this isn't right.'' And Members are going to be looking at that, and they are going to say it is not right.

That is why we are urging Members to pause and take a careful look at this before they put it into law. You can have a situation in which an individual investor goes in under State law within the statute of limitations. Often you do not discover these things. They are concealed. That is what fraud is all about. So he is within the statute of limitations. Other investors do the same thing.

So let us say it is New York or California or Illinois, and a whole wide group of people have been defrauded by some fraud artist. Well, if 50 of them come in and bring some kind of suit against this artist, they can be swept up into a class action, removed into the Federal court. They will go over to the Federal court, and then they say to them, ''Well, our statute of limitations is shorter than your State statute of limitations under which you filed this action,'' which was timely filed in the State court.

They acted on their rights within the time limitation of the State court. They had no idea they were going to get swept up the way this bill permits. And so all of a sudden they are over in Federal court, and they say to them ''It's too bad. The statute of limitations has run. And you don't have an action. You don't have a cause of action.'' You are shut out of the courthouse.

Now, where is the fairness in that? I defy anyone to show me the fairness in that process.

Mr. BRYAN. Is the Senator also suggesting that a remedy available at the State court level against an accomplice, whether it be a lawyer or an accountant, that would be available to the investor under State law, if removed under the process of the Federal court, which the Senator has just described, would preclude that small investor from a recovery against an accomplice who had participated in the fraud that resulted in the investor's loss?

Mr. SARBANES. The Senator is exactly on point. That is exactly what would happen, which would be exactly what would be permitted to take place under this legislation.

When the 1995 bill was passed, people said, ''Well, we are defining this Federal standard. People can still go into the State court, the individual investor, and get a remedy.''

Now they come along and they say, ''Well, we're going to preempt the State courts in quote, 'class actions,''' but then they define class actions so broadly that it will sweep up individual investors. It can sweep up people who are not bringing what we traditionally recognize and know as a class action.

So it is once again an example of overreaching, as this mayor indicated from Greenwood, MS, that removing these protections would have grave consequences. This thing goes beyond anything that is required to deal with—the New York State Bar Association quote, I think, is the best on this very point when they said, ''The proposed solution far exceeds any appropriate level of remedy for the perceived problem.''

I am saying to the opponents, look, let us examine what you assert as the problem. And we will hear examples of a problem that will be cited. Most of those examples, I am sure I would think something needs to be done about them. But the solution, the proposed solution here will far exceed the examples. What is going to happen is eventually—and that is why I think these people are opposing this legislation I have cited.

I think Senators need to be cautious. This, in effect, is an investor's beware legislation—investors beware. I think in the future we are going to be petitioned or importuned in the Congress to correct this overreaching because innocent people will have been denied their remedy against fraud artists who have cheated them out of their life savings.

Let me just note that we are at a time of record high in our Nation's

stock market. The current bull market is the longest in history. Stocks are trading at a price-earnings ratio that exceed even those reported in the 1920s. The level of participation in the stock market by America's families is also at a record level, both directly through ownership of stocks and indirectly through pension funds and mutual funds. History suggests that at some point the bull market will end, and history also suggests that when that occurs is when securities fraud will be exposed. You don't get that much exposure in a rising market.

Should this bill be enacted, at that time many investors will find their State court remedies eliminated. In too many cases investors will be left without any effective remedies at all. Such a result can only harm innocent investors, undermine public confidence in the securities market, and ultimately raise the cost of capital for deserving American businesses.

I urge my colleagues to think long and hard about this legislation, to be very careful about it. It far exceeds what needs to be done in terms of addressing any perceived problem. I think we need to be extremely sensitive to it.

I expect a number of amendments to be offered to this bill as we proceed with its consideration. I look forward to discussing those at the appropriate time as we seek to correct what I think are some of the more obvious and egregious flaws in this legislation.

I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Connecticut is recognized.

Mr. DODD. Madam President, let me begin by thanking my chairman of the committee, Senator D'AMATO, and Senator GRAMM with whom I authored this particular proposal.

Senator DOMENICI has been very involved in this issue, going back a number of years when the issue first arose, trying to deal with this sinister practice going on of strike lawsuits and predator law firms. I will share briefly some news out this morning as to how the law firms that we are trying to deal with operate, where the issue of fraudulent behavior is hardly their motivation; it has to do with simple stock fluctuation. Some Internet activity today will highlight that in categorical terms, as early as about 4 or 5 hours ago. This is a pervasive problem that needs to be addressed.

We passed this bill out of our committee 14–4 on a strong bipartisan vote. The bill is endorsed by the Securities and Exchange Commission, supported by this administration, the Clinton administration. We will be happy to entertain the amendments as they are offered that come up that were raised in committee. We had hearings on this matter—not a lengthy markup, but an extensive markup—with an opportunity to vote a lot of the issues.

I will pick up on some of the concluding comments and remarks of my two colleagues from Maryland and Nevada with regard to the recklessness standard. We received a letter of endorsement and support from the Securities and Exchange Commission, signed by Chairman Arthur Levitt, Isaac Hunt, and Laura Unger, March 24. This letter, I believe, has been introduced in the RECORD by Chairman D'AMATO, but I am, at this juncture, going to highlight two paragraphs of this letter because they go right to the heart of what was raised a few moments ago when it comes to the recklessness standard. I will address this more directly in my remarks. Let me quote two paragraphs in this letter.

> As you know, when the Commission testified before the Securities Subcommittee of the Senate Banking Committee in October 1997, we identified several concerns about S. 1260. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to cover losses attributable to reckless misconduct would jeopardize the integrity of the securities markets. In light of this profound concern, we are gratified by the language in your letter of today agreeing to restate in S. 1260's legislative history, and in the expected debate on the Senate floor, that the Private Securities Litigation Reform Act of 1995 did not, and was not intended to, alter the well-recognized and critically important scienter standard.

Jumping down another paragraph,

> The ongoing dialog between our staffs has been constructive. The result of this dialog, we believe, is an improved bill with legislative history that makes clear, by reference to the legislative debate in 1995, that Congress did not alter in any way the recklessness standard when it enacted the Reform Act.

Then it goes on to complete the paragraph.

I don't know if anything can be more clear in this letter. Certainly the intent, stated in committee, stated on the floor previously, stated in this letter, and we stated again here on the floor today as to what the intentions were of those of us who crafted this legislation when it comes to ''recklessness.''

Now I agree. I mentioned earlier, some courts, a few district courts, have read otherwise. That happens. But we will try to make it clear that was aberrational behavior, erroneous behavior, in my view, rather than what we intended.

I see my colleague from New York is rising.

Mr. D'AMATO. If the Senator will yield for a question, is it not true, if we were to set aside this legislation and not go forward, there might be a question and that, indeed, what both the White House and the SEC are saying, as a result of our coming forward, we may be eliminating that question, that ambiguity, by moving forward in the way that we proposed in this legislation?

Mr. DODD. I think the chairman of committee raises an excellent point, that in fact our legislative history included with S. 1260, the debate we have had, makes it quite clear what the intent of the committee was in 1995, what the intent of the committee in this legislation is today.

In the absence of that, I think you might have courts ruling otherwise, even though we may have not drawn that conclusion in the earlier legislation.

Mr. SARBANES. Will the Senator yield?

Mr. DODD. I will make my comments, and then I will be glad to yield for a debate, but I want to finish my opening statement.

Mr. SARBANES. Would the Senator have any objection to codifying this standard?

Mr. DODD. I will do that in my remarks.

There is a very difficult problem codifying the standard on recklessness. Congress has wrestled with this over the years. We were not the first committee to try. We thought leaving the standard as it has been in the courts, making sure we are not trying to make any change to that standard here, any way other than what has been an accepted standard, was a better way to proceed, based on the advice we received.

We certainly did not change that standard, as has been the suggestion, either with this act or the act of 1995 despite the fact that some courts may have read it otherwise. I can't preclude a court from misinterpreting the decisions of a Congress.

But the recklessness standard has been a good standard over the years and ought not to be tampered with, in my opinion.

Mr. BRYAN. Will the Senator yield? I don't want to interrupt his presentation. I am always happy to wait, but we are talking of the reckless standard.

If I might inquire of the Senator, the SEC, as I understand it, has sent over a definition of ''reckless.'' If that could be included in the findings of fact as opposed to the report language, I think it would strengthen what we all seek to do, and that is to retain the reckless standard, which I know is the objective of the Senator from Connecticut.

As the Senator knows far better than I, report language is fairly thin gruel compared to the findings of fact which are included or other issues which the sponsors of the legislation—I wonder if the Senator would consider including that definition.

Mr. DODD. The problem has been, as you start trying to codify, we—I will take a look at what the Senator has. I haven't seen it.

The suggestion has been made—what I was trying to respond to, prior to rising here, was that the suggestion was made that somehow this piece of legislation and '95 Act had undone the standard of recklessness that had been used.

We made it quite clear—at least I thought we did—in 1995 that we were not altering the standard. Certainly the SEC believes that was what we intend. This legislative history and this debate on today's bill makes it clear it

was not the intent. What I objected to was the suggestion that somehow we had changed the scienter standard. We had not done that. And the letter from the three members of the Securities and Exchange Commission, I think, reinforces the point—not whether or not you add something in the statement of facts or whether or not you have it in the legislative history where I believe it is most appropriate—about addressing the underlying concern and issue. And that is whether or not this legislation in any way, or the 1995 Reform Act in any way, tried to fool around with the standard of recklessness. We didn't then, and we aren't now.

So what I am saying here today, what the chairman of the committee has said, and others, this is raising a red herring. It doesn't exist. It is difficult enough to debate where there is a legitimate disagreement, and there will be amendments offered where clearly there are provisions in the bill which my colleagues, including my distinguished friend from Nevada, disagree with. It is a fundamental difference here. Recklessness, as a matter of this legislation, is not a problem. It is trying to raise an issue that really does not exist. That is the reason I felt I should address that issue prior to making my general comments and statements about what I think is a valuable piece of legislation.

Now, Madam President, let me, if I may, proceed here. It has been said, in the sense that we get the pendulum swings and the proposals are offered, in a sense, this is a very narrow bill. It is not designed to be all-encompassing and all-sweeping, yet it is being received by certain quarters as if it were a wide, sweeping piece of legislation. It is dealing with an underlying problem that still exists. The facts bear out the necessity of us trying to move with nationally traded securities on the national exchanges to see to it that we can set some standards here so we don't continue to end up with a proliferation of lawsuits chasing forums all over this country to satisfy a trial bar at the expense of jobs, investors in these companies out there. That is what has been happening. That is what we try to address with this bill.

At the beginning of the debate today on S. 1260, the securities litigation reform standards, marks, in a sense, an anniversary, Madam President. It was almost 3 years ago that we took the floor of this body, many of my colleagues, in support of the Private Securities Litigation Reform Act of 1995. That bill, overwhelmingly enacted into law by Congress, was designed to curb abuses in the field of private securities class action lawsuits.

Let me pause, if I can, to note just how important the private litigation system has been in maintaining integrity of our capital markets. It is highly questionable whether our markets would be as deep, as liquid, as strong, or as transparent were it not for our system of maintaining private rights of action against those who commit fraud. America's markets are the envy of the world because of the tremendous confidence that American and foreign investors have in the regulatory system that supports those markets.

But it is precisely because of the vital importance of the private litigation system that the depths to which it had sunk by 1995 had become so damaging. The system was no longer an avenue for aggrieved investors to seek justice and restitution, but it had become, instead, a pathway for a few enterprising attorneys to manipulate its procedures for their own considerable profit, to the detriment of legitimate companies and investors all across our Nation.

If we needed a reminder about how abusive that system had become, we received yet another example of it last week, with the conclusion of one of the last lawsuits filed under that old system. This litigation against a Massachusetts biotech company called Biogen, lasted more than 3 years, cost that company, in direct litigation expenses alone, more than $3 million.

But even more than the direct costs, the lawsuit enacted an untold loss on the company because of the time and resources devoted by its top management and their scientists to defending themselves.

The conclusion to this litigation on May 6 came in swift contrast to the lengthy and expensive lawsuit itself, as reported by Reuters:

> A Federal jury has ruled as baseless a class-action shareholder lawsuit accusing Biogen, Inc. and its chairman of misleading investors . . . The 10-member jury took less than three hours to reach their verdict. . . .

So this week's debate marks not only the opening of Congress' effort to establish strong national standards of liability for nationally-traded securities, but also allows us to mark the close of an era in securities litigation that perversely offered more comfort to those filing abusive and frivolous lawsuits than it offered to redress to those who had been legitimately defrauded.

But the very success of the 1995 reform act in shutting down avenues of abuse on the Federal level has created a new home for such kinds of litigation in State courts.

Throughout 1996, the first year of the reform act, reports were coming to Congress that there was a dramatic increase in the number of cases filed in State courts. Prior to enactment of the '95 reform act, it was extremely unusual, extremely unusual, for a securities fraud class action case to be brought in a State court anywhere in this country.

But by the end of 1996, it had become clear from both the number of cases filed in State court, and the nature of those claims, that a significant shift was underfoot, as some attorneys sought to evade the provisions of the reform act that made it more difficult to coerce a settlement, which was what was going on.

John Olson, the noted securities law expert, testified in February before the subcommittee on securities that:

> In the years 1992 through 1994, only six issuers of publicly traded securities were sued for fraud in State court class actions. In contrast, at least 77 publicly traded issuers were sued in State court class actions between January 1, 1996, and June 30, 1997. Indeed, the increase in State court filings may even be greater than indicated by these dramatic statistics. Obtaining an accurate count of State court class actions is extraordinarily difficult, because there is no central repository of such data and plaintiffs are under no obligation to provide notice of the filing of such suits.

In April, 1997, the Securities and Exchange Commission staff reported to the Congress, and the President found that:

> Many of the State cases are filed parallel to a Federal court case in an apparent attempt to avoid some of the procedures imposed by the reform act, particularly the stay of discovery pending a motion to dismiss. This may be the most significant development in securities litigation post-reform act.

Even though the number of State class actions filed in 1997 was down from the high of 1996, it was still 50 percent higher than the average number filed in the 5 years prior to the reform act, and it represented a significant jump in the number of parallel cases filed.

So there was a significant increase. It did drop in 1997. But if you are going to use the bar of when the reform act was passed, it was still substantially higher. It was a rare occasion indeed when people ran to State courts. We didn't think we would need this bill. We honestly thought that dealing with this problem at the Federal level would work. That is where the cases were brought. Why are we here today? We are here because these enterprising attorneys, as the chairman of the committee pointed out—many without clients, by the way—discovered that if they ran into a State court here, they could avoid the legislation that we adopted and passed so overwhelmingly here in 1995. But there are other reasons as well. It isn't just an increase in the caseload. That would not, in my view, necessarily warrant moving today. There are other issues.

This change in the number and nature of the cases filed has had two measurable, negative impacts that I think our colleagues ought to take very good note of.

First, for those companies hit with potentially frivolous or abusive State court class actions, all of the cost and expense that the '95 reform act sought to prevent are once again incurred. So, in effect, we did nothing. Today, all of that cost and discovery, and so forth, before a motion to dismiss could be filed—today you have to go do it all over again. It is as if the '95 act were never passed. That is what happened here.

Some might question whether a State class action can carry with it the same type of incentives to settle even

frivolous lawsuits that existed on the Federal level prior to 1995.

Allow me to provide one example of how this is so. Adobe Systems, Inc. wrote to the Banking Committee on April 23, 1998, this year, about its experience with State class action lawsuits.

One of the key components of the 1995 reform act was to allow judges to rule on a motion to dismiss prior to the commencement of the discovery process. This is not precedent-setting procedure. That is normally, in many cases, how you deal with it, a motion to dismiss coming up early. Under the old system, Adobe had won a motion for summary dismissal, but only after months of discovery by the plaintiffs that cost the company more than $2 million in legal expenses and untold time and energy by officials to produce the tens of thousands of documents and numerous depositions.

With the 1995 act in place, those kinds of expenses are far less likely to occur at the Federal level.

But in an ongoing securities class action suit filed in California state court since 1995, Adobe has had to spend more than $1 million in legal expenses and has had to produce more than 44,000 pages of documents, all before the state judge is even able to entertain a motion for summary dismissal.

In fact, in an April 23rd, letter to Chairman D'AMATO, Colleen Pouliot, Adobe's General Counsel, noted that:

> There are a number of California judicial decisions which permit a plaintiff to obtain discovery for the very purpose of amending a complaint to cure its legal insufficiencies.

This one example makes clear that while Adobe, which has the resources for a costly and lengthy legal battle, might fight a meritless suit, these costs provide a powerful incentive for most companies without that kind of wherewithal to settle these suits rather than incur such expenses.

The second clear impact of the migration of class action suits to state court is that it has caused companies to continue to avoid using the safe harbor for forward looking statements that was a critical component of the '95 reform act.

In this increasingly competitive market, investors are demanding more and more information from company officials about where it thinks that the company is going, and what is likely to happen.

In fact, today we have more investors in our markets than ever before. People want more information. The safe harbor provisions which we crafted were designed to encourage companies to step forward and to tell us where they were going. Clearly, there can be some who decide it would be deceitful. In no way do we try to protect anybody who is lying or cheating in the process. We are trying to encourage companies to tell us more about where they are going so those investors can make good decisions. But what has happened as a result of this rush to State courts is that the very companies that said they need the safe harbor provisions are not writing the safe harbor provisions because they know they don't have the same protection in State court, which is where these cases are running.

So after all the encouragement of the 1995 act to have the safe harbor, companies haven't been putting it in. So investors out there trying to make decisions of where to put their hard-earned dollars don't have the benefit of that safe harbor language, which may give them a better idea in which companies to make those investments.

The California Public Employees Pension System, one of the biggest institutional investors in the Nation stated that ''forward-looking statements provide extremely valuable and relevant information to investors.''

SEC Chairman Arthur Levitt also noted the importance of such information in the marketplace in 1995:

> Our capital markets are built on the foundation of full and fair disclosure. . . . The more investors know and understand management's future plans and views, the sounder the valuation is of the company's securities and the more efficient the capital allocation process.

In recent years, the Securities and Exchange Commission, in recognition of this fact, sought to find ways to encourage companies to put such forward-looking statements into the marketplace. Congress too sought to encourage this and this effort ultimately culminated in the creation of a statutory safe harbor, so that companies need not fear a lawsuit if they did not meet their good-faith projections about future performance.

Unfortunately, the simple fact is that the fear of State court litigation is preventing companies from effectively using the safe harbor.

Again, the SEC's April 1997 study found that ''companies have been reluctant to provide significantly more forward looking disclosure than they had prior to enactment of the safe harbor.'' (p. 24); the report went on to cite the fear of State court litigation as one of the principal reasons for this failure.

Stanford Law School lecturer Michael Perino stated the case very well in a forthcoming law review article:

> If one or more states do not have similar safe harbors, then issuers face potential state court lawsuits and liability for actions that do not violate federal standards. . . . for disclosures that are . . . released to market participants nationwide, the state with the most plaintiff-favorable rules for forward looking disclosures, rather than the Federal Government, is likely to set the standard to which corporations will conform.

If the migration of cases to state court were just a temporary phenomenon, then perhaps it would be appropriate for Congress to tell these companies and their millions of investors to simply grin and bear it, that it will all be over soon.

But the SEC report contains the warning that this is no temporary trend: ''If state law provides advantages to plaintiffs in a particular case, it is reasonable to expect that plaintiffs' counsel will file suit in state court.'' The plain English translation of that is that any plaintiffs' lawyer worth his salt is going to file in state court if he feels it advantageous for his case; since most state courts do not provide the stay of discovery or a safe harbor, we're confronted with a likelihood of continued state court class actions.

While the frustration of the objectives of the 1995 Reform Act provide compelling reasons for congressional action, it is equally important to consider whether the proposition of creating a national standard of liability for nationally-traded securities makes sense in it's own right.

I certainly believe it does.

In 1996, Congress passed the ''National Securities Markets Improvement Act'' which established a precedent of national treatment for securities that are nationally-traded.

In that act, Congress clearly and explicitly recognized that our securities markets were national in scope and that requiring that the securities that trade on those national markets comply with 52 separate jurisdictional requirements both afforded little extra protection to investors and imposed unnecessarily steep costs on raising capital.

Last July, then-Securities Commissioner Steven Wallman submitted testimony to the Securities Subcommittee in which he said:

> Disparate, and shifting, state litigation procedures may expose issuers to the potential for significant liability that cannot be easily evaluated in advance, or assessed when a statement is made. At a time when we are increasingly experiencing and encouraging national and international securities offerings and listing, and expending great effort to rationalize and streamline our securities markets, this fragmentation of investor remedies potentially imposes costs that outweigh the benefits. Rather than permit or foster fragmentation of our national system of securities litigation, we should give due consideration to the benefits flowing to investors from a uniform national approach.

That is what we are trying to do with this bill.

At that same hearing, Keith Paul Bishop, then-California's top state securities regulator testified along the same lines that:

> California believes in the federal system and the primary role of the states within that system. However, California does not believe that federal standards are improper when dealing with truly national markets. California businesses, their stockholders and their employees are all hurt by inordinate burdens on national markets. Our businesses must compete in a world market and they will be disadvantaged if they must continue to contend with 51 or more litigation standards.

SEC Chairman Arthur Levitt, at his reconfirmation hearing before the Banking Committee on March 26, 1998, said that the legislation we are debating today:

> Addresses an issue that . . . deals with a certain level of irrationality. That to have to two separate standards is not unlike if you

had, in the state of Virginia, two speed limits, one for 60 miles an hour and one for 40 miles an hour. I think the havoc that would create with drivers is not dissimilar from the kind of disruption created by two separate standards [of litigation] and I have long felt that in some areas a single standard is desirable.

which is all we are trying to do here with this bill, to set one speed limit, if you will, on a national debate on trading securities and on markets. That is all, one speed limit, not two, to live up to the fact of what we tried to do with the 1995 bill.

The message from all of these sources is clear and unequivocal: A uniform, national standard of litigation is both sensible and appropriate.

The legislation under consideration today accomplishes that goal in the narrowest, most balanced way possible.

Before I discuss what the legislation will do, let me point out a few things that it won't do:

It will not affect the ability of any state agency to bring any kind of enforcement action against any player in the securities markets;

It will not affect the ability of any individual, or even a small group of individuals, to bring a suit in state court against any security, nationally traded or not;

It will not affect any suit, class action or otherwise, against penny stocks or any stock that is not traded on a national exchange.

It will not affect any suits based upon corporate disclosure to existing shareholders required by state fiduciary duty laws;

And it will not alter the national scienter requirement to prevent shareholders from bringing suits against issuers or others who act recklessly.

There has been a lot of talk about this last point, so let me address it head-on.

It is true that in 1995, Congress wrestled with the idea of trying to establish a uniform definition of recklessness; but ultimately, the 1995 Private Securities Litigation Reform Act was silent on the question of recklessness. While the act requires that plaintiffs plead ''Facts giving rise to a strong inference that the defendant acted with the requisite state of mind . . .''

The act at no point attempts to define that state of mind. Congress left that to courts to apply, just as they had been applying their definition of state of mind prior to 1995.

Unfortunately, a minority of district courts have tried to read into some of the legislative history of the reform act an intent to do away with recklessness as an actionable standard.

I believe that these decisions are erroneous and cannot be supported by either the black letter of the statute nor by any meaningful examination of the legislative history.

There are several definitions of recklessness that operate in our courts today, and some of them are looser than others. But I agree with those who believe that reckless behavior is an extreme departure from the standards of ordinary care; a departure that is so blatant that the danger it presents to investors is either known to the defendant or is so obvious that he or she must have been aware of it.

The notion that Congress would condone such behavior by closing off private lawsuits against those who fall within that definition is just ludicrous.

And if, by some process of mischance and misunderstanding, investors lost their ability to bring suits based on that kind of scienter standard, I would be the first, though certainly not the last, Senator to introduce legislation to restore that standard.

As I mentioned a moment ago, Mr. President, S.1260 is a moderate, balanced and common sense approach to establishing a uniform national standard of litigation that will end the practice of meritless class action suits being brought in state court.

This legislation keeps a very tight definition of class action and applies it's standards only to those securities that have been previously defined in law as trading on a national exchange.

That is why the Securities and Exchange Commission has stated that ''We support enactment of S. 1260;'' That is why the Clinton administration has also indicated it's support for the legislation.

In the final analysis, it is both the millions of Americans who have invested their hard-earned dollars in these nationally-traded companies and the men and women who will hold the new jobs that will be created as a result of newly available resources, whom we hope will be the real beneficiaries of the action that we take here today.

I strongly urge my colleagues to join the Securities and Exchange Commission, dozens of our colleagues, the Clinton administration, dozens of governors, state legislators and state securities regulators in supporting passage of the Securities Litigation Uniform Standards Act of 1998.

Madam President, I see my colleague.

How much time remains?

The PRESIDING OFFICER. The Senator from New York controls the time. There are 10 minutes 30 seconds remaining.

Mr. D'AMATO. I wonder if I might ask my friend and colleague. I know we are going to have some extended debate with some of the amendments. Senator GRAMM, who has worked with the Senator from Connecticut, would like to be heard, and Senator FEINGOLD has been waiting. He has an amendment that I believe is a very substantive amendment, and is one that might take hours to debate. But I believe we can dispose of it in a relatively short period of time if we were to permit the Senator to proceed.

Mr. DODD. I didn't realize how much time had already gone on. My colleague from Texas is chairman of the Securities Subcommittee and the principal author of the bill, of which I am proud to be a cosponsor.

While he is in the Chamber, let me commend and congratulate my colleague from Texas on this issue. This is a strong bipartisan bill, 14 to 4, coming out of this committee. It took a long time to go through all of this. We have had extensive hearings on it. We have listened to an awful lot of people. This is a good piece of legislation. It is needed out there, if we are going to in this day and age, with so many people wanting to get into this market, get more information to them, having a single standard here. Jobs and investors are affected when you have a handful of attorneys out there deciding they are going to act in a way that really brings great danger to our markets. And so I urge adoption of the legislation.

I yield the floor at this point.

Mr. D'AMATO. Madam President, I yield up to 3 minutes to the Senator from Texas and ask unanimous consent that Senator FEINGOLD from Wisconsin be recognized thereafter for the purposes of introducing an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Reserving my right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I certainly do not want in any way to interfere with the presentation of the amendment of the Senator from Wisconsin, but we are in a time limit where we have an hour on each side and I want to make sure that I do not lose my——

Mr. D'AMATO. It was never the Senator's intent nor would this impinge on the Senator's time. It was an effort to accommodate one of our colleagues.

Mr. BRYAN. I am happy to do that. Can we include one proviso in the proposed unanimous consent that after the Senator from Texas is allowed the time as requested by my friend, the distinguished chairman, and after the Senator from Wisconsin is recognized for purposes of an amendment, will the Senator from Nevada then be next recognized, if that would be agreeable?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. Madam President, I often find myself having to speak at length in the Chamber when I do not have the votes. On this bill, I am in the happy position that we have the votes. We are going to win. We are going to defeat all of the amendments, because we have a good bill, and we have a very broad base of support. So I have often found that when you have the votes, it is best not to speak at length.

However, as the author of the legislation, I wanted to say just a couple of things. First, I thank Chairman D'AMATO for his leadership. I want people to know that without his principal leadership on this bill, we would not be here. He was instrumental in helping

us pull the coalition together. He set a time schedule on bringing the bill before the full committee, and I thank him for his leadership.

I believe this legislation will benefit the country. I think we will create jobs, growth, and opportunity from enactment of the bill, and I think that Chairman D'AMATO IS DUE A LION'S SHARE OF THE CREDIT.

I thank Senator DODD. I don't think anybody in the Senate has a better, more cooperative ranking member than I do as chairman of the Securities Subcommittee. I thank Senator DODD for his leadership.

The bottom line on this bill is that in 1995 we sought to act to deal with the problem of economic piracy through the courts. We had found ourselves in a position where lawsuits were being filed against companies if their stock price went up, if their stock price went down, if their stock price did not change. New, emerging companies were the special targets of these lawsuits. These are the companies that had great technical ideas but did not have a whole bevy of lawyers on their payroll, and they were finding themselves basically being extorted, as people filed lawsuits that often were just boilerplate documents. These suits were so boilerplate that at times the name of the company being sued was confused in the documents filed in the court.

And so we stepped in to try to do something about it, and we passed a bill called the Private Securities Litigation Reform Act, Public Law 104–67. That legislation basically did five things. No. 1, it said that you had to have a client; that you could not have a lawyer who filed a bunch of motions representing nobody in reality and just collecting a whole bunch of money. The legislation said that there had to be genuine clients, and the client that stood the most to gain could be the lead client and had the privilege to choose the lawyer, and the lawyer had to be accountable to the people who were filing the lawsuit.

You all heard the statement that our chairman quoted, about the bragging of the lead lawyer in this area.

Are my 3 minutes up?

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. D'AMATO. I request an additional 2 minutes.

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

Mr. GRAMM. So we required that you have real people filing a real lawsuit. We also required that if you are going to file a lawsuit, you have to say specifically what the company did wrong. We further established a procedure whereby you did not have to go through this lengthy and expensive discovery process while the court was considering whether there was even enough merit in the case to proceed further with it. We also eliminated the ability to go after the people that had deep pockets, even though they had no real, substantive liability. Finally, where it was clear that the lawsuit was frivolous, we gave the judge the responsibility to require that the people who filed the lawsuit paid the legal expenses of those who found themselves pulled into court.

It was a good bill, and it is beginning to have an impact. Our problem is that in trying to circumvent it, the same people filing the same lawsuits started to move into State court. So we have written a bill that tries to set uniform national standards. It applies only to class-action suits. It applies only to stocks that are traded nationally.

It is eminently reasonable. It is clearly within the purview of the interstate commerce clause of the Constitution. This is a bill that needs to be passed. I thank everybody who has been involved in it for their leadership.

We will have a series of amendments. We voted on every one of them in committee. Every one of these amendments is aimed at killing the bill by undercutting the basic premise of the bill, which is when you are dealing with nationally traded securities, you need national standards. So I hope our colleagues will join us in the process of defeating these amendments and approving the bill.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair. I thank the manager, the Senator from New York.

AMENDMENT NO. 2394

(Purpose: To amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, national origin, age, or disability, and for other purposes)

Mr. FEINGOLD. At this point I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 2394.

Mr. FEINGOLD. 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:

At the appropriate place, add the following:

SEC. ___. CIVIL RIGHTS PROCEDURES PROTECTIONS.

(a) SHORT TITLE.—This section may be cited as the ''Civil Rights Procedures Protection Act of 1998''.

(b) AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

''SEC. 719. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(c) AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

''SEC. 16. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 795) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under section 501, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(e) AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.—Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(f) AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES.—Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

''(d) Notwithstanding any Federal law (other than a Federal law that expressly refers to this section) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim concerning making and enforcing a contract of employment under this section, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(g) AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by adding at the end the following new paragraph:

''(5) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this subsection, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(h) AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.—Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) is amended—

(1) by redesignating section 405 as section 406; and

(2) by inserting after section 404 the following new section:

''SEC. 405. EXCLUSIVITY OF REMEDIES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act or under an amendment made by this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(i) AMENDMENT TO TITLE 9, UNITED STATES CODE.—Section 14 of title 9, United States Code, is amended—

(1) by inserting ''(a)'' before ''This''; and

(2) by adding at the end the following new subsection:

''(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability.''.

(j) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to claims arising on and after the date of enactment of this Act.

Mr. FEINGOLD. Madam President, I rise today to offer an amendment, which is actually a bill I have worked on for some time, the Civil Rights Procedures Protection Act, S. 63, a measure cosponsored by Senators KENNEDY, LEAHY, and TORRICELLI.

What this legislation does is address the rapidly growing and troubling practice of employers conditioning employment or professional advancement upon their employees' willingness to submit claims of discrimination or harassment to arbitration, mandatory arbitration, rather than still having the right to pursue their claims in the courts. In other words, in too many cases employers are forcing their employees to ex ante agree to submit their civil rights claims to mandatory binding arbitration irrespective of what other remedies may exist under the laws of this Nation.

So to address this growing trend of mandatory binding arbitration, this measure, the Civil Rights Procedures Protection Act, amends seven civil rights statutes to guarantee that a civil rights plaintiff can still seek the protection of the U.S. courts. The measure ensures that an employer cannot use his or her superior bargaining power to coerce her or his employees to, in effect, capitulate to an agreement which diminishes their civil rights protection.

To be specific, this legislation affects civil rights claims brought under title VII of the Civil Rights Act of 1964, section 505 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, section 1977 of the revised statutes, the Equal Pay Act, the Family and Medical Leave Act, and the Federal Arbitration Act. In the context of the Federal Arbitration Act, the protections in this legislation are extended to claims of unlawful discrimination arising under State or local law, and other Federal laws that prohibit job discrimination.

Madam President, I want to be clear, because it is important that we promote voluntary arbitration in this country, that this is in no way intended to hinder or discourage or bar the use of arbitration on conciliation or mediation or any other form of alternative dispute resolution short of litigation resolving those claims. I think it is tremendous that we try to encourage people to voluntarily avoid litigation.

I have long been a strong proponent of voluntary forms of alternative dispute resolution. The key, however, is that, in those cases that I can support alternative dispute resolution, it is truly voluntary. That is not what we are talking about here. What is happening here is that these agreements to go to arbitration are mandatory, they are imposed upon working men and women, and they are required prior to employment or prior to a promotion.

Mandatory binding arbitration allows employers to tell all current and prospective employees, in effect, if you want to work for us, you will have to check your rights as a working American citizen at the door. Indeed, these requirements have been referred to recently as front-door contracts; that is, employers require that employees surrender certain rights right up front in order to get in the front door. Working men and women all across the country are faced with a very dubious choice, then, of either accepting these mandatory limitations of their right to redress in the face of discrimination or harassment, or being placed at risk of losing an employment opportunity or professional advancement.

As a nation that values work and deplores discrimination, I don't think we can allow this situation to continue. The way I like to describe it is, what this expects a person to do is to sign an agreement that they will not go to court even before they feel the sting of discrimination. They have to sign this deal before they even sit down to their desk and do their first work for an employer.

So, in conclusion, allow me to stress that this practice of mandatory binding arbitration should be stopped now. If people believe they are being discriminated against or sexually harassed, they should continue to retain all avenues of redress provided for by the laws of this Nation. This amendment will help restore integrity and balance in relations between hard-working employees and their employers. But I think more important, this amendment will ensure that the civil rights laws this Congress passes will continue to protect all Americans.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, I commend the Senator from Wisconsin for coming forth with this proposal. It is an amendment that he has been working on, for quite a period of time. As a matter of fact, it has been referred to the Judiciary Committee.

Having said that, I think at the very least it should have, and requires, a thorough hearing. It is important, and it is important we understand the nuances. It is important that we get the case-by-case documentation as relates to those people who have suffered as a result of this area of the law. It is an area of great concern in terms of whether or not a person has to sign an agreement—and they do now—prior to employment, that they give away or they agree that all matters will be settled by way of arbitration.

Maybe it should not be ''all matters.'' Maybe there are certain matters that no one should ever be required to forfeit. I think we should look at that, because I think there are some very real questions. If there is a question of sexual harassment, do you mean to tell me that a person in that case should have to give up his or her right to bring a claim and that it will be settled in camera, behind the scenes, by way of arbitration? And there may be other areas where, indeed, the arbitration procedure should be the methodology of resolving a dispute.

But I believe the Senator is correct, that there are some areas that really call into question whether or not a person must sign this agreement, otherwise he or she doesn't get the job. They just never get the job. They never get the promotion. So what do you think they are going to do? Of course they are going to sign. So this is serious.

I believe we have an obligation to have a thorough, thoughtful analysis, and, indeed, the Judiciary Committee may want to look at certain aspects. But I believe since, indeed, the financial services community, the banking community, the securities community has to deal with this day in and day out, the proper jurisdiction does lie before the Banking Committee.

With that in mind, I have indicated to the Senator that, before we leave, during the month of July or prior, it will be my intent to hold at least a full hearing, where witnesses to both sides, including the Securities and Exchange Commission—which I understand is studying this matter very carefully—will appear so we could have the benefit of their review, of their testimony,

of people who have written and people who have been involved in this, those who have been aggrieved as well as those who can testify to the merits of certain aspects of having arbitration in some limited cases.

But I must say for the record, I believe the Senator has touched on something that is very important and I would not like to move to table at this time. I think it would be unfair to the importance of this legislation.

With that in view, I have indicated to the Senator that I will call these hearings, so we can fully explore this and then bring it to this floor as legislation that has had the benefit of the totality of the input from the SEC, from our staffs, after listening and hearing and getting the kind of in-depth review that I know that not only I feel should take place, but that most of the members of my committee would support.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I thank the Senator from New York who, I think, has given a very sympathetic listen to what we are trying to accomplish here. This issue, in fact, emanates in large part originally from his State and from some of the practices in his State that are now becoming nationwide.

I think he has shown here, in his comments, already a keen understanding of what is involved here. Even though this issue has not been presented formally to his committee, he clearly understands that what is being requested of some of these individuals is simply unreasonable in light of American traditions of protection from discrimination and sexual harassment.

So, even though I think this bill is a very appropriate vehicle to offer this amendment, I am grateful the chairman of the Banking Committee has agreed to hold a hearing in which he will be personally involved, in which I will have the opportunity to testify, prior to the end of July, on this bill.

I look forward to being able to participate in helping to select some of the witnesses. I agree with the Senator very strongly that there are people on both sides, as well as those in the middle such as the SEC, who are seriously looking at this. This would be a useful hearing to move this issue along. I happen to be a member of the Judiciary Committee as well, so I certainly regard this as an appropriate forum as well. But I think this committee, in light of the fact these agreements started in securities firms, is a place where a hearing would be appropriate.

I also understand the Senator does not expect in any way I would be prevented from offering this to other bills at any point.

But, in light of all that and his assurances—which have always been extremely secure whenever I have dealt with him in the past, for the last 5½ years—in light of all that, I look forward to the hearing, I look forward to working with him. I hope that he can support this legislation after he has had a chance to review it.

Given all that, at this point, Madam President, I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The amendment (No. 2394) was withdrawn.

Mr. D'AMATO. I thank my colleague and tell him that we look forward to working together in a cooperative way in helping to craft a package that will address the true abuses yet maintain the importance of arbitration where it is deemed appropriate, because I think in certain cases it is absolutely appropriate and I think in others it is absolutely indefensible.

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

Mr. BRYAN. I thank the Presiding Officer.

Just to be clear, in terms of the status, the 22 minutes that are reserved to the Senators in opposition is not affected by the colloquy between my two friends from New York and Wisconsin?

The PRESIDING OFFICER. The Senator is correct.

Mr. BRYAN. Madam President, this legislation that we are debating today, as I have said on previous occasions, is somewhat arcane and esoteric. It is not the sort of thing where, for people who are at home watching this debate, it causes them to move to the edge of their chairs and to hang on every word.

It is, however, terribly important for the tens of millions of small investors who, in recent years, have invested in the future of America, and for their confidence in the market system that we have created, because they are the small investors, they are the ones who will be impacted by this legislation. The large investors, the large institutions, will still have options that heretofore the small investors have had but the small investors will be deprived of as a result of this legislation. So it is the view of the Senator from Nevada that this legislation plunges a dagger into the heart of every small investor in America.

What we are talking about is not whether a case can be brought in State court or Federal court. We are talking about a system, which currently exists, that allows a private small investor to be part of a class action, and other small investors who have been defrauded as a result of the misconduct of others, to come together and file an action in State court and to avail themselves of statutes of limitations that are longer than are available to those of us who file in Federal court to provide, for joint and several liability, the ability to recover from accomplices—particularly important if the primary offender has bankrupted himself or herself or itself or has taken leave—and to avail himself or herself of triple damages under RICO.

So this has a very practical impact. Actions that would be available to small investors at the State court level will no longer—no longer—be available to those small investors, as a practical matter. So we continue a process which alarmed my good friend, the distinguished ranking member of this committee, the distinguished Senator from Maryland, that began with the Private Securities Litigation Reform Act of 1995 and, in our view, simply goes too far.

Those of us who express strong reservations about this bill find no comfort with those who are filing strike suits, those who are involved in litigiousness for the sake of litigiousness. I believe it would be possible to craft a narrow provision that addresses the ostensible concerns that have been raised and yet not deprive small investors in this country of their rights under the law.

The system for private enforcement of remedies has existed now for more than six decades. It is a dual system involving the State courts and the Federal courts. It has worked exceptionally well. The SEC has repeatedly testified as to the importance of private rights of actions as being absolutely essential to augment their own enforcement efforts. Indeed, they have said they have not the ability nor the resources to deal with the vast panoply of investor fraud, and they view the private cause of action as essential.

Indeed, States were the first to enact these protections against fraud in the early 1900s, and when, in the mid-1930s, the statutes that essentially provided the framework for Federal securities regulation were put in place, it was expressly intended to supplement, not to supersede, to complement, not to wipe out, and the language of this legislation today specifically preempts the State cause of action for class actions. These State remedies are vitally important, and States have responded in a number of different ways by providing protections. I am going to talk about three primarily.

The statute of limitations. Why is that important? Those who perpetrate fraud on small investors don't do so openly and nakedly; they try to conceal it to protect that activity. So the unfortunate decision of the court in the Lampf decision, which limits at the Federal level the right of an investor who has been defrauded 1 year from the point of discovery of the fraud, 3 years even though the investor never becomes aware of that fraud, is viewed by the Securities Commission as unreasonable because it takes them, with all of their resources, a minimum of 3½ years.

The statute of limitation is not just an arcane debate about how long one should have, it is the ability of a small investor who has been defrauded without his knowledge and, never having learned of it within the 3-year period of time, is now precluded. Thirty-three States in this country, including my own in Nevada, provide for a longer statute of limitation. Some provide 2

years from the time of discovery of fraud, or 5 or 6 or even 10 years, and some provide no bar at all.

In the vast majority of States in America, small investors filing class actions who do not discover the fraud until after 3 years are currently, under existing law, protected in at least 33 States. This legislation cuts off that right, and even though we all agree or, as the lawyers say, stipulate to the merit of the claim, it is barred—barred—by the 3 years even though the small investor never became aware of the fraud. That is what we are talking about.

Forty-nine of the 50 States provide liability for the accomplices—those who conspired with the primary perpetrator of the fraud, whether they be lawyers, whether they be accountants, whether they be other investment advisers—to provide a cause of action—49 out of 50. Unfortunately, at the Federal level, there is no remedy for plaintiffs against aiders and abetters. So that means that if the primary offender, the perpetrator, becomes bankrupt, leaves the country, or is otherwise unable to respond in damages, historically at the State court level, the class-action plaintiffs could recover against those who conspired and aided in that fraud.

The action that we take with S. 1260 deprives small investors filing class actions from this recovery. So now, if we pass this legislation, they are precluded from moving against those who conspired and actively participated in the fraud.

Moreover, States, as a matter of providing protection to their own citizens, have provided in a number of jurisdictions for joint and several liability. That means if five or six are guilty of the fraud and only one has the ability to respond in damages, States have made the determination that as between the innocent investor, utterly blameless, that the innocent investor ought to be satisfied against the perpetrator of that fraud, even though there may have been several involved. That is wiped out.

We have, in effect, a piece of legislation before us that dramatically limits the right of a small investor to pursue a class action in State court and to avail himself or herself of a whole host of remedies which States have provided on their own.

I must say, the irony of this course of action by a Republican Congress that has proclaimed its devotion to State rights and has raged against preemption by a Congress at the Federal level of essentially State rights does not go unnoticed by this Senator.

Why are class actions important? Again, it is pretty esoteric. Think for a moment. Tens of millions of small investors who may have been victimized by a fraud don't have the ability to hire a lawyer on their own to fight against entrenched special interests who have the ability to provide legal defenses and delays and delays. That is practically no remedy at all. It is only by binding together with other investors, small investors who are similarly situated, as the law says, that those costs can be spread and a recovery can be possible.

When we say, as proponents of this legislation, ''Well, the small investor can still file in State court,'' that is true, but it is a hollow and transparent remedy because, as a practical matter, small investors simply do not have the ability to pay for the lawyer's fees and the costs that are involved in processing these kind of cases.

That was the situation that 23,000 senior citizens who joined in a class action against Charlie Keating and Lincoln Savings and Loan found themselves in a few years ago. It was a class action, and they were ultimately able to recover 65 cents on the dollar of their losses.

Had those plaintiffs been involved today with a shorter cause of action at the Federal level, with the cause of action unavailable at the State level for class actions, those plaintiffs would have not been able to recover that kind of money. The examples of these kinds of groups are not just small individuals, but they include school districts, municipalities, special improvement districts, pension funds at the State and municipal level. All of these are going to be affected by this legislation. As a practical matter, a class action provides the only realistic hope of recovery.

As I pointed out, the SEC, with all its resources, says it takes them up to 3 years to compile the data to bring these securities fraud suits. So in effect, what we are doing now is we are providing for two classes of investors: Those who have been defrauded who are people of means, of wealth, so they can hire their own lawyers, they can still file at the State court level and take advantage of the longer statute of limitations, can take advantage of the provisions that provide liability against accomplices, can take advantage against the joint and several liability protections available at the State level. But if you are a small investor—and that is what most of those who are defrauded are, small investors—that remedy is no longer available to you.

So the question arises: Why are we doing this? What is the problem? Well, frankly, to the great credit of our regulatory framework, we have the safest and the most efficient securities markets in the world.

In 1990, there were 158 IPOs, totaling $4.6 billion. In 1997, 7 years later, there were 619 IPOs, totaling $39 billion. The stock market has recently set record highs. The Dow is over 9,000. And individuals confident in these markets are pouring in $40 billion a month in mutual funds. In 1980, 1 in every 18 households in America invested in the stock market. Less than 20 years later, it is more than one in three. That is a great tribute to the security and safety of this market.

Why are we reducing the investor protections at a time when the stock market is surging and consumer confidence is growing?

Investor confidence is crucial, and it is threatened by increasing fraud. I believe it was President Kennedy who made the observation, that, ''A rising tide''—referring to the economy—''raises all boats.'' And I think that is true. But it is equally true it also hides the shoals.

Newsweek, in its October 6, 1997, edition: ''Scam Scuttling: The Bull Market is Drawing Con Artists. SEC Chairman Levitt summarized, ''In a market like this, parasites crowd in to feast on the bull's success.''

Business Week, December 15: ''Ripoff! Secret World of Chop Stocks—And How Small Investors—[and that is what we are talking about] Are Getting Fleeced.'' The article focuses on small-cap equities manipulated to enrich promotors and defraud thousands of small investors—a $10 billion-a-year business that regulators and law enforcement have barely dented.

The New York Times of November 26 of last year: ''Lessons of Boesky and Milken Go Unheeded in Fraud Case.'' In one case, 1,600 investors were swindled out of $95 million.

Yet Federal and State enforcement resources are shrinking as these fraudulent schemes are perpetrated upon the innocent small investors.

Now is not the time, I would respectfully argue, to in effect rip from the investor his or her opportunity to recover that which has been lost as a result of being victimized by fraud. Our securities markets run on trust, Madam President—on trust—not money. There will be much less trust, I fear, if this legislation occurs.

Look what has happened in countries around the world: ''Albania tries to regain control [of the Ponzi scheme].'' That can't happen in America with the system that we have created. ''Shanghai Stock Market Cited for Scandal.'' ''10,000 Stampede as Russian Stock [Market] Collapses.'' ''Scandal Besets Chinese Markets.''

My point being that we have devised a system to protect investors. And I fear, by reason of overly broad legislation, we are depriving small investors of the very opportunity to recover that which has provided the confidence in the market that has encouraged such a massive investment by small investors.

Why? We are led to believe there is a massive influx of cases that must be preempted because everybody is going to the State court to bypass the provisions of the 1995 law.

Price Waterhouse, in January of 1998, made a report, an evaluation. Forty-four State cases—44—were filed in all of 1997, a one-third decrease since 1996—I want to emphasize that, a decrease—when 66 were filed, and less than in the 3 years before the 1995 legislation. A followup Price Waterhouse study, in February, tells us 39 cases were filed.

My point being, whether it is 39 or 44, I would not argue that with my colleagues, but that is, out of 15 million cases, civil cases—not criminal, not traffic, not domestic relations—we are talking about 44 cases or 39 cases out of 15 million filed. That is a very, very small number. And although there are some problems, as has been pointed out by the proponents, none of the problems justifies the sweeping emasculation of investor protections that this legislation provides for.

Now, what are the problems specifically in the act itself?

If one believes that uniform standards are an essential public policy in the country—and, I must say, I have not been persuaded—then I think we would agree that a uniform standard that provides strong investor protections ought to be a part of that uniform standard.

Unfortunately, what we have done, in each and every case, is opted for the lowest common denominator of protection. If the statute of limitations is longer at the State level, we have preempted it and limited the statute of limitations. If the State provides for liability against those who are accomplices, we take that cause of action away from the small investor. If the State allows for joint and several recovery against each and every one of those involved in the fraud, we take that away from the small investor.

So it is my view that this is part of an ongoing process in which we have, in my judgment, left the small investor high and dry in many cases if this legislation passes.

I must say that when you look at the trend line following the 1995 legislative enactments, you can see that pattern unfold. The Lampf decision, which shocked the SEC and others, limited the statute of limitations to 1 year from the time of discovery of the fraud to 3 years. The SEC recognized that that is an unreasonable period of time. And those who argued several years ago for comprehensive reforms said, ''Look, we'll address the statute of limitations at that point.'' We tried, Madam President, in 1995 to address the statute of limitations, but we were rebuffed. Now this legislation takes the longer statute of limitations, available in 33 out of 50 States, away from those small investors.

The Supreme Court, in the Central Bank case, held that there is no ability to hold accomplices liable. We tried to provide for aider and abetter coverage. The SEC strongly supports that. We were told that when we redid the Federal securities laws that that would be included. My colleague from Maryland and I tried, and we were rebuffed in that effort.

Joint and several liability, eliminated in the 1995 act. Civil RICO, eliminated. Discovery provisions, limited. In 1996, we made a determination to divide some of the regulatory responsibility between State and Federal authorities.

In 1998, we are here with S. 1260, which I think is the coup de grace in terms of small investor protection. So I must say that I am greatly disturbed by this threat. I believe that small investors ultimately will pay the price.

It is often said that those of us who oppose this legislation must be working for those nefarious trial lawyers. Let's take a look at the groups who support the position that the senior Senator from Maryland and I take. The American Association of Retired Persons. When I attend one of their meetings, I haven't seen a single retired lawyer in attendance. The AFL-CIO, the American Federation of State County and Municipal Workers, Consumer Federation of America, Consumers Union, and many, many others, as you can see, particularly those involved with the State retirement associations, including the Public Employees Retirement System, the League of Cities, the National Association of Counties and Municipal Treasuries.

Let me read a paragraph from a letter that the able Senator from Maryland introduced, coming from the Government Finance Officers Association, the Municipal Treasurers'Association, National Association of Counties, National Association of County Treasurers, National Association of State Retirement Administrators, National Conference on Public Employee Retirement System, National League of Cities, U.S. Conference of Mayors. They raise many of the same objections that I have outlined today, as has my colleague from Maryland.

Here is their comment:

> The Private Securities Litigation Reform Act was opposed by state and local governments because the legislation did not strike an appropriate balance, and this legislation extends that mistake to state courts. As both users of debt and investors of public funds, state and local governments seek to not only reduce frivolous lawsuits but to protect state and local government investors who are defrauded in securities transactions. . . .
>
> The above organizations believe that States must be able to protect State and local government funds.

We are talking about taxpayer dollars. We are not talking about litigious plaintiffs. We are talking about pension funds, municipal State funds in which those entities have been defrauded and now will be provided much less protection to recover tax dollars—dollars belonging to each and every citizen who is a part of that group.

Let me address one final point here as we conclude this discussion. One of the concerns that has been expressed is that there is no adequate assurance that liability will continue to exist against those who are reckless in their conduct. Now, that is a standard more egregious than simple negligence, more egregious than gross negligence. We are talking about conduct that is reckless in nature.

Prior to 1995, when the Private Securities Litigation Reform Act was enacted, 11 of 13 circuits in this country had addressed the issue and had concluded that there was a cause of action for those who are guilty of reckless misconduct. The 1995 legislation, because it talked about a specific pleading standard, has created some confusion. Following the 1995 enactment, several district courts have concluded that no longer is there liability for reckless misconduct.

Now, the proponents of this legislation say that they do not intend that as a consequence. And I accept their representation. However, we have tried to get into this bill a provision crafted by the SEC defining ''reckless'' to make it absolutely sure that ''reckless'' is protected. Their response? If the courts strike down ''reckless'' we will remedy it.

I never impugn anyone's good faith, but I am a product of the experience that I have had in this legislation. We were told back in the 1990s that we would address the statute of limitation problem when we looked at comprehensive legislation to correct that. It did not occur. We were told after the Central Bank case that we will address the problem in which aiders and accomplices are no longer liable under the law. We were rejected in that effort. So I must say I find my comfort level not very high if the courts intend that. It seems to me if we are in earnest in wanting to protect that ''reckless'' standard, it is terribly important we use a definition which the SEC has provided. Let's make it part of this legislation.

I am not unmindful of the fact that this bill is a train that is leaving the station. It will pass and it will be signed into law. But it would be a tragic mistake not to make absolutely sure that ''reckless'' is included. I believe a fair reading of the 1995 legislation should not give rise to an inference that ''reckless'' has somehow been changed. I don't believe that was the intent. The authors of this legislation say it is not true, but even when we try to get it moved into the findings of the legislation, we get resistance, so I have concern.

Let me conclude by saying this is a piece of legislation which is a solution in search of a problem, overly broad and dangerous to millions of small investors in America.

I yield the floor and reserve whatever time remains.

(Mr. FAIRCLOTH assumed the chair.)

Mrs. FEINSTEIN. Mr. President, I rise today to lend my support to S. 1260, the Securities Litigation Uniform Standards Act. This legislation, introduced by Senator GRAMM and Senator DODD, is essential to my state of California, providing needed uniform national standards in securities fraud class actions.

In 1995, with my support, Congress successfully passed the Securities Litigation Reform Act. The 1995 Act provided relief to American companies hit with frivolous, or nuisance, lawsuits.

Specifically, the legislation adopted federal provisions to discourage nuisance securities lawsuits and increase the level of information provided for investors.

This is very important to my state of California, where hundreds of burdensome lawsuits are filed each and every year. More than 60% of all California high tech firms have been sued at least once. Apple Computers executives stated they expect to be sued every two years. These lawsuits levy a heavy cost on businesses who have to pay for expensive legal battles, draining company resources which might otherwise be spent on growing and improving the health of the company. Securities litigation, as several high tech executives have described, is truly ''an uncontrolled tax on innovation.''

The high-tech industry has been central to the successful economic recovery in California. As thousands of workers in the aerospace industry lost their jobs, and as the recession of the '90s stalled the economy, it was California's entrepreneurial spirit, the investment in new ideas, research and new technology which resulted in a rebounding economy.

In California, there are over 20,000 established high-tech companies. With roughly 670,000 workers, California ranks 1st in the nation in high-tech employment. To put it in another way, for every 1,000 workers in my state, 62 are high-tech. That is significant when one considers that as the 7th largest economy in the world, California supports almost every kind of industry and business known to commerce.

Start-up companies in the high-tech and biotech industries are most directly affected by securities lawsuits. These high-tech and biotech companies dedicate a large percentage of company funds for research and development. The average high tech firm invests between 16–20% of company revenues in research, with biotech firms often as high as 60%. This level of investment is integral to their business success. However, with the burden of frivolous lawsuits, California companies are not able to use their resource on developing innovative technologies and new products for the market place.

The 1995 Securities Litigation Reform moved in the right direction. However, the 1995 legislation did not address recent actions by plaintiffs to file frivolous cases in state courts. Since the passage of the 1995 legislation, suits traditionally filed in federal courts are now being placed in state courts. The current law does not protect companies from this threat.

The bill, which I have been pleased to support, will protect companies from this side-door tactic. The Securities Litigation Uniform Standards Act of 1997 establishes uniform national standards in securities fraud class action suits. It would permit a defendant, whether a company or individual, who is sued in state court to proceed into federal court. This legislation would in effect require that every large securities class action be brought into federal court.

The creation of effective national standards will make it easier to protect companies from so-called nuisance shareholder lawsuits. Specifically, the legislation would provide for the shifting of securities lawsuits filed in a state court into the more appropriate federal court, a process called ''removal.'' The removal authority would only apply for class action suits involving nationally-traded securities, such as the New York Stock Exchange. Without removal authority, these companies, whose securities are traded throughout the fifty states, could face liability under federal securities laws in fifty state courts. This widespread liability would undermine the reforms enacted in the 1995 Securities Litigation Reform Act.

Further, this legislation would prevent ''forum shopping,'' a method for nuisance lawsuits to be initiated in the most sympathetic state jurisdiction. This is a very real concern for California. According to a recent study by former Securities and Exchange Commissioner Joseph A. Grundfest, approximately 26% of litigation activity has moved from federal to state court since the passage of the 1995 law. The study elaborates:

> This increase in state court litigation is likely the result of a 'substitution effect' whereby plaintiffs' counsel file state court complaints when the underlying fact appear not to be sufficient to satisfy new, more stringent federal pleading requirements.

California is the home to one-third of the nation's biotechnology companies and medical device companies. These firms have been the source of tremendous growth. Yet these high tech firms are the very ones who face one of every four strike suits and who have had to pay hundreds of millions of dollars in settlements. National standards will address this problem effectively and fairly.

By establishing a uniform system for the movement of cases from state to federal court, Congress can limit abusive lawsuits that inhibit economic and job growth. The Securities Litigation Uniform Standards Act of 1997 will offer important protection for American companies from nuisance lawsuits.

I appreciate the efforts of the Banking Committee and the sponsors, Senator GRAMM and Senator DODD, for their work on this issue and encourage my fellow Senate colleagues to support this legislation.

Mr. JOHNSON. Mr. President, I rise today in opposition to S. 1260, the Securities Litigation Uniform Standards Act. This bill seeks to prevent states from protecting their own citizens from unscrupulous actions by a small minority in the securities industry. We must allow states to protect their own investors, and this further intrusion into states rights is unwarranted by the evidence.

Preempting state remedies now—and requiring fraud victims to seek relief solely under the federal standards promulgated in 1995—could leave investors with severely limited ability to protect themselves against fraud. We should permit the 1995 Private Securities Litigation Reform Act to be interpreted by the courts before we embark on this effort to anticipate future problems with the PSLRA that have not yet arisen. Several federal district courts have issued rulings on the 1995 law that are so restrictive that they threaten almost all private enforcement of securities law—including holding that reckless wrongdoers are no longer liable to their victims under the PSLRA.

The SEC has warned in briefs filed in these cases that such a result would essentially end private enforcement of the federal securities laws. By eliminating state remedies for fraud before knowing whether the courts will finally interpret the PSLRA in a way that provides victims with a viable means to recover their losses, S. 1260 risks not only harming innocent investors but undermining public confidence in our securities markets.

There is no need for any federal action inasmuch as there have been few state securities class actions filed since the PSLRA passed, and most have been in one state. Preemption proponents cite an imaginary ''explosion'' of state suits filed to ''circumvent'' the PSLRA in the two years since its enactment. But the mere handful of state securities class actions filed in 1997—only 44 nationwide—represents a one-third decrease since 1996 and is less than in the three years before the PSLRA was passed. It also is an infinitesimally small percentage of the roughly 15 million civil cases filed in state courts each year. No state other than California has had more than seven securities class actions filed in the two years since enactment of the PSLRA. Given these small numbers, there is no reason why states should not be left free to decide how best to protect their own citizens from fraud.

State laws against securities fraud are part of a dual enforcement system that has served the country exceptionally well since the Depression. States enacted protections against financial schemes in the early 1900s. Congress passed federal securities laws in 1933 and 1934 to complement—not replace—state laws and to stop abuses that caused the 1929 crash. Many states have chosen to provide more expansive investor protections than federal law currently provides—through accountability for aiders and abettors, realistic time limits for filing a fraud claim, and the ability to recover fully from professionals who help perpetrate frauds (like lawyers and accountants) when the main wrongdoer is bankrupt, in jail, or has fled the country. For example, according to the SEC, 49 of the 50 states provide liability for aiders and abettors now unavailable under federal law and 33 states provide longer statutes of limitations for securities fraud actions than current federal law. S. 1260 would

take away these important state remedies.

This effort has been underway virtually since the PSLRA passed. It is not based on the new realities created by the PSLRA, but rather to eliminate another form of protection for investors. The SEC has repeatedly expressed concern that federal legislation to preempt state laws is premature. In an April 1997 letter to the President forwarding a lengthy SEC report on the operation of the PSLRA, Chairman Arthur Levitt stated, ''The Commission endorses the ultimate conclusion of this report: it is too early to assess with great confidence many important effects of the [PSLRA] and therefore, on this basis, it is premature to propose legislative changes. . . The one-year time frame has not allowed for sufficient practical experience with the Reform Act's provisions, or for many court decisions (particularly appellate court decisions) interpreting those provisions.'' The SEC reiterated this view in October 1997 testimony before both the House and Senate and has specifically criticized the pending preemption legislation, stating that it ''would deprive investors of important protections.'' SEC Commissioner Norman Johnson, a Republican, has been especially critical: ''Given the possible adverse affect on investor confidence, as well as the long history of effective and concurrent federal and state securities regulation, and the strong federalism concerns raised by preemption . . . extreme caution should be exercised before state courthouse doors are closed to small investors through the preclusion of state class actions for securities fraud.'' While three of the five SEC Commissioners no longer oppose S. 1260, there has been no change in any of the underlying facts that led to the SEC's earlier report and testimony. Commissioner JOHNSON continues to oppose S. 1260.

With more and more Americans participating in the stock market boom, it is more imperative that we maintain these investor protections, not weaken them. According to a front-page article in the November 30, 1997, New York Times, ''Investment Fraud Is Soaring Along with the Stock Market.'' This was only one in a long line of recent articles reporting on widespread fraud in the financial markets—a fact acknowledged by federal and state enforcement officials nationwide. The National White Collar Crime Center reports that corporate financial crime costs $565 billion annually, nearly 12 times the amount of street crime. The New York Attorney General has reported that investor complaints have risen 40% per year in the past two years; the U.S. Attorney in New York City has stated that she has witnessed an ''explosion'' of securities fraud; and the mob has now infiltrated Wall Street. Yet, federal and state enforcement resources are shrinking. As SEC Chairman Levitt observed in December 1997: ''In a market like this, parasites crowd in to feast on the bull's success.'' In light of all this, Congress should strengthen, not weaken, existing deterrents.

This premption of state law is opposed by a broad coalition, including the American Association of Retired Persons; American Federation of State County and Municipal Workers; Consumer Federation of America; Consumers Union; Gray Panthers; Government Finance Officers Association; Municipal Treasurers' Association; National League of Cities; National Association of Counties; National Association of County Treasurers and Finance Officers and many, many others.

Mr. President, I urge my colleagues to join me in opposing this unnecessary and unwarranted federal intrusion into what should appropriately be state law.

Mr. DODD. Mr. President, S. 1260, the Securities Litigation Uniform Standards Act of 1998, is intended to create a uniform national standard for securities fraud class actions involving nationally-traded securities. In advocating enactment of uniform national standards for such actions, I firmly believe that the national standards must be fair ones that adequately protect investors. I hope that Senator D'AMATO, one of the architects of the Banking Committee's substitute, would engage in a colloquy with me on this point?

Mr. D'AMATO. I would be happy to.

Mr. DODD. At a hearing on S. 1260 last October, the Securities and Exchange Commission (SEC) voiced concern over some recent federal district court decisions on the state of mind—or scienter—requirement for pleading fraud was adopted in the Private Securities Litigation Reform Act of 1995 ('95 Reform Act or PSLRA). According to the SEC, some federal district courts have concluded that the '96 Reform Act adopted a pleading standard that was more rigorous than the Second Court's, which, at the time of enactment of the PSLRA, had the toughest pleading standards in the nation. Some of these courts have also suggested that the 95 Reform Act changed not only the pleading standard but also the standard for proving the scienter requirement. At the time we enacted the PSLRA, every federal court of appeals in the nation—ten in number—concluded that the scienter requirement could be met by proof of recklessness.

Mr. D'AMATO. I am sympathetic to the SEC's concerns. In acting now to establish uniform national standards, it is important that we make clear our understanding of the standards created by the '95 Reform Act because those are the standards that will apply if S. 1260 is enacted into law. My clear intent in 1995, and my understanding today, is that the PSLRA did not in any way alter the scienter standard in federal securities fraud lawsuits. The '95 Reform Act requires plaintiffs, and I quote, ''to the state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'' The '95 Reform Act makes no attempt to alter or define that state of mind. In addition, it was my intent in 1995, and it is my understanding today, that the '95 Reform Act adopted the pleading standard applied in the Second Circuit.

Mr. DODD. I agree with the comments of my colleague from New York. I too, did not intend for the PSLRA to alter the state of mind requirement in securities fraud lawsuits or to adopt a pleading standard more stringent than that of the Second Circuit. In fact, I specifically stated during the legislative debates preceding and following the President's veto that the '95 Reform Act adopted the Second Circuit's pleading standard. This continues to be my understanding and intent today. Ensuring that the scienter standard includes reckless misconduct is critical to investor protection. Creating a higher scienter standard would lessen the incentives for issuers of securities to conduct a full inquiry into potentially troublesome areas and could therefore damage the disclosure process that has made our markets a model for other nations. The U.S. securities markets are the envy of the world precisely because investors at home and abroad have enormous confidence in the way our markets operate. Altering the scienter standard in the way envisioned by some of these district court decisions could be very damaging to that confidence.

Mr. D'AMATO. My friend from Connecticut is correct. The federal securities laws must include a scienter requirement that adequately protects investors. I was surprised and dismayed to learn that some district court decisions had not followed the clear language of the '95 Reform Act, which is the basis upon which the uniform national standard in today's legislation will be created.

Mr. DODD. It appears that these district courts have misread the language of the '95 Reform Act's ''Statement of Managers.'' As I made clear in the legislative debate following the President's veto, however, the disputed language in the Statement of Managers was simply meant to explain that the Conference Committee omitted the Specter amendment because that amendment did not adequately reflect existing Second Circuit caselaw on the pleading standard. I can only hope that when the issue reaches the federal courts of appeals, these courts will undertake a more thorough review of the legislative history and correct these decisions. While I trust that the courts will ultimately honor Congress' clear intent, should the Supreme Court eventually find that recklessness no longer suffices to meet the scienter standard, it is my intent to introduce legislation that would explicitly restore recklessness as the pleading and liability standard for federal securities fraud lawsuits. I imagine that I would not be alone in this endeavor, and I ask my good friend from New York whether he would join me in introducing such legislation?

Mr. D'AMATO. I say to the Senator from Connecticut that I would be pleased to work with him to introduce such legislation under those circumstances. I agree that investors must be allowed a means to recover losses caused by reckless misconduct. Should the court deprive investors of this important protection, such legislation would be in order.

Mr. DODD. I want to thank the Senator from New York, the Chairman of the Banking Committee, for his leadership on this bill and for engaging in this colloquy with me. In proceeding to create uniform national standards while some issues concerning the '95 Reform Act are still being decided by the courts, we must act based on what we intended and understand the '95 Reform Act to mean. As a sponsor of both the Senate bill that became the '95 Reform Act and the bill, S. 1260, that we are debating today, I am glad that we have had this opportunity to clarify how the PSLRA's pleading standards will function as the uniform national standards to be created in S. 1260, the Securities Litigation Uniform Standards Act of 1998.

Mr. REID. Mr. President, in 1995, we passed the Private Securities Litigation Reform Act or PSLRA, as it became known. Our intent was to prevent abusive filings by a group of trial attorneys who were using a loophole in our laws. These lawsuits were often entirely without merit and really amounted to strong-arm efforts to get money out of small start-up companies. Our legislation was aimed at putting an end to these strike suits and to a large extent it has succeeded.

Many of these companies could take the capital they were expending on litigation and settlement costs and invest in research in development. They could provide greater returns to their shareholders. They could create more jobs.

Unfortunately, the small group of attorneys who were involved in this loophole found another way to get their frivolous strike suits heard in court. They shifted their efforts to state courts.

The SEC has noted this development saying that this ''apparent shift to state court may be the most significant development in securities litigation'' since the '95 legislation was enacted. Before the '95 Act, few, if any, securities class actions were filed in state court. Since it's enactment, the number of state claims has exploded.

A study by Price Waterhouse found that the average number of state court securities class actions filed in 1996 grew 355 percent over the 1991–1995 average. In 1997, filings were 150 percent greater than the 1991–1995 average. While the number of state court filings dropped slightly in 1997 compared to 1996 it is believed this is due to a strategic desire by plaintiffs' lawyers to undercut the underlying legislation.

According to Stanford Law School official Michael Perino:

> It is possible that plaintiffs' attorneys may simply have strategically chosen not to pursue a significant number of state cases in order to decrease the apparent necessity for Congress to pass a federal preemption statute. Past experience * * * indicates that plaintiffs respond strategically to legislative initiatives that might alter the costs and benefits of securities litigation.

The State court litigation is a loophole around the PSLRA. This is undermining the bipartisan efforts we made in passing the PSLRA to give companies the ability to disclose more information to investors without the fear of being sued. But the threat of being sued in 50 states chills the disclosure of company information to investors.

People are understandably reluctant to make disclosures under the Federal law's ''safe harbor'' provision when their statements can be used against them in state court. According to the SEC, fear of state court liability for forward looking statements was inhibiting the use of the PSLRA's safe harbor.

The time to act on this is now. Delay undermines one of the main policy goals of the PSLRA—greater information flow to investors. Delays will cause a proliferation of litigation in state courts. Delay forces all parties to spend millions of dollars arguing about matters that uniform standards legislation can put to rest.

As time goes on, states will reach different legislative and judicial results—this just furthers the confusion. As President Clinton wrote last year, ''the proliferation of multiple and inconsistent standards could undermine national law.''

We need to prevent this confusion by putting a stop to this end run around Congress. A patchwork system of securities laws undermines America's capital markets. Capital formation is inhibited by overlapping the duplicative legal rules governing securities litigation. Uniform standards legislation ensures that purchasers and sellers of nationally traded securities have similar remedies in securities lawsuits regardless of their state of residence.

It is time to close this loophole and put an end to this high priced extortion that seems to be benefitting only a few trial attorneys.

Mr. LIEBERMAN. Mr. President, I rise today to say a few brief words of support for the bill we are now considering, the Securities Litigation Uniform Standards Act of 1998. I was an original co-sponsor of this important legislation. Through its passage, we in Congress can continue to send the strong message to the nation's securities markets and the country's investors that we first articulated in 1995 with the enactment of the Private Securities Litigation Reform Act: we will not let frivolous lawsuits disrupt our nation's securities markets, devalue our citizens' investments or cut off the free flow of information we all need to make reasoned and well-informed investment decisions.

I was a proud supporter of the 1995 Act, which restored some rationality and common sense to the laws regulating federal securities litigation. That bill set specific standards for federal private class actions alleging securities fraud, so that those deserving of compensation received it, while those seeking only to profit from the filing of an abusive suit did not. Unfortunately, in the wake of that Act, some enterprising plaintiffs' attorneys have turned to State courts to file abusive suits. Through these State court actions, plaintiffs' attorneys have effectively circumvented the reforms the 1995 Act put in place, reforms we in Congress overwhelmingly embraced in the 1995 Act.

Were the regulation of nationally traded securities a matter of purely local concern, I might agree with those who see nothing wrong with this phenomenon—who argue that each State should be free to set for itself the laws governing actions in its courts. But we clearly are not dealing here with something of only local concern. To the contrary, the securities governed by this bill—and it is important to emphasize this point—are by definition trading on national exchanges. As we all know, securities traded on national exchanges are bought and sold by investors in every State, and those investors rely on information distributed on a national basis. It simply makes no sense to open those who make statements about national securities on a national basis to class actions brought under 50 separate State regulatory regimes—not if we want efficient and well-functioning securities markets, that is. In short, not only is a uniform standard appropriate in this case; it provides perhaps the quintessential example of something that should be subject to one set of standards nationwide.

For this reason, it is not surprising that this bill has the support, not only of a significant portion of the Congress, but also of both the SEC and the Administration. As someone involved for many years in efforts to reform our nation's litigation system, I can say with confidence that the fact that both the SEC and the Administration support this bill speaks volumes to the merits of this bill.

Let me close, Mr. President, by thanking the principal sponsors of this bill, particularly Senators DODD, D'AMATO, GRAMM and DOMENICI. They have worked hard to accommodate all legitimate concerns raised about this bill, working particularly closely with both the SEC and the Administration, and making significant changes to the bill as it moved to the floor. I join with them in urging my colleagues to pass this important legislation today.

Mr. WELLSTONE. Mr. President, I rise today to oppose S. 1260, the ''Securities Litigation Uniform Standards Act of 1997.''

Mr. President, we are considering legislation that would risk imperiling the financial security of those individuals most susceptible to fraud. The American Association of Retired Persons opposes this legislation based on

the bill's anti-investment character and the heightened dependence of senior citizens on investment. I find it very odd that in a time when the stock market is doing so well that some of my colleagues are considering exposing Social Security to the vagaries of the booms and busts of Wall Street, we are preventing the states from protecting their citizens from securities fraud. In a time when more Americans are relying on investments for financial security—especially retirees—we are rolling back protections.

Many states, my own included, have laws which provide for increased penalties for fraud perpetrated against Seniors and the disabled—the Minnesota statute mentions securities specifically—and Congress has always given the states great leeway in protecting their consumers. In Minnesota, there is an additional civil penalty of $10,000 for each violation where deceptive trade practices, false advertising, or consumer fraud are perpetrated against elderly and disabled persons.

Not only are seniors and the disabled at great risk for fraud, they are increasingly becoming investors and they are least able to recoup the income lost. It is devastating for anyone to lose their life savings through a lie, to have their pension wiped out, but for Americans on a fixed income—it will destroy them, Mr. President.

I cannot support this legislation. It is bad for investors, it is terrible for seniors and the disabled, and it addresses a problem which does not exist at the expense of consumers.

I urge its rejection.

Mr. REED. Mr. President, as a supporter of the Private Securities Litigation Reform Act of 1995 I am pleased to support S. 1260, the Securities Litigation Uniform Standards Act of 1998.

The bill will create a uniform standard for securities class action lawsuits against corporations listed on the three largest national exchanges.

Class action suits are frequently the only financially feasible means for small investors to recover damages.

Yet, such lawsuits have also been subject to abuse, draining resources from corporations while inadequately representing the interests of investor plaintiffs.

Mr. President, in 1995, I voted to curtail such abusive litigation. It was obvious then that some class action suits were being filed after a precipitous drop in the value of a corporation's stock, without citing specific evidence of fraud.

These lawsuits inflict substantial costs upon corporations, harming the business and its shareholders. Unfortunately, since passage of federal procedures protecting corporations from such suits there has been some attempt by class action plaintiffs to circumvent these safeguards by filing similar lawsuits in state courts.

Mr. President, this Act will preempt this circumvention, creating a national standard for class action suits involving nationally traded securities. I favor this legislation because it recognizes the national nature of our securities markets, provides for more efficient capital formation, and protects investors.

However, Mr. President, it is essential to recognize that preemption marks a significant change concerning the obligations of Congress.

When federal legislation was enacted to combat securities fraud in 1933 and 1934, federal law augmented existing state statutes. States were free to provide greater protections from fraud to their citizens, and many have.

The Chairman of the Securities and Exchange Commission has testified concerning the traditional system by which securities have been regulated: through both public and private lawsuits in both state and federal courts.

Many of my colleagues voted for the 1995 legislation knowing that if federal standards failed to provide adequate investor protections, state suits would provide a necessary backup.

With passage of this legislation, my colleagues and I have now accepted full and sole responsibility to ensure that fraud standards allow victimized investors to recoup lost funds.

Only a meaningful right of action against those that defraud guarantees investor confidence in our national markets.

A uniform national standard concerning fraud provides no benefit to markets if issuers can, with impunity, fail to ensure that consumers receive truthful, complete information on which to base investment decisions.

Specifically, my support rests on the presumption that the liability standard was not altered by either the 1995 Act or this legislation.

I strongly endorse the Report which accompanies this legislation, which states clearly that nothing in the 1995 legislation changed either the scienter standard or the previous pleading standards associated with the most stringent rules, those of the Second Circuit.

The reason such standards were not changed in 1995 is that they are essential to providing adequate investor protection from fraud.

I have been deeply troubled by the ruling of several federal district courts which, ignoring the clear legislative history of the 1995 Act, have either changed the requirements of scienter in a fraud case or have invalidated the proper pleading standard for a 10b-5 action.

Mr. President, let me be clear: nothing in the act addressed the scienter standard: which has quite rightly been held by every Circuit to rule on the issue to include recklessness.

With regard to proper pleadings: the PSLRA requires plaintiffs to plead specific facts ''giving rise to a strong inference'' that the defendants acted with the required state of mind. Prior to the 1995 legislation, some circuit courts allowed scienter to be averred generally. However, the PSLRA's heightened standard was specifically linked to the most stringent pleading standard at the time, that of the Second Circuit. That standard allows a plaintiff to establish a case by either pleading motive and opportunity or recklessness.

Mr. President, I believe that SEC Chairman Levitt, who has a lifetime of experience as both an investor and regulator of markets, has been the most articulate concerning the need for a recklessness standard concerning the scienter requirement.

In October 21, 1997 testimony before the Subcommittee on Finance and Hazardous Materials of the House's Committee on Commerce, Chairman Levitt said:

> In my judgment, eliminating recklessness from the securities anti-fraud laws would be tantamount to eliminating manslaughter from the criminal laws. It would be like saying you have to prove intentional murder or the defendants gets off scot free. . . . If we were to lose the reckless standard, in my judgement, we would leave substantial numbers of the investing public naked to attacks by fraudsters and schemers.

In testimony before the Banking Subcommittee Chair by Senator GRAMM, on October 29, 1997, Chairman Levitt further articulated his position regarding the impact a loss of recklessness would have. He said:

> A uniform federal standard that did not include recklessness as a basis for liability would jeopardize the integrity of the securities markets, and would deal a crippling blow to defrauded investors with meritorious claims. A higher scienter standard would lessen the incentives for corporations to conduct a full inquiry into potentially troublesome or embarrassing areas, and thus would threaten the disclosure process that has made our markets a model for nations around the world.

I think the danger that a loss of recklessness posses to our citizens and our markets is clear.

Mr. President, equally important is a pleading standard that allows victimized investors to recover their losses. The reason for allowing a plaintiff to establish scienter through a pleading of motive and opportunity or recklessness is clear. As one New York Federal District Court has stated, ''a plaintiff realistically cannot be expected to plead a defendant's actual state of mind.''

Since the 1995 Act allows for a stay of discovery pending a defendant's motion to dismiss, requiring a plaintiff to establish actual knowledge of fraud or an intent to defraud in a complaint raises the bar far higher than most legitimately defrauded investors can meet.

The SEC has been clear on this point and it has been well recognized by the supporters of both the 1995 and 1998 Acts that neither changed the preexisting standards.

Mr. President, I am pleased that the Chairman of the Committee and the Ranking Member of the Subcommittee, a prime sponsor of this legislation, have today articulated their belief that including reckless behavior in the definition of fraud is essential to the protection of our markets. I join them in

their pledge to sponsor legislation should such protections be threatened.

As a result, the legislative history of both bills well establishes that the scienter standard, as well as the pleading standard of the Second Circuit Court of Appeals, remains totally intact. Therefore, it is now clear that federal district court rulings that have held otherwise are clearly in error.

Mr. President, I ask unanimous consent to have printed in the RECORD an analysis, preformed for me by the staff of the SEC, of cases adjudicated under the 1995 Act.

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

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 20, 1998.

TED LONG,
Legislative Counsel, Offices of Senator Jack Reed, Hart Senate Office Building, Washington, DC.

DEAR MR. LONG: The attached responds to your request for staff technical assistance with respect to S. 1260, the ''Securities Litigation Uniform Standards Act of 1997.'' This technical assistance is the work of the staff of the Securities and Exchange Commission; the Securities and Exchange Commission itself expresses no views on this assistance.

I hope the attached is responsive to your request.

Sincerely,

RICHARD H. WALKER,
General Counsel.

Attachment.

PLEADING STANDARD SCORECARD

(As of April 17, 1998)

I. Cases Applying the Second Circuit Pleading Standard:

1. City of Painesville v. First Montauk Financial Corp., 1998 WL 59358 (N.D. Ohio Feb. 8, 1998).
2. Epstein v. Itron, Inc., No. CS–97–214 (RHW), 1998 WL 54944 (E.D. Wash. Jan. 22, 1998).
3. In re Wellcare Mgmt. Group, Inc. Sec. Lit., 964 F. Supp. 632 (N.D.N.Y. 1997).
4. In re FAC Realty Sec. Lit., 1997 WL 810511 (E.D.N.C. Nov. 5, 1997).
5. Page v. Derrickson, No. 96–842–CIV–T–17C, 1997 U.S. Dist. LEXIS 3673 (M.D. Fla. Mar. 25, 1997).
6. Weikel v. Tower Semiconductor Ltd., No. 96–3711 (D.N.J. Oct. 2, 1997).
7. Gilford Ptnrs. L.P. v. Sensormatic Elec. Corp., 1997 WL 757495 (N.D. Ill. Nov. 24, 1997).
8. Galaxy Inv. Fund, Ltd. v. Fenchurch Capital Management, Ltd., 1997 U.S. Dist. LEXIS 13207 (N.D. Ill. Aug. 29, 1997).
9. Pilarczyk v. Morrison Knudsen Corp., 965 F. Supp. 311, 320 (N.D.N.Y. 1997).
10. OnBank & Trust Co. v. FDIC, 967 F. Supp. 81, 88 & n.4 (W.D.N.Y. 1997).
11. Fugman v. Aprogenex, Inc., 961 F. Supp. 1190, 1195 (N.D. Ill. 1997).
12. Shahzad v. H.J. Meyers & Co., Inc., No. 95 Civ. 6196 (DAB), 1997 U.S. Dist. LEXIS 1128 (S.D.N.Y. Feb. 6, 1997).
13. Rehm v. Eagle Fin. Corp., 954 F. Supp. 1246, 1252 (N.D. Ill. 1997).
14. In re Health Management Inc., 970 F. Supp. 192, 201 (E.D.N.Y. 1997).
15. Marksman Partners, L.P. v. Chantal Pharmaceutical Corp., 927 F. Supp. 1297, 1309–10, 1309 n.9 (C.D. Cal. 1996).
16. Fischler v. AmSouth Bancorporation, 1996 U.S. Dist. LEXIS 17670 (M.D. Fla. Nov. 14, 1996).
17. STI Classic Fund v. Bollinger Industries, Inc., No. CA 3:96–CV–0823–R, 1996 WL 866699 (N.D. Tex. Nov. 12, 1996).
18. Zeid v. Kimberley, 930 F. Supp. 431 (N.D. Cal. 1996).

II. Cases Applying a Stricter Pleading Standard than the Second Circuit:

A. Cases Holding that Motive and Opportunity and Recklessness do not Meet Pleading Standard.

1. Mark v. Fleming Cos., Inc., No. CIV–96–0506–M (W.D. Okla. Mar. 27, 1998).
2. In re Silicon Graphics Sec. Lit., 970 F. Supp. 746 (N.D. Cal. 1997).
3. In re Comshare, Inc. Sec. Litig., Case No. 96–73711–DT, 1997 U.S. Dist. LEXIS 17262 (E.D. Mich. Sept. 18, 1997).
4. Voit v. Wonderware Corp., No. 96–CV. 7883, 1997 U.S. Dist. LEXIS 13856 (E.D. Pa. Sept. 8, 1997).
5. Powers v. Eichen, No. 96–1431–B (AJB), 1997 U.S. Dist. LEXIS 11074 (S.D. Cal. Mar. 13, 1997).
6. Norwood Venture Corp. v. Converse Inc., 959 F. Supp. 205, 208 (S.D.N.Y. 1997).
7. Friedberg v. Discreet Logic, Inc., 959 F. Supp. 42, 48–49 (D. Mass. 1997).
8. In re Glenayre Technologies, Inc., 1997 WL 691425 (S.D.N.Y. Nov. 5, 1997).
9. Havenick v. Network Express, Inc., 1997 WL 626539 (E.D. Mich. Sep. 30, 1997).
10. Chan v. Orthologic Corp., et al., No. CIV–96–1514–PHX–RCB (D. Ariz. Feb. 5, 1998) (dicta).

B. Cases Holding only that Motive and Opportunity do not Meet Reform Act's Pleading Standard:

1. Novak v. Kasaks, No. 96 Civ. 3073 (AGS), 1998 WL 107033 (S.D.N.Y. Mar. 10, 1998).
2. Myles v. MidCom Communications, Inc, No. C96–614D (W.D. Wash. Nov. 19, 1996).
3. In re Baesa Securities Litig., 969 F. Supp. 238 (S.D.N.Y. 1997).
4. Press v. Quick & Reilly Group, Inc., No. 96 Civ. 4278 (RPP), 1997 U.S. Dist. LEXIS 11609, at *5 (S.D.N.Y. Aug. 8, 1997).

III. Examples of Cases with Language Questioning Recklessness as a Basis of Liability (All Cases Previously Listed Above):

1. In re Silicon Graphics Sec. Lit., 970 F. Supp. 746 (N.D. Cal. 1997).
2. Friedberg v. Discreet Logic, Inc., 959 F. Supp. 42, 49 n.2 (D. Mass. 1997).
3. Norwood Venture Corp. v. Converse Inc., 959 F. Supp. 205, 208 (S.D.N.Y. 1997).

Mr. REED. Mr. President, as this legislation makes clear, those rulings that reject the reckless standard, or the Second Circuit's pleading standard are clearly wrong and a threat to the security of our markets.

Mr. President, with assurances that proper protections for investors will remain in place, I am pleased to support the 1998 Act, thus moving toward an efficient, national uniform standard for securities class action lawsuits.

I trust that higher courts will adhere to current principles of legislative history and case law to rule that the pleading and scienter standards continue to protect investors and that we will remain true to our commitment and fix any error.

Additionally, as expressed in votes during the mark-up of this legislation, I am concerned that the definition of class action, as currently included in the bill, is too broad.

Specifically, by defining a class as those whose claims have been consolidated by a state court judge, the bill infringes upon the rights of individual investors to bring suit; a situation sponsors have sought to avoid. I hope that this issue can be resolved today on the floor.

Finally, I have appreciated the expert analysis that the Chair, Commissioners, and staff of the Securities and Exchange Commission have provided on this issue. I thank them for their assistance.

Ms. MIKULSKI. Mr. President, I rise to support the Securities Litigation Uniform Standards Act. I supported the 1995 Private Securities Litigation Reform Act for three reasons: to stop the bounty hunters, to put the person who had lost the most money in charge of class action suits, and to penalize people who commit fraud.

I have been very disturbed and disappointed to hear from many Maryland biotechnology and high technology companies that the 1995 reforms are being circumvented and, that in some respects, nothing has changed.

Why has nothing changed even though we enacted those important reforms? Because some have refused to accept the law of the land. Rather than abide by congressional efforts to protect small companies that create jobs and help to maintain our robust economy, a small group of specialized lawyers have simply shifted their filings to state courts.

Enacting this uniform standards legislation would close this loophole and enable Congress to finish the job of eliminating abusive securities litigation that hampers and harms our economic future

Uniform standards would only involve class action suits with at least 50 plaintiffs involving nationally traded securities. These claims were rarely filed in state courts until federal reform became law in December 1995.

This exposure of national companies and their shareholders to lawsuits by 50 different sets of rules amounts to a balkanization of securities law that boosts legal fees, distracts companies from creating jobs, and erodes the value of shareholder investments.

I have heard from Maryland CPAs, venture capitalists, and Maryland companies along the I–270 High-Tech Highway that these uniform standards are needed.

I believe that much of our economic future is in new and developing industries such as high technology and biotechnology. New, high-tech jobs are created only when companies generate capital to allow them to move into new fields. Without a balanced and uniform legal system free of loopholes, these companies must spend too much on frivolous litigation and not enough on investments to generate jobs.

Mr. President, this legislation is about perfecting the important reforms we passed in 1995 to protect our emerging industries as they strive to innovate and create jobs. Promoting job creation is one of my economic principles, and I am pleased to support this legislation today.

Mr. HATCH. Mr. President, I rise today to speak about S. 1260, the Securities Litigation Uniform Standards Act of 1998. I am pleased that this bill

is being acted upon today. Enactment of this bill will implement the underlying purpose of the Private Securities Litigation Reform Act of 1995 by establishing uniform standards governing private securities litigation.

The Private Securities Litigation Reform Act of 1995 provided a ''safe harbor'' for forward-looking statements in order to encourage companies to make voluntary disclosures regarding future business developments. This objective was important to provide an environment in which companies could provide more information to potential investors without undue risk of litigation.

Since passage of the 1995 Act, however, actions are often filed in state courts in order to circumvent these very protections. The resulting threat of frivolous lawsuits and liability under state law discourages corporate disclosure of forward-looking information to investors, eroding investor protection and jeopardizing the capital markets that are so important to the productivity of the fast-growing sectors of our economy.

Uniform liability standards eliminate this threat and the drag on our economy which it causes. The enactment of this bill will, I believe, be a great impetus for new businesses, especially those in the rapidly growing high-tech and bio-tech fields of our economy. This bill thereby creates a business atmosphere that encourages, rather than inhibits economic growth.

I hope my colleagues will join me in supporting passage of S. 1260, the Securities Litigation Uniform Standards Act of 1968.

Mr. GRAMS. Mr. President, I rise in strong support of S. 1260, the Securities Litigation Uniform Standards Act, which is necessary to preserve the intent of the Public Securities Litigation Reform Act of 1995. This bipartisan legislation is narrowly drafted to correct an unexpected consequence of the Public Securities Litigation Reform Act and is supported by the White House and the Securities and Exchange Commission (SEC).

Following enactment of the 1995 Act, it became apparent that trial lawyers were up to their old tricks by circumventing the intent of the law by bringing frivolous class action law suits in state courts, rather than in Federal court. Although brought in a different forum, this action yields the same result—namely raising the cost to investors, workers, and customers. As a member of the conference committee on the 1995 Act, I can assure you that this is not the intent of Congress.

As its name implies, S. 1260 preserves the 1995 Act by establishing uniform standards governing private class actions involving nationally traded securities. This bill does not interfere with the ability to bring criminal suits in state courts or for individuals to seek relief in state courts. Rather, this Act simply requires that class action lawsuits against nationally traded securities be filed in Federal court.

I urge my colleagues to support this legislation and hope that it will be approved expeditiously so as to preserve the intent of the 1995 Act.

Mr. KERRY. Mr. President, I would like to thank the Senators DODD and GRAMM for their work in bringing this legislation before us today. I support this effort to reestablish the reasonable limitations the Congress established in 1995 with respect to class action lawsuits alleging the commission of securities fraud in connection with the purchase or sale of a covered security. This was a warranted and important step, and the efforts to effectively nullify it by bringing such suits in state courts must be halted, which this legislation does by requiring all class action suits of this type be brought in federal courts.

While fraudulent actions by a company's management can destroy an individual investor's retirement nest egg, a frivolous suit filed against a start-up high-technology company can stop that business dead in its tracks. We need to protect the rights and interests of both shareholders and entrepreneurs. Although no law can do that perfectly, I believe this legislation will bring us as close as possible to the correct balance.

The high technology sector has played an important part in the economic development of Massachusetts and the nation. This sector, which has been the most frequent target of securities strike suits, is critical to our future economic growth and the creation of highly skilled, family-wage jobs. Frivolous strike suits have had a chilling effect on start-up high-technology, biotechnology, and other growth businesses.

After the growth of frivolous strike suits during the first part of this decade, passage of the Securities Litigation Reform Act in 1995 was successful to a large degree in limiting strike suits in federal court. But litigants are too often circumvented its impediments to frivolous lawsuits by bringing actions in state court, reinvigorating the threat to emerging companies.

The Securities Litigation Reform Act's limits on discovery fishing expeditions, until a court rules on the merits of a case, does not apply in state court, and plaintiffs have begun to file state lawsuits in order to gain access to important company information—too often this has permitted ''fishing expeditions'' into corporate files to try to find evidence of fraud. Actions such as these frustrate the intent of the reform law. Moving these cases to federal court should eliminate these meritless ''fishing expeditions.''

Strike suits in state courts also have had a chilling effect on the number of companies which have released forward-looking statements on earnings. Companies fear that if the information on earnings that they release proves to be inaccurate, they will be held liable in state court. The lack of accurate, forward-looking information on companies makes it more difficult for investors to make informed judgments about their future. Reducing suits to those that can meet federal court standards should give these companies the confidence to release voluntarily their future earnings estimates, which should increase the efficiency of capital and reduce future stock volatility in our markets.

Finally, the Securities Litigation Reform Act included important provisions which restrict the use of ''professional plaintiffs,'' eliminate bounty payments, limit attorneys' fees, assure class action lawsuit members receive notice of settlement terms, and restrict secret agreements under seal. None of these protections is available for class action suits brought in state courts.

Moving all class action securities lawsuits to federal court should lead to the creation of a more favorable, stable climate for businesses while preserving important remedial means for shareholders with legitimate complaints about inappropriate corporate activities. Investors should gain better information about the marketplace. A diminished threat of abusive strike suits will strengthen the ability of businesses to provide investors with more information.

I believe this helps to restore the balance we seek on behalf of all Americans, both those who are investors and those who are entrepreneurs and managers. I will support its passage and complement those who have brought it to passage.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

The Senator from New York.

Mr. D'AMATO. Mr. President, I know there are a number of amendments. I ask my colleagues, in the interest of moving forward if they would submit those amendments so we can start working on them.

The PRESIDING OFFICER. The Senator from New York has 2 minutes 36 seconds remaining. The time has expired on the side of the Senator from Maryland.

Mr. SARBANES. Once an amendment is sent to the desk we can have time to proceed; is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2395

(Purpose: To provide that the appropriate State statute of limitations shall apply to certain actions removed to Federal court)

Mr. SARBANES. I send an amendment to the desk for myself, Senator BRYAN and Senator JOHNSON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. BRYAN and Mr. JOHNSON, proposes an amendment numbered 2395.

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

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

The amendment is as follows:

On page 9, between lines 9 and 10, insert the following:

''(d) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding subsection (b), an action that is removed to Federal court under subsection (c) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 9, line 10, strike ''(d)'' and insert ''(e)''.

On page 10, line 12, strike ''(e)'' and insert ''(f)''.

On page 10, line 17, strike ''(f)'' and insert ''(g)''.

On page 14, between lines 10 and 11, insert the following:

''(3) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding paragraph (1), an action that is removed to Federal court under paragraph (2) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 14, line 11, strike ''(3)'' and insert ''(4)''.

On page 15, line 15, strike ''(4)'' and insert ''(5)''.

On page 15, line 20, strike ''(5)'' and insert ''(6)''.

Mr. SARBANES. Mr. President, Senator CLELAND has been here for some time on the floor. I know he wishes to speak to the bill, and in the course of those remarks would be speaking to this amendment, so I yield the floor. I hope that Senator CLELAND will be recognized.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Georgia.

Mr. CLELAND. Mr. President, I rise today to express my reservations about the merits of S. 1260.

I served as Georgia's Secretary of State and Commissioner of Securities for many years. I was responsible for administering Georgia's securities laws and providing investor protection for Georgia residents.

We are all aware that the securities markets are an integral part of our nation's economy and that we have experienced tremendous growth in these markets. Nearly half of all American households now invest in the stock market either directly or through mutual funds. These are not just rich people trying to become richer. These are primarily middle class Americans seeking to fund their children's education, to save up for a down payment on a home, and to provide a decent standard of living for themselves in retirement. In 1990, only 17.8 percent of all Americans invested in equities but that figure has grown dramatically, and one in three households now own securities.

Unfortunately, these successes have led to a tremendous increase in fraud and abuse. Recently, top securities watchdogs in the United States have warned that the explosion in the stock market has led to a sharp rise in securities sales fraud and stock price manipulation. Several studies have shown that many Americans lack the financial sophistication to protect themselves from fraud. At a town meeting in Los Angeles, SEC Chairman Levitt cautioned that investors are ''more vulnerable than ever to fraud.'' This concern has been echoed by others who point to a disturbing rise in the level of securities fraud and there are many allegations that organized crime is seeking a foothold in certain sectors of the securities marketplace.

It is unclear whether there is any means for defrauded investors to recover stolen money under federal law following the passage of the 1995 PSLRA, which severely limits the rights of defrauded investors. Preemption of state remedies under S. 1260 could lead investors with no ability to protect themselves against fraud. Several federal district courts have issued rulings on the 1995 law that are so restrictive that they threaten almost all private enforcement—including holding that reckless wrongdoers are no longer liable to their victims under the PSLRA. I strongly disagree with this interpretation because Congress, when it crafted the PSLRA, it did not intend to eliminate recklessness as a standard of liability. On the contrary, it is my understanding that the PSLRA did not, in any way, alter the scienter standard in federal securities fraud suits.

Let us be clear about who suffers in the cases of securities fraud—it is retirees living on fixed incomes, young families struggling to make ends meet and save for their children's education, teachers, and factory workers. Each day, devastating cases are brought to the attention of securities regulators and law enforcement officers. Indeed, financial fraud is a serious and growing problem. No discussion about securities litigation reform is complete without serious consideration of the potential impact on small investors across the country. The elimination of state remedies against fraud could be catastrophic for millions of Americans. The fundamental purpose of securities law is to protect investors, something that S. 1260 does not adequately address. In fact, S. 1260 is designed merely to protect big business.

The confidence in our securities markets results, in part, because of the cooperative enforcement system that has served the United States exceptionally well since the Depression. Substantive securities regulation in this country began at the state level. In 1911, the State of Kansas enacted the nation's first Blue Sky Law. Other states quickly adopted their own version of such legislation. Congress passed federal securities laws in 1933 and 1934 to complement—not replace—state laws and to stop abuses that caused the 1929 crash.

Many states have chosen to provide more expansive investor protections than federal law currently provides—through accountability for aiders and abettors, realistic time limits for filing a fraud claim, and the ability of investors to recover fully from professionals who help perpetrate frauds when the primary wrongdoer is bankrupt, in jail, or has fled the country.

In the late 1980s as Secretary of State, I conducted a series of public hearings to focus on securities fraud taking place in Georgia. This led me to recommend a number of changes to strengthen Georgia's securities laws. These changes established significant disclosure requirements for those dealers offering and selling certain stocks within or from the state of Georgia. These recommendations were unanimously enacted as amendments to the Georgia Securities Act, and gave my staff more tools to effectively deal with securities fraud. The Georgia legislature also installed securities fraud as a predicate offense for purposes of liability under the RICO statute. I am pleased to report that the efforts of the Georgia General Assembly are the rule rather than the exception. According to the SEC, 49 of the 50 states provide liability for aiders and abettors now unavailable under federal law, and 33 states provide longer statutes of limitations for securities fraud actions than current federal law. Mr. President, S. 1260 would undermine these important state remedies.

Simply put, S. 1260 is an affront to the efforts of state governments across the country to locally protect their public investors from fraudulent securities transactions. For example, this bill reinforces the unduly short statute of limitations in federal law. In effect, federal law rewards those perpetrators of fraud who successfully conceal the fraud for more than three years. A majority of states have statutes of limitations that are longer than the federal statute. As currently written, S. 1260 would preempt those state laws. Furthermore, the definition of ''class action'' contained in this bill is overly broad. I have been informed that the definition of ''class action'' in S. 1260 would allow single suits filed in the same or different state courts to be rolled into a larger federal class action, and this was never contemplated or desired by individual plaintiffs.

Another cause for concern is that under S. 1260, defrauded state and local pension funds are barred from recovering from corporate wrongdoers in state court. Since many remedies have already been foreclosed in federal court, the state or local government and its taxpayers may be required to make up losses in the pension fund resulting from fraudulent securities transactions. If state and local governments are creatures of state law, shouldn't they be entitled to pursue state remedies?

State and local government representatives are unequivocal in their opposition to S. 1260. The National League of Cities, the U.S. Conference of Mayors, the Government Finance Officers Association, and the National Association of State Retirement Administrators all reject the bill in its current form.

Mr. President, I am not convinced that the federal preemption of state

anti-fraud protections is a necessary step. Preemption supporters emphasize an ''explosion'' of state suits filed to circumvent the PSLRA in the two years since its enactment. Yet the number of state securities class actions filed in 1997—only 44 nationwide—represents a 33 percent decrease since 1996 and is lower than the number filed in any of the three years before the PSLRA was passed. In addition, most of the state court cases have been filed in California. No state other than California has had more than seven securities class actions filed in the two years since the enactment of the PSLRA. Mr. President, if a problem exists, then it should be addressed in Sacramento, not Washington, and I understand that California has already established a legislative commission to study its laws and make changes if necessary. Other states should be free to decide how to protect their own citizens from fraud.

Mr. President, I support the right of investors to seek legal remedies against those persons selling fraudulent securities. I have supported an investor's right to seek redress through mediation, arbitration, and civil litigation. While I worked to streamline the regulatory process in Georgia, I opposed amendments to federal regulations that would have impaired the ability of a state to protect its investors. Here in the Senate, my focus remains the same. For this reason, I oppose S. 1260.

Thank you Mr. President. I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I believe that my colleague, the Senator from Maryland, is going to speak to this amendment. This amendment would indeed promote forum shopping for those lawyers to look for the State that had the longest statute of limitations.

I point out the Lampf decision, which will be referred to. After that decision, in a sample of actions brought in the State courts, 43 of them were filed within the 4-year period of time—43 out of a total of 44. So we do not believe this amendment will do anything other than to promote forum shopping for the longest period of time, and that it really counteracts the Supreme Court's decision, which has not worked a hardship on plaintiffs who have a legitimate suit or seek to bring it.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland.

Mr. SARBANES. Mr. President, this amendment, as the Senator from New York has indicated, goes to the question of the statute of limitations, and it seeks to preserve the State statutes of limitations.

Let me quickly review the history. In the Lampf case, which my colleague referred to, the Supreme Court significantly shortened the period of time in which investors may bring securities fraud actions. On a 5 to 4 vote—in other words, in a very closely divided Court—the Supreme Court held that the applicable statute of limitations is 1 year after the plaintiff knew of a violation, and in no event more than 3 years after the violation occurred. In other words, once the violation occurs, if the plaintiff never finds out about it and 3 years pass, you can't do anything about it, even though, of course, one of the hallmarks of securities fraud is concealment and deception specifically designed to keep them from finding it out.

The other aspect was 1 year after the plaintiff knew of the violation. Now, this is shorter—this statute of limitations —than those that exist in private securities actions in the law in 33 of the 50 States, as my distinguished colleague illustrated earlier with his map.

Testifying before the Banking Committee in 1991, SEC Chairman Richard Breeden stated:

> The timeframe set forth in the Court's decision is unrealistically short and will do undue damage to the ability of private litigants to sue.

Chairman Breeden went on to point out that many cases come to light only after the original distribution of securities. The Lampf cases could well mean that, by the time investors discover they have a case, they are already barred from the courthouse. The FDIC and the State securities regulators joined the SEC in 1991 in favor of overturning the Lampf decision. In fact, Chairman Levitt testified before the Securities Subcommittee of our committee in April of 1995:

> Extending the statute of limitations is warranted because many securities frauds are inherently complex and the law should not reward the perpetrator of a fraud who successfully conceals its existence for more than 3 years.

Chairman Levitt reaffirmed his support for a longer statute of limitations before the committee as recently as March 25, 1998. I continue to believe that this time period in the Federal legislation does not allow individual investors adequate time to discover and pursue violations of securities law, but we raised that issue before and that issue was decided.

So this amendment isn't trying to change the time period for securities fraud actions brought in Federal court. This amendment seeks to fix a related problem that will be created by this bill. Because of the overly broad definition of a class action, this bill creates a flaw; namely, that the Federal statute of limitations will now apply in an unfair manner to State cases. Cases that were timely filed under State statute of limitations may now be removed to Federal court and then dismissed under the shorter Federal statute of limitations.

Mr. BRYAN. Mr. President, will the Senator from Maryland yield for a question?

Mr. SARBANES. I yield to my colleague.

Mr. BRYAN. Is the Senator indicating that an investor who files in a State court in a timely fashion after having consulted with legal counsel that said, yes, this is a timely action—and we shall assume for the sake of the discussion meritorious—can have his action, in effect, dismissed by having it removed to the Federal court and the shorter statute of limitations of 1 to 3 years as is required under Federal law?

Mr. SARBANES. Exactly.

Mr. BRYAN. It will wipe them out.

Mr. SARBANES. Investors who file in a timely fashion under State law may find their lawsuits dismissed because, contrary to their intention, and in many instances unbeknownst to them that this would happen, they find themselves lifted out of a State court, put into the Federal court, and at that point the shorter statutes of limitations apply. So their suit is dismissed for failure to meet a shorter time requirement that they couldn't have known was going to be applied to them.

This problem is created in part because of the broad definition of what is a class action that is in this legislation. So you could have an individual investor who finds himself classified as part of a group, although he was not part a group. He filed it on his own. He had his own lawyer, and he wasn't in collusion with anybody else in doing this. Or you could have 50 identified investors—say, school districts, or water and sewer districts—that get defrauded. If there are more than 50, they can be lifted out of the State court and put into the Federal court. When they went into the State court, they met the statute of limitations. But when they get lifted out of the State court and put in the Federal court, they then have to comply with this shorter statute of limitations, and they find themselves dismissed for failure to meet the shorter time requirement.

Mr. BRYAN. So the perpetrator of the fraud, if I understand what the Senator from Maryland is saying, has the ability to wipe out the small investor by removing the cause of action to the Federal court, even though that case was filed timely under State law and even though the small investor says, Look, I want to have this action continued at the State level. So the Senator is saying, if I understand the Senator from Maryland correctly, that the power to wipe out this cause of action, to wipe out any possibility for relief, are now providing that to the perpetrator of the fraud?

Mr. SARBANES. That is correct.

Mr. BRYAN. The perpetrator of the fraud is allowed to do that under this?

Mr. SARBANES. That is right. What this amendment does, very simply, is it provides that when the investors are removed from the State court to the Federal court, they can bring their State statute of limitations with them. If they filed in the State court, and

they complied with the statute of limitations, they ought not to find themselves taken into Federal court and then being told they do not comply with the shorter statute of limitations and they are out of the courthouse when they, in fact, complied at the State level with the State statute of limitations.

This is to deal with this unfairness whereby an investor can file a timely suit under State rules and without advance warning later be dismissed under a different set of rules. Anyone who wished to bring the suit in the Federal court would have to abide by the 1- and 3-year limitation of Lampf. But this is clearly unfair to an investor who is acting in a reasonable manner.

This amendment is supported by a broad coalition of government officials and consumer groups. The National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and others have written to express their support for an amendment to allow plaintiffs to carry State statute of limitations with them in cases filed in State court which are removed to Federal court. The Consumer Federation of America has joined as well.

I hope my colleagues will support this amendment. It is an effort to deal with what, I think, is a very specific and definable flaw in this legislation. I don't think investors going into a State court, timely under State law—and I refer back to the comments of Chairman Breeden and others about the complexities of these cases, the difficulty of discovering the fraud, the difficulty of bringing the suit once the fraud is discovered—that they then ought to find themselves foreclosed altogether from any equitable relief simply by removal to the Federal court and the application of the shorter statute of limitations.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in opposition to the amendment. The purpose of this amendment is, obviously, to thwart the underlying rationale for the legislation.

My colleagues have already pointed out that there are 50 jurisdictions with different statutes of limitations in them. My colleague from Nevada has worked long and hard on the issue of trying to extend the statute of limitations at the Federal level, which is an effort that I applaud and support. After the Lampf decision, I thought it is worthwhile. I don't disagree with him on that. I disagree with my colleague from Maryland. That is not the issue.

The issue, of course, is not whether or not there is a statute of limitations at the Federal level but whether or not you are going to allow 50 different individuals to apply State statute of limitations on nationally traded securities accounts on national markets. The purpose of this bill is a uniform standard for which nationally traded securities are traded on national markets.

If you are going to allow 50 different jurisdictions to apply 50 different statutes of limitations, you have just destroyed the very purpose of the legislation. Vote against the bill if you want. But you can't very well vote for this amendment and then vote for the bill. It doesn't make any sense at all.

Of course, this idea that this has been a great disadvantage, let me share some hard facts with my colleagues about what has happened, because in order to make this amendment a Federal limit, you have to have information backing it, supporting it, underlying it, which indicates there is a problem here.

The evidence since 1991, when the Lampf decision was rendered, clearly refutes the contention that State courts are necessarily a safety net for meritorious claims. The evidence of that would lead one to the opposite conclusion. The statute of limitations was shortened, as my colleague from Nevada and the Senator from Maryland pointed out, by a Supreme Court decision in 1991. That was 4 years, between 1991 and 1995, before we passed the 1995 litigation reform bill.

So it is kind of an interesting 4 years to look at. You have the Lampf decision in 1991. We passed in 1995 the litigation reform bill. What happened between 1991 and 1995? There is almost no evidence, none, that plaintiffs brought securities fraud cases in class actions against nationally traded securities in State courts during 1991 and 1995—no evidence of it at all. That would be the time you might do it because there the law said, of course, you could go into State courts and use the State statute of limitations. If you want to take advantage of it, that period of time would certainly be an indication of what was going on.

There is evidence that many of the suits brought in State courts since the 1995 act are well within the 1 to 3 years. Again, let me emphasize that I don't have any difficulty with the notion of having a longer period. I agree with my colleague on that.

But he knows and I know we have been through that. We haven't been successful in extending it. Now, maybe someday we can. Maybe we can convince others. But that is a different debate—an important debate but a different debate. The debate here raised by this amendment is, do we allow the 50 different jurisdictions, 33 States which do better, 17 which do worse—by the way, in 17 States you would be disadvantaged between what the Federal law provides and what the State courts do. So you get a mixed bag on this.

But since 1995, most of the actions that have been brought in the statute of limitations were brought well within the 1 year of the discovery or 3 years of when the fraud was committed, which is what the Lampf decision allowed and provided for. In fact, it is worthwhile to note that in some of these cases the suggestion somehow that the statute of limitations is a problem is ludicrous on its face. Three suits were filed against Intel Corporation within 48 hours of an adverse earnings announcement—48 hours; three lawsuits were filed within 48 hours. One in 3 years. It is ridiculous; these lawsuits are being filed almost momentarily in many cases.

We have a second case of the EMC corporation. A case was filed within 20 hours of an adverse announcement. The notion somehow that this a great effort to discover fraud in these cases—the notion somehow that those of us in support of this bill in any way want to discourage investors from bringing legitimate lawsuits as plaintiffs is totally wrong.

And part of what we rest our case on, Mr. President—let me share with my colleagues what you could find on your Internet this morning, not a year ago or 5 years ago or 6 months ago. It is entitled ''Stock Disasters.'' ''Stock Disasters'' it is called. That might suggest we have had some real fraud going on—''Stock Disasters.'' You hit on your little mouse here, and you hit on ''Top Stock Losers of the Day.'' Boom, this page pops up. You have to get this one, and then you get this one.

What does it show you? It lists stock fluctuations, stocks that lost money, stocks that gained money. That is all.

Mr. D'AMATO. Will the Senator yield for a question?

Mr. DODD. I am happy to yield to my colleague.

Mr. D'AMATO. Let me ask the Senator, does the underlying legislation in any way limit the Securities and Exchange Commission from bringing any action to recover for disgorgement where there is fraud?

Mr. DODD. None whatsoever.

Mr. D'AMATO. There is no statute of limitations?

Mr. DODD. Absolutely none.

Mr. D'AMATO. So the SEC can bring these actions but the strike lawyers can't wait indefinitely and pick a forum. That is what the Senator is saying. But certainly the SEC can still bring these actions at any time that it discovers fraud.

Mr. DODD. My colleague from New York is absolutely correct. The point we have been trying to make here is that if you go here —and ''Stock Disasters'' is the title of this, Mr. President—and then you switch on ''Stock Disasters''—and the stocks decline in a couple cases, some stocks going up—there is no allegation here of fraud or mismanagement, merely stock fluctuations.

Stock disasters? That is not a disaster. It is 10:52 this morning. That is how these suits are filed. It is ludicrous to somehow suggest we are talking about deep fraud in these cases. All we are trying to do is slow this down so that legitimate plaintiffs can bring lawsuits, and also legitimate investors particularly—and a lot of these companies, by the way, I point out, Mr. President, a lot of these companies, if you look at the losers as of 10:52 this morning, are your small high-tech firms.

That is the future of our economy, by the way. That is the knowledge-based economy of our country for the 21st century. Let some predator law firm go out there because they get a slight stock fluctuation and bring a lawsuit against them, having to spend millions of dollars to defend the company, you lose the company. Who benefits from that? I tell you who does. The law firm. That is who does. That is all this is about, the bottom line. That is all this is about.

So we talk here about the statute of limitations. Again, I am all for extending it. I think there is a case to be made on that. But to say here with nationally traded securities on national markets, these exchanges, that you are going to have to go through 50 different jurisdictions is to defeat the very purpose of what we are trying to do here. And that is, with nationally traded securities and national exchanges, we ought to have a uniform standard. I would have it be a bit longer, but that is not the issue before us. What is before us is whether or not we are going to have one standard here so that we can try to have some predictability and a little fairness in this process.

Certainly what we have seen, of course, is a rush to the courthouse, and that is why I think this amendment is unnecessary. And if its adoption were to occur, it would destroy the very purpose which has brought us here at this point in our debate.

For those reasons, Mr. President, I urge rejection of the amendment.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Maine.

Ms. COLLINS. Mr. President, I rise in support of the amendment to preserve the state statute of limitations for cases removed to Federal court under this legislation.

I intend to vote for this bill. But in doing so, I think it important to be straightforward about what S. 1260 does. This is a bill that preempts state law. Specifically, it preempts securities antifraud statutes for certain types of class action cases.

I generally oppose preemption, as I think it overlooks the considerable wisdom that exists at the local level. Not without some measure of discomfort, I am nonetheless inclined to vote for this bill, because I find considerable merit to the contention that large class-action cases against companies whose securities are sold in the national marketplace may well belong in the Federal courts. Otherwise, Congress' ability to regulate our national securities markets in an era of international investing is arguably impeded.

I feel strongly, however, that if we are going to preempt state law and impose a single federal standard, it must be a fair one, and that is not the case with the federal statute of limitations. Under federal law, a securities fraud suit must be brought within one year of when the fraud was or should have been discovered, but in no instance after more than three years have elapsed.

I served for five years as the head of the Maine department that regulates financial institutions, and I can tell you from personal experience that a three-year limitations period is too short. The reality is that, even with due diligence, some frauds are not discovered within that time frame. Indeed, the very object of a fraud is to deceive the other party to the transaction for as long as possible.

The limited partnership cases of the last decade illustrate my point. The victims of those frauds were largely elderly, largely trusting, and largely lacking in financial sophistication. It is no wonder that in many of those instances, they did not, and even within reasonable care, could not have, discovered the fraud within three years of its commission.

It is not just my opinion that the Federal limitations period is inadequate. The Securities and Exchange Commission has taken the position that the period is too short.

This is an instance in which the Maine Legislature has shown more wisdom than the Federal Government. Under the law of my state, the limitation period is two years from the date the fraud was, or with reasonable care, should have been discovered, with no outside limit. That gives innocent investors the opportunity to obtain redress for fraud as long as they act with reasonable diligence.

I can understand the argument for a single, Federal standard in this area, but I cannot accept preempting a state standard that is far more consistent with reality. While the best remedy would be to change the Federal limitations period for all securities fraud cases, that issue is not before us today. Thus, we should take the next best step, which is to preserve the state statutes for cases that are removed to Federal court under this legislation.

What this amendment will not do is harm high-tech companies. What it will do—maybe not this year or next, but at some point—is to protect innocent, unsuspecting investors, who are victimized by a securities scam that could not reasonably have been discovered within three years. Thus, I urge my colleagues not to wait until we have such victims, but to stop the problem before it occurs by supporting this amendment.

I thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Nevada.

Mr. BRYAN. Mr. President, I commend the Senator from Maine for her, I think, most illuminating statement in terms of the problem that we face with the shorter statute of limitations. She is absolutely correct. Her State—and my own—apparently, if I understood the distinguished Senator, has a 1- and 5-year statute; 5 years is the outside. That is what we have in Nevada as well.

The testimony beyond refutation is that a 3-year statute is simply too short. The Securities and Exchange Commission, which has all of the resources available to the Federal Government, much more so than any individual investor, tells us that on average it takes more than 3 years to do the investigation, to bring the cause of action. Certainly the small investor is seriously disadvantaged here, so I thank her for her comment and her leadership.

Let me just make a couple of comments. I know we have talked about this in the context of the debate on the bill, but the unfairness of this legislation to the small consumer can best be described: Heads the perpetrator of the fraud wins; tails the small investor loses. This is a ''no win'' proposition for the small investor.

The thrust of this legislation is to say that the traditional class action lawsuit should no longer be available at the State court level. And, by ''traditional class actions'' we mean individual plaintiffs who are bound together by a common lawyer who files on behalf of a lot of people who have been victimized by the identical fraud. That is really what a class action traditionally has been.

Our friends on the other side say there have been some abuses. I acknowledge that there may have been some abuses there. I would be willing to work with them in dealing with the abuses. But here is the ingenious and unfair part of this. The proponents say, ''The individual has a right to file an action at the State court level, would have all the rights currently available under State law—the longer statute of limitations, the accomplice liability, the joint and several, the RICO provisions.'' OK, that sounds somewhat fair, although as we have pointed out, most small investors simply don't have the resources to bring such a case. But let's suppose that your teachers' pension fund, or what we have in Nevada, the public employee retirement system—suppose they bring an action at the State level: One plaintiff, one lawyer, and, lo and behold, they have discovered 4 years after the fact of fraud that the public employee retirement system fund has been ripped off by a monstrous fraud. They file suit in State court.

Surely you would think it would be possible for that one plaintiff to pursue a remedy under State law. But here is how the bill is crafted. Without the permission or consent of that public employee retirement system, if there are 49 other plaintiffs who file against the perpetrator of the fraud, then involuntarily, without the permission of the public employee retirement system, they can be forcibly removed from the State court and those rights that exist under State law are effectively divested from them. So in the hypothetical that I cite, a monstrous fraud,

which may have cost the public employee retirement system literally millions and millions of dollars, discovered sometime after 3 years for the first time and filed timely under the law—it would be possible for the perpetrator of the fraud to actually get other plaintiffs to file to build up a number of 50, thereby removing the case from State jurisdiction. And once it gets to the Federal court, lo and behold, what happens: the hammer falls because at the Federal level, because of the Lampf decision, the statute of limitations is 3 years, the outside bar.

So here you can have literally tens of thousands of public employees or teacher retirement funds or an Orange County type of investment in which you may have a million or more taxpayers who are unable to recover simply because the perpetrator of the fraud is allowed to remove the single case from State court jurisdiction. What is the fairness of that?

The able and distinguished chairman of the committee says the SEC can bring the action. That is true. But we have been told on many, many occasions that the SEC simply does not have the resources; that both the current chairman and previous chairman, in the time I served with the distinguished chairman of the committee and my colleague and good friend from Connecticut, have repeatedly told us that the SEC simply does not have the resources to pursue all of the fraud out there, and therefore the private cause of action is an absolutely essential and critical part of the regulatory structure, the structure that has created the safest and most efficient market in the world.

Why are we making these changes? Because we are told that we must worship at the shrine of uniformity, that there is a rush to the courthouse door; 44 cases out of 15 million is a rush to the courthouse door? Many, many States have had no cause of action filed at all, at all. I think in my own State of Nevada there has been one. A rush? I must say, I do not think that makes the argument.

If uniformity is an end to itself, isn't it a fairly persuasive argument to say 49 of the 50 States have laws that hold aiders and abettors liable? These are the accomplices, these are the lawyers, the accountants, the investment advisers who participated with the primary individual involved in the fraud to create the loss to the innocent investor—49 out of 50 States say those people ought to be liable, too. They are not, under the 1995 legislation. So if uniformity is to be the standard by which this debate is to be judged, what is wrong with that uniformity?

What we have here, and I regret to say this, it is a systematic attempt to close the courtroom door to innocent investors, small investors in this particular instance that we are debating here. We are talking about an institutional investor who could be taken involuntarily to the Federal court. I don't understand the public policy argument that says that is somehow meritorious. I concede that maybe you could argue preemption if you develop a broader statute of limitations at the Federal level to protect them. Maybe that is a possibility. Maybe we could reach a compromise there. Then maybe you could argue preemption.

But the proponents of this measure—with due respect to my colleague from Connecticut, he does support a longer statute of limitation—but the primary thrust of getting this legislation, the folks who have opposed and resist this, have resisted the longer statute of limitations. So, in effect, we take two weapons away from the small investor: The right at the Federal level to a longer statute of limitations—Lampf took that weapon away from the small investor—and now we are going to go one step further and take it away from that small investor who is filing at the State level, not as part of a class action but as an individual. And I must say I think the unfairness of that is—all of this is being done in the name of, whether it is 39 cases or 44 cases out of 15 million, filed annually.

I come from a part of the country where we understand what ''rush'' is. The gold rush. There was an exodus of people coming out West. But 44 people? I wouldn't call that a gold rush. That would be a trickle.

So I must say, this is a terribly, terribly important investor protection. My colleague from Maryland and I, we know how to count the votes. We know this legislation is going to pass. But even if you are for this legislation, please, please, I implore you to consider what you do to the small investor who is filing in State court. He or she gets involuntarily wiped out by the perpetrator of fraud by removing that case to the Federal court system where the shorter statute of limitations prevails.

I yield the floor.

Mr. SARBANES. Mr. President, I understand that the leadership doesn't intend to have votes much beyond 6 o'clock or thereabouts, and I suggest to my colleague that we set aside this amendment and do the next amendment, which I will send to the desk, which actually is interrelated in concept with this amendment, and that we have a vote on the two amendments beginning about 5:40.

Mr. D'AMATO. Mr. President, we cannot confirm that it is the intention of the leadership on both sides to curtail votes as of any specific time. However, it would seem to me to be appropriate, notwithstanding that, to move to support the Senator's request that we stack the two amendments with a vote starting at 5:40 for the first one, and thereafter undertake a vote on the second one. Then, of course, if the leadership has decided no further votes, we can put that matter over.

We are looking to shop that right now. I believe that will be the case, but we are waiting for final confirmation. If the Senator wishes to make his request on the basis that we will proceed to our first vote at 5:40 on the pending amendment and that thereafter, immediately after that vote, take up the second amendment and seek a vote on that, I will certainly join in that request.

Mr. SARBANES. For ordering votes, we should not have any second degree.

Mr. D'AMATO. Yes.

Mr. SARBANES. Just to sketch it out, it was my assumption then in the morning we will have one other amendment to offer. We will do that amendment and then final passage is my expectation.

Mr. D'AMATO. That is my expectation, and I will make that recommendation to the leader. Subject to the concurrence of the leaders, I imagine we then will have debate, hopefully limited to, let's say, an hour equally divided on the third amendment, and then go to final passage. How much time does the Senator want in between the third vote and final passage?

Mr. SARBANES. Of course, we have used up all the debate time. What should we have, 10 minutes on each side before final passage, or 30 minutes equally divided before final passage?

Mr. D'AMATO. We can work that out and make that request later, but I certainly will not be opposed to 30 minutes equally divided before final passage.

Mr. SARBANES. Mr. President, I ask unanimous consent to set aside the current amendment, and I will send an amendment to the desk, and that no second-degree amendments be in order to either, and that the vote begin on the amendment to be set aside at 5:40, to be followed by a vote on the amendment which will be sent to the desk.

Mr. D'AMATO. Mr. President, before that amendment is set aside, I ask for the yeas and nays and indicate that I will move to table at the appropriate time.

The PRESIDING OFFICER (Mr. COATS). Is there a sufficient second on the request for the yeas and nays?

Mr. DODD. 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. SARBANES. 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. SARBANES. Mr. President, I withdraw the request.

The PRESIDING OFFICER. The Senator's request is withdrawn.

AMENDMENT NO. 2396

(Purpose: To make amendments with respect to the definition of a class action, and for other purposes)

Mr. SARBANES. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. If there is no objection, the pending amendment is set aside.

Mr. SARBANES. I apologize to the Chair. I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. BRYAN and Mr. JOHNSON, proposes an amendment numbered 2396.

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

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

The amendment is as follows:

On page 10, strike line 24 and all that follows through page 12, line 11 and insert the following:

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(i) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(ii) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 16, strike line 3 and all that follows through page 17, line 13 and insert the following:

''(B) CLASS ACTION.—

''(i) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(II) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 17, line 14, strike ''(C)'' and insert ''(ii)'' and move the margin 2 ems to the right.

On page 17, line 21, strike ''(D)'' and insert ''(C)''.

Mr. SARBANES. Mr. President, this amendment interrelates with the other amendment that has been set aside on which a vote will occur later.

The sponsors of this bill say their goal is to wipe out frivolous class-action lawsuits alleging securities fraud. What are class-action lawsuits? They are lawsuits brought by a single person, not just on his own behalf, but on behalf of other persons similarly situated. In other words, one person can bring a lawsuit on behalf of an anonymous and potentially enormous group of people.

Why do we allow someone to bring such a lawsuit? Because in many situations, it is the only economical way people can pursue remedies. If a large number of people have each suffered a relatively small loss, it may not be economical for any one of them to pay the costs of a lawsuit. There are many examples of class-action suits by investors who have been defrauded. It is a tool that allows individuals to share the cost of a lawsuit when they are injured.

Because they can be brought on behalf of a potentially enormous class, on occasion they can be misused to coerce defendants into settlement. This is the abuse about which the sponsors of the legislation complain. They argue that companies are coerced by flimsy securities fraud class-action suits, that it is cheaper for the company to settle rather than to fight them, and that these class actions are being misused.

I share the view that frivolous securities fraud class-action suits should not be tolerated, either in Federal court or in State court, and lawyers who file worthless suits hoping to extort a settlement should not be able to pursue that practice. But this bill reaches beyond the frivolous class action.

Here is the problem. The definition of class action in this bill is too broad.

It will prevent investors from bringing individual actions solely on their own behalf in State court. Since they were enacted over 60 years ago, the Federal securities laws have preserved the right of individual investors to bring securities fraud suits under State law. This system has worked well. State remedies offer important protections to investors where Federal remedies fall short.

But the definition that is contained in this bill for ''class action'' is too broad. The bill has a three-pronged definition of ''class action.'' And these prongs permit individual investors to be brought into Federal court against their will. The bill includes, as a class action, any group of lawsuits in which damages are sought on behalf of more than 50 persons, even if the suits are brought by separate lawyers without coordination.

So to tie it into the previous amendment, what happens is an investor goes into State court, in a timely fashion, he files an individual suit, and if 50 others do the same thing, they can be removed to Federal court as, quote, a ''class action,'' although it is not a class action as a class action is ordinarily considered or ordinarily defined. They lift them out of the State court and put them into the Federal court, and they are shut out because of the statute of limitations.

Individual investors ought not to have to lose their remedies under State law in order to deal with the problem of frivolous class actions. And so the amendment that is offered narrows the bill's definition of ''class action'' to a suit brought on behalf of unnamed parties similarly situated. We do not use this ''50 investor'' definition which means unwary people are going to be trapped and lose their remedy.

Now a broad coalition of State and local government associations have written to us supporting this amendment—the National Association of State Retirement Administrators as well. Here is what they have to say about the definition of ''class action'' in the bill.

The definition of ''class action'' contained in S. 1260 is overly broad. The definition of ''class action'' in S. 1260 would allow single suits filed in the same or different courts to be rolled into a larger class action that was never contemplated or desired by individual plaintiffs and have it removed to Federal court. Claims by the bill's proponents that individual plaintiffs would still be able to bring suit in Federal court are belied by this provision.

If we can narrow the definition of ''class action'' to a proper class action, and then that is taken into Federal court, then the statute of limitations will apply, if that prevails.

On the other hand, if you are going to have a definition of ''class action'' that is so broad that individual investors can be covered, they ought not be subjected to the risk of losing their suit altogether because it is removed in a Federal court and they are bound by a statute of limitations that they had no idea was going to come into play in their instance.

So, Mr. President, I very strongly urge this amendment. I think it corrects a very important weakness in this legislation. We can narrow the definition of who is covered by the class action so we no longer have to worry about the individual investor being shut out unfairly. I think we ought to significantly improve this legislation and narrow it so it applies to what it is asserted it is meant to apply to, and does not apply to individual investors who I think need to have their remedies preserved in the State courts.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me tell you basically what this amendment would do. This amendment would have the unintended effect—and I cannot believe that my colleague would want for that to happen—of opening up the whole question of the class-action suits being able to be moved to State courts. It would effectively allow lawyers to circumvent the purpose, the very purpose of this bill since so-called ''huge'' mass actions could still be brought in the State court.

So what we have is the problem of high-growth companies, small high-growth companies that traditional class actions may be brought against by the strike lawyers; namely, they are expensive and timely to defend, and the plaintiffs are often forced to settle, regardless of the merits, to avoid excessive litigation costs. That is exactly what we are trying to deal with. There should be a uniform standard, and there should be a uniform procedure. And that is why we moved these nationally traded securities.

Senator DODD spoke to this, the nationally traded securities going to a Federal forum. This amendment changes the predominance requirements in the bill's class action definition. This effectively would gut the bill by encouraging State actions which would not qualify as a class action contained in the act. As a result, these

class actions would not be able to be removed to the Federal court. And so you have mass action lawyers representing a large number of plaintiffs on an individual basis in either a single action or a group action.

The ''class action'' definition in the bill was worked out with the SEC. We have worked that out, and it is comprehensive enough to close the loophole. But it also provides State courts with guidance. It says ''up to 50 people.'' That is the bright line. When you get over 50 people, OK, that is the class action. And so this bill does not prevent individual investors from pursuing State court remedies, nor will it prevent a small group of investors from pooling their resources to pursue a claim under State law, but it will stop the strike action suits, the forum shopping that we have attempted to limit, because we have seen that dramatic increase.

I think Senator DODD, when he pointed out what the record was, I think it was a handful, what, five or six cases in a period of years, in all of the years, ballooning up to 40-plus in 1 year. What was that?

Mr. DODD. If my colleague would yield.

Mr. D'AMATO. Yes.

Mr. DODD. Our colleagues have made much of this notion that there has not been this great degree of activity. Try, if you will, to just keep these numbers in mind. These are the actions filed in State court for fraud in class actions against publicly traded companies.

In 1992, there were four cases filed all across the country. In 1993, there was one case filed all across the country. In 1994, there was one case filed all across the country. I do not have numbers for 1995. But they are four, one, and one.

Mr. D'AMATO. Six cases.

Mr. DODD. Then in 1996—we passed a law in 1995—59 cases were filed in State court; and in 1997, 1998, the number did drop down to about 38. But you compare that—they want to talk about how the number fell off to 38 from 59. What they do not want to mention to you is, in 1994 and 1993 and 1992 you had a total of six cases; in 1993 and 1994, one case—one case. And then it jumps, as we see in these other examples of where it moves to.

So I say to my colleague and the chairman of the committee, this is quite clear. And if they wanted to get to statute of limitations problems, why didn't they file more of those cases in that period?

Mr. D'AMATO. Mr. President, I think my colleague, by answering the question, points out quite clearly—it was my impression heretofore that he had mentioned a number of cases, but six cases in 3 years, jumping to 10 times that, 59—slightly less than 10 times that in 1 year—in 1 year—I think it proves the point. And that is why the necessity of seeing to it that we have a uniform standard, that you cannot go forum shopping. And that is why this Senator, at the appropriate time, will move to table the pending amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, this is a very complicated area of law. I know our colleagues are going to come to the floor and want to know what this is all about.

In effect, this amendment would have the impact of creating even further uncertainty in the definition of a class action. It does not provide more certainty; it is less certainty. I think it would upset the very carefully crafted and very balanced definition worked out with the Securities and Exchange Commission.

The reason it took us a little time to get this bill to our colleagues was because we took so much time working with the SEC to try and define these areas. What our colleagues are offering is an amendment that would disrupt the definition worked out with the SEC in this area.

Clearly, with all due respect, the tremendous amount of expertise in crafting it—I am not going to suggest to my colleagues that we have a perfect definition in the bill. But certainly this one is not perfect either. But if you are going to trust one or the other, it seems to me the one worked out with the Securities and Exchange Commission, I urge my colleagues, makes a lot more sense.

Neither of these definitions tracks word for word what is in rule 23. Rule 23—trust me when I tell you this rule 23 goes on for pages, pages. It is one of the more lengthy definitions of class actions that there is. So, we are not tracking that word for word. We are trying to pick up the essence of it. It is tremendously complicated.

We think this definition we have worked out with the Securities and Exchange Commission provides the right kind of balance.

The bill originally had a limit of 25 plaintiffs, now raised to 50 for a single lawsuit. This is by no means an exact science. I am the first to say that if we find shortly that number is not working as well as we would like, we would change it. Anybody who claims they have a word on high as to what is the perfect number here is deluding themselves. It is a number we chose because we thought it made sense based, again, on our discussions with the SEC.

With all due respect to the authors of this amendment, it does undercut what we have tried to achieve here. I want to emphasize to our colleagues, you don't have to agree with every agency and what it suggests and does. But on this definition worked out with the Securities and Exchange Commission, if you want some predictability and some knowledge-based definition, the one we have in the bill is the way to go. To come up all of a sudden with a new one here that I don't think enjoys the kind of expertise that we have been able to achieve through working with the SEC would be unfortunate and could create a lot more problems.

For those reasons, I urge the defeat of this amendment.

Mr. BIDEN. Mr. President, I opposed the 1995 Securities Litigation Act for several reasons—including the precedent-setting changes to this country's judicial system without the input of the Judiciary Committee.

I support the Sarbanes amendment for similar reasons—relating both to procedure, and to substance.

In the past, bills that made changes to the rules that govern citizen's access to State courts were referred to the Judiciary Committee, to enable the committee with expertise to review and work on the legislation.

While my colleagues on the Banking Committee had the opportunity to examine the specific, substantive changes this bill would make to our Nation's securities laws, it seems to me that we have once again skipped a very important step in the process.

The securities litigation bill we are considering on the floor today preempts State court statutes of limitations in securities fraud cases—and yet again the Judiciary Committee was not given the opportunity to examine the issue.

In 1991, the Supreme Court significantly shortened the statute of limitations for Federal securities fraud actions—to the shorter of 3 years after the fraud occurs or 1 year after it is discovered.

Then-SEC Chairman Richard Breeden called the new time limit ''unrealistically short.'' But, S. 1260 would compound the problem by applying the Federal time limit to State actions removed to Federal court—even though it is shorter than the time limit applicable to actions in 33 of the 50 States.

This bill would not only leave investors without State court remedies when brokers and dealers make fraudulent statements when selling corporate stock—but it would also tell them that they need only conceal their fraud for 3 years before being absolved of responsibility in Federal court as well.

And the new time limit will apply even though the 1995 Securities Litigation Act raised the standard investors must meet to win a class action suit—you now have to prove a falsehood was made with clear intent to deceive.

That's incredibly tough to prove.

I will admit, some frivolous lawsuits are filed. And some lawyers do make too much from a suit—leaving defrauded investors too little.

But, immunizing Wall Street professionals who can successfully hide their lies for 3 years is not the answer.

I support the Sarbanes amendment and urge my colleagues to do the same. We should protect the small investor—not let white collar criminals go unpunished.

Mr. D'AMATO. Mr. President, I know my colleague from Nevada is going to speak to this issue, and I ask unanimous consent at 5:30 today the Senate proceed to a vote on or in relation to the Sarbanes amendment 2395, to be

immediately followed by a vote on or in relation to amendment 2396, the matter we are now considering, with no amendments in order to the amendments. I finally ask that the time until 5:30 be equally divided between the proponents and opponents. I have no intention of using any of the time, but that all the time be yielded to my colleague.

Mr. SARBANES. Reserving the right to object, and I do not object, subsequent to that, then, I take it what the leadership would like to do is try to finish, so we will offer a third amendment and debate that. We hope the time will not be too long on that. Then we would be able to vote on that amendment and then on final passage.

Mr. D'AMATO. That is correct.

Mr. SARBANES. I have no objection.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York?

Without objection, it is so ordered.

The Senator from Nevada.

Mr. BRYAN. I don't want to prolong this debate unnecessarily. I realize several of my colleagues have time constraints.

Let me say I think the Senator from Maryland has crafted an amendment that is eminently fair. He is using the definition of the Federal Rules of Civil Procedure. The notion that we get involved in describing what is a class action based upon an arbitrary number of individual plaintiffs—some of whom could be private citizens, some could be pension funds, and could be State agencies—makes no sense to me.

So I believe, in trying to provide some sense of balance and fairness—so we do not get a situation where we have discussed throughout a good part of the afternoon that an individual who files an action by himself or herself with his or her lawyer alone, no other coplaintiffs involved, immediately after the discovery of a fraud, that would be 3 to 3 years and 2 months after the fraud occurred—should be allowed to pursue that cause of action and not be involuntarily sucked up into Federal court because 49 other people may have filed similar action, and to give to the errant defendant, the perpetrator of the fraud, the ability to manipulate the process so that the perpetrator of the fraud can file some phony plaintiff's actions, getting up to the threshold of 50, and then have the case removed, the individual plaintiff, the individual pension fund, the individual retirement fund, then having been effectively deprived of pursuing a cause of action that may be meritorious without question.

I certainly urge my colleagues to thoughtfully reflect. This is the Federal Rules of Civil Procedure. They have been around since 1939. Why should we craft some kind of a special rule as to what constitutes a class action, the effect of which deprives individuals—not people filing on behalf of a similarly situated class, but individuals—their opportunity to recover on a fraud perpetrated upon them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Very briefly, the essence of this comes down to this, because this is very complicated.

How does this work? It is a State court judge that has to make this determination as to whether or not these individual suits get consolidated. It is not a Federal judge; it is a State court judge. Obviously, a State court judge has broad discretion in making that determination. Even if he does do that, if an individual feels he does not belong in that grouping—obviously, we are trying to avoid a case where there are 50 or more individual actions that effectively operate as a single action, which would thus gut the bill and the uniform way in which we are attempting to deal with litigation issues.

As I said, the decision to consolidate these individual actions must be with a State court judge, and then if the individual feels as though they really don't belong in that case, the State court judge has broad discretion to take that individual out.

There are a lot of protections here. This is not heavy handed at all. It is a way to try and avoid exactly creating new loopholes where plaintiffs seek to consolidate individual cases and thus evade the provisions of this legislation.

But that decision is the State court judges' decision and to their broad discretion. And secondly, the individual has the opportunity to go to that State court judge and make the case that they don't really belong in that class action. That State court judge has the broad discretion of keeping that person out of that class.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I don't know if it is appropriate at this time, if all time is yielded back, and I know at 5:30 we will vote.

VOTE ON AMENDMENT NO. 2395—MOTION TO TABLE

Mr. D'AMATO. Mr. President, if it is appropriate now, I move to table the Sarbanes 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 lay on the table the amendment of the Senator from Maryland. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced—yeas 69, nays 30, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—69

Abraham	Ashcroft	Bennett
Allard	Baucus	Bingaman
Bond	Grams	McConnell
Boxer	Grassley	Mikulski
Brownback	Gregg	Moseley-Braun
Burns	Hagel	Murkowski
Campbell	Harkin	Murray
Chafee	Hatch	Nickles
Coats	Helms	Reid
Cochran	Hutchinson	Robb
Coverdell	Hutchison	Roberts
Craig	Inhofe	Roth
D'Amato	Jeffords	Santorum
Daschle	Kempthorne	Sessions
DeWine	Kerry	Smith (NH)
Dodd	Kohl	Smith (OR)
Domenici	Kyl	Stevens
Enzi	Landrieu	Thomas
Faircloth	Leahy	Thompson
Feinstein	Lieberman	Thurmond
Frist	Lott	Torricelli
Gorton	Lugar	Warner
Gramm	Mack	Wyden

NAYS—30

Akaka	Durbin	Lautenberg
Biden	Feingold	Levin
Breaux	Ford	Moynihan
Bryan	Glenn	Reed
Bumpers	Graham	Rockefeller
Byrd	Hollings	Sarbanes
Cleland	Inouye	Shelby
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Dorgan	Kerrey	Wellstone

The motion to lay on the table the amendment (No. 2395) was agreed to.

VOTE ON AMENDMENT NO. 2396 — MOTION TO TABLE

Mr. D'AMATO. Mr. President, what is the pending business?

The PRESIDING OFFICER. The question is on agreeing to Amendment No. 2396 offered by Mr. SARBANES.

Mr. D'AMATO. Mr. President, I move to table 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

The result was announced—yeas 72, nays 27, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—72

Abraham	Faircloth	Lott
Allard	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frist	McConnell
Bennett	Gorton	Mikulski
Bingaman	Gramm	Moseley-Braun
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brownback	Hagel	Reid
Burns	Harkin	Robb
Campbell	Hatch	Roberts
Chafee	Helms	Roth
Coats	Hutchinson	Santorum
Cochran	Hutchison	Sessions
Collins	Inhofe	Smith (NH)
Coverdell	Jeffords	Smith (OR)
Craig	Kempthorne	Snowe
D'Amato	Kerrey	Specter
Daschle	Kohl	Stevens
DeWine	Kyl	Thomas
Dodd	Landrieu	Thurmond
Domenici	Leahy	Warner
Enzi	Lieberman	Wyden

NAYS—27

Akaka	Byrd	Durbin
Biden	Cleland	Feingold
Bryan	Conrad	Glenn
Bumpers	Dorgan	Graham

Hollings	Lautenberg	Sarbanes
Inouye	Levin	Shelby
Johnson	Moynihan	Thompson
Kennedy	Reed	Torricelli
Kerry	Rockefeller	Wellstone

The motion to lay on the table the amendment (No. 2396) was agreed to.

Mr. SARBANES addressed the Chair.

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

AMENDMENT NO. 2397

(Purpose: To preserve the right of a State or a political subdivision thereof or a State pension plan from bringing actions under the securities laws)

Mr. SARBANES. 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 Maryland [Mr. SARBANES], for himself, Mr. BRYAN, Mr. JOHNSON and Mr. BIDEN, proposes an amendment numbered 2397.

The amendment is as follows:

On page 10, between lines 16 and 17, insert the following:

''(f) STATE ACTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(2) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 10, line 17, strike ''(f)'' and insert ''(g)''.

On page 15, between lines 19 and 20, insert the following:

''(5) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 15, line 20, strike ''(5)'' and insert ''(6)''.

Mr. SARBANES. Mr. President, I offer this amendment on behalf of myself, Senator BRYAN, Senator JOHNSON, and Senator BIDEN. I will be very quick, because the manager has indicated he will accept this amendment.

This amendment preserves the right of State and local governments and their pension plans to bring securities fraud suits under State law. They have never been professional plaintiffs. They have never abused the system. They have to go through an elaborate process to even bring suit. They obviously are concerned with protecting the public and the taxpayers, and it seems to me a reasonable exemption from the provisions of this bill as it applies to these governmental units.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have no objection. As the Senator has indicated, these classes are comprised solely of States, counties, and other public entities. There is no record of such class-action suits being brought. I might add, local governments, for the most part, school districts in particular, are typically precluded from investing in stocks, particularly in these stocks. We accept the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 2397) was agreed to.

Mr. D'AMATO. Mr. President, I am aware of no further amendments, but I ask unanimous consent that the Senator from Oklahoma be recognized for the purpose of propounding a unanimous-consent request, and that the Senator from California—I think I have 2½ minutes left. I yield 1 minute to the Senator from California.

Mr. BIDEN. Will the Senator yield? I believe a unanimous-consent agreement had room for me to offer an amendment at sometime, and I intend on doing that, although I will not ask for a rollcall vote. I will be a very good boy if you listen for 5 minutes, and then I will withdraw the amendment.

Mr. D'AMATO. I have no objection. I ask that the Senator be recognized to offer an amendment.

AMENDMENT NO. 2398

(Purpose: To amend the bill with respect to title 18, United States Code)

Mr. BIDEN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 2398.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . FRAUD AS PREDICATE OFFENSE.

Section 1964(c) of title 18, United States Code, is amended by striking '', except'' and all that follows through ''final''.

Mr. BIDEN. Mr. President, I will be necessarily brief because I have over the years learned to count, and I do not believe I have the votes for this amendment, but I want to make two relatively brief points.

First of all, in 1970, the Congress greatly assisted the fight against organized crime by adopting the Racketeering Influence and Corruption Organizations Act. We know it as RICO.

RICO included a private civil enforcement provision with enhanced penalties, including triple damages for racketeering behavior in furtherance of a criminal enterprise engaged in certain, what they call predicate offenses, including murder, arson, bribery, wire fraud, bankruptcy fraud, and securities fraud—securities fraud.

At the request of the Securities and Exchange Commission and the industry, though against the wishes of law enforcement and State regulators, in 1995, the Securities Litigation Act effectively eliminated securities fraud as a grounds for private civil RICO proceedings. Many of us disagreed with carving out the securities fraud for special status, Mr. President, and protection from application of the civil RICO statute. In fact, my amendment was intended to preserve many civil RICO securities fraud claims and was accepted last time by the full Senate. Unfortunately, it was dropped in committee.

Last November, the Federal grand jury in Manhattan indicted 19 individuals, including two reputed mob chieftains known as ''Rossi'' and ''Curly,'' for their role in the alleged plot to manipulate a thinly traded stock, so-called penny stocks, and for threatening brokers to drive up the prices.

There is an article that was published that says ''The Mob on Wall Street.'' I ask unanimous consent that an except from this article be printed in the RECORD.

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

[From Business Week, Dec. 16, 1996]

THE MOB ON WALL STREET

(By Gary Weiss)

In the world of multimedia, Phoenix-based SC&T International Inc. has carved out a small but significant niche. SC&T's products have won raves in the trade press, but working capital has not always been easy to come by. So in December, 1995, the company brought in Sovereign Equity Management Corp., a Boca Raton (Fla.) brokerage, to manage an initial public offering. ''We thought they were a solid second- or third-tier investment bank,'' says SC&T Chief Executive James L. Copeland.

But there was much about Sovereign that was known to only a very few. There were, for example, the early investors, introduced by Sovereign, who had provided inventory financing for SC&T. Most shared the same post office box in the Bahamas. ''I had absolutely no idea of who those people were,'' says Copeland. He asked Sovereign. ''I was told, 'Who gives a s—. It's clean money.'' The early investors cashed out, at the offering price of $5, some 1,575 million shares that they acquired at about $1.33 share—a gain of some $5.8 million.

By mid-June, SC&T was trading at $8 or better. But for SC&T shareholders who did not sell by then, the stock was an unmitigated disaster. Sovereign, which had handled over 60% of SC&T's trades early in the year, sharply reduced its support of the stock. Without the backing of Sovereign and its 75-odd brokers, SC&T's shares plummeted—to $2 in July, $1 in September, and lately, pennies. The company's capital-raising ability is in tatters. Laments Copeland: ''We're in the crapper.''

A routine case of a hot stock that went frigid. Or was it? Copeland didn't know it, but there was a man who kept a very close

eye on SC&T and is alleged by Wall Street sources to have profited handsomely in the IPO—allegedly by being one of the lucky few who sold shares through a Bahamian shell company. His name is Philip Abramo, and he has been identified in court documents as a ranking member, or *capo*, in the New Jersey-based DeCavalcante organized crime family.

James Copeland didn't know it. Nobody at SC&T could have dreamed it. But the almost unimaginable had come true: Copeland had put his company in the hands of the Mob.

Today, the stock market is confronting a vexing problem that, so far, the industry and regulators have seemed reluctant to face—or even acknowledge. Call it what you will: organized crime, the Mafia, wiseguys. They are the stuff of tabloids and gangster movies. To most investors, they would seem to have as much to do with Wall Street as the other side of the moon.

But in the canyons of lower Manhattan, one can find members of organized crime, their friends and associates. How large a presence? No one—least of all regulators and law enforcement—seems to know. The Street's ranking reputed underworld chieftain, Abramo, is described by sources familiar with his activities as controlling at least four brokerages through front men and exerting influence upon still more firms. Until recently Abramo had an office in the heart of the financial district, around the corner from the regional office of an organization that might just as well be on Venus as far as the Mob is concerned—the National Association of Securities Dealers, the self-regulatory organization that oversees the small-stock business.

A three-month investigation by Business Week reveals that substantial elements of the small-cap market have been turned into a veritable Mob franchise, under the very noses of regulators and law enforcement. And that is a daunting prospect for every investor who buys small-cap stocks and every small company whose stock trades on the NASDAQ market and over the counter. For the Mob makes money in various ways, ranging from exploiting IPOs to extortion to getting a ''piece of the action'' from traders and brokerage firms. But its chief means of livelihood is ripping off investors by the time-tested method of driving share prices upward—and dumping them on the public through aggressive cold-calling.

In its inquiry, Business Week reviewed a mountain of documentation and interviewed traders, brokerage executives, investors, regulators, law-enforcement officials, and prosecutors. It also interviewed present and former associates of the Wall Street Mob contingent. Virtually all spoke on condition of anonymity, with several Street sources fearing severe physical harm—even death—if their identities became known. One, a former broker at a Mob-run brokerage, says he discussed entering the federal Witness Protection Program after hearing that his life might be in danger. A short-seller in the Southwest, alarmed by threats, carries a gun.

Among Business Week's findings:

The Mob has established a network of stock promoters, securities dealers, and the all-important ''boiler rooms''—a crucial part of Mob manipulation schemes—that sell stocks nationwide through hard-sell cold-calling. The brokerages are located mainly in the New York area and in Florida, with the heart of their operations in the vicinity of lower Broad Street in downtown Manhattan.

Four organized crime families as well as elements of the Russian Mob directly own or control, through front men, perhaps two dozen brokerage firms that make markets in hundreds of stocks. Other securities dealers and traders are believed to pay extortion money or ''tribute'' to the Mob as just another cost of doing business on the Street.

Traders and brokers have been subjected in recent months to increasing levels of violent ''persuasion'' and punishment—threats and beatings. Among the firms that have been subject to Mob intimidation, sources say, is the premier market maker in NASDAQ stocks—Herzog, Heine, Gedule Inc.

Using offshore accounts in the Bahamas and elsewhere, the Mob has engineered lucrative schemes involving low-priced stock under Regulations S of the securities laws. Organized crime members profit from the runup in such stocks and also from short-selling the stocks on the way down. They also take advantage of the very wide spreads between the bid and ask prices of the stock issues controlled by their confederates.

The Mob's activities seem confined almost exclusively to stocks traded in the over-the-counter ''bulletin board'' and NASDAQ small-cap markets. By contrast, New York Stock Exchange and American Stock Exchange issues and firms apparently have been free of Mob exploitation.

Wall Street has become as lucrative for the Mob that it is allegedly a major source of income for high-level members of organized crime—few of whom have ever been publicly identified as having ties to the Street. Abramo, who may well be the most active reputed mobster on the Street, has remained completely out of the public eye—even staying active on the Street after his recent conviction for tax evasion.

Mob-related activities on the Street are the subject of inquiries by the FBI and the office of Manhattan District Attorney Robert M. Morgenthau, which is described by one source as having received numerous complaints concerning mobsters on the Street. (Officials at both agencies and the New York Police Dept. did not respond to repeated requests for comment.)

Overall, the response of regulators and law enforcement to Mob penetration of Wall Street has been mixed at best. Market sources say complaints of Mob coercion have often been ignored by law enforcement. Although an NASD spokesman says the agency would vigorously pursue reports of Mob infiltration, two top NASD officials told Business Week that they have no knowledge of Mob penetration of member firms. Asked to discuss such allegations, another high NASD official declined, saying: ''I'd rather you not tell me about it.''

The Hanover, Sterling & Co. penny-stock firm, which left 12,000 investors in the lurch when it went out of business in early 1995, is alleged by people close to the firm to have been under the control of members of the Genovese organized crime family. Sources say other Mob factions engaged in aggressive short-selling of stocks brought public by Hanover.

Federal investigators are said to be probing extortion attempts by Mob-linked short-sellers who had been associated with the now-defunct Stratton Oakmont penny-stock firm.

Mob manipulation has affected the markets in a wide range of stocks. Among those identified by Business Week are Affinity Entertainment, Celebrity Entertainment, Beachport Entertainment, Crystal Broadcasting, First Colonial Ventures, Global Spill Management, Hollywood Productions, Innovative Medical Services, International Nursing Services, Novatek International, Osicom Technologies, ReClaim, SC&T, Solv-Ex, and TJT. Officials of the companies deny any knowledge of Mob involvement in the trading of their stocks, and there is no evidence that company managements have been in league with stock manipulators. These stocks were allegedly run up by Mob-linked brokers, who sometimes used force or threats to curtail short-selling in the stocks. When support by allegedly Mob-linked brokerages ended, the stocks often suffered precipitous declines—sometimes abetted, traders say, by Mob-linked short-sellers. The stocks have generally fared poorly (table, page 99).

Not all of the stocks were recent IPOs, and they were often taken public by perfectly legitimate underwriters. International Nursing, for example, went public at $23 in 1994 and was trading at $8 in early 1996 before falling back to pennies. Short-sellers who attempted to sell the shares earlier this year were warned off—in one instance by a Mob member—market sources assert. International Nursing Chairman John Yeros denies knowledge of manipulation of the stock.

What this all adds up to is a shocking tale of criminal infiltration abetted by widespread fear and silence—and official inaction. While firms and brokerage executives who strive to keep far afield of the Mob often complain of NASD inaction, rarely do such people feel strongly enough to share their views with regulators or law enforcement. Instead, they engage in self-defense. One major brokerage, which often executes trades for small-cap market makers, keeps mammoth intelligence files—to steer clear of Mob-run brokers. A major accounting firm keeps an organized-crime expert on the payroll. His duties include preventing his firm from doing business with brokerages linked to organized crime and the Russian Mob.

Mr. BIDEN. Mr. President, they are not talking about legitimate traders; they are talking about the mob's attempt to infiltrate Wall Street. It seems to me for us to carve out of the original legislation an exemption from RICO predicate statutes securities fraud is a serious mistake. But it would also be a serious mistake for me to push this issue without the votes at this point, because I realize there is an attempt to bring this legislation to a close.

I think it is bad legislation generally. I think it is a serious mistake to have done this, but I also have been here long enough, as I said, to be able to know where the votes are.

I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 2398) was withdrawn.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senator from California be recognized for 1 minute and thereafter, the sponsor of the legislation who has not spoken today, Senator DOMENICI, who has been tied up in committee, has asked to be recognized for up to 5 minutes. Then I ask unanimous consent that we go to final passage.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized for 1 minute.

Mrs. BOXER. Thank you very much, Mr. President.

The question before the Senate today is the following: How many securities litigation laws should there be relative to class-action lawsuits involving nationally traded securities?

I believe the answer is one. And I believed the answer was one when we had

this debate in 1995. And even though I advocated for a stronger law at that time, I always thought there ought to be one law.

We, as policymakers, must establish a regulatory environment in which investors have sufficient rights and remedies while also ensuring that the high-growth industries of our economy, many of which are located in my home State of California, are provided the stability and the certainty they need to expand, grow, and create jobs.

This bill does just that. It is narrowly crafted to address only the issue of class action lawsuits and nationally traded securities—I think this is very important. It defines and limits class-action lawsuits. It applies only to nationally traded securities. It is a bill which I am proud to support.

Chairman Levitt, who I respect greatly, Chairman of the SEC, is supportive of this legislation, and I think his words should carry a great deal of weight. We ought to give this law a chance to work in the Federal court and not see this law go to 50 different State courts. This would be very disruptive and it doesn't make sense for nationally traded securities.

If, after a time, we feel the law isn't good enough, isn't strong enough, isn't working as we had envisioned, we can revisit it and address it as necessary. But I think today we ought to support this bill, as drafted, and assert there ought to be one law when it comes to class action lawsuits involving nationally traded securities.

So, Mr. President, I am pleased to join the Chairman of the Banking Committee and the ranking member on the Securities Subcommittee, Senator DODD, in support of this bill. I yield the floor, and I yield the time back to the Senator from New York.

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes.

Mr. DOMENICI. Mr. President, I will not use that amount of time.

I just want to say how pleased I am that today we are going to close the loop and make sure that the small group of entrepreneurial plaintiff lawyers who were taking advantage of our securities laws are now going to follow a uniform law in the States and in the Federal courts.

It was in 1990 that Senator Sanford of North Carolina, who passed away just recently, and I introduced the first legislation on this issue. We did so because we found that a small group of plaintiff's lawyers were engaged in the business of finding meritless lawsuits to file, but since they were class action lawsuits, they would have to get settled. We found a trend across the country where they settled all these cases rather than have jury trials. A small cadre of lawyers became rich, and, as far as we can find out, very few stockholders benefited.

We passed the first bill to tighten up the rules in the Federal court system in 1995. It is the only bill where we overrode President Clinton's veto. And tonight I think we will pass, by an even more overwhelming number, the culmination of this effort. The bill will keep plaintiffs' lawyers from picking State courts to do what we have precluded them from doing in the Federal courts. This bill will stop them from doing what we know they already are doing—they look for a sympathetic state forum where they can get these lawsuits filed.

This is legislation that helps the high-tech companies that get started in America. We have testimony that the Intel company—that great American company—had they faced one of these kinds of suits when they were in their infancy, they are almost certain that they would not exist today. We do not know how many other companies now do not exist because they faced these kinds of lawsuits.

But essentially we are doing an exciting thing for growth, prosperity, and we are harming and hurting no one with legitimate complaints against corporations for fraud, misrepresentation, and malfeasance.

As I said, I rise today in strong support of S. 1260, the ''Securities Litigation Reform Uniform Standards Act of 1998'' and I want to commend the Majority Leader for bringing this bill to the floor this week. Few issues are more important to the high-tech community and the efficient operation of our capital markets than securities fraud lawsuit reform.

I am pleased to serve as an original co-sponsor of this legislation with Senators D'AMATO, DODD, and GRAMM—a bill to provide one set of rules to govern securities fraud class actions.

As I said previously, this bill completes the work I began more than 6 years ago with Senator Sanford of North Carolina. Back in the early 1990's, Senator Sanford and I noticed that a small group of entrepreneurial plaintiffs' lawyers were taking advantage of our securities laws and the federal rules related to class action lawsuits to file frivolous and abusive claims against high-technology companies in Federal courts.

Often these lawsuits were based simply on the fact that a company's stock price had fallen, without any real evidence of fraud. Senator Sanford and I realized a long time ago that stock price volatility—common in high tech stocks—simply is not stock fraud.

But, because it was so expensive and time consuming to fight these lawsuits, many companies settled even when they knew they had done nothing wrong. The money used to pay for these frivolous lawsuits could have been used for research and development or to create new, high-paying jobs.

So, we introduced a bill to make some changes to the securities fraud class action system. Of course, since we were up against the plaintiffs' lawyers, the bill didn't go anywhere for awhile.

After Senator Sanford left the Senate, the senior Senator from Connecticut, Senator DODD, and I continued to work hard on this issue. In 1995, with tremendous help from Chairman D'AMATO and Senator GRAMM, we passed a law. The Private Securities Litigation Reform Act of 1995 passed Congress in an overwhelmingly bipartisan way—over President Clinton's veto of the bill.

And since enactment of the Reform Act, we have seen great changes in the conduct of plaintiffs' class action lawyers in federal court. Because of more stringent pleading requirements, plaintiffs' lawyers no longer ''race to the courthouse'' to be the first to file securities class actions. Because of the new rules, we no longer have ''professional plaintiffs''—investors who buy a few shares of stock and then serve as named plaintiffs in multiple securities class actions. Other rules make it difficult for plaintiffs' lawyers to file lawsuits to force companies into settlement rather than face the expensive and time consuming ''fishing expedition'' discovery process.

Now, it looks like our new law has worked too well. Entrepreneurial trial lawyers have begun filing similar claims in State court instead of federal court to avoid the new law's safeguards against frivolous and abusive lawsuits. Instead of one set of rules, we now have 51—one for the Federal system and 50 different ones in the States.

According to the Securities and Exchange Commission, this migration of claims from Federal court to State court ''may be the most significant development in securities litigation'' since the passage of the new law in 1995.

In fact, prior to passage of the new law in 1995, State courts rarely served as the forum for securities fraud lawsuits. Now, more than 25 percent of all securities class actions are brought in State court. A recent Price Waterhouse study found that the average number of State court class actions filed in 1996—the first year after the new law—grew 335 percent over the 1991–1995 average. In 1997, State court filings were 150 percent greater than the 1991–1995 average.

So, there has been an unprecedented increase in State securities fraud class actions. In fact, trial lawyers have testified to Congress that they have an obligation to file securities fraud lawsuits in State court if it provides a more attractive forum for their clients. Imagine that—plaintiffs' lawyers admit that they are attempting to avoid federal law.

These State court lawsuits also have prevented high-tech companies from taking advantage of one of the most significant reforms in the 1995 law—the safe harbor for predictive statements. Under the 1995 law, companies which make forward-looking statements are exempt from lawsuits based on those statements if they meet certain requirements. Companies are reluctant to use the safe harbor and make predictive statements because they fear that such statements could be used

against them in State court. This fear chills the free flow of important information to investors—certainly not a result we intended when we passed the new law.

So today, the Senate will vote to create one set of rules for securities fraud cases. One uniform set of rules is critical for our high-technology community and our capital markets.

Without this legislation, the productivity of the fastest growing segment of our economy—high tech—will continue to be hamstrung by abusive, lawyer-driven lawsuits. Rather than spend their resources on R&D or creating new jobs, high-tech companies will continue to be forced to spend massive sums fending off frivolous lawsuits.

When I first worked on this issue, executives at Intel Corporation told me that if they had been hit with a frivolous securities lawsuit early in the company's history, they likely never would have invented the microchip. We should not let that happen to the next generation of Intels.

This bill also is important to our markets. Our capital markets are the envy of the world, and by definition are national in scope. Information provided by companies to the markets is directed to investors across the United States and throughout the world.

Under the Commerce Clause of the U.S. Constitution, Congress has the authority to regulate in areas affecting ''interstate commerce.'' I cannot imagine a more classic example of what constitutes ''interstate commerce'' than the purchase and sale of securities over a national exchange.

Not only does Congress have the authority to regulate in this area, it clearly is necessary and appropriate. Right now, in an environment where there are 50 different sets of rules, companies must take into account the most onerous State liability rules and tailor their conduct accordingly. If the liability rules in one State make it easier for entrepreneurial lawyers to bring frivolous lawsuits, that affects companies and the information available to investors in all other States. One uniform set of rules will eliminate that problem.

Mr. President, I again want to commend my colleagues for their work on this important bill. I understand that this is a bi-partisan bill which has the support of the SEC and at least 40 Senators. I think by the end of the day, many, many more Senators will join us in supporting this bill. Thank you, Mr. President.

Mr. D'AMATO. Mr. President, I have one more unanimous consent. The Senator from Nevada has asked to speak for up to 3 minutes. I ask unanimous consent that he be given that and then we go to final passage.

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

The Senator from Nevada.

Mr. BRYAN. I thank the Presiding Officer.

I thank the chairman for his courtesy.

Mr. President, this is a vote that I believe that my colleagues who support the measure—and I am not unmindful of how the votes lie—will live to rue. At a time when investor fraud is mounting with billions and billions of dollars, we have a consistent, steady course of action where we are systematically depriving individual small investors from protections.

This adds a further limitation to the statute of limitations. And 37 out of the 50 States provide a greater remedy. This provides a limitation in terms of the ability of an investor to file an action against an accomplice. And 49 out of 50 States provide that remedy. We take that away in this course of action.

Most States provide a remedy for joint and several liability so that an investor who is defrauded may recover the full amount of his or her loss from any one of the individual investors. If this legislation had been in place at the time of the Keating fraud, where Keating himself was, in effect, judgment proof, there would have been no ability to recover against the fraudulent activity of the accomplices—the accountants, the lawyers, and others.

That is why, contrary to the assertion by the proponents, this is not a plaintiff's lawyer's argument that is being made in opposition to this. There are some abuses, and we should confine ourselves to that. That is why all of the governmental institutions who are charged with their public responsibility as stewards of investment funds, retirement funds, municipalities, school districts, States, all have expressed their opposition to the legislation, because they recognize that the taxpayer, himself or herself, is frequently defrauded by this course of action.

So this is a bad piece of legislation. And we continue on a slippery slope in eliminating basic investor protections. The small guys get dealt out of the game with this legislation. The victims, they can take care of themselves. But for the millions and millions of small investors who have confidence in our markets, who are coming in—one out of every three in the country—they are the big losers in this legislation.

Mr. SARBANES. Will the Senator yield?

Mr. BRYAN. I am happy to yield.

Mr. SARBANES. I want to commend the Senator from Nevada for a very powerful statement and for his very strong presentation of the arguments. All I want to say to my colleague is, I am confident in making the prediction that events down the road, when the investors come in, innocent people, and say, ''We didn't have a remedy,'' he will be proven correct.

Mr. BRYAN. I thank the Senator from Maryland for his comments. He has stood tall, not only in this legislation but in the 1995 legislation on behalf of small investors. That is what this matter is all about. There is no sympathy for plaintiff lawyers. That is not the argument, as the Senator from Maryland and I and others who oppose this legislation know. We are talking about protecting small investors in America who, I believe, are left with fewer defenses as a result of this.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I will be very brief on this. And we have been through this. The last time it was a 5-day debate. We ought to take some solace in the fact that we have done this in half a day. And let me commend my colleagues, all of them, who have been involved in this and over some period of time.

But I say, Mr. President, this is a very sound piece of legislation that can make a huge difference today. That investor that my colleague, the distinguished Senator from Nevada, talks about, that is the investor that deposits their hard-earned money in the securities of struggling businesses, high-tech companies that are the primary targets of these lawsuits. And it is these industries that represent the knowledge-based economy of our 21st century.

Too often we have seen predator lawyers out there go after them. What we are trying to do with this bill is to tighten up the loophole, to make it possible for these companies to grow while simultaneously—simultaneously—seeing to it that investors can bring a rightful cause of action, as plaintiffs, where fraud has been committed.

This is going to make for a far sounder system for people in this country. And I predict to my colleagues that we will see economic growth in these firms and businesses, where they can avoid the kind of tremendous expenditures that have had to be laid out to fight frivolous lawsuits and end up as settlements, costing fortunes with, of course, cases being thrown out of court.

So I predict to my colleagues, this will be a vote they will be very proud of in the years ahead to avoid these frivolous lawsuits we have seen in the past. I urge passage of the legislation.

Mr. D'AMATO. I ask unanimous consent that Senator KOHL be recognized for a request, and then I will call for the yeas and nays.

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

Mr. KOHL. Thank you, I say to Senator D'AMATO.

CHANGE OF VOTE—ROLL CALL VOTE NO. 132

Mr. KOHL. Mr. President, on rollcall vote No. 132, I voted no. It was my intention to vote aye. Therefore, I ask unanimous consent that 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.

Mr. D'AMATO. 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.

Mr. D'AMATO. 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. D'AMATO. 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 PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 79, nays 21 as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—79

Abraham	Frist	Mack
Allard	Gorton	McConnell
Ashcroft	Graham	Mikulski
Baucus	Gramm	Moseley-Braun
Bennett	Grams	Murkowski
Bingaman	Grassley	Murray
Bond	Gregg	Nickles
Boxer	Hagel	Reed
Breaux	Harkin	Reid
Brownback	Hatch	Robb
Burns	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Coats	Hutchison	Santorum
Cochran	Inhofe	Sessions
Collins	Jeffords	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Domenici	Landrieu	Thurmond
Enzi	Leahy	Warner
Faircloth	Lieberman	Wyden
Feinstein	Lott	
Ford	Lugar	

NAYS—21

Akaka	Dorgan	Levin
Biden	Durbin	McCain
Bryan	Feingold	Moynihan
Bumpers	Glenn	Sarbanes
Byrd	Inouye	Shelby
Cleland	Johnson	Torricelli
Conrad	Lautenberg	Wellstone

The bill (S. 1260), as amended, was passed, as follows:

S. 1260

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securities Litigation Uniform Standards Act of 1998''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Private Securities Litigation Reform Act of 1995 sought to prevent abuses in private securities fraud lawsuits;

(2) since enactment of that legislation, considerable evidence has been presented to Congress that a number of securities class action lawsuits have shifted from Federal to State courts;

(3) this shift has prevented that Act from fully achieving its objectives;

(4) State securities regulation is of continuing importance, together with Federal regulation of securities, to protect investors and promote strong financial markets; and

(5) in order to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the Private Securities Litigation Reform Act of 1995, it is appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators and not changing the current treatment of individual lawsuits.

SEC. 3. LIMITATION ON REMEDIES.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 16 of the Securities Act of 1933 (15 U.S.C. 77p) is amended to read as follows:

''SEC. 16. ADDITIONAL REMEDIES; LIMITATION ON REMEDIES.

''(a) REMEDIES ADDITIONAL.—Except as provided in subsection (b), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

''(b) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

''(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(c) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

''(d) PRESERVATION OF CERTAIN ACTIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), a class action described in paragraph (2) of this subsection that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(2) PERMISSIBLE ACTIONS.—A class action is described in this paragraph if it involves—

''(A) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(B) any recommendation, position, or other communication with respect to the sale of securities of the issuer that—

''(i) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(ii) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(e) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(f) STATE ACTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(2) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

''(g) DEFINITIONS.—For purposes of this section the following definitions shall apply:

''(1) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(B) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(3) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

(2) CONFORMING AMENDMENTS.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(A) by inserting ''except as provided in section 16 with respect to class actions,'' after ''Territorial courts,''; and

(B) by striking ''No case'' and inserting ''Except as provided in section 16(c), no case''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended—

(1) in subsection (a), by striking ''The rights and remedies'' and inserting ''Except as provided in subsection (f), the rights and remedies''; and

(2) by adding at the end the following new subsection:

''(f) LIMITATIONS ON REMEDIES.—

''(1) CLASS ACTION LIMITATIONS.—No class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

''(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

''(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

''(2) REMOVAL OF CLASS ACTIONS.—Any class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

''(3) PRESERVATION OF CERTAIN ACTIONS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a class action described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

''(B) PERMISSIBLE ACTIONS.—A class action is described in this subparagraph if it involves—

''(i) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

''(ii) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

''(I) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

''(II) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

''(4) PRESERVATION OF STATE JURISDICTION.—The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

''(5) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

''(6) DEFINITIONS.—For purposes of this subsection the following definitions shall apply:

''(A) AFFILIATE OF THE ISSUER.—The term 'affiliate of the issuer' means a person that directly or indirectly, through 1 or more intermediaries, controls or is controlled by or is under common control with, the issuer.

''(B) CLASS ACTION.—The term 'class action' means—

''(i) any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

''(II) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

''(ii) any group of lawsuits (other than derivative suits brought by 1 or more shareholders on behalf of a corporation) filed in or pending in the same court and involving common questions of law or fact, in which—

''(I) damages are sought on behalf of more than 50 persons; and

''(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

''(C) COUNTING OF CERTAIN CLASS MEMBERS.—For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as 1 person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

''(D) COVERED SECURITY.—The term 'covered security' means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred.''.

SEC. 4. APPLICABILITY.

The amendments made by this Act shall not affect or apply to any action commenced before and pending on the date of enactment of this Act.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

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

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

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I am trying to have an announcement for the Members. But I need to check with a couple of people in just a moment. So if the Senator from Iowa would like to proceed with statements, I would like to maybe interrupt in a moment.

Mr. LEAHY. Mr. President, while the leader is on the floor—if the Senator from Iowa will withhold for just a moment—I know the leader is trying to get a schedule together. I just wanted to note, because there has been some question over here on this side of the aisle, that on S. 2037, the WIPO bill, or the digital new millennium copyright legislation, there is absolutely no objection to going forward with it. I suggest that there will be unanimous support for it over here. I just wanted to advise the distinguished majority leader of that fact.

Mr. LOTT. I might respond to the fact that we do want to get that bill done. We have run into a possible technical problem that we are trying to work out, as you well know.

Mr. LEAHY. I understand what the leader wants to do. I wanted to make sure that he understands this side of the aisle is ready and raring to go.

Mr. LOTT. Mr. President, for the information of all Senators, the Senate has now passed the second of the four high-tech bills that we had been working on and have worked to get agreements. And we have been successful in that. It is our intent at the earliest opportunity to consider and pass the WIPO bill, even though I understand there may be a technical problem with the blue slip issue involving the House of Representatives. We are trying to check that out, and also the immigration bill that the Senator from Michigan has been working on, and Senator KENNEDY from Massachusetts.

It would be our intent to call up that immigration bill, if we do not do it before noon on Monday, with the possibility of stacked votes on Monday afternoon about 5:30. I am not asking unanimous consent to that effect right now. I have discussed that with Senator ABRAHAM, and Senator KENNEDY. But I would need to check that with Senator DASCHLE and others.

But I want the Members to know that we need to complete action on these high-tech bills. A lot of great work has been done. We have been able to pass two of them. We are very close to being able to get the other two done. Our intent is to stay with that until we get it completed.

The Senate will now begin the DOD authorization bill.

Having said all of that, there will be no further votes this evening, and the Senate will consider the DOD authorization bill throughout Thursday's session of the Senate. I had hoped there would be opening statements. But I understand we will just lay the bill down, and then we will begin tomorrow.

But I want the RECORD to show that I was requested to have the remainder of the night for the DOD authorization bill so that we could get 2 or 3 hours on it. We are not going to be able to do that. But I am certainly prepared and willing, and wanted to do that.

UNANIMOUS-CONSENT REQUEST—S. 2057

Mr. LOTT. Mr. President, I now ask unanimous consent the Senate turn to S. 2057, the DOD authorization bill.

Mr. ABRAHAM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senate majority leader has the floor.

UNANIMOUS CONSENT REQUEST—S. 1415

Mr. LOTT. Mr. President, I ask unanimous consent that S. 1415, the tobacco bill, be referred to the Finance Committee until 9 p.m. on Thursday, May 14, and if the committee has not reported the bill at that time, the measure be automatically discharged and placed immediately on the calendar, notwithstanding a recess or adjournment of the Senate.

I further ask the Finance Committee have permission to meet during the session of the Senate on Thursday, May 14, to consider S. 1415.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. I would ask the majority leader if he could hold for a few moments on propounding this UC; there are some discussions going on on that subject.

Mr. LOTT. Mr. President, I will withhold the unanimous consent request at this time, and while I am working on both of these unanimous consent requests, the Senators from Iowa wish to be recognized so I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S, 2078 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRASSLEY. I yield the floor.

UNANIMOUS CONSENT AGREEMENT—S. 1415

Mr. LOTT. Mr. President, I ask unanimous consent that S. 1415, the tobacco bill, be referred to the Finance Committee until 9 p.m. on Thursday, May 14, and if the committee has not reported the bill at that time, the measure be automatically discharged and placed immediately on the calendar, notwithstanding a recess or adjournment of the Senate.

I further ask that the Senate Finance Committee have permission to meet during the session of the Senate on Thursday, May 14, to consider S. 1415.

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Mr. LOTT. Mr. President, I now ask unanimous consent again that the Senate turn to S. 2057, the DOD authorization bill.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2057) to authorize appropriations for fiscal year 1999 for military activities in the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Dan Groeschen be granted the privilege of the floor during the consideration of the 1999 defense authorization bill.

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

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry. What is the floor situation right now? What are we on?

The PRESIDING OFFICER. We are on the bill S. 2057, Department of Defense authorization bill.

NUCLEAR DETONATIONS IN INDIA

Mr. HARKIN. Mr. President, I want to take a little time again today to talk about the perilous situation that we find in south Asia at this point in time. Once again, in complete disregard of world opinion, in complete disregard of peace in the region, in complete disregard of the concerns of its neighbors and its allies and friends, yesterday the nation of India once again detonated two more nuclear devices. That makes five in 2 days.

What I hear around here, Mr. President, people are saying, what have they done? Have they lost their senses? Have they lost all concept of reality? Have they gone berserk? Are they completely nutty now? Those are the kinds of things I hear around the Chamber and around the Capitol—people talking about India, and what has happened to them. I do not believe that all Indians have gone berserk or that all Indians are crazy, but certainly something has happened with their Government to flaunt what they have done, to go ahead and not only set off three in 1 day, but two the next day, and also near the border of Pakistan. For the life of me, I cannot understand what they can possibly be thinking of.

So, I am pleased that the President has announced that he will, in accordance with the law, invoke the full range of sanctions that are required under the Nuclear Policy Prevention Act of 1994. These are tough, and we want to make sure that the administration follows through on them. We have to end all foreign assistance and loans to the Nation of India. We must terminate all military aid and weapons transfers. We must oppose international foreign aid and financial assistance to the Nation through the World Bank and the International Monetary Fund. I understand many of our allies have decided to join in placing these sanctions on India. The law requires it, and we must place the full measure of the law on India in this regard.

Mr. President, I visited the south Asia region twice in the last year and a half. I understand the complexity of their internal politics and their international relations. But I must say this, that whatever problems there may have been before have been multiplied a thousandfold by what India just did.

Again, I hope the nations in that region will exercise caution and restraint in light of this. Right now, India has become the pariah of the world community of nations, and rightfully so, for what it has done. It should remain a pariah for a considerable amount of time, until it reverses its course, until it sits down with its neighbors to reach peaceful solutions in that area, until India is willing to sit down with its neighbor, Pakistan, and solve once and for all the issue of Kashmir; until India is ready to sit down with its neighbor, Pakistan, and secure their borders; until India is willing to disavow putting their nuclear arsenals within their military. Until that time, until these things are done, India will and should remain a pariah among the world community of nations.

Earlier today, our Secretary of Defense appeared before our Appropriations Subcommittee on Defense. We discussed these developments in south Asia and what they mean. Will there be a nuclear arms race now in the region? Will Pakistan follow suit and detonate a nuclear weapons test in response to India? What about China? What is China going to do now? How about Iran? Don't forget, they have a border also. What is Iran going to do now that India has taken this step? So what are all these nations going to do?

Secretary Cohen this morning, in open testimony, indicated that we may see a chain reaction of events. I think that is an apt term, considering the physics of nuclear fission. Just as a nuclear explosion is an uncontrolled nuclear chain reaction, so we may see uncontrolled events now happen in that region. But, just like a nuclear chain reaction, there are things you can do to slow it down and stop it. Just as in a nuclear powerplant, to slow down the chain reaction, they stick in the graphite rods to slow down the reaction, so we need to insert some graphite rods into the events that just happened in south Asia.

What I mean by that is that I believe that certain steps must be taken to slow down these events. First of all, as I mentioned, we must apply the full force and effect of law on the sanctions to India. Second, I believe we must meet with Pakistan at the earliest possible time to discuss our mutual security needs in that area of the world; to discuss them with Pakistan, who has been a friend and an ally going clear back to the establishment of Pakistan as a nation. When people wondered

what direction Pakistan would go, would they go to the Soviet Union or would they tilt toward the United States, Pakistan declared at that time they would go with the United States, they would follow the path of democracy and freedom and not with the Soviet Union.

Time and time and time again, Pakistan has come to our aid, our assistance, whether it was overflights over the Soviet Union for purposes of intelligence gathering, helping us in that terrible war in Afghanistan. There are still over a million refugees in the country of Pakistan from that war that helped topple the Soviet Union. Every step of the way, Pakistan has been our friend and our ally. So I think we need to meet with them at the earliest possible time to discuss our mutual security interests in that area.

Next, I hope President Clinton will, at the earliest possible time, indicate that he will not be visiting India this year. I know there has been a trip planned for the President to visit Pakistan and India this fall. I call upon the President to indicate now that, because of these events, it would not be right and proper for him to visit India but that it would be right and proper for him to visit Pakistan and perhaps other nations in that area such as Bangladesh. So, I call upon him to call off that visit to India to send another strong signal.

And, third, in order to put these graphite rods back into this chain reaction and to slow it down, I believe we need to press ahead with the Comprehensive Test Ban Treaty, or the CTBT, that would outlaw all nuclear weapons tests globally. So far, 149 nations have signed the treaty. In fact, we thought we were going to get it all done in August of 1996, except one nation walked out and refused to sign it—India. And now we know why. Is it too late for a Comprehensive Test Ban Treaty? I don't believe so. In fact, I believe what has happened in India more than anything indicates that we have to act now in the U.S. Senate to ratify the Comprehensive Test Ban Treaty.

We have not taken it up yet, and we should. We have signed it. It is now sitting before the Senate. We ought to take it up because the Comprehensive Test Ban Treaty will help put those graphite rods back in that chain reaction, slowing down uncontrolled events in south Asia.

The CTBT will not by itself eliminate the possibility of proliferation, but it will make it extremely difficult for nuclear nations, such as India, to develop sophisticated weapons that could be delivered by ballistic missiles.

Again, we have India, and they set off their underground explosions. But, as we know, that is not the end of the line in terms of developing the kind of weapons that can be delivered by ballistic missiles. If we don't sign and if we don't urge other nations and India to sign the CTBT, this will not be the end of India's nuclear testing, believe me. They are now going to have to refine their warheads. They are going to have to have further testing so that they have the kind of warheads they can deliver with missiles and perhaps aircraft. We have to stop that from happening, and that is why we need the Comprehensive Test Ban Treaty.

It would have been better if we had this in effect beforehand to stop what happened in India, but we didn't have it. We can't turn the clock back. We can't put the genie back in the bottle, but what we can do is we can push ahead now.

Here is how I see it, Mr. President. We have to put the full force and effect of the law on India with all these sanctions, cut off all aid, military assistance and cut off all World Bank loans and IMF. In fact, I think we ought to withdraw our ambassador, which the President has done, and not send him back. Then I believe the U.S. Senate should ratify the Comprehensive Test Ban Treaty and insist that India do so immediately, before we ever lift any sanctions. In that way, India may have a bomb, but they may not have something that they could deliver on the head of a missile.

That is why I believe it is so important that we bring up the Comprehensive Test Ban Treaty and ratify it in the Senate and stop this madness, stop these uncontrolled events that may take place in south Asia unless we act right now.

In fact, I must say, I know the occupant of the chair has spoken on this issue. I know he had a hearing on it today. Quite frankly, I am somewhat shocked that more Senators are not out here talking about what has happened in India in the last couple of days. I believe this is the biggest single danger to world peace that we have faced perhaps in the last 20 to 30 years, because uncontrolled events can start taking place.

On the one hand, I believe we must come down with the full force and effect of the law on India. I believe the President should call off his trip there this fall. I believe we need to meet with our friends in Pakistan to discuss our mutual security needs in that area. On the other hand, we need to ratify a comprehensive test ban treaty and then say to India, ''If you want to rejoin the community of nations, sign, join, no more testing.'' Then we get other nations to sign it, and we will have a comprehensive test ban treaty and will stop the uncontrolled events that may be unfolding in south Asia.

It is a perilous time. India cannot be excused from what it did. Hopefully, the community of nations can put the proper pressure on India to come to its senses and join the rest of the world community in saying, ''No; that they will never ever test nuclear weapons ever again.''

Mr. President, I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

MORNING BUSINESS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business until 7:45 p.m., with Senators permitted to speak for up to 10 minutes each.

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

NOTICE OF DECISION TO TERMINATE RULEMAKING

Mr. THURMOND. Mr. President, pursuant to Section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1383), a Notice of Decision to Terminate Rulemaking was submitted by the Office of Compliance, U.S. Congress. This Notice announces the termination of a proceeding commenced by a Notice of Proposed Rulemaking and a Supplementary Notice of Proposed Rulemaking published in the CONGRESSIONAL RECORD on October 1, 1997, and January 29, 1998, respectively.

I ask unanimous consent that this Notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: AMENDMENTS TO PROCEDURAL RULES

NOTICE OF DECISION TO TERMINATE RULEMAKING

Summary.—On October 1, 1997, the Executive Director of the Office of Compliance published a notice in the CONGRESSIONAL RECORD proposing, among other things, to extend the Procedural Rules of the Office to cover the General Accounting Office and the Library of Congress and their employees with respect to alleged violations of sections 204–207 of the Congressional Accountability Act of 1995 (''CAA''). These sections apply the rights and protections of the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act, and the Uniformed Services Employment and Reemployment Act, and prohibit retaliation and reprisal for exercising rights under the CAA. The notice invited public comment, and, on January 28, 1998, a supplementary notice was published inviting further comment. Having considered the comments received, the Executive Director has decided to terminate the rulemaking and, instead, to recommend that the Office's Board of Directors prepare and submit to Congress legislative proposals to resolve questions raised by the comments.

Availability of comments for public review.—Copies of comments received by the Office with respect to the proposed amendments are available for public review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact.—Executive Director, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540–1999; telephone (202) 724–9250 (voice), (202) 426–1912 (TTY). This Notice will be made available in large print or braille or on computer disk upon request to the Office of Compliance.

SUPPLEMENTARY INFORMATION

The Congressional Accountability Act of 1995 (''CAA''), 2 U.S.C. §1301 et seq., applies

the rights and protections of eleven labor, employment, and public access laws to the Legislative Branch. Sections 204–206 of the CAA explicitly cover the General Accounting Office (''GAO'') and the Library of Congress (''Library''). These sections apply the rights and protections of the Employee Polygraph Protection Act of 1988 (''EPPA''), the Worker Adjustment and Retraining Notification Act (''WARN Act''), and section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'').

On October 1, 1997, the Executive Director of the Office of Compliance (''Office'') published a Notice of Proposed Rulemaking (''NPRM'') proposing to extend the Procedural Rules of the Office to cover GAO and the Library and their employees for purposes of proceedings involving alleged violations of sections 204–206, as well as proceedings involving alleged violations of section 207, which prohibits intimidation and retaliation for exercising rights under violations of section 207, which prohibits intimidation and retaliation for exercising rights under the CAA. 143 CONG. REC. S10291 (daily ed. Oct. 1, 1997). The Library submitted comments in opposition to adoption of the proposed amendments and raising questions of statutory construction. On January 28, 1998, the Executive Director published a Supplementary Notice of Proposed Rulemaking (''Supplementary NPRM'') requesting further comment on the issues raised by the Library. 144 CONG. REC. S86 (daily ed. Jan. 28, 1998). Comments in response to the Supplementary NPRM were submitted by GAO, the Library, a union of Library employees, and a committee of the House of Representatives.

The comments expressed divergent views as to the meaning of the relevant statutory provisions. The CAA extends rights, protections, and procedures only to certain defined ''employing offices'' and ''covered employees.'' The definitions of these terms in section 101 of the CAA, which apply throughout the CAA generally, omit GAO and the Library and their employees from coverage, but sections 204–206 of the CAA expressly include GAO and the Library and their employees within the definitions of ''employing office'' and ''covered employee'' for purposes of those sections. Two commenters argued that the provisions of sections 401–408, which establish the administrative and judicial procedures for remedying violations of sections 204–206, refer back to the definitions in section 101 ''without linking to the very limited coverage'' of the instrumentalities in sections 204–206, and therefore do not cover GAO and the Library and their employees. However, two other commenters argued to the contrary. One stated that, because employees of the instrumentalities were given the protections of sections 204–206, ''the concomitant procedural rights'' of sections 401–408 were also conferred on them; and the other commenter argued that construing the CAA to grant rights but not remedies would defeat the stated legislative purpose, ''since a right without a remedy is often no right at all.'' The four commenters also expressed divergent views about whether GAO and the Library and their employees, who were not expressly referenced by section 207, are nevertheless covered by the prohibition in that section against retaliation and reprisal for exercising applicable CAA rights.

Having considered that the comments received express such opposing views of the statute, the Executive Director has decided to terminate the rulemaking without adopting the proposed amendments and, instead, to recommend that the Office's Board of Directors prepare and submit to Congress legislative proposals to resolve questions raised by the comments.

In light of the statutory questions raised, it remains uncertain whether employees of GAO and the Library have the statutory right to use the administrative and judicial procedures under the CAA, and whether GAO and the Library may be charged as respondent or defendant under those procedures, where violations of sections 204–207 of the CAA are alleged. The Office will continue to accept any request for counseling or mediation and any complaint filed by a GAO or Library employee and/or alleging a violation by GAO or the Library. Any objection to jurisdiction may be made to the hearing officer or the Board under sections 405–406 or to the court during proceedings under sections 407–408 of the CAA. Furthermore, the Office will counsel any employee who initiates such proceedings that a question has been raised as to the Office's and the courts' jurisdiction under the CAA and that the employee may wish to preserve rights under any other available procedural avenues.

The Executive Director's decision announced here does not affect the coverage of GAO and the Library and their employees with respect to proceedings under section 215 of the CAA (which applies the rights and protections of the OSHAct) or *ex parte* communications. On February 12, 1998, the Executive Director, with the approval of the Board, published a Notice of Adoption of Amendments amending the Procedural Rules to include such coverage. 144 CONG. REC. S720 (daily ed. Feb. 12, 1998).

Signed at Washington, D.C., on this 12th day of May, 1998.

RICKY SILBERMAN,
Executive Director, Office of Compliance.

AMERICAN MISSILE PROTECTION ACT OF 1998

Mr. FAIRCLOTH. Mr. President, this morning, the Senate failed to invoke cloture on S. 1873, the American Missile Protection Act of 1998. The bill is simple and its purpose can be stated very easily by reciting Section 3 in its entirety. ''It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).''

Everyone knows that it is necessary to first vote to stop endless debate on a bill when a filibuster has been threatened, then, after cloture, we can have limited debate followed by a vote on the bill itself. From this morning's vote, it can be seen that more than 40 percent of my colleagues feel that it should be the policy of the United States to keep our citizens exposed to the risks of a ballistic missile attack.

Mr. President, I know that the Cold War is over. Unfortunately, although some would like to believe otherwise, this does not mean that we are one happy world, where all countries are working in mutual cooperation. It is no time for the United States to let down its guard or to cease doing everything possible to maintain our national security.

The nuclear testing in India this week should shake some sense into those calling for the U.S. to disarm itself of our nuclear deterrent capability, as if that would set an example to the rest of the world. We cannot ''uninvent'' nuclear weapons everywhere in the world. Therefore, we must do the next best thing—prepare our best defense.

During the Cold War standoff with the Soviet Union, we operated under a system known as MAD, for Mutually Assured Destruction. No country, back then, would attack us with a nuclear weapon because there was full realization that it would face certain annihilation because we could and would retaliate in kind, and with greater strength. MAD was never a completely risk-free strategy, though. We had to rely on the hope that other governments would act responsibly and not put their citizens in the path of a direct, retaliatory missile hit. This was the best we could do back then. MAD has outlived its usefulness today because we have the capability to protect ourselves better—we now have the ability to develop defensive technologies that can give us a system that will knock out a ballistic missile before it can land on one of our cities.

It should be clear to everyone that in today's more complicated world the threat of a ballistic missile attack is not confined to a couple of superpowers; there is a greater risk than ever before of a launch against the U.S., either by accident or design, from any of a number of so-called ''rogue'' nations. And, with the additional risk that chemical or biological weapons can be launched using the same ballistic missile technology as is used for nuclear weapons delivery, the threat is more widespread and we must defend against it.

Without National Missile Defense, there is a greater risk that an incident, even one involving chemical or biological weapons, could escalate into full scale nuclear war. If we must stick with a MAD strategy, we will have to retaliate once we identify a ballistic missile launch at the U.S. It would be much better to eliminate those missiles with a defensive system, and then determine what most appropriate response, diplomatic or military, we would undertake.

Ignoring that National Missile Defense can keep us from an escalating nuclear war, critics of the American Missile Protection Act, through twisted logic, say that if the U.S. builds a defensive capability, this will drive the world closer to a nuclear war. Their argument goes something like this—if we can defend against a ballistic missile attack, there is nothing that will stop us from striking another country first because we no longer have to worry about retaliation. As incredible as it may sound, they say that a National Missile Defense is actually an act of aggression.

In order to buy into such an argument, however, you have to first assume that the United States has been standing by, waiting to take over the world with its nuclear defensive arsenal, but the Soviet bear kept us in our cage. You would have to believe that

Americans have been so intent on spreading democracy around the world that we would attack any country that would not adopt our free system of government and force democracy upon its peoples.

No, Mr. President, building a National Missile Defense is not an act of aggression that would free us up to launch an unprovoked attack on other countries. It is an act of common sense in a dangerous world.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a treaty and one nomination which was referred to the Committee on Governmental Affairs.

(The nomination received today is printed at the end of the Senate proceedings.)

REPORT CONCERNING THE INDIAN NUCLEAR TESTS ON MAY 11, 1998—MESSAGE FROM THE PRESIDENT—PM 125

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 Foreign Relations.

To the Congress of the United States:

Pursuant to section 102(b)(1) of the Arms Export Control Act, I am hereby reporting that, in accordance with that section, I have determined that India, a non-nuclear-weapon state, detonated a nuclear explosive device on May 11, 1998. I have further directed the relevant agencies and instrumentalities of the United States Government to take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 13, 1998.*

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 126

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:

I hereby report to the Congress on developments since the last Presidential report of November 25, 1997, concerning the national emergency with respect to Iran that was declared in Executive Order 12170 of November 14, 1979. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1703(c). This report covers events through March 31, 1998. My last report, dated November 25, 1997, covered events through September 30, 1997.

1. There have been no amendments to the Iranian Assets Control Regulations, 31 CFR Part 535 (the ''IACR''), since my last report.

2. The Iran-United States Claims Tribunal (the ''Tribunal''), established at The Hague pursuant to the Algiers Accords, continues to make progress in arbitrating the claims before it. Since the period covered in my last report, the Tribunal has rendered one award. This brings the total number of awards rendered by the Tribunal to 585, the majority of which have been in favor of U.S. claimants. As of March 31, 1998, the value of awards to successful U.S. claimants paid from the Security Account held by the NV Settlement Bank was $2,480,897,381.53.

Since my last report, Iran has failed to replenish the Security Account established by the Algiers Accords to ensure payment of awards to successful U.S. claimants. Thus, since November 5, 1992, the Security Account has continuously remained below the $500 million balance required by the Algiers Accords. As of March 31, 1998, the total amount in the Security Account was $125,888,588.35, and the total amount in the Interest Account was $21,716,836.85. Therefore, the United States continues to pursue Case No. A/28, filed in September 1993, to require Iran to meet its obligation under the Algiers Accords to replenish the Security Account.

The United States also continues to pursue Case No. A/29 to require Iran to meet its obligation of timely payment of its equal share of advances for Tribunal expenses when directed to do so by the Tribunal. Iran filed its Rejoinder in this case on February 9, 1998.

3. The Department of State continues to respond to claims brought against the United States by Iran, in coordination with concerned government agencies.

On January 16, 1998, the United States filed a major submission in Case No. B/1, a case in which Iran seeks repayment for alleged wrongful charges to Iran over the life of its Foreign Military Sales (FMS) program, including the costs of terminating the program. The January filing primarily addressed Iran's allegation that its FMS Trust Fund should have earned interest.

Under the February 22, 1996, settlement agreement related to the Iran Air case before the International Court of Justice and Iran's bank-related claims against the United States before the Tribunal (see report of May 16, 1996), the Department of State has been processing payments. As of March 31, 1998, the Department of State has authorized payment to U.S. nationals totaling $13,901,776.86 for 49 claims against Iranian banks. The Department of State has also authorized payments to surviving family members of 220 Iranian victims of the aerial incident, totaling $54,300,000.

During this reporting period, the full Tribunal held a hearing in Case No. A/11 from February 16 through 18. Case No. A/11 concerns Iran's allegations that the United States violated its obligations under Point IV of the Algiers Accords by failing to freeze and gather information about property and assets purportedly located in the United States and belonging to the estate of the late Shah of Iran or his close relatives.

4. U.S. nationals continue to pursue claims against Iran at the Tribunal. Since my last report, the Tribunal has issued an award in one private claim. On March 5, 1998, Chamber One issued an award in *George E. Davidson* v. *Iran*, AWD No. 585–457–1, ordering Iran to pay the claimant $227,556 plus interest for Iran's interference with the claimant's property rights in three buildings in Tehran. The Tribunal dismissed the claimant's claims with regard to other property for lack of proof. The claimant received $20,000 in arbitration costs.

5. The situation reviewed above continues to implicate important diplomatic, financial, and legal interests of the United States and its nationals and presents and unusual challenge to the national security and foreign policy of the United States. The Iranian Assets Control Regulations issued pursuant to Executive Order 12170 continue to play an important role in structuring our relationship with Iran and in enabling the United States to implement properly the Algiers Accords. I shall continue to exercise the powers at my disposal to deal with these problems and will continue to report periodically to the Congress on significant developments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 13, 1998.*

MESSAGES FROM THE HOUSE

At 1:10 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 bills, in which it requests the concurrence of the Senate:

H.R. 1021. An act to provide for a land exchange involving certain National Forest System lands within the Routt National Forest in the State of Colorado.

H.R. 2217. An act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes.

H.R. 2841. An act to extend the time required for the construction of a hydroelectric project.

H.R. 2886. An act to provide for a demonstration project in the Stanislaus National Forest, California, under which a private contractor will perform multiple resource management activities for that unit of the National Forest System.

H.R. 3723. An act to authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes.

H.R. 3811. An act to establish felony violations for the failure to pay legal child support obligations, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 255. Concurrent resolution authorizing the use of the Capitol grounds for the Greater Washington Soap Box Derby.

H. Con. Res. 262. Concurrent resolution authorizing the 1998 District of Columbia Special Olympics Law Enforcement Torch Run to be run through the Capitol Grounds.

H. Con. Res. 263. Concurrent resolution authorizing the use of the Capitol Grounds for the seventeenth annual National Peace Officers' Memorial Service.

The message further announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1605. An act to establish a matching grant program to help States, units of local government, and Indian tribes to purchase armor vests for use by law enforcement officers.

The message also announced that the House has disagreed to the amendment of the Senate to the bill (H.R. 629) to grant the consent of Congress to the Texas Low-Level Radioactive Waste Disposal Compact, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints for consideration of the House bill and the Senate amendment, and modifications committed to conference: Mr. BLILEY, Mr. DAN SCHAEFER of Colorado, Mr. BARTON of Texas, Mr. DINGELL, and Mr. HALL of Texas, as the managers of the conference on the part of the Houses.

The message further announced that pursuant to the provisions of 22 U.S.C. 276d, the Speaker appoints the following Members of the House to the Canada-United States Interparliamentary Group, in addition to Mr. HOUGHTON of New York, Chairman, appointed on April 27, 1998: Mr. GILMAN, Mr. HAMILTON, Mr. CRANE, Mr. LAFALCE, Mr. OBERSTAR, Mr. SHAW, Mr. LIPINSKI, Mr. UPTON, Mr. STEARNS, Mr. PETERSON of Minnesota, and Mr. DANNER.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 2217. An act to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2841. An act to extend the time required for the construction of a hydroelectric project; to the Committee on Energy and Natural Resources.

H.R. 2886. An act to provide for a demonstration project in the Stanislaus National Forest, California, under which a private contractor will perform multiple resource management activities for that unit of the National Forest System; to the Committee on Energy and Natural Resources; to the Committee on Energy and Natural Resources.

H.R. 3723. An act to authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes; to the Committee on the Judiciary.

Pursuant to the order of today, May 13, 1998, the following bill was ordered referred to the Committee on Finance:

S. 1415. A bill to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; ordered, referred to the Committee on Finance until 9:00 pm on Thursday, May 14, 1998 to report or be discharged.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times, and placed on the Calendar:

H.R. 1021. An act to provide for a land exchange involving certain National Forest Systems lands within the Routt National Forest in the State of Colorado.

H.R. 3811. An act to establish felony violations for the failure to pay legal child support obligations, 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–391. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE RESOLUTION NO. 163

Whereas, Federal departments such as the Environmental Protection Agency have sought to implement strict standards on American farmers regarding pesticide use; and

Whereas, Certain nations allow the use of pesticides that are prohibited for use by American farmers and the export to the United States of agricultural products growth with the assistance of these pesticides; and

Whereas, This provides an unfair advantage to other nations and their citizens over American farmers and American agricultural workers who depend on this productivity for their livelihood; and

Whereas, The United States' agriculture is a vital industry to the nation's economy and quality of life; and

Whereas, Protecting our citizens by proven science and policy is of paramount importance to American citizens; and

Whereas, No nation should be allowed to export items into our nation using methods such as certain pesticides that the government of the United States prohibits its own farmers from using based on debatable claims of health and environmental concerns; now, therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to prohibit the importation of agricultural and other food items from nations that do not have the same requirements, standards, and restrictions on allowable pesticides and chemicals used in the production, preservation, and growth of the products in future trade agreements; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–392. A resolution adopted by the Senate of the Legislature of the Commonwealth of Massachusetts; to the Committee on Appropriations.

RESOLUTIONS

Whereas, although we believe that the United States should retain its position as the strongest military Nation in the world, we also believe that the security of our Nation is dependent fundamentally not on military might, but on the well-being and vitality of our citizens; and

Whereas, programs which sustain and improve the health, education, and affordable housing, environmental protection, and safety of our citizens are being transferred from the Federal to the State governments; and

Whereas, the funds being provided by the Federal Government to the States are insufficient to fulfill these responsibilities; and

Whereas, the seven countries currently identified as our potential adversaries have a combined military budget of 15 billion dollars, while the United States military budget for 1997 is 265 billion dollars; and

Whereas, the United States military budget remains at cold war levels and contains: 114 billion dollars not requested by the Pentagon, 25 billion dollars for 10,000 nuclear weapons and their delivery systems, and 40 billion dollars in excess and what many former military leaders and leading executives consider sufficient; and

Whereas, current Pentagon spending outweighs all military threats, and creates fewer jobs than increased spending on domestic programs would deliver; and

Whereas, shifting funds from the military to repairing our infrastructure would dramatically improve the lives of our citizens and strengthen our ability to complete successfully in the world market; and

Whereas, sufficient amounts of money need to be redirected from the military budget to the several States so that the States can meet the critical needs of rebuilding communities and inner cities, repairing schools, educating children, reducing hunger, providing housing, improving transportation, protecting the environment, and obtaining a decent level of health care and safety for all of our citizens, thereby increasing fundamentally our security and well-being; Now, therefore, be it

Resolved, That the Massachusetts Senate memorialize the President and the Congress of the United States to shift sufficient funds from the military to the States for the improvement of the lives of citizens; and be it further

Resolved, That a copy of these resolutions be transmitted forthwith by the clerk of the Senate to the President of the United States, the Presiding Officers of each branch of Congress and the Members thereof from this commonwealth.

POM–393. A resolution adopted by the House of the Legislature of the Commonwealth of Massachusetts; to the Committee on Appropriations.

RESOLUTION

Whereas, in August of 1996, the United States Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, so-called; and

Whereas, Congress in said act forbade use of Federal funds to provide SSI benefits and food stamp benefits for financially needy immigrants lawfully residing in the United States; and

Whereas, legal immigrants pay taxes and contribute in many ways to the productivity and vitality of our communities; and

Whereas, the United States was founded and built by immigrants; and

Whereas, Congress should be applauded for the restoration of SSI benefits for legal immigrants through passage of the Balanced Budget Act of 1997; and

Whereas, Congress must continue in this effort by resolving to restore its financial responsibility in the Food Stamp Benefits Program as the present situation imposes a financial burden on the States and needy residents of the States; therefore, be it

Resolved, That the Massachusetts House of Representatives respectfully requests that the President and the Congress of the United States restore to the States the authority to provide federally funded food stamp benefits to needy, lawful residents of the United States; and be it further

Resolved, That the Massachusetts House of Representatives respectfully requests that the President and the Congress of the United States restore to the Commonwealth adequate Federal funding to allow for the provision of food stamp benefits for financially needy immigrants lawfully residing in this Commonwealth; and be it further

Resolved, That a copy of these resolutions be transmitted forthwith by the clerk of the House of Representatives to the President of the United States of America, the Presiding Officer of each branch of the United States Congress and each Member of the Massachusetts congressional delegation.

POM–394. A resolution adopted by the Board of Supervisors of the County of Yuba, California relative to Beale Air Force Base; to the Committee on Armed Services.

POM–395. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services.

ASSEMBLY JOINT RESOLUTION NO. 52

Whereas, on the night of July 17, 1944, two transport vessels loading ammunition at the Port Chicago naval base on the Sacramento River in California were suddenly engulfed in a gigantic explosion, the incredible blast of which wrecked the naval base and heavily damaged the town of Port Chicago, located 1.5 miles away; and

Whereas, everyone on the pier and aboard the two ships was killed instantly—some 320 American naval personnel, 200 of whom were Black enlisted men; and another 390 military and civilian personnel were injured, including 226 Black enlisted men; and

Whereas, the two ships and the large loading pier were totally annihilated and an estimated $12,000,000 in property damage was caused by the huge blast; and

Whereas, this single, stunning disaster accounted for nearly one-fifth of all Black naval casualties during the whole of World War II; and

Whereas, the specific cause of the explosion was never officially established by a Court of Inquiry, in effect clearing the officers-in-charge of any responsibility for the disaster and insofar as any human cause was invoked, laid the burden of blame on the shoulders of the Black enlisted men who died in the explosion; and

Whereas, following the incident, many of the surviving Black sailors were transferred to nearby Camp Shoemaker where they remained until July 31, when two of the divisions were transferred to naval barracks in Vallejo near Mare Island; another division, which was also at Camp Shoemaker until July 31, returned to Port Chicago to help with the cleaning up and rebuilding of the base; and

Whereas, many of these men were in a state of shock, troubled by the vivid memory of the horrible explosion; however, they were provided no psychiatric counseling or medical screening, except for those who were obviously physically injured; none of the men, even those who had been hospitalized with injuries, was granted survivor leaves to visit their families before being reassigned to regular duties; and none of these survivors was called to testify at the Court of Inquiry; and

Whereas, Captain Merrill T. Kline, Officer-in-Charge of Port Chicago, issued a statement praising the African American enlisted men and stating that ''the men displayed creditable coolness and bravery under those emergency conditions''; and

Whereas, after the disaster, white sailors were given 30 days' leave to visit their families—according to survivors, this was the standard for soldiers involved in a disaster—while only African American sailors were ordered back to work the next day to clean and remove human remains; and

Whereas, after the disaster, the preparation of Mare Island for the arrival of African American sailors included moving the barracks of white sailors away from the loading area in order to be clear of the ships being loaded in case of another explosion; and

Whereas, the survivors and new personnel who later were ordered to return to loading ammunition expressed their opposition, citing the possibility of another explosion; the first confrontation occurred on August 9 when 328 men from three divisions were ordered out to the loading pier; the great majority of the men balked, and eventually 258 were arrested and confined for three days on a large barge tiered to the pier; and

Whereas, fifty of these men were selected as the ring-leaders and charged with mutiny, and on October 24, 1944, after only 80 minutes of a military court, all 50 men were found guilty of mutiny—10 were sentenced to 15 years in prison, 24 sentenced to 12 years, 11 sentenced to 10 years, and five sentenced to eight years; and all were to be dishonorably discharged from the Navy; and

Whereas, after a massive outcry the next year, in January 1946, 47 of the Port Chicago men were released from prison and ''exiled'' for one year overseas before returning to their families; and

Whereas, in a 1994 investigation, the United States Navy stated that ''there is no doubt that racial prejudice was responsible for the posting of only African American enlisted personnel to loading divisions at Port Chicago''; and

Whereas, in the 1994 investigation, the United States Navy, prompted by Members of Congress, admitted that the routine assignment of only African American enlisted personnel to manual labor was clearly motivated by race; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to act to vindicate the sailors unjustly blamed for, and the sailors convicted of mutiny following, the Port Chicago disaster, and to rectify any mistreatment by the military of those sailors; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States.

POM–396. A resolution adopted by the Council of the City of Pittsburgh, Pennsylvania relative to Federal credit unions; to the Committee on Banking, Housing, and Urban Affairs.

POM–397. A resolution adopted by the Mayor and Councilmen of the City of Oak Ridge, Tennessee relative to the Department of Energy Laboratory for Comparative and Functional Genomics in Oak Ridge (TN); to the Committee on Commerce, Science, and Transportation.

POM–398. A joint resolution adopted by the General Assembly of the State of Colorado; to the Committee on Commerce, Science, and Transportation.

HOUSE JOINT RESOLUTION 98–1018

Whereas, the Internet is a massive global network spanning local government, state, and international borders; and

Whereas, transmissions over the Internet are made through packet-switching, a process that makes it not only impossible to determine with any degree of certainty the precise geographic route or endpoints of specific Internet transmissions but infeasible to separate interstate from intrastate Internet transmissions or domestic from foreign transmissions; and

Whereas, the United States Supreme Court has ruled that state taxation of companies operating outside the borders of the state is constitutional only if there is a substantial connection between the state and the company and the tax is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the state; and

Whereas, the tax laws and regulations of local governments, state governments, and the federal government were established long before the Internet or interactive computer services became available; and

Whereas, taxation of Internet transmissions by local, state, and federal governments without a thorough understanding of the impact such taxation would have on Internet users and providers could have unintentional and unpredictable consequences and may be unconstitutional if it does not meet the tests set forth by the United States Supreme Court; and

Whereas, the United States Congress is being asked to consider federal legislation that would establish a national policy on the taxation of the Internet and other interactive computer services; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-first General Assembly of the State of Colorado, the Senate concurring herein: That the Colorado General Assembly does not support at this time any Congressional action that would establish a national policy expanding taxation of the Internet and other interactive computer services; *be it further*

Resolved, That the Colorado General Assembly endorses a moratorium on taxation of the internet and interactive computer services until the impact of such taxation can be thoroughly studied and evaluated; *be it further*

Resolved, That the Colorado General Assembly encourages Congress to establish or appoint a consultative group to study, evaluate, and report back to Congress on the impact of any taxation on the use of the Internet and other interactive computer services and the users of those services; *be it further*

Resolved, That any consultative group established or appointed by Congress should include state and local governments, consumer and business groups, and other groups and individuals that may be impacted by a national policy on the taxation of the internet and other interactive computer services; *be it further*

Resolved, That copies of this Joint Resolution be sent to the United States Senate, the United States House of Representatives, Governor Roy Romer, the National Governors' Association, and each member of the Colorado Congressional Delegation.

POM–399. A resolution adopted by the Legislature of the State of Minnesota; to the Committee on Commerce, Science, and Transportation.

RESOLUTION NO. 6

Whereas, the Aircraft Repair Station Safety Act of 1997 would provide for more stringent standards for certification of foreign repair stations by the Federal Aviation Administration and would revoke the certification of any repair facility that knowingly uses defective parts; and

Whereas, the Aircraft Repair Station Safety Act of 1997 would require all maintenance facilities, whether domestic or foreign, to adhere to the same safety and operating procedures; now, therefore, be it

Resolved by the Legislature of the State of Minnesota, That it urges the President and Congress of the United States to enact the Aircraft Repair Station Safety Act of 1997; be it further

Resolved, That the Secretary of State of the State of Minnesota is directed to prepare copies of this memorial and transmit them to the President and Vice-President of the United States, the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, the chair of the Senate Committee on Commerce, Science, and Transportation, the chair of the House Committee on Transportation and Infrastructure, and Minnesota's Senators and Representatives in Congress.

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. THOMPSON (for himself and Mr. GLENN):

S. 2071. A bill to extend a quarterly financial report program administered by the Secretary of Commerce; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself and Mr. FRIST):

S. 2072. A bill to amend the Internal Revenue Code of 1986 to enhance the global competitiveness of United States businesses by permanently extending the research credit, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. DEWINE, and Mr. ABRAHAM):

S. 2073. A bill to authorize appropriations for the National Center for Missing and Exploited Children; to the Committee on the Judiciary.

By Mr. WELLSTONE:

S. 2074. A bill to guarantee for all Americans quality, affordable, and comprehensive health care coverage; to the Committee on Finance.

By Mr. ASHCROFT (for himself and Mr. MCCONNELL):

S. 2075. A bill to provide for expedited review of executive privilege claims and to improve efficiency of independent counsel investigations; to the Committee on the Judiciary.

S. 2076. A bill to provide reporting requirements for the assertion of executive privilege, and for other purposes; to the Committee on the Judiciary.

By Mr. FORD (for himself, Mr. BOND, Mr. DORGAN, and Mr. LEAHY):

S. 2077. A bill to maximize the national security of the United States and minimize the cost by providing for increased use of the capabilities of the National Guard and other reserve components of the United States; to improve the readiness of the reserve components; to ensure that adequate resources are provided for the reserve components; and for other purposes; to the Committee on Armed Services.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. KERREY, Ms. MOSELEY-BRAUN, Mr. HAGEL, and Mr. ALLARD):

S. 2078. A bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 230. A resolution to authorize the production of records by the Select Committee on Intelligence; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself and Mr. FRIST):

S. 2072. A bill to amend the Internal Revenue Code of 1986 to enhance the global competitiveness of United States businesses by permanently extending the research credit, and for other purposes; to the Committee on Finance.

RESEARCH TAX CREDIT LEGISLATION

Mr. DOMENICI. Mr. President, advanced technologies drive a significant part of our nation's economic strength. Our economy and our wonderful standard of living depend on a constant influx of new technologies, processes, and products from our industries.

Many countries can provide labor at lower costs than the United States. As any new product matures, competitors using overseas labor can frequently find a way to undercut our production prices. We maintain our lead by constantly improving our products through encouragement of innovation.

The majority of new products require industrial research and development to reach the market stage. I want to encourage that research and development to create new products to ensure that our factories stay busy and that our workforce stays fully employed at high salaried jobs. I want more of our large multi-national companies to select the United States as the location for their R&D. R&D done here creates American jobs. And frequently the benefits of R&D in one area apply in another area; I want those spin-off benefits in this country, too.

The federal government has used the Research Tax Credit to encourage companies to perform research. But many studies document that the present form of this Tax Credit is not providing as much stimulation to industrial R&D as it could. Today, I introduce legislation to improve the Research Tax Credit.

The single most important change I'm proposing in the Research Tax Credit is to make it permanent. The credit has never been permanent, since Congress created it in 1981. Many studies point out that the temporary nature of the Credit has prevented companies from building careful research strategies. A recent study by Coopers and Lybrand claimed a $41 billion stimulus for the economy by 2010, with $13 billion added to the economy's productive capacity by 2010. Many of my Senate colleagues have endorsed legislation that includes this critical action, more than twenty at last count.

My legislative proposal goes further. The current Credit references a company's research intensity back to their level in the 1984–88 time period. That time period is too outdated to meet today's dynamic market conditions. Many companies now are operating in dramatically different markets, many with totally new product lines. My legislation allows a company to choose a four year period in the last ten years that best matches their own needs. This allows companies to tailor and optimize research strategies to match current market conditions.

The current approach has a provision that severely restricts the ability of many start-up companies to benefit from the full impact of the Credit. Recent analysis shows that 5 out of 6 start-up companies receive reduced benefits because of a provision that limits their allowable increase in research expenditures to half of their current expenditures. I'm concerned when start-up companies aren't receiving full benefit from this Credit. These are just the companies that tend to drive the innovative cycle in this country, they are the ones that frequently bring out the newest leading-edge products. My legislation allows start up companies for their first ten years to take full credit for their increases in research costs.

My legislation addresses several other shortcomings in the current Credit. Now there is a Basic Research Credit'' allowed, but rarely used. It is defined to include only research with ''no commercial interest.'' Now, I don't know too many companies that want to support—much less admit to their stockholders that they are supporting—research with no commercial interest. The idea of this clause was to encourage support of long term research; the kind that benefits far more than just the next product improvement. This is the kind of research that can enable a whole new product or service. We need to encourage this long term research. My legislation adds an incentive for this type of research by including any research that is done for a consortium of U.S. companies or any research that is destined for open literature publication. These two additions will include a lot more long term research that has future product applications. I've also allowed this credit to apply to research done in national labs, so companies can select the best source of research for any particular project.

And finally my legislation recognizes the importance of encouraging companies to use research capabilities wherever they exist in the country, whether

in other businesses, universities, or national labs. The current credit disallows 35% of all expenses invested in research performed under an external contract—my legislation allows all such expenses to apply towards the Credit. This should encourage creation of partnerships, where different partners can leverage their individual strengths. These partnerships enable our companies to perform research more efficiently, that can further strengthen our economy.

In summary, Mr. President, this proposed Bill significantly strengthens incentives for private companies to undertake search that leads to new processes, new services, and new products. The result is stronger companies that are better positioned for global competition. Those stronger companies will hire more people at higher salaries with real benefits to our national economy and workforce.

By Mr. HATCH (for himself, Mr. DEWINE, and Mr. ALLARD):

S. 2073. A bill to authorize appropriations for the National Center for Missing and Exploited Children; to the Committee on the Judiciary.

THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

Mr. HATCH. Mr. President, today I am proud to introduce the National Center for Missing and Exploited Children Authorization Act of 1998. This bill recognizes the outstanding record of achievements of this outstanding organization and will enable NCMEC to provide even greater protection of our Nation's children in the future.

As part of the Missing Children's Assistance Act, the Office of Juvenile Justice and Delinquency Prevention has selected and given grants to the Center for the last 14 years to operate a national resource center located in Arlington, Virginia and a national 24-hour toll-free telephone line. The Center provides invaluable assistance and training to law enforcement around the country in cases of missing and exploited children. The Center's record is quite impressive, and its efforts have led directly to a significant increase in the percentage of missing children who are recovered safely.

In fiscal year 1998, the Center received an earmark of $6.9 million in the Departments of Commerce, Justice, and State Appropriations conference report. In addition, the Center's Jimmy Ryce Training Center received 1.185M in this report.

This legislation directs OJJDP to make a grant to the Center and authorizes appropriations up to $10 million in fiscal years 1999 through 2003. The authorization would, of course, be subject to appropriations. The bill thus continues and formalizes NCMEC's long partnership with the Justice Department and OJJDP.

NCMEC's exemplary record of performance and success, as demonstrated by the fact that NCMEC's recovery rate has climbed from 62% to 91%, justifies action by Congress to formally recognize it as the nation's official missing and exploited children's center, and to authorize a line-item appropriation. This bill will enable the Center to focus completely on its missions, without expending the annual effort to obtain authority and grants from OJJDP. It also will allow the Center to expand its longer-term arrangements with domestic and foreign law enforcement entities. By providing an authorization, the bill also will allow for better congressional oversight of the Center.

The record of the Center, described briefly below, demonstrates the appropriateness of this authorization.

For fourteen years the Center has served as the national resource center and clearinghouse mandated by the Missing Children's Assistance Act. The Center has worked in partnership with the Department of Justice, the Federal Bureau of Investigation, the Department of Treasury, the State Department, and many other federal and state agencies in the effort to find missing children and prevent child victimization.

The trust the federal government has placed in NCMEC, a private, non-profit corporation, is evidenced by its unique access to the FBI's National Crime Information Center, and the National Law Enforcement Telecommunications System (NLETS).

NCMEC has utilized the latest in technology, such as operating the National Child Pornography Tipline, establishing its new Internet website, www.missingkids.com, which is linked with hundreds of other websites to provide real-time images of breaking cases of missing children, and, beginning this year, establishing a new CyberTipline on child exploitation.

NCMEC has established a national and increasingly worldwide network, linking NCMEC online with each of the missing children clearinghouses operated by the 50 states, the District of Columbia and Puerto Rico. In addition, NCMEC works constantly with international law enforcement authorities such as Scotland Yard in the United Kingdom, the Royal Canadian Mounted Police, INTERPOL headquarters in Lyon, France, and others. This network enables NCMEC to transmit images and information regarding missing children to law enforcement across America and around the world instantly. NCMEC also serves as the U.S. State Department's representative at child abduction cases under the Hague Convention.

The record of NCMEC is demonstrated by the 1,203,974 calls received at its 24-hour toll-free hotline, 1(800)THE LOST, the 146,284 law enforcement, criminal/juvenile justice, and healthcare professionals trained, the 15,491,344 free publications distributed, and, most importantly, by its work on 59,481 cases of missing children, which has resulted in the recovery of 40,180 children.

NCMEC is a shining example of the type of public-private partnership the Congress should encourage and recognize. I urge my colleagues to support this legislation, which would help improve the performance of the National Center for Missing and Exploited Children and thus the safety of our Nation's children.

I ask for unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 2073

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) For 14 years, the National Center for Missing and Exploited Children (referred to in this section as the ''Center'') has—

(A) served as the national resource center and clearinghouse congressionally mandated under the provisions of the Missing Children's Assistance Act of 1984; and

(B) worked in partnership with the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury, the Department of State, and many other agencies in the effort to find missing children and prevent child victimization.

(2) Congress has given the Center, which is a private non-profit corporation, unique powers and resources, such as having access to the National Crime Information Center of the Federal Bureau of Investigation, and the National Law Enforcement Telecommunications System.

(3) Since 1987, the Center has operated the National Child Pornography Tipline, in conjunction with the United States Customs Service and the United States Postal Inspection Service and, beginning this year, the Center established a new CyberTipline on child exploitation, thus becoming ''the 911 for the Internet''.

(4) In light of statistics that time is of the essence in cases of child abduction, the Director of the Federal Bureau of Investigation in February of 1997 created a new NCIC child abduction (''CA'') flag to provide the Center immediate notification in the most serious cases, resulting in 642 ''CA'' notifications to the Center and helping the Center to have its highest recovery rate in history.

(5) The Center has established a national and increasingly worldwide network, linking the Center online with each of the missing children clearinghouses operated by the 50 States, the District of Columbia, and Puerto Rico, as well as with Scotland Yard in the United Kingdom, the Royal Canadian Mounted Police, INTERPOL headquarters in Lyon, France, and others, which has enabled the Center to transmit images and information regarding missing children to law enforcement across the United States and around the world instantly.

(6) From its inception in 1984 through March 31, 1998, the Center has—

(A) handled 1,203,974 calls through its 24-hour toll-free hotline (1-800-THE-LOST) and currently averages 700 calls per day;

(B) trained 146,284 law enforcement, criminal and juvenile justice, and healthcare professionals in child sexual exploitation and missing child case detection, identification, investigation, and prevention;

(C) disseminated 15,491,344 free publications to citizens and professionals; and

(D) worked with law enforcement on the cases of 59,481 missing children, resulting in the recovery of 40,180 children.

(7) The demand for the services of the Center is growing dramatically, as evidenced by the fact that in 1997, the Center handled 129,100 calls, an all-time record, and by the fact that its new Internet website (www.missingkids.com) receives 1,500,000 ''hits'' every day, and is linked with hundreds of other websites to provide real-time images of breaking cases of missing children, helping to cause such results as a police officer in Puerto Rico searching the Center's website and working with the Center to identify and recover a child abducted as an infant from her home in San Diego, California, 7 years earlier.

(8) In 1997, the Center provided policy training to 256 police chiefs and sheriffs from 50 States and Guam at its new Jimmy Ryce Law Enforcement Training Center.

(9) The programs of the Center have had a remarkable impact, such as in the fight against infant abductions in partnership with the healthcare industry, during which the Center has performed 668 onsite hospital walk-throughs and inspections, and trained 45,065 hospital administrators, nurses, and security personnel, and thereby helped to reduce infant abductions in the United States by 82 percent.

(10) The Center is now playing a leading role in international child abduction cases, serving as a representative of the Department of State at cases under The Hague Convention, and successfully resolving the cases of 343 international child abductions, and providing greater support to parents in the United States.

(11) The Center is a model of public/private partnership, raising private sector funds to match congressional appropriations and receiving extensive private in-kind support, including advanced technology provided by the computer industry such as imaging technology used to age the photographs of long-term missing children and to reconstruct facial images of unidentified deceased children.

(12) The Center was 1 of only 10 of 300 major national charities given an A+ grade in 1997 by the American Institute of Philanthropy.

(13) In light of its impressive history, the Center has been redesignated as the Nation's missing children clearinghouse and resource center once every 3 years through a competitive selection process conducted by the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, and has received grants from that Office to conduct the crucial purposes of the Center.

(14) An official congressional authorization will increase the level of scrutiny and oversight by Congress and continue the Center's long partnership with the Department of Justice and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice.

(15) The exemplary record of performance and success of the Center, as exemplified by the fact that the Center's recovery rate has climbed from 62 to 91 percent, justifies action by Congress to formally recognize the National Center for Missing and Exploited Children as the Nation's official missing and exploited children's center, and to authorize a line-item appropriation for the National Center for Missing and Exploited Children in the Federal budget.

SEC. 2. NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.

(a) GRANTS.—The Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall annually make a grant to the National Center for Missing and Exploited Children, which shall be used to—

(1) operate the official national resource center and information clearinghouse for missing and exploited children;

(2) provide to State and local governments, public and private nonprofit agencies, and individuals, information regarding—

(A) free or low-cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing and exploited children and their families; and

(B) the existence and nature of programs being carried out by Federal agencies to assist missing and exploited children and their families;

(3) coordinate public and private programs that locate, recover, or reunite missing children with their families;

(4) disseminate, on a national basis, information relating to innovative and model programs, services, and legislation that benefit missing and exploited children;

(5) provide technical assistance and training to law enforcement agencies, State, and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children; and

(6) provide assistance to families and law enforcement agencies in locating and recovering missing and exploited children, both nationally and internationally.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section, $10,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003.

By Mr. WELLSTONE:

S. 2074: A bill to guarantee for all Americans, quality, affordable, and comprehensive health care coverage; to the Committee on Finance.

HEALTHY AMERICANS ACT

Mr. WELLSTONE. Mr. President, today I introduce the Healthy Americans Act. Colleagues will be hearing more about it because there will be amendments that I will offer on this subject here on the floor of the Senate; and with every bit of ability I have as a Senator, I will push this piece of legislation here and talk about it in my State of Minnesota and around the country.

The Healthy Americans Act insures the uninsured; guarantees affordable, comprehensive insurance for all, and ensures quality health care through its patient protection provisions.

Let me start out by providing some context, Mr. President. I have two charts beside me to demonstrate my points. In 1987, we had about 32 million Americans who were uninsured. Today, as you can see from this graph beside me, we are up to close to 45 million Americans who are uninsured. Mr. President, since we debated the subject of universal health care coverage several years ago, a debate both of us were very involved in, we have had about a million more people a year who have been dropped from coverage.

Assuming the same economic growth with no economic downturn, which is a very rosy assumption, we will continue to see this same kind of a profile where we will get up pretty close to 48 million Americans by the year 2005 who will have no health insurance coverage.

So this is still a crisis for many Americans, and this is an issue that walks into the living rooms of many families and stares them in the face.

The second chart shows the actual percent of annual family income, on average, that goes to premiums and out-of-pocket payments in the form of deductibles, copays or other amounts of money that people have to spend on health care. It is, I think, very important to look at this.

First, what you see is that at the bottom end of the income ladder, families with annual incomes of $30,000 or less are spending an inordinate, and I would say unaffordable, percent of their income for their health care. If you look at families with incomes between $10,000 and $20,000, you can see they are spending on average 8 percent of their income on health care expenses. Then when you look at families with incomes under $10,000, you can see that the average family is paying well over 20 percent of their annual income, and these are the people who can least afford to make that kind of payment.

Next, you can see that for families with annual incomes of $30,000 or more, the average amount of that income spent on premiums, deductibles and copays drops to below 5 percent on average—I would say a more affordable amount. But don't forget these are just averages. Many families at every income level are spending more than 10 percent of their family income on health care, especially if someone in the family has a serious illness. That is not affordable. That is not fair.

Now if we look back at the same chart we can see what would happen under the Healthy Americans Act. All Americans would pay what they can afford—people should pay what they can afford—but it will be well within their means. For those hardest-pressed families, people would pay no more than ½ percent of their income. Those with higher incomes would pay no more than 3 or 5 percent; and no family, including those with at the highest income levels, would pay above 7 percent of their annual income for health care.

So, Mr. President, as you can see, these two charts demonstrate the need to provide coverage for the uninsured and to make health care coverage affordable for all.

The Healthy Americans Act does just that. First of all, it covers the uninsured, which I think is the first and most important thing to do. It builds, I say to my colleague from Indiana, on existing State programs. This is universal coverage with maximum flexibility. In addition to covering the uninsured, many of them moderate-income and low-income citizens, we are going to make sure that health care coverage is affordable for all citizens.

In other words, we are going to have family protection. So, first, we cover the uninsured. Then we have family protection, and we say no family pays more than 7 percent of family income on health care, and it goes from about

0.5 percent to 7 percent depending on income. We include Medicare recipients as well. The income profile of elderly people is not that high and they need income protection, too.

So, again, first, we cover the uninsured, expanding existing programs; second, we have protection for family income; third, we make sure there is a good package of benefits comparable to what we have here in the Congress; fourth of all, we have strong consumer protections, strong patient protections, something we have been talking about every day; fifth of all, we expand coverage to include some needed benefits that are long overdue.

In Minnesota, and around the country—it could very well be the case in Indiana, Mr. President—a lot of elderly people are paying well over 30 percent of their monthly income just on prescription drug costs. We cover prescription drug costs and add that benefit to Medicare. We have good, strong mental health parity, and substance abuse coverage as well. And this is, I think, really important.

The way all of this comes together for the States is to have a maximum amount of flexibility. And what we are essentially saying to States is, ''Look, here is what we decided in the Senate. We are going to make sure the uninsured are covered. That is phase one. The second thing, we are going to make sure there is protection of family income. The third thing is we are going to make sure there is a good package of benefits, at least as good as what we have in the Congress. The fourth thing that we are going to do is make sure there is good, strong patient protection. If you agree to that, States, there will be Federal money that will go to you on a, roughly speaking, 70–30 matching basis. And you decide how you want to do it. In other words, the funds are there for you to use if you agree to lay out a plan for universal, affordable, comprehensive health care and follow it over the next 4 years. This is a good strategy for going into the next century; it is a good strategy for reaching universal coverage in our country.'' We are offering the States a carrot; not a stick.

No State has to do it. There is maximum flexibility. I say to my colleague from Indiana—we are friends even though we do not always agree on issues—we will not have this ideological debate about single payer or ''pay or play'' and all these other things that people do not understand. This piece of legislation, the Healthy Americans Act, leaves it up to the States.

This legislation says to Minnesota, let us expand. We are already above 90 percent on the number insured in my State. Let us expand the coverage for these people who still have no insurance. Let us have some protection of family income, a very big issue for a lot of people who are covered but they are paying way more than they can afford, especially when you include the deductibles and copays and the premiums.

What we are saying to Minnesota or Indiana or California or New York: Let us cover the uninsured. We can build on what you are already doing with the State Children's Health Insurance Plan, by expanding it to adults and more children. Let us make sure there is family income protection. Let us make sure there is patient protection and a good package of benefits that is comprehensive. And you decide how you want to do it. You decide how you want to do it in Indiana. You decide how you want to do it in Minnesota or California or New York or North Carolina or Florida or New Hampshire or Iowa—you name it. You decide how you want to do it.

But the point is, if a State wants to participate—and I think most States will be very interested in participating in this piece of legislation—then there will be Federal grant money that will come on, roughly speaking, a 70–30 matching basis.

Mr. President, I would like to talk a little bit about the cost of this, because I do not want to introduce a piece of legislation and treat people in the United States of America as if they do not have intelligence. If we think something is important, then we invest in it. This piece of legislation, as we have costed it out and done our actuarial estimates, goes like this: In the first year—we are just trying to cover the uninsured—it will be $42 billion; year two, it gets up to $48 billion; year three, $62 billion; years four and five—when we include both coverage for the uninsured and now also providing the family income protection, it gets up to $85 billion, and then, $98 billion.

You would add an additional, roughly speaking, $26 billion to $39 billion to that estimate in the last 2 years if you are going to cover Medicare recipients, making sure they do not pay more than 7 percent of annual income for health care coverage and making sure that prescription drug costs are covered. Now, I say to colleagues, the maximum gets to be above $100 billion—we have estimated this to be $137 billion at the very end of this 5 year period.

How do we pay for this? I will tell you. We have hundreds of billions of dollars of what many of us have called corporate welfare, a variety of different deductions and tax breaks, many of which I do not believe are necessary. In addition, we have some military weaponry that I think there is a very legitimate debate as to whether or not we need to be spending money on some of these items. And in addition, we take a look at some of the domestic programs that I think people can call into question as to whether or not they are essential.

But, Mr. President, my point is that we offset the expenditure. We are not talking about taxpayers paying any more money. But what we are saying is that this is a worthwhile investment. We have a GDP of over $8 trillion, we have an economy at its peak performance, and we are being told that we cannot have universal health care coverage in the United States of America? We are being told that we cannot afford to make sure that every man, woman, and child has decent coverage? That there cannot be some protection of family income? That the uninsured can't be insured? That elderly people aren't able to get the care they need? That some patient protection for the people isn't possible? That is not acceptable. Of course it is possible. Of course we can do this. Of course we can do better as a nation. And that is what this piece of legislation says, Mr. President.

I just say to colleagues again that I have been disappointed that we have put this issue of universal coverage off the table. It should be put back on the table. I have had so many conversations with people in Minnesota, poignant conversations—it happens in other parts of the country, too—which are about health care. I will just give but one example. I think I may have given it one time before on the floor. But, after all, the legislation we introduce is all about people's lives. Why else should we be here? It is all about, hopefully, improving people's lives.

I will never forget a discussion with a woman whose husband I had met a year earlier. When I met him a year earlier, he was in bad shape. He is a young man, maybe 40 at most, a railroad worker struggling with cancer. And then I met her a year later out at a farm gathering, and she came up to me and she said, ''I want you to come over and meet my husband again, Senator'' or ''PAUL.'' ''He's a real fighter. The doctor said he only had 3 months to live, but it's a year later and he's still struggling. He's now in a wheelchair.'' And so we talked.

Then she took me aside, and she said, ''Every day is a living hell. Every day I'm battling with these companies to find out what they're going to cover.''

I do not think any American with a loved one who is struggling with an illness or a sickness should have to worry about whether or not there is going to be decent coverage. I think that is unacceptable. I think we can do better in America. I think it is time again to talk about humane, affordable, dignified health care for every man, woman, and child. That is what this Healthy Americans Act does.

I love ideas. I am really interested in policy. I am proud of the people who have helped me on this legislation: Dr. John Gilman in my office; Rick Brown, who is with the UCLA School of Public Health; Doctors Nicole Lurie and Steve Miles from Minnesota.

I like the fact that the Healthy Americans Act is a decentralized plan. I like that. I like the fact that it is simple. I like the fact that it gives States a lot of leeway, so different States can try different approaches, and we can see what works best.

But we do have here, colleagues, a commitment as a nation to make sure

those people who are uninsured have health insurance, to make sure families do not go broke and are able to afford health insurance, to make sure it is a package of benefits as good as what we have. Shouldn't the people we represent have as good health care coverage as Members of the Congress have, and shouldn't they be guaranteed strong patient protections?

I think this is, in my not so humble opinion, an excellent piece of legislation. I think it is going to take a real battle to get it passed. But I will bring amendments out on the floor. I will do everything I can as a U.S. Senator to bring this to people in the country. I am absolutely convinced that this is one of the most important things we can do as a Senate to respond to a very real issue that affects the lives of so many people we represent.

By Mr. ASHCROFT (for himself and Mr. MCCONNELL)

S. 2075. A bill to provide for expedited review of executive privilege claims and to improve efficiency of independent counsel investigations; to the Committee on the Judiciary.

EXECUTIVE PRIVILEGE LEGISLATION

S. 2076. A bill to provide reporting requirements for the assertion of executive privilege, and for other purposes; to the Committee on the Judiciary.

THE EXECUTIVE ACCOUNTABILITY ACT OF 1998

Mr. ASHCROFT. Mr. President, I rise today in order to introduce two bills designed to address the abuse and misuse of executive privilege by the President, the Executive Accountability Act of 1998 and a companion bill designed to expedite appeals of executive privilege claims asserted in independent counsel investigations. I want to thank Senator MCCONNELL who has joined me as a co-sponsor of both these measures.

Executive privilege is just that—a privilege extended to the President, and the President alone, to be invoked in those rare circumstances in which the President must keep discussions about official acts secret from the courts, Congress and the American people in order to protect national security.

This President has abused this privilege. He has used it as a delaying tactic to try to shield the details of unofficial acts having nothing to do with national security, but everything to do with Mr. Clinton's personal legal problems. As I detailed in a letter to my colleagues back in March, the President's current claim of executive privilege is legally baseless. I would ask that that letter be included in the record.

Part and parcel of the President's abuse of executive privilege is his unwillingness to acknowledge the mere fact that he has asserted the privilege. Indeed, the President's lawyers recently have attacked the Independent Counsel's office for acknowledging the Court's entirely predictable rejection of the President's assertion of executive privilege. Apparently, the President wants to be able to assert the privilege and have a court rule on it, all without the knowledge of Congress or the American people.

This is an affront to Congress and the public. Congress has a vital interest in the development of the law of executive privilege. Until this Administration, grand jury investigations into presidential communications were rare. Congressional oversight hearings, by contrast, are commonplace. But Congress will have to live with whatever rules the courts develop concerning the scope of executive privilege. Without notice that the President is raising these claims, Congress cannot protect its interests by filing amicus briefs.

The President's covert assertion of executive privilege is of concern not just to Congress but to every citizen. Although a limited executive privilege is necessary to protect national security, the privilege is contrary to the public's right to know. As a consequence, asserting the privilege has historically come with a political cost. President Clinton has tried to enjoy the benefits of the privilege while avoiding these costs. We should ensure that if a President takes the extraordinary step of asserting executive privilege that he not be able to keep that action from the American people.

The Executive Accountability Act of 1998 addresses the problem of the covert use of executive privilege through the simple expedient of requiring full disclosure. If the President decides to invoke the privilege in court, both the President and the presiding judge must disclose that fact to Congress. If the court rules on a claim of executive privilege, the court must inform Congress. If the President decides to appeal an adverse ruling on a claim of executive privilege, he must also disclose that fact to Congress. If the Attorney General provides a written opinion concerning the validity of the privilege, that too should be shared with the Congress. Finally, the Act confirms that any Member of Congress has the capacity to file an amicus brief in any judicial proceeding in which the President asserts executive privilege. The legislation also builds in protections to ensure that none of these disclosures endangers national security.

I am also introducing a companion bill to address the President's misuse of executive privilege as a delaying tactic to try to run out the clock on the Independent Counsel's investigation. The bill would provide for expedited review of such claims and for a direct appeal to the Supreme Court. Hopefully, this provision will remove the temptation to use executive privilege claims as delaying tactics, and will force the President to think twice before asserting a spurious claim of privilege.

When properly confined to official acts affecting national security, executive privilege serves an important function. But when abused as a delaying tactic or to protect unofficial acts, the privilege in its distorted form becomes an unacceptable impediment to the public's right to know. These two bills impose accountability requirements on the executive to ensure that the privilege is used in an appropriate way. Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 2075

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO TITLE 28.

Section 594 of title 28, United States Code, is amended by adding at the end the following:

''(m) JUDICIAL REVIEW OF EXECUTIVE PRIVILEGE CLAIMS.—

''(1) EXPEDITED CONSIDERATION.—It shall be the duty of a district court of the United States and the Supreme Court of the United States to advance on the docket and to expedite to the maximum extent practicable the disposition of any claim asserting executive privilege in any investigation authorized pursuant to this chapter.

''(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of a district court of the United States disposing of a claim asserting executive privilege in any investigation authorized pursuant to this chapter shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. No stay of an order described in this subsection shall be issued by a single Justice of the Supreme Court of the United States.''.

SEC. 2. EFFECTIVE DATE.

Section 594(m) of title 28, United States Code (as added by section 1 of this Act), applies to any claim of executive privilege asserted on or after January 1, 1998, except that, for purposes of an order described in section 594(m)(1) of title 28, United States Code (as added by section 1 of this Act), entered before the date of enactment of this Act, the time periods for appeal provided in section 594(m)(2) of that title 28, United States Code (as added by section 1 of this Act), shall begin running on the date of enactment of this Act.

S. 2076

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Executive Accountability Act of 1998''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Grand jury investigations into Presidential communications have been, to date, extraordinary and rare occurrences, and hopefully, will remain that way. Congressional oversight hearings, by contrast, are commonplace.

(2) If judicial decisions permit presidential aides to withhold crucial information from a grand jury investigating criminal misconduct, congressional inquiries will be stymied by similar claims of executive privilege.

(3) For these reasons, the proper scope of executive privilege is of concern to every

Member of Congress, and every Member of Congress has an interest in being notified of assertions of executive privilege by the President and in having the opportunity to file amicus briefs in appropriate cases.

(4) In the context of the current litigation before Judge Norma Holloway Johnson, the President failed to acknowledge publicly that he asserted executive privilege to shield information from the grand jury.

(5) Indeed, lawyers for the President have protested that the outcome of Judge Johnson's order rejecting the President's claim of executive privilege became public.

(6) As a consequence, Members of Congress have not had a proper basis to decide whether to file amicus briefs apprising the court of the unique interests and views of Congress with respect to executive privilege.

SEC. 3. REPORTING REQUIREMENTS.

(a) INITIAL REPORT.—Whenever the President asserts executive privilege in a judicial action or proceeding, the President shall promptly report to Congress and provide an explanation of the reasons for such assertion in such detail as is consistent with national security.

(b) REPORT BY PRESIDING JUDGE OF ASSERTION.—Whenever, in a judicial action or proceeding, the President asserts executive privilege, it shall be the duty of the presiding judicial officer in that action or proceeding promptly to report the assertion to Congress.

(c) REPORT BY PRESIDING JUDGE OF DISPOSITION.—Whenever in a judicial action or proceeding, the President asserts executive privilege, it shall be the duty of the presiding judicial officer in that action or proceeding promptly to report to Congress any order or ruling disposing of that claim and provide an explanation of the reasons for such disposition in such detail as is consistent with national security.

(d) AMICUS BRIEFS.—Any Member of either House of Congress shall have the right to file an amicus brief, regarding an assertion of executive privilege by the President, in any judicial action or proceeding in which that assertion is made.

(e) REPORT CONCERNING DECISION TO APPEAL.—Whenever the President decides to appeal an adverse disposition of a claim of executive privilege or to file a petition for certiorari in response to such adverse disposition, the President shall promptly report the decision to Congress.

(f) ADDITIONAL REQUIREMENT.—Whenever the President asserts executive privilege in any forum, the President shall forward to Congress any written legal opinion regarding the lawfulness of the assertion redacted as is consistent with national security.

(g) REPORT TO CONGRESS.—For purposes of this Act, providing notice or a report to the Senate Majority and Minority Leaders and the Speaker of the House and House Minority Leader shall constitute notice to Congress.

DEAR COLLEAGUE: The newspapers and talk shows have been filled for the past few weeks with discussion of executive privilege. First, there were reports of the President's decision to invoke the privilege to prevent several of his aides from testifying before the grand jury. Now it has been reported that the President has argued that his executive privilege extends to discussions between presidential aides and the First Lady. Many commentators appear to assume that executive privilege applies to these communications and have focused on the prudence of the President's decision to invoke the privilege in light of the parallels to Watergate. I will leave that question for the pundits. The more pressing question for the Congress is whether executive privilege has any application at all to this situation.

Grand jury investigations into Presidential communications are extraordinary and rare occurrences, and hopefully, will remain that way. Congressional oversight hearings, by contrast, are commonplace. If the President's aides are permitted to withhold crucial information from a grand jury investigating criminal misconduct, we can rest assured that congressional inquiries will be stymied by similar claims of executive privilege. For this reason, the proper scope of executive privilege is of concern to every member of Congress.

As Chairman of the Constitution Subcommittee, I have inquired into the law of executive privilege as developed by the courts. Although for years the body of caselaw did not extend much beyond Chief Justice Marshall's opinion in the criminal trial of Aaron Burr, a number of decisions in the last quarter century have clarified the relatively modest scope of executive privilege. A number of critical principles emerge from these cases.

Executive privilege extends only to communications made in relation to official responsibilities. The privilege does not cover unofficial acts. ''[The privilege is] limited to communications in performance of [a President's] responsibilities of his office and made in the process of shaping policies and making decisions.'' *Nixon* v. *Administrator of the GSA*, 433 U.S. 425, 449 (1977); *see also United States* v. *Nixon*, 418 U.S. 683, 715 (1974).

Even if executive privilege applies to a communication, it generally does not prevent disclosure to a grand jury. ''The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.'' *United States* v. *Nixon*, 418 U.S. 683, 713 (1974).

The sole exception is for communications concerning national security. The Court in *United States* v. *Nixon* indicated that the scope of any absolute executive privilege would be limited to ''military or diplomatic secrets.'' 418 U.S. at 710. Outside this context, even a valid claim of executive privilege cannot keep presidential communications from the grand jury as long as the conversations are ''preliminarily shown to have some bearing on the pending criminal cases.'' *Id.* at 713.

I hope you find this summary helpful. For my part, these well-established principles lead me to believe that the President is on tenuous legal ground in asserting executive privilege. In order for his claim to prevail, he first would have to show that the discussions he had with aides concerning how to respond to allegations of sexual misconduct in his private life qualify as official government acts. I sincerely doubt he could make such a showing, especially in light of his asserted ability to compartmentalize his private life from the affairs of state.

However, even if he made such a showing, the President would still need either to demonstrate that the communications concerned ''military or diplomatic secrets,'' or to convince a court that the information is neither necessary nor relevant to the grand jury's investigation. The President seems unlikely to prevail on either issue. Although there is some dispute as to the exact nature of the demonstration of relevance or need that the prosecutor must make, even the most demanding opinion on the subject states that the prosecution ''will be able easily to explain'' why it should have access to privileged presidential communications when the President and his close aids are the subject of the criminal investigation. *See In re Sealed Case*, 121 F.3d 729, 755 (D.C. Cir. 1997).

In the end, it seems quite likely that the President's claim of executive privilege will share the fate of this administration's other novel theories of privilege, which caused delay, but ultimately were rejected by the courts. First, the President asserted a novel immunity from civil suit that, in his view, extended even to cases of private misconduct occurring before he took the presidential oath of office. The Supreme Court rejected that claim 9–0. *See Clinton* v. *Jones*, 117 S. Ct. 1636 (1997). Then the administration asserted a novel theory of government attorney-client privilege, which would treat taxpayer-financed government attorneys just like private attorneys for purposes of the attorney-client privilege. The Eighth Circuit Court of Appeals rejected that argument, concluding that allowing the White House ''to use its in-house attorneys as a shield against the production of information relevant to a federal criminal investigation would represent a gross misuse of public assets.'' *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 921 (8th Cir. 1997). The Supreme Court declined to review that decision. *See* 117 S. Ct. 2482 (1997). Now we have novel claims of executive privilege, a privilege extending to communications with the First Lady, and a secret service privilege.

The President's current claim of executive privilege appears to be foreclosed by well-established limits on the privilege and calculated more for delay than anything else. However, we are not privy to all the information that is at the President's disposal. Future developments may strengthen or weaken the President's assertion of privilege or make it clear that the assertion implicates issues that have not yet reached the Supreme Court, such as whether the privilege applies to anyone other than the President.

In the event such novel issues arise, the Constitution Subcommittee may hold hearings in an effort to clarify the proper scope of executive privilege. I continue to believe that the Senate has a critical responsibility to ensure that the doctrine of executive privilege does not become distorted in a manner that will interfere with congressional oversight long after the current scandals subside.

Sincerely,

JOHN ASHCROFT,
Chairman, U.S. Senate Judiciary, Subcommittee on the Constitution, Federalism and Property Rights.

By Mr. FORD (for himself, Mr. BOND, Mr. DORGAN, and Mr. LEAHY):

S. 2077. A bill to maximize the national security of the United States and minimize the cost by providing for increased use of the capabilities of the National Guard and other reserve components of the United States; to improve the readiness of the reserve components; to ensure that adequate resources are provided for the reserve components; and for other purposes; to the Committee on Armed Services.

THE NATIONAL GUARD AND RESERVE COMPONENTS EQUITY ACT OF 1998

Mr. FORD. Mr. President, on behalf of Senator BOND, co-chairman of the Senate National Guard Caucus, Senators DORGAN and LEAHY, I am introducing today the National Guard and Reserve Components Equity Act of 1998.

Over the past few years, we've had to expend a huge amount of energy fending off attacks to the Guard. Worse,

the whole time we're dusting ourselves off and assessing the damage, our opponents deny they've ever laid a finger on us.

It reminds me of the boxer who, at the insistence of his trainer, took on the current champ. After the first round, he came back to his corner with a busted lip, and his trainer patted him on the back and said, ''You're doing great,'' then shoved him back out when the second bell sounded. After the second round, he staggered back to his corner with a black eye and a busted cheek, and his trainer said, ''You're doing great, he hasn't laid a hand on you.'' And the boxer replied, ''Well you'd better keep an eye on the referee, 'cause someone is beating' the heck out of me.''

Year after year, the Guard has come back to its corner, bruised and battered by the budget process, only to hear Pentagon officials insist they haven't laid a hand on them.

I think we all agree that as we enter the 21st Century, the common goal of the U.S. military should be to create and maintain a seamless Total Force that provides our military leaders with the necessary flexibility and strength to address whatever conflicts that might arise.

The 1997 QDR should have been the vehicle to achieve that goal. Unfortunately, it fell far short. One analyst described the QDR as ''another banal defense of the status quo.''

There are close to a half million men and women in the National Guard, accounting for about 20 percent of this nation's Armed Forces. Because of their dual federal-state mission, National Guardsmen and women are on hand to serve in both the international arena and in our own backyards. Perhaps more than any other soldier, members of the Guard embody our forefathers' vision of the citizen-soldier.

That's because the citizen-soldiers of the National Guard find their roots not only in the history of this country, but equally important, in the communities of this country.

The Army National Guard alone provides more than 55 percent of the ground combat forces, 45 percent of the combat support forces, and 25 percent of the Army's combat support units—all while using only two percent of the Department of Defense budget.

But if you look at the QDR process, you would think the Guard has outlived its usefulness—that their cost-effectiveness, their flexibility, their readiness are all figments of this Senator's imagination.

This contentious relationship got even hotter last spring when leaders of the National Guard expressed outrage at never being given the opportunity to present their case before the QDR and over the Army's failure to be up-front about how deeply they wanted to cut the Army Guard.

The outrage was well placed. The Washington Times was right on target when they wrote back in June that

> The Guard has a greater relevance today than during the Cold War—exactly the kind of relevance the Founding Fathers envisioned when they elected to place the preponderance of the nation's military strength in the state militias.

They understand that with its ''dual use system,'' the Guard is the wave of the future, not a relic of the past.

While many of us felt blind-sided by the QDR, the fact is it was just one more instance where the Pentagon refuses to give the Guard the status it deserves.

I don't believe making the Chief of the National Guard a four star general and a member of the Joint Requirements Oversight Council will solve all of the Guard's problems, but I do believe it would help to change the dynamics of this dysfunctional relationship, and better ensure the Guard's needs are met when the Defense budget is being written, rather than through Congressional intervention.

As many of you probably recall, last year Senator Stevens offered an amendment to the Defense Authorization bill to make this change. It was approved by the Senate, but later dropped in Conference Committee. Instead, Conferees agreed to having a Two-Star General from the Guard and one from the Reserves—a position the Guard already has.

Since then, I've been working with Senator BOND—my co-chairman of the Senate National Guard Caucus to come up with new legislation reinforcing the important role of both the Guard and the Reserves.

The bill would direct the Secretary of Defense to submit a report to Congress regarding the force structure necessary for the Army National Guard and Army Reserve to meet future national security threats. The bill would freeze the end strength of the Army National Guard and the Army Reserve at the level Congress approved for Fiscal Year 1998, until September 30, 2000. This freeze will provide Congress a chance to review the force structure report submitted by the Secretary of Defense.

The bill also requires the Secretary of Defense to develop a master plan for the modernization of the National Guard And Reserve Components to ensure compatibility of equipment with our active forces. Under this legislation, the Secretary must also submit a master plan to Congress on meeting the military construction needs of the National Guard and Reserve Components.

This legislation builds on Senator STEVENS's amendment to last year's Defense Authorization. It elevates the Chief of the National Guard Bureau to the Grade of General (4-star) and elevates the Senior Representatives of the Reserves one Grade. These are just some provisions of the bill. My Guard Caucus Co-Chairman, Senator BOND, someone who has been deeply committed to improving the readiness of the Guard, will be outlining other provisions of the bill.

Mr President, the Reserve Components are the only contact a majority of Americans have with the military. When they see a neighbor, a child's teacher, or their family doctor representing the U.S. in the international arena or on hand when natural disasters strike, they have a direct link to the military.

That bond has remained strong for well over 200 years. And despite resistance from the Pentagon, I believe Congress has no intention of seeing that bond damaged through insufficient funds or lack of resources—from operations and maintenance to pay and allowances to continued equipment modernization and military construction. This is why the National Guard and Reserve Components Equity Act of 1998 needs to become law.

Muhammad Ali used to say that not only could he knock'em out, but he could pick the round. Opponents to the Guard and Reserves should be on notice—no matter how much they try and bob and weave, this is the round they're going to go down.

Before closing, I'd like to take just a moment to say how much I've enjoyed working with Senator BOND on National Guard issues over the last ten years. We've worked together, along with the other members of the Caucus, in a bipartisan manner to ensure that the National Guard and Reserve components receive the funding these dedicated men and women need to successfully fulfill their role in preserving our national security.

Mr. President, I ask unanimous consent that the National Guard and Reserve Components Equity Act of 1998 be printed in the RECORD, along with a section-by-section description this legislation.

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

S. 2077

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Guard and Reserve Components Equity Act of 1998''.

TITLE I—STRATEGIC PLANNING

SEC. 101. FORCE STRUCTURE.

(a) REQUIREMENT.—At the same time as the President submits the budget to Congress for fiscal year 2000 under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to Congress a report on the Army reserve component force structure.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) The force structure that the Secretary considers appropriate for the Army National Guard and the Army Reserve for meeting threats to the national security that are considered probable for the six fiscal years beginning with fiscal year 2000.

(2) Specific wartime missions for the units in that force structure, including missions relating to responses to emergencies involving weapons of mass destruction.

(b) FREEZE ON END STRENGTHS.—Notwithstanding any other provision of law, the Armed Forces shall maintain the same

strengths for Selected Reserve personnel of the Army National Guard of the United States and the Army Reserve through September 30, 2000, as are authorized under paragraphs (1) and (2), respectively, of section 411(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1719)

SEC. 102. MODERNIZATION PLAN.

(a) PLAN REQUIRED.—The Secretary of Defense shall develop a master plan that provides for the complete modernization of the National Guard and the other reserve components of the Armed Forces, including the modernization necessary to ensure the compatibility of the equipment used by the reserve components.

(b) SUBMISSION TO CONGRESS.—The Secretary shall submit the plan to Congress not later than six months after the date of the enactment of this Act.

SEC. 103. MILITARY CONSTRUCTION.

(a) PLAN REQUIRED.—The Secretary of Defense shall develop a master plan that provides for meeting the unmet requirements of the National Guard and the other reserve components for military construction.

(b) SUBMISSION TO CONGRESS.—The Secretary shall submit the plan to Congress not later than six months after the date of the enactment of this Act.

TITLE II—RESERVE COMPONENT LEADERSHIP

SEC. 201. CHIEF OF THE NATIONAL GUARD BUREAU.

(a) RELATIONSHIP TO THE JOINT CHIEFS OF STAFF.—Section 151 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(h) PARTICIPATION BY THE CHIEF OF THE NATIONAL GUARD BUREAU.—(1) The Chief of the National Guard Bureau shall identify for the Chairman any matter scheduled for consideration by the Joint Chiefs of Staff that directly concerns the National Guard, domestic security, or public safety.

''(2) Unless, upon request of the Chairman for a determination, the Secretary of Defense determines that a matter identified pursuant to paragraph (1) does not concern the National Guard, domestic security, or public safety, the Chief of the National Guard Bureau shall meet with the Joint Chiefs of Staff when that matter is under consideration. The Chief of the National Guard Bureau has equal status with the members of the Joint Chiefs of Staff for the consideration of the matter by the Joint Chiefs of Staff.

''(3) The Chairman shall provide the Chief of the National Guard Bureau with all agenda for the meetings of the Joint Chiefs of Staff and any other information that the Chairman considers appropriate to assist the Chief of the National Guard Bureau to carry out his responsibilities under this subsection.''.

(b) MEMBERSHIP ON THE JOINT REQUIREMENTS OVERSIGHT COUNCIL.—Section 181(c) of such title is amended—

(1) in paragraph (1)—

(A) in subsection (D), by striking out ''and'';

(B) in subsection (E), by striking out the period at the end and inserting in lieu thereof ''; and''; and

(C) by adding at the end the following:

''(F) the Chief of the National Guard Bureau.''; and

(2) in paragraph (2), by inserting ''and the Chief of the National Guard Bureau'' after ''other than the Chairman of the Joint Chiefs of Staff''.

(c) ADDITIONAL ADVISORY FUNCTIONS.—Section 10502(c) of title 10, United States Code, is amended to read as follows:

''(c) ADVISER ON NATIONAL GUARD MATTERS.—The Chief of the National Guard Bureau is the principal adviser to the President, the Secretary of Defense, any other person designated to exercise national command authority, the Secretary of the Army, the Chief of Staff of the Army, the Secretary of the Air Force, and the Chief of Staff of the Air Force on matters relating to—

''(1) the National Guard;

''(2) the Army National of the United States;

''(3) the Air National Guard of the United States;

''(4) domestic security; and

''(5) public safety.''.

(d) RELATIONSHIP TO THE ARMY STAFF AND THE AIR STAFF.—Section 10502 of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(e) RELATIONSHIP TO ARMY AND AIR STAFF.—To the extent that it does not impair the independence of the Chief of the National Guard Bureau in the performance of his duties, the Chief of the National Guard Bureau shall serve at the level of the Vice Chief of Staff of the Army in all forums within the Department of the Army, and at the level of the Vice Chief of Staff of the Air Force in all forums within the Department of the Air Force.''.

SEC. 202. GRADES OF RESERVE COMPONENT LEADERS.

(a) NATIONAL GUARD BUREAU LEADERSHIP.—

(1) CHIEF.—Section 10502(d) of title 10, United States Code, is amended by striking out ''lieutenant general'' and inserting in lieu thereof ''general''.

(2) VICE CHIEF.—Section 10505(c) of such title is amended by striking out ''major general'' and inserting in lieu thereof ''lieutenant general''.

(3) OTHER GENERAL OFFICERS.—Section 10506(a)(1) of such title is amended by striking out ''major general'' each place it appears and inserting in lieu thereof ''lieutenant general''.

(b) CHIEF OF ARMY RESERVE.—Section 3038(c) of such title is amended by striking out ''major general'' in the third sentence and inserting in lieu thereof ''lieutenant general''.

(c) CHIEF OF NAVAL RESERVE.—Section 5143 of such title is amended—

(1) in subsection (b), by striking out ''from officers who—'' and inserting in lieu thereof ''from among officers of the Naval Reserve who—''; and

(2) in subsection (c)(2), by striking out ''a grade above rear admiral (lower half)'' in the third sentence and inserting in lieu thereof ''the grade of vice admiral''.

(d) COMMANDER, MARINE FORCES RESERVE.—Section 5144 of such title is amended—

(1) in subsection (b), by striking out ''from officers who—'' and inserting in lieu thereof ''from among officers of the Marine Corps Reserve who—''; and

(2) in subsection (c)(2), by striking out ''a grade above brigadier general'' in the third sentence and inserting in lieu thereof ''the grade of lieutenant general''.

(e) CHIEF OF AIR FORCE RESERVE.—Section 8038(c) of such title is amended by striking out ''major general'' in the third sentence and inserting in lieu thereof ''lieutenant general''.

(f) EXCLUSION FROM DISTRIBUTION LIMITS FOR GENERAL OFFICERS ON ACTIVE DUTY.—Section 525(b) of title 10, United States Code, is amended by adding at the end the following:

''(6)(A) An officer serving in a position referred to in subparagraph (B) in the grade specified for the position in that subparagraph is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under paragraph (1).

''(B) Subparagraph (A) applies to an officer while serving in any of the following positions:

''(i) The Chief of the National Guard Bureau, if serving in the grade of general.

''(ii) The Vice Chief of the National Guard Bureau, if serving in the grade of lieutenant general.

''(iii) The Director of the Army National Guard, if serving in the grade of lieutenant general.

''(iv) The Director of the Air National Guard, if serving in the grade of lieutenant general.

''(7)(A) An officer while serving in a position referred to in subparagraph (B), if serving in the grade of lieutenant general or vice admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under paragraph (1) or (2), as applicable.

''(B) Subparagraph (A) applies to an officer serving in any of the following positions:

''(i) The Chief of Army Reserve.

''(ii) The Chief of Naval Reserve.

''(iii) The Commander, Marine Forces Reserve.

''(iv) The Chief of Air Force Reserve.''.

(g) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on January 1, 1999.

SEC. 203. ADJUTANTS GENERAL OF THE NATIONAL GUARD.

(a) FEDERAL RECOGNITION.—The Secretary of Defense shall prescribe in regulations a requirement that, whenever a person is appointed to the position of State adjutant general of the National Guard, the board that is to consider the appointee for being extended Federal recognition be convened within 60 days after the date of the appointment.

(b) INVESTIGATIONS OF ADJUTANTS GENERAL.—The Secretary of Defense shall prescribe in regulations a requirement that the Inspector General of the Department of Defense be responsible for conducting investigations regarding appointments of State adjutants general of the National Guard for the Department of Defense.

(c) STATE INCLUDES POSSESSIONS, ET CETERA.—For the purposes of this section, the term ''State'' includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

SEC. 204. REVIEW OF PROMOTIONS AND FEDERAL RECOGNITION FOR NATIONAL GUARD OFFICERS.

(a) GAO REVIEW.—The Comptroller General shall review the promotions of, and extensions of Federal recognition to, officers of the National Guard to determine the timeliness and fairness of the processing of such actions.

(c) SCOPE OF REVIEW.—The Comptroller General shall determine the period and number of actions that are necessary to be reviewed in order to provide a meaningful basis for making determinations under subsection (a).

(c) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the review. The report shall include the Comptroller General's determinations together with any recommendations that the Comptroller General considers appropriate.

TITLE III—USE OF THE RESERVE COMPONENTS FOR EMERGENCIES INVOLVING WEAPONS OF MASS DESTRUCTION

SEC. 301. DISASTER RELIEF.

(a) AUTHORITY.—

(1) DEFINITIONS.—

(A) MAJOR DISASTER.—Paragraph (2) of section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42

U.S.C. 5122) is amended by striking out ''or explosion'' and inserting in lieu thereof ''explosion, or emergency involving a weapon of mass destruction.''.

(B) WEAPON OF MASS DESTRUCTION.—Such section is further amended by adding at the end the following:

''(9) WEAPON OF MASS DESTRUCTION.—'Weapon of mass destruction' has the meaning given that term in section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

''(10) NATIONAL GUARD.—'National Guard' has the meaning given that term in section 101(3) of title 32, United States Code.

''(11) RESERVE COMPONENTS.—'Reserve components of the Armed Forces' means the reserve components named in section 10101 of title 10, United States Code.''.

(2) USE OF RESERVE COMPONENTS.—Section 201(a) of such Act (42 U.S.C. 5131) is amended—

(A) by striking out the period at the end of paragraph (7) and inserting in lieu thereof ''; and''; and

(B) by adding at the end the following:

''(8) the use of the National Guard or the other reserve components of the Armed Forces to take actions that may be necessary to provide an immediate response to an incident involving a use or threat of use of a weapon of mass destruction.''.

(3) REQUESTS BY DIRECTOR OF FEMA.—Section 611 of such Act (42 U.S.C. 5196) is amended by adding at the end the following:

''(l) USE OF THE RESERVE COMPONENTS.—The Director may request the Secretary of Defense to authorize the National Guard or to direct other reserve components of the Armed Forces to conduct training exercises, preposition equipment and other items, and take such other actions that may be necessary to provide an immediate response to an emergency involving a weapon of mass destruction. The Secretary of Defense may authorize the National Guard or direct other reserve components to take actions requested by the Director under the preceding sentence.''.

(b) REIMBURSEMENT OF STATES.—

(1) AUTHORITY.—Chapter 1 of title 32, United States Code, is amended by adding at the end the following new section:

''§ 115. Reimbursement for State costs of preparedness programs for emergencies involving weapons of mass destruction

''(a) REIMBURSEMENT AUTHORIZED.—The Secretary of Defense may reimburse a State for expenses incurred by the State for the National Guard of that State to participate in emergency preparedness programs to respond to an emergency involving the use of a weapon of mass destruction. Expenses reimbursable under this section may include the costs of the following:

''(1) Pay, allowances, clothing, subsistence, travel, and related expenses of personnel of the National Guard.

''(2) Operation and maintenance of equipment and facilities of the National Guard.

''(3) Procurement of services and equipment for the National Guard.

''(b) STATE INCLUDES POSSESSIONS, ET CETERA.—For the purposes of this section, the term 'State' includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

''(c) WEAPON OF MASS DESTRUCTION DEFINED.—In this section, the term 'weapon of mass destruction' has the meaning given that term in section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

''115. Reimbursement for State costs of preparedness programs for emergencies involving weapons of mass destruction.''.

SEC. 302. RESERVES ON ACTIVE DUTY.

(a) AUTHORITY.—

(1) ORDER TO ACTIVE DUTY.—Section 12301(b) of title 10, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)'';

(B) by striking out ''for not more than 15 days a year'' in the first sentence; and

(C) by adding at the end the following;

''(2) The authority under paragraph (1) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving a weapon of mass destruction (as defined section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).

''(3) A unit or member may not be ordered to active duty under this subsection for more than 15 days a year. Days of service on active duty to provide assistance described in paragraph (2), up to 15 days a year, shall not be counted toward the limitation on the total number of days set forth in the preceding sentence.''.

(2) USE OF ACTIVE GUARD AND RESERVE PERSONNEL.—Section 12310 of title 10, United States Code, is amended by adding at the end the following:

''(c)(1) A Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may perform any duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction (as defined in section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).

''(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).''.

(b) EXCLUSION FROM STRENGTH LIMITATIONS.—

(1) GENERAL LIMITATION.—Section 115(d) of such title is amended by adding at the end the following:

''(8) Members of the reserve components on active duty and members of the National Guard on full-time National Guard duty to participate in emergency preparedness programs for responding to emergencies involving a weapon of mass destruction (as defined section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).''.

(2) OFFICER PERSONNEL LIMITATION.—Section 12011 of such title is amended by adding at the end the following:

''(c) Members of the reserve components on active duty and members of the National Guard on full-time National Guard duty to participate in emergency preparedness programs for responding to emergencies involving a weapon of mass destruction (as defined section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) shall not be counted for purposes of a limitation in subsection (a).''.

(3) ENLISTED PERSONNEL LIMITATION.—Section 12011 of such title is amended by adding at the end the following:

''(c) Members of the reserve components on active duty and members of the National Guard on full-time National Guard duty to participate in emergency preparedness programs for responding to emergencies involving a weapon of mass destruction (as defined section 1402 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))) shall not be counted for purposes of a limitation in subsection (a).''.

TITLE IV—STRENGTHENED REFORMS FOR ARMY NATIONAL GUARD COMBAT READINESS

SEC. 401. ADEQUATE FUNDING FOR MEETING NCO EDUCATION REQUIREMENTS.

Section 1114(b) of the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102–484; 10 U.S.C. 10105 note) is amended to read as follows:

''(b) AVAILABILITY OF TRAINING.—The Secretary of the Army shall ensure that sufficient training positions and funds are available to enable compliance with subsection (a) without it being necessary for noncommissioned officers to be absent from unit annual training for the units of assignment in order to attend training to meet military education requirements.''.

SEC. 402. COMBAT UNIT TRAINING.

Section 1119 of the Army National Guard Combat Readiness Reform Act of 1992 is amended—

(1) by inserting ''(a) PROGRAM TO MINIMIZE POST-MOBILIZATION TRAINING NEEDS.—'' before ''The Secretary'';

(2) by inserting ''all'' before ''combat units'' in the first sentence;

(3) in paragraph (1)—

(A) in subparagraph (A), by inserting ''and professional development'' after ''qualification'';

(B) in subparagraph (B), by striking out ''and squad level'' and inserting in lieu thereof ''squad, and platoon level''; and

(C) by striking out subparagraph (C) and inserting in lieu thereof the following:

''(C) maneuver training at the platoon level to at least the minimum extent required of all Army units; and''; and

(4) by adding at the end the following:

''(b) ADEQUACY OF FUNDING.—The Secretary shall ensure that sufficient funds are made available for conducting the training required under the program.''.

SEC. 403. USE OF COMBAT SIMULATORS.

The text of section 1120 of such Act is amended to read as follows:

''The Secretary of the Army shall—

''(1) expand the use of simulations, simulators, and advanced training devices and technologies to fully support the complete integration of Army National Guard units with active Army units; and

''(2) use and distribute combat simulators so as to serve the training of Army National Guard units as well as active Army units.''.

TITLE V—PAY, ALLOWANCES, RETIREMENT, AND OTHER MONETARY BENEFITS

SEC. 501. BASIC ALLOWANCE FOR HOUSING.

(a) RESERVES ON ACTIVE DUTY MORE THAN 100 MILES FROM HOME.—Section 403(g)(3) of title 37, United States Code, is amended by adding at the end the following: ''A member of a reserve component on active duty may not be denied a basic allowance for housing at that rate on the basis of being provided quarters of the United States if the member is performing duty more than 100 miles from the member's primary residence.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply with respect to active duty performed on or after that date.

SEC. 502. ELIGIBILITY FOR HAZARDOUS OR IMMINENT DANGER PAY.

(a) FULL MONTHLY RATE FOR ACTIVE DUTY FOR PARTIAL MONTH.—Section 310(a) of title 37, United States Code, is amended in the matter preceding paragraph (1) by striking

out ''for any month in which he was entitled to basis pay'' and inserting in lieu thereof ''for any month in which he was entitled to any basic pay (without regard to the number of days of duty performed for the month)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date of the enactment of this Act.

SEC. 503. ALLOTMENTS OF PAY.

Section 701(d) of title 37, United States Code, is amended—

(1) by inserting ''(including a member of a reserve component of that armed force)'' in the first sentence after ''a member of the Army, Navy, Air Force, or Marine Corps''; and

(2) by inserting ''(three allotments, in the case of a member of a reserve component)'' in the second sentence after ''six allotments''.

SEC. 504. EARLY RETIREMENT FOR PHYSICAL DISABILITY.

(a) PERMANENT AUTHORITY.—Chapter 1223 of title 10, United States Code, is amended by inserting after section 12731a the following:

§ 12731b. Early retirement for physical disability

''(a) RETIREMENT WITH AT LEAST 15 YEARS OF SERVICE.—For the purposes of section 12731 of this title, the Secretary concerned may—

''(1) determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

''(A) has completed at least 15, and less than 20, years of service computed under section 12732 of this title; and

''(B) no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability; and

''(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

''(b) EXCLUSION.—This section does not apply to persons referred to in section 12731(c) of this title.''.

(b) REPEAL OF SUPERSEDED AUTHORITY.—Section 12731(a)(c) of such title is amended by striking out paragraph (3).

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 12731a the following:

''12731b. Early retirement for physical disability.''.

TITLE VI—OTHER BENEFITS

SEC. 601. REPEAL OF 10-YEAR LIMITATION ON USE OF MONTGOMERY GI BILL BENEFITS.

(a) REPEAL.—Subsection (a) of section 16133 of title 10, United States Code, is amended by striking out ''(1)'' and all that follows and inserting in lieu thereof ''on the date the person is separated from the Selected Reserve.''.

(b) CONFORMING AMENDMENTS.—Subsection (b) of such section is amended—

(1) in paragraph (1)—

(A) by striking out ''In'' in the matter preceding subparagraph (A) and inserting in lieu thereof ''Subsection (a) does not apply in''; and

(B) by striking out the comma at the end of subparagraph (B) and all that follows and inserting in lieu thereof a period;

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3) and, in such paragraph, by striking out ''of this title—'' and all that follows through ''for the purposes of clause (2)'' and inserting in lieu thereof ''of this title, the member may not be considered to have been separated from the Selected Reserve for the purposes''.

SEC. 602. DEMONSTRATION PROGRAM ON UNLIMITED USE OF COMMISSARY STORES.

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a demonstration program to test the efficacy of permitting unlimited use of commissary stores by members and former members of the reserve components who are eligible for limited use of commissary stores under section 1063 and 1064 of title 10, United States Code.

(b) PERIOD FOR PROGRAM.—The program shall be carried out for one year beginning on January 1, 1999.

(c) REPORT.—Not later than March 31, 2000, the Secretary of Defense shall submit to Congress a report on the results of the demonstration program, together with any comments and recommendations that the Secretary considers appropriate.

SEC. 603. SPACE AVAILABLE TRAVEL FOR MEMBERS OF SELECTED RESERVE.

(a) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2646. Space available travel: members of Selected Reserve

''(a) AVAILABILITY.—The Secretary of Defense shall prescribe regulations to allow members of the Selected Reserve in good standing (as determined by the Secretary concerned), and dependents of such members, to receive transportation on aircraft of the Department of Defense on a space available basis under the same terms and conditions as apply to members of the armed forces on active duty and dependents of such members.

''(b) CONDITION ON DEPENDENT TRANSPORTATION.—A dependent of a member of the Selected Reserve may be provided transportation under this section only when the dependent is actually accompanying the member on the travel.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2646. Space available travel: members of Selected Reserve.''.

SEC. 604. REPEAL OF EXPIRATION OF ELIGIBILITY FOR VETERANS HOUSING BENEFITS BASED ON SERVICE IN THE SELECTED RESERVE.

Section 3702(a)(2)(E) of title 38, United States Code, is amended by striking out ''For the period beginning on October 28, 1992, and ending on October 27, 1999, each'' and inserting in lieu thereof ''Each''.

TITLE VII—OTHER MATTERS

SEC. 701. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT ADDED TO GENERAL BUSINESS CREDIT.

(a) READY RESERVE-NATIONAL GUARD CREDIT.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

''SEC. 45D. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for the taxable year is an amount equal to 50 percent of the actual compensation amount for the taxable year.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day during a taxable year when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The maximum credit allowable under subsection (a) shall not exceed $2,000 in any taxable year with respect to any one Ready Reserve-National Guard employee.

''(2) DAYS OTHER THAN WORK DAYS.—No credit shall be allowed with respect to a Ready Reserve-National Guard employee who performs qualified active duty on any day on which the employee was not scheduled to work (for a reason other than to participate in qualified active duty) and ordinarily would not have worked.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty, as defined in section 101(d)(1) of title 10, United States Code;

''(B) full-time National Guard duty, as defined in section 1010(d)(5) of such title; and

''(C) hospitalization incident to duty referred to in subparagraph (A) or (B).

''(2) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve or of the National Guard.

''(4) NATIONAL GUARD.—The term 'National Guard' has the meaning given such term by section 101(c)(1) of title 10, United States Code.

''(5) READY RESERVE.—The term 'Ready Reserve' has the meaning given such term by section 10142 of title 10, United States Code.''

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of such Code (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the Ready Reserve-National Guard employee credit determined under section 45D(a).''

(c) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45C the following new item:

''Sec. 45D. Ready Reserve-National Guard employee credit.''

(d) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years beginning after December 31, 1997.

SECTION-BY-SECTION ANALYSIS

Section 101: Directs the Secretary of Defense to submit a report to Congress regarding the following;

1) force structure appropriate for the Army National Guard and the Army Reserve to meet national security threats.

2) freezes the end strength of the Army National Guard and Army Reserve at the levels approved in Public Law 105–85 Stat. 1719 until September 30, 2000.

Section 102: Directs the Secretary of Defense to develop a master plan for the modernization of the National Guard and Reserve Component of the Armed Services to ensure compatibility of equipment. The report is to be submitted to Congress six months from date of enactment of legislation.

Section 103: Directs the Secretary of Defense to develop a master plan regarding the unmet military construction requirements of the National Guard and Reserve Components. This Report will be submitted within six months after passage of the legislation.

Sections 201 & 202: Elevates the Chief of the National Guard Bureau to the Grade of General (4-Star) and elevates the Senior Representatives of the Reserves (Army, Navy, Air Force and Marines) to Lieutenant General (3-Star). Adjusts the responsibility of the Chief of the National Guard Bureau regarding issues that directly affect the National Guard. Includes the Chief of the National Guard Bureau as a full time member of the Joint Requirements Oversight Council.

Section 203: Requires the Secretary of Defense to appoint the Federal Recognition Board for an Adjutant General within 60 days of the Adjutant General's appointment by a Governor. This section also requires the Secretary of Defense to have the Inspector General of the Defense Department be responsible for conducting investigations regarding appointments of State Adjutants General.

Section 204: Requires the General Accounting Office (GAO) to review the National Guard members promotions and extensions of Federal recognition as to the timeliness and fairness of the process. GAO will report to Congress one year after the enactment of the legislation.

Section 301: Enhanced integration of the National Guard Bureau, Reserve Components and the Federal Emergency Management Agency (FEMA) for emergencies involving Weapons of Mass Destruction.

Section 302: Describes duties of Reserves (National Guard & Reserves) in responding to an emergency involving a weapon of mass destruction.

Section 401: Directs the Secretary of the Army to ensure that sufficient training funds are available for enlisted men and women to meet their military education requirements.

Section 402: Directs the Secretary of the Army to ensure that sufficient training funds are available for the training of Army National Guard to maintain Platoon level operations.

Section 403: Directs the Secretary of the Army to expand the use of simulations, simulators and advanced training devices to fully support the integration of Army National Guard with Active Army units.

Section 501: Prohibits the Services from denying Basic Housing allowance to Reserve component members if they are on active duty more than 100 miles from their primary home.

Section 502: Provides equity between Reserve component members and active duty counterparts in receiving Hazardous or Imminent Danger pay.

Section 503: Increases Reserve Components pay allotment authorization to the same level as Active duty personnel.

Section 504: Makes permanent the early retirement for Physical Disability of National Guard and Reserve component members who have between 15 and 20 years of satisfactory service. The present law expires at the end of Fiscal Year 1999.

Section 601: Repeals the Ten Year limitation on the use of the Montgomery GI bill benefits if the reservists remain members in good standing of the Selected Reserve.

Section 602: Provides for a demonstration program on unlimited use of military commissary stores for reserve component members.

Section 603: Directs the Secretary of Defense to develop rules for Reserve Component Members and their families to travel on Department of Defense Aircraft on a space available basis.

Section 604: Makes permanent the eligibility for veterans' home loan guarantees for members of the Selected Reserves. Reserve eligibility is to expire October 1999.

Section 701: Provides a tax incentive to businesses that employ National Guard and Reserve personnel. A business can receive a tax credit of up to $2000.00 per year, per employee for a member of the Guard and Reserve who is absent from employment for the purpose of performing Active Duty assignments.

Mr. BOND. Mr. President, I am proud to join with my colleague and co-chair of the Senate National Guard Caucus, Senator FORD to introduce a bill today to bolster the recognition of the National Guard and reserve components by the Department of Defense. The bill entitled the National Guard and Reserve Components Equity Act of 1998.

Since the Senate National Guard Caucus was established in 1987, Senator FORD and I and the sixty five other members have worked tirelessly to insure the adequate resourcing of the National Guard and reserves. This year will be Senator FORD's final year as Caucus co-chair. I will sorely miss his advise and counsel. The legislation we lay before you this day is testimony to his commitment to improving the quality of life standards for our nations active, Guard and reserve component service members. He and I have worked to include major quality of life and resourcing issues highlighted by reserve and National Guard Associations.

This bill seeks to provide overdue recognition and benefits to the nation's reservists and Guard personnel and their families. For too long, the nation's reservists and National Guardsmen and women have been the recipients of less than a full commitment by the Department of Defense. The bill we have introduced will stir some controversy I am sure, but these men and women deserve our support. As we ask more and more of our reserve and Guard we owe it to the people who we ask to go into harm's way, to provide them with equality in pay, equality in fielded equipments and equality in training. We owe it to their families to provide them with equal access to commissaries and space available travel. We owe it to them to continue reservist eligibility for VA home loans and repeal Montgomery Bill limitations for Selected Reservists. We need to do all this and more. We must also recognize the sacrifices made by reservist and Guard employers. This bill addresses each of these issues. We must remove any semblance of second class status from the shoulders of these professional and dedicated individuals.

Reserve and Guard components are being called upon to integrate themselves into the tactical operations of the nation's defense plans, in order to do this effectively, the systems used by the components must be compatible. That is not the case today. In many instances, radios and data transfer equipments are incompatible. For instance many artillery units operate independently because they are unable to coordinate their operations. I could hardly believe it, but many fighter aircraft units suffer the same fate, and you can imagine that the theater commanders don't care to have independent fighter units involved in heavily coordinated and multi-national operations. Digitization, situational awareness data link upgrades and avionics modernization of reserve and Guard units is imperative. This bill directs the Secretary of Defense to develop a master plan for the modernization of these components.

The bill also addresses the use of Guard and reserve component personnel in response to an emergency involving a weapon of mass destruction; to include their integration with efforts of the Federal Emergency Management Agency.

Family issues are addressed, as well. As I mentioned earlier, there are provisions for demonstration program for unlimited use of military commissionaries by reserve component members, and for the development of rules governing Space Available Travel for reservists and their families.

I urge my colleagues to review this bill, sign on and help us to provide these and other long overdue measures to bring equity in individual recognition and resource allocation to these vital components of our national security.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. KERREY, Ms. MOSELEY-BRAUN, Mr. HAGEL, and Mr. ALLARD):

S. 2078. A bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes; to the Committee on Finance.

FARM AND RANCH RISK MANAGEMENT ACT

Mr. GRASSLEY. Mr. President, I rise today to introduce the Farm and Ranch Risk Management Act of 1998. This bill gives farmers another tool to manage the risk of price and income fluctuations inherent in agriculture. It does this by encouraging farmers to save some of their income during good years and allowing the funds to supplement income during bad years. This new tool will more fully equip family farmers to deal with the vagaries of the marketplace.

Farming is a unique sector of the American economy. Although agriculture represents one-sixth of our Gross Domestic Product, it consists of hundreds of thousands of farmers across the nation. Many of whom operate small, family farms. These farms often support entire families, and even several generations of a family. And they work hard every day and produce the food consumed by the rest of the country, and around the world as well.

Yet farming remains one of the most perilous ways to make a living. The income of a farm family depends, in large part, on factors outside its control. Weather is one of those factors. For instance, I have heard on the Senate

floor recently that the income of North Dakota farmers dropped 98% last year because of flooding. Weather can totally wipe out a farmer. And, at best, weather can cause farmers' income to fluctuate wildly.

Another factor is the uncertainty of international markets. Iowa farmers now export 40% of all they produce. But what happens when European countries impose trade barriers on beef, pork and genetically-modified feed grain, as examples. And what happens when Asian governments devalue their currencies. Exports fall and farm income declines. Through no fault of the farmer, but because of decisions made in foreign countries.

Mr. President, the 1996 farm bill took planting decisions out of the hands of government bureaucrats and put them back into the hands of farmers. Farmers now have the ability to plant according to the demands of the market. The farmers I talk to are pleased with this change in philosophy. They would rather make their own decisions and rely on the market for their income, instead of the government.

But the sometimes volatile nature of commodity markets can make it difficult for family farmers to survive even a normal business cycle. When prices are high, farmers often pay so much of their income in taxes that they are unable to save anything. When prices drop again, farmers can be faced with liquidity problems. This bill allows farmers to manage their income, to smooth out the highs and lows of the commodity markets.

In that way, this bill is complementary with the philosophy of the new farm program. Business decisions are left in the hands of farmers, not bureaucrats at the Department of Agriculture, and not elected officials. The farmer decides whether to defer his income for later years. The farmer decides when to withdraw funds to supplement his operation.

Mr. President, I will take just a moment to explain how the bill works. Eligible farmers are allowed to make contributions to tax-deferred accounts, also known as FARRM accounts. The contributions are tax-deductible and limited to 20% of the farmer's taxable income for the year. The contributions are invested in cash or other interest-bearing obligations. The interest is taxed during the year it is earned.

The funds can stay in the account for up to five years. Upon withdrawal, the funds are taxed as regular income. If the funds are not withdrawn after five years, they are taxed as income and subject to an additional 10% penalty.

Essentially, the farmer is given a five-year window to manage his money in a way that is best for his own operation. The farmer can contribute to the account in good years and withdraw from the account when his income is low.

This bill helps the farmer help himself. It is not a new government subsidy for agriculture. It will not create a new bureaucracy purporting to help farmers. The bill simply provides farmers with a fighting chance to survive the down times and an opportunity to succeed when prices eventually increase.

Mr. President, I want to thank my colleagues for supporting this bill, especially Senator BAUCUS, the lead Democratic cosponsor. I look forward to working with him on the Finance Committee to ensure passage of this important effort for our farmers.

ADDITIONAL COSPONSORS

S. 89

At the request of Ms. SNOWE, the names of the Senator from Wisconsin [Mr. FEINGOLD] and the Senator from Oregon [Mr. WYDEN] were added as cosponsors of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 381

At the request of Mr. ROCKEFELLER, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 381, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 831

At the request of Mr. SHELBY, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 863

At the request of Mrs. MURRAY, her name was withdrawn as a cosponsor of S. 863, a bill to authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia.

S. 1260

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. 1260, a bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes.

S. 1320

At the request of Mr. ROCKEFELLER, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1320, a bill to provide a scientific basis for the Secretary of Veterans Affairs to assess the nature of the association between illnesses and exposure to toxic agents and environmental or other wartime hazards as a result of service in the Persian Gulf during the Persian Gulf War for purposes of determining a service connection relating to such illnesses, and for other purposes.

S. 1334

At the request of Mr. BOND, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN] and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1580

At the request of Mr. SHELBY, the name of the Senator from Kansas [Mr. BROWNBACK] was added as a cosponsor of S. 1580, a bill to amend the Balanced Budget Act of 1997 to place an 18-month moratorium on the prohibition of payment under the medicare program for home health services consisting of venipuncture solely for the purpose of obtaining a blood sample, and to require the Secretary of Health and Human Services to study potential fraud and abuse under such program with respect to such services.

S. 1754

At the request of Mr. FRIST, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 1754, a bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health professions and disadvantaged health education programs, and for other purposes.

S. 1758

At the request of Mr. LUGAR, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1758, a bill to amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.

S. 1825

At the request of Mrs. MURRAY, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1825, a bill to amend title 10, United States Code, to provide sufficient funding to assure a minimum size for honor guard details at funerals of veterans of the Armed Forces, to establish the minimum size of such details, and for other purposes.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Kansas [Mr. BROWNBACK] was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1959

At the request of Mr. COVERDELL, the names of the Senator from Kentucky

[Mr. MCCONNELL] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 1959, a bill to prohibit the expenditure of Federal funds to provide or support programs to provide individuals with hypodermic needles or syringes for the use of illegal drugs.

S. 1973

At the request of Mr. BUMPERS, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 1973, a bill to amend section 2511 of title 18, United States Code, to revise the consent exception to the prohibition on the interception of oral, wire, or electronic communications.

S. 1981

At the request of Mr. HUTCHINSON, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1981, a bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act.

S. 1992

At the request of Mrs. HUTCHISON, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1992, a bill to amend the Internal Revenue Code of 1986 to provide that the $500,000 exclusion of a gain on the sale of a principal residence shall apply to certain sales by a surviving spouse.

S. 2036

At the request of Mrs. HUTCHISON, the names of the Senator from Georgia [Mr. COVERDELL], the Senator from Oregon [Mr. SMITH], the Senator from Alabama [Mr. SESSIONS], the Senator from Colorado [Mr. ALLARD], the Senator from Mississippi [Mr. LOTT], the Senator from Oklahoma [Mr. NICKLES], the Senator from Alaska [Mr. STEVENS], the Senator from North Carolina [Mr. HELMS], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 2036, a bill to condition the use of appropriated funds for the purpose of an orderly and honorable reduction of U.S. ground forces from the Republic of Bosnia and Herzegovina.

SENATE CONCURRENT RESOLUTION 88

At the request of Mr. D'AMATO, the name of the Senator from South Dakota [Mr. JOHNSON] was withdrawn as a cosponsor of Senate Concurrent Resolution 88, a concurrent resolution calling on Japan to establish and maintain an open, competitive market for consumer photographic film and paper and other sectors facing market access barriers in Japan.

SENATE RESOLUTION 176

At the request of Mr. DOMENICI, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Maine [Ms. COLLINS], and the Senator from Montana [Mr. BURNS] were added as cosponsors of Senate Resolution 176, a resolution proclaiming the week of October 18 through October 24, 1998, as ''National Character Counts Week.''

SENATE RESOLUTION 216

At the request of Mr. LIEBERMAN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Resolution 216, a resolution expressing the sense of the Senate regarding Japan's difficult economic condition.

SENATE RESOLUTION 230—AUTHORIZING THE PRODUCTION OF RECORDS BY THE SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 230

Whereas, the Office of the Inspector General of the United States Department of Justice has requested that the Senate Select Committee on Intelligence provide it with copies of committee records relevant to the Office's pending inquiry into the handling and dissemination by the Department of Justice and the Federal Bureau of Investigation of certain foreign intelligence and counterintelligence information;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, acting jointly, are authorized to provide to the Office of Inspector General of the United States Department of Justice, under appropriate security procedures, copies of committee records relevant to the Office's pending inquiry into the handling and dissemination by the Department of Justice and the Federal Bureau of Investigation of certain foreign intelligence and counterintelligence information.

AMENDMENTS SUBMITTED

THE SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

FEINGOLD AMENDMENT NO. 2394

Mr. FEINGOLD proposed an amendment to the bill (S. 1260) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to limit the conduct of securities class actions under State law, and for other purposes; as follows:

At the appropriate place, add the following:

SEC. ___. CIVIL RIGHTS PROCEDURES PROTECTIONS.

(a) SHORT TITLE.—This section may be cited as the ''Civil Rights Procedures Protection Act of 1998''.

(b) AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

''SEC. 719. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(c) AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

''SEC. 16. EXCLUSIVITY OF POWERS AND PROCEDURES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 795) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under section 501, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(e) AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.—Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

''(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(f) AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES.—Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

''(d) Notwithstanding any Federal law (other than a Federal law that expressly refers to this section) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim concerning making and enforcing a contract of employment under this section, such powers

and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(g) AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by adding at the end the following new paragraph:

''(5) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this subsection, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(h) AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.—Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) is amended—

(1) by redesignating section 405 as section 406; and

(2) by inserting after section 404 the following new section:

''SEC. 405. EXCLUSIVITY OF REMEDIES.

''Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act or under an amendment made by this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure.''.

(i) AMENDMENT TO TITLE 9, UNITED STATES CODE.—Section 14 of title 9, United States Code, is amended—

(1) by inserting ''(a)'' before ''This''; and

(2) by adding at the end the following new subsection:

''(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability.''.

(j) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to claims arising on and after the date of enactment of this Act.

Mr. SARBANES (for himself, Mr. BRYAN, and Mr. JOHNSON) proposed two amendments to the bill, S. 1260, supra; as follows:

AMENDMENT NO. 2395

On page 9, between lines 9 and 10, insert the following:

''(d) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding subsection (b), an action that is removed to Federal court under subsection (c) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 9, line 10, strike ''(d)'' and insert ''(e)''.

On page 10, line 12, strike ''(e)'' and insert ''(f)''.

On page 10, line 17, strike ''(f)'' and insert ''(g)''.

On page 14, between lines 10 and 11, insert the following:

''(3) APPLICABILITY OF STATE STATUTE OF LIMITATIONS.—Notwithstanding paragraph (1), an action that is removed to Federal court under paragraph (2) shall be subject to the State statute of limitations that would have applied in the action but for such removal.

On page 14, line 11, strike ''(3)'' and insert ''(4)''.

On page 15, line 15, strike ''(4)'' and insert ''(5)''.

On page 15, line 20, strike ''(5)'' and insert ''(6)''.

AMENDMENT NO. 2396

On page 10, strike line 24 and all that follows through page 12, line 11 and insert the following:

''(2) CLASS ACTION.—

''(A) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(i) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(ii) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 16, strike line 3 and all that follows through page 17, line 13 and insert the following:

''(B) CLASS ACTION.—

''(i) IN GENERAL.—The term 'class action' means any single lawsuit (other than a derivative action brought by 1 or more shareholders on behalf of a corporation) in which—

''(I) 1 or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; and

''(II) questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members.

On page 17, line 14, strike ''(C)'' and insert ''(ii)'' and move the margin 2 ems to the right.

On page 17, line 21, strike ''(D)'' and insert ''(C)''.

SARBANES (AND OTHERS) AMENDMENT NO. 2397

Mr. SARBANES (for himself, Mr. BRYAN, Mr. JOHNSON, and Mr. BIDEN) proposed an amendment to the bill, S. 1260, supra; as follows:

On page 10, between lines 16 and 17, insert the following:

''(f) STATE ACTIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(2) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 10, line 17, strike ''(f)'' and insert ''(g)''.

On page 15, between lines 19 and 20, insert the following:

''(5) STATE ACTIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans similarly situated.

''(B) STATE PENSION PLAN DEFINED.—For purposes of this paragraph, the term 'State pension plan' means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

On page 15, line 20, strike ''(5)'' and insert ''(6)''.

BIDEN AMENDMENT NO. 2398

Mr. BIDEN proposed an amendment to the bill, S. 1260, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. FRAUD AS PREDICATE OFFENSE.

Section 1964(c) of title 18, United States Code, is amended by striking '', except'' and all that follows through ''final''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. 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 13, for purposes of conducting a Full Committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this business meeting is to consider pending calendar business.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DOMENICI. 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 13, 1998, at 10:00 a.m. to hold a hearing.

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

COMMITTEE ON THE JUDICIARY

Mr. DOMENICI. 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 13, 1998, at 10:30 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on ''Tobacco Litigation: Is it Constitutional?''

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 13, 1998, at 9:30 a.m. on Federal Communications Commission Oversight: Wireless Bureau.

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

SUBCOMMITTEE ON NEAR EASTERN AND SOUTH ASIAN AFFAIRS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on near Eastern and South

Asian Affairs be authorized to meet during the session of the Senate on Wednesday, May 13, 1998, at 2:00 p.m. to hold a hearing.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Wednesday, May 13, 1998, at 9:30 a.m.

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

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS ON REGULATORY RELIEF

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on Financial Institutions and Regulatory Relief of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, May 13, 1998, to conduct an oversight and reauthorization hearing on the Community Development Financial Institutions Fund (CDFI) Program.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICE

Mr. DOMENICI. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Wednesday, May 13, 1998 at 2:00 p.m. for a hearing on ''S. 1710, The Retirement Coverage Error Correction Act of 1998.''

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

ADDITIONAL STATEMENTS

AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT—CONFERENCE REPORT

• Mr. BROWNBACK. Mr. President, particularly in light of the 1996 Farm Bill, it is important that the federal government focus its attention on the factors that will increase U.S. agriculture's competitiveness in a deregulated farm economy. This includes improving efficiency in the transportation system, keeping international markets active and growing, advancing research, and facilitating use of market oriented risk management tools.

Yesterday the Senate approved the Conference Report to S. 1150, which provides for two of those critical factors. First of all, it provides important funding for agriculture research programs. Though I am critical of government funding of applied research that would otherwise be financed by those who will directly benefit in the private sector, I view basic research as a responsibility of the federal government. It is through research—largely conducted by the land grant universities supported by the federal government—that we experienced the ''green revolution'' whereby the world learned to produce more food using fewer resources. Through research we have developed technologies that have increased farm efficiency exponentially, transformed food processing, and enhanced human nutrition. Given the structure of the agriculture industry, these advances never would have occurred if it had been up to individual farmers or individual companies to conduct the necessary research.

Furthermore, the intensive use of farmland here in the U.S. means that sensitive ecosystems around the world—which would have to be converted to farmland were it not for the productive capacity of the Midwest—can be spared. Continuing to search for ways to increase the productive capacity of America's farmers will help ensure that these ecosystems are not destroyed in order to provide for the food needs of the world's growing population. So the advances achieved through research have not only improved our own economic position, they have also benefitted the environment worldwide.

The bill also provides a stable funding mechanism for crop insurance, which has been subject to annual debates in recent years. This has been problematic for farmers and insurance agents, who need to be able to plan ahead. With the more liberalized market conditions that the new Freedom to Farm Act provides, risk management is more important than ever for farmers. And, for many, crop insurance is the most viable option for managing risk. In fact, lenders often require that producers obtain crop insurance in order to qualify for operating loans.

All of the spending that is directed toward these programs is offset by savings from food stamp administration accounts and the limitation of Commodity Credit Corporation funding for computers. So, the increased spending in this bill does not jeopardize the balanced budget agreement enacted last year.

It goes without saying that this bill is critical for a farm state like Kansas. However, the benefits of agricultural research and a reliable mechanism to manage risk extend well beyond the state lines of farm states—this country's production affords our consumers in rural communities and cities alike the cheapest, safest, and most abundant food supply on earth. It is imperative that Congress continue the investment that makes this competitive advantage possible. I am glad that the Senate finally approved the Conference Report, and hope that the House will act soon to secure these benefits for rural America.•

CELEBRATION OF ISRAEL'S 50TH ANNIVERSARY

Mr. FEINGOLD. Mr. President, during the last few days, both in Israel and around the world, Jews and millions of others have been celebrating the 50th anniversary of the birth of Israel. A celebration of Israel is a celebration of democracy, prosperity, faith and the fulfillment of the dream of a Jewish homeland.

It was on May 14, 1948, that David Ben-Gurion announced Israel's birth to the world. Fifty years later, Israel is a mature state—a survivor of wars, assassinations and painful regional conflicts. And Israel has not only survived, it has prospered and thrived.

It has bloomed in the desert, taking root against seemingly impossible odds.

But it does not surprise us, for we know that overcoming the insurmountable is the story of the Jewish people. Examples of Israel's achievements abound: it is a world leader in developing agricultural techniques for arid climates, and in harnessing the power of solar energy.

Ben-Gurion believed that Israel could lead the world to a better future by marrying the ethical teachings of the ancients with the discoveries of modern science. ''It is only by the integration of the two,'' he wrote, ''that the blessings of both can flourish.''

Israel ranks among the most advanced economies in the world, and is a vigorous democracy in a region of largely authoritarian regimes. Voter turnout for Israel's 1996 elections were about 80 percent, a high turnout by any standard, and one that surpasses and challenges the United States, which had just 49 percent turnout that same year. And Israel has successfully resettled Jewish immigrants from the former Soviet Republics and across the globe, including absorbing 680,000 immigrants during a three year period. The culture of Israel is equally vibrant, as Israelis have drawn on their dramatic personal and national histories to create invaluable contributions to the arts.

At 50, Israel has character, strength and dignity. Of course, like anyone who reaches 50, Israel is also experiencing something of a mid-life crisis.

As Israelis take stock of their achievements at this important moment in their history, they find problems yet to be solved and many goals yet to be reached. Israel has not yet made peace with all of her neighbors, and difficult decisions about how to achieve peace, or whether to continue to, at this point, seek peace at all, are causing painful rifts in Israeli society.

Personally, I look at Israel from many perspectives—as an American, as a Jew, as a United States Senator and as a member of the Senate Foreign Relations Committee.

As an American, I see Israel as a staunch ally and friend. As a Jew, I see a spiritual homeland, a place where all Jews have a claim, a right to belong. Israel is an oasis of faith for Jews in every corner of the world. As a United States Senator and member of the Senate's Foreign Relations Committee, I take a deep interest in Israel and the Middle East peace process.

I first visited Israel when I was 19 years old. My father and mother took me as a way to educate me about the importance of Israel, and the trip had an enormously powerful impact on me. I returned two more times, in 1976 and 1977, while I was a student at Oxford University.

My strongest memory of that last trip was our visit to the Western Wall, when I brushed up against a soldier carrying a machine gun under his jacket. It was then that I felt for the first time, through the cold steel of a weapon, what it was like to exist in a society where the threat of violence was a constant. At the time, I hoped upon my next return to Israel that there would be peace in the region—never realizing that we would find ourselves in the stalemate we are in today so many years later. For these 21 years since then, I was unable to return to Israel except for one time and one time only—and then only for 10 hours—for the sad occasion of Yitzhak Rabin's funeral in November 1995.

I went as a very young man and returned much changed—I had become a Senator, a husband and a father—but was still awed by the powerful presence of faith and hope, violence and conflict that still characterize the Jewish state today.

In between these visits, I had the opportunity to study the evolving relationship between Israel and the United States for a paper I did for a history course at the University of Wisconsin-Madison. To research this paper, I read all the comments of Members of Congress in the CONGRESSIONAL RECORD concerning Israel for the years 1948, 1956, 1967 and 1973, and analyzed how those comments reflected a changing definition of U.S. interests in the region from the birth of Israel, through the Suez Crisis, the Six Day War and the Yom Kippur War.

In 1948, most of the talk was about the need for a homeland for the Jewish people, especially after the Holocaust. In 1956, that talk shifted to describing Israel as a blooming democracy; a small outpost of democratic values in the midst of a non-democratic region. In 1967, Israel was the non-aggressive dove who triumphed in a hostile environment. By 1973, my predecessors had shifted to speaking of Israel in a very positive geopolitical and national security terms.

Today, I add my own remarks about Israel to the long chronicle of the American-Israeli relationship in the CONGRESSIONAL RECORD to those of my predecessors who came to speak in times of crisis and triumph for Israel.

The U.S. has played a pivotal role in Israel's history, and our relationship has been a strong one from the beginning. Within minutes of Ben-Gurion's announcement of the birth of Israel, President Harry Truman recognized the fledgling state. Prior to Israel's founding, between the end of the Second World War and May 14, 1948, official U.S. support for a Jewish state was largely grounded in the desire to help re-settle hundreds of thousands of Jewish refugees, displaced people and survivors of the Holocaust.

From May 14, 1948, until today, America could always count on Israel as an island of democracy and stability in an area of the world not altogether familiar with either concept.

The presence of a secure and vital Israel, in and of itself, is in America's interests.

For many years, those interests included containment of Soviet expansion into the Middle East, securing access to the region's oil for the industrialized nations of the West, promoting market economies and democratic institutions and safeguarding Israel's national security. As the inter-relationship between Israel and the United States has developed, matured and adapted to political and economic developments, so too has American policy. During the tenure of President Jimmy Carter, for example, America was very active in the Middle East peace process, culminating in the signing of the Camp David accords.

During the first Reagan term, the administration's priorities of combating terrorism, promoting cooperative security and confronting Soviet expansion found common ground with the perspectives of Prime Ministers Begin and Shamir, and, in general, those closer relations survived the policy differences arising over the Lebanon war in 1982. Ties between Israel and the United States grew stronger during President Reagan's second term, including the signing of several precedent-setting strategic and cooperative defense agreements.

During the early Bush years, U.S.-Israel relations were marked again by tension caused by some policy disagreements, but tension eased in 1990 when—amid Iraqi threats against Israel generated by the Persian Gulf crisis—President Bush repeated the U.S. commitment to Israel's security. Confidence in U.S. support was a primary factor in Israel's decision not to retaliate against Iraq for its Scud missile attacks.

Of course, the first year of the Clinton administration saw the historic signing on the White House lawn of the Declaration of Principles establishing the goals and framework for peace talks. On September 13, 1993, the world watched with hope and trepidation as Prime Minister Rabin and Yasser Arafat inaugurated a new era in the Middle East. This would soon be followed by two other major peace agreements: the May 1994 Gaza-Jericho Agreement that provided for Palestinian control over the Gaza Strip and the environs of Jericho after an Israeli withdrawal, and the September 1995 Interim Agreement that set a timetable and an agenda for final status negotiations.

The Palestinians and Israelis have also agreed to other arrangements, such as the Israeli withdrawal from six Palestinian cities in December 1995, and the Palestinian elections in January 1996.

As much as we hoped the historic moment on the White House lawn would bring an end to terrorism, bloodshed and occupation, we all knew just as well that the road to peace would not be that simple. Years of bitter experience also told us the road would not be that short.

But 1994 and 1995 were relatively good years. The peace process was progressing, and, by late 1995, it seemed relations between Rabin and Arafat were warming. Then, of course, as we can never forget, extremism struck again with the assassination of Yitzhak Rabin by a Jewish radical. It is important to note that this was a terrorist attack like so many in the new Middle East, where extremism and violence of every stripe lashes out against any sign of peace and tolerance.

Today, this extremism and violence present perhaps the greatest and most persistent threat to peace.

Just before he died, Rabin said, ''Peace is the future.'' We must remain faithful to the memory of Rabin and all those who had the courage and the abiding discipline to put ancient hatreds aside and made peace their priority, because Rabin had no illusions about the difficulty of the peace process.

Someone who witnessed Rabin in a meeting on the peace process said to the prime minister, ''I can see I'm talking to the converted.'' Rabin's reply was, ''You're talking to the committed, not the converted.'' It was commitment that peace required of him and requires of all of us.

As we look forward to Israel's next 50 years, we must be able to look forward to a future that gives every Israeli, and every Jew, a peaceful homeland. But the Palestinians are also clearly key to peace in the region, and that is why it is so important to get the current negotiations back on track.

Although our priorities and perceptions on the path to peace sometimes differ, America and Israel have, by and large, moved forward together, and I believe that partnership will continue. Earlier this month, in honor of this 50th anniversary, Congress unanimously passed a resolution which read, in part, ''The United States commends the people of Israel for their remarkable achievements in building a new state and a pluralistic democratic society in the Middle East in the face of terrorism, hostility and belligerence by many of her neighbors.'' The resolution reaffirmed the bonds of friendship between Israel and the U.S., and extended best wishes for a peaceful, prosperous and successful future.

The key to continued success and prosperity in Israel will be a lasting peace, and the United States clearly has an interest in taking an active role in the peace process, as it has done throughout the years.

Helping facilitate the peace process is one facet of U.S. relations with

Israel, and another is foreign assistance. Since 1976, Israel has been the largest recipient of U.S. foreign assistance. Over the past 10 years, Israel has annually received about $3 billion in economic and military grants, refugee settlement assistance, and other aid, from the United States.

Recently, we have seen a movement to gradually reduce that level of aid, beginning with the declaration by Prime Minister Netanyahu that Israel should reduce its dependence on the United States when he addressed a joint session of Congress two years ago. Negotiations have since been conducted with the goal of reducing the overall level of American assistance and to gradually phase out economic aid while increasing military aid.

Specifically, the Clinton administration and the Congress are currently reviewing an Israeli proposal to reduce the $1.2 billion in U.S. *economic* assistance to Israel to zero over 10 years, and to increase U.S. *military* aid to Israel from $1.8 billion to $2.4 billion per year. I am intrigued by this idea, and am glad to see Israel taking the lead in this regard. Israel has recognized that in its 50-year history, it has made enormous strides in economic development and, as a result, now boasts a relatively healthy economy. At the same time, Israel recognizes—as I think we all do—that it still faces a substantial security threat, and so must maintain a robust military and access to state-of-the-art weaponry.

The proposal to change our aid relationship reflects this reality. It is an Israeli plan, and as such reflects Israeli priorities, including a desire to decrease its dependence on the United States, and boost its own self-sufficiency. I am concerned about potential unintended consequences of hasty action by the Congress, and so, I, along with others in this body are still considering our legislative response. But by and large I believe these are worthy goals that we should support, just as we have supported Israel in the past.

Ben-Gurion envisioned many achievements for Israel, including one I mentioned earlier, the idea of building a successful nation by marrying scientific advances with ancient Hebrew traditions. He believed that by drawing on the strength, wisdom and skill of a nation of faith and accomplishment, Israel could build a lasting peace with its neighbors.

Israel deserves that peace at last.

Just over 100 years ago, the First Zionist Congress convened in Basel, Switzerland. Under the leadership of Theodore Herzl, the participants announced their desire to reestablish a Jewish homeland in the historic land of Israel. Herzl once said that ''If you will it, it is not a dream.''

Israel is a testament to the will of a people who believed those words and proved them true.

It would be 51 years until the dream expressed at the First Zionist Congress would become reality, until Holocaust survivors and other Jews persecuted around the world could have a homeland where they could seek refuge and build a life. And 50 years after that founding, Israel has taken root in the desert soil and it has thrived.

The United States has built an alliance and friendship with Israel that has enriched American life and helped Israel thrive, and I hope that partnership will continue for the next 50 years and beyond. But as Israelis well know and all of us must recognize, the dream of those at the First Zionist Congress and of other Jews for centuries, to have a homeland, cannot be truly fulfilled until peace is attained.

Violence and conflict are a constant threat to the people of Israel, and to the Nation of Israel itself. As we celebrate the 50th anniversary of the birth of Israel, we have every right to wish for something more. Not just for a Jewish homeland, but a homeland at peace.

As Theodore Herzl said, ''If you will it, it is not a dream.''●

TRIBUTE TO THE FLOYD COUNTY EMERGENCY AND RESCUE SQUAD: FORTY YEARS OF VOLUNTEER SERVICE IN EASTERN KENTUCKY

● Mr. MCCONNELL. Mr. President, I rise today to recognize the recent anniversary of the Floyd County Emergency and Rescue Squad. Forty years ago, this squad of volunteers was formed to help the people of Eastern Kentucky in times of emergency and disaster, and have been doing so ever since.

The Floyd County Emergency and Rescue Squad was founded on April 27, 1958, as a result of a tragic accident in Prestonsburg, Kentucky, in which a school bus plunged into the Big Sandy River, killing 26 students and the driver. As a result of this tragedy, dozens of community members came together to form the Squad and the late Graham Burchett became the first Captain, a position he held for twenty years.

Since that time, over 300 community members have served on the Squad—doctors and lawyers, coal miners and factory workers—people from all walks of life have worked side-by-side in volunteer service to their community. The Squad operates without any public support. The members are all volunteers and all their equipment is paid for through private donations and grants.

The Squad currently maintains a roster of thirty active members and dozens of reserve members. The Squad is called on for auto extrication, water rescue and drowning recovery, lost or missing persons, and assistance to coal mine rescue teams. In the last month alone, they have assisted in the evacuation of flood victims, recovered a drowning victim and have assisted on four auto accidents.

Despite the fact that the Squad must labor mightily for every dollar they get, they have managed to secure ultra-modern equipment, and are called frequently to assist in recovery activities outside the county and even outside the state.

Mr. President, I hope all my colleagues will join me in offering our congratulations to Captain Harry Adams, Co-Captain Richie Schoolcraft, Treasurer and Secretary Brian Sexton, First Lieutenant Derek Calhoun and Second Lieutenant Lee Schoolcraft and all the volunteers of the Floyd County Rescue Squad. They carry on the Squad's rich tradition of volunteering their time and risking their lives to help the people of their community, and they are all worthy of our admiration and thanks.●

ANTI-SLAMMING AMENDMENTS ACT

● Mr. LEVIN. Mr. President, yesterday, Senator MCCAIN and Senator HOLLINGS proposed a managers' amendment, Amendment No. 2389 to S. 1618, a bill to amend the Communications Act of 1934. The amendment significantly improves the protections for consumers against ''slammers,'' persons who deliberately deceive consumers and change their long distance carrier without proper authorization. The manager's amendment included two of my amendments which were cosponsored by Senator DURBIN and Senator GLENN.

The Permanent Subcommittee on Investigations held a hearing recently on slamming. At this hearing, we became aware of the fact that slammers intentionally used names like Phone Company and Long Distance Services to deliberately deceive customers on their phone bills. Usually local telephone companies or billing agents precede an itemized list of long distance calls by printing the name of the long distance service provider. When deceptive company names are used, customers are not aware that their long distance service provider has been changed. My intention was to remedy this situation by requiring the billing companies to specify the long distance provider using a statement like, ''Your provider for the following long distance service is————————'' . If that type of statement were made conspicuously and clearly stated on a consumer's phone bill before the itemized long distance charges, consumers would know if their long distance carrier had been changed.

Section 231 of the manager's amendment, entitled Obligations of Telephone Billing Agents, has language that differs from my proposed amendment. The language in the Manager's amendment is language that was suggested by the staff at the Federal Communications Commission.

I chose not to use the FCC language because my staff contacted several telephone companies and learned that if we used the FCC language several problems could be created which may result in potential increased costs to consumers. GAO has advised my staff that some of the requirments in the

provision as passed simply can't be done.

Because of time constraints we were unable to resolve the language in the provision. It is not our intention to increase consumers costs for telephone services in order to alert them about ''slammers.'' If the current bill increases costs, and we believe it could, we need to modify this section so consumers are protected without having to pay for that protection. I sincerely hope we can continue to work to improve this section in the conference committee, if there is one, or before the bill is enacted into law, to make sure that we are not creating a burden on telecommunications carriers which will be passed on to consumers.●

COMMENDING THE CREDIT UNIONS FOR KIDS PROGRAM

● Mr. SMITH of Oregon. Mr. President, I rise today in recognition of the Credit Unions for Kids program, an effort which began in my state of Oregon but which has since spread to more than 35 states across the nation and has served as an outstanding example of community service.

The Credit Unions for Kids program represents credit union employees and members in Oregon and Southwest Washington who have volunteered their resources and time in raising $1.7 million to benefit the Doernbecher Children's Hospital Foundation. Last year, Oregon ranked first in the average dollars raised per credit union on a nationwide basis.

This is a day for celebration, not only for this donation, but for the generosity exhibited by a twelve-year fund-raising effort undertaken by the employees, families, and members of the credit unions in Oregon and Southwest Washington. This combined effort serves as an example to the businesses, communities and corporations in the Pacific Northwest and throughout the nation that anything is possible, even fulfilling the dream of a new children's hospital, one floor at a time.

For a moment, I would like to focus on the recipient of this donation—the new Doernbecher Children's Hospital which replaces a very old and outdated facility on the campus of Oregon Health Sciences University. This four-story, 250,000 square-foot facility houses 120 beds, including the medical/surgical units, a pediatric intensive care unit, the Kenneth W. Ford Cancer Center and the Doernbecher Neonatal Care Center. The hospital also has a 16-bed floor dedicated to inpatient and outpatient cancer treatment.

Perhaps what is most impressive about this facility is the focus on the need of the children and families whom it will serve. Designed by Doernbecher staff, parents and patients, the hospital has places for families to gather together, facilities for families who wish to cook their own meals, and patient rooms that have extra beds so that parents may stay with their children. There are separate playrooms, outdoor play structures and a schoolroom. There are large and numerous windows welcoming natural light. There is artwork of birds and frogs, sculptures, painting, and poems.

One particular poem, ''Naknuwisha'' which appears in the waiting room of the hospital and is a Sahaptin term among the Yakima, meaning ''to care for something precious, particularly children who need our help'' was written by Kim Stafford in 1996 and serves as a constant reminder to all who enter the hospital that this is a place for children, and a place where healing and hope begin:

Naknuwisha
young friend,
be part of something old—
be home here in the great world
where rain wants to give you drink
where forest wants to be your house
where frogs say your name and your name
where wee birds carry your wishes far
and the sun reaches for your hand—
be home here
be healed
be well
be with us all
young friend.

Mr. President, this beautiful new hospital is the foundation of a commitment made by the community, families, friends, physicians, and by businesses who have given the gift of time and resources to turn a dream into a reality. I am proud to recognize the Credit Unions of Oregon and Washington, and to congratulate them on their contribution to this facility and this day of celebration of the opening of the Credit Unions for Kids floor of the Doernbecher Children's Hosptial.

Congratulations, and thank you.●

NAN S. HUTCHINSON SENIOR HALL OF FAME HONOREES

● Mr. GRAHAM. Mr. President, I am delighted to recognize and congratulate a group of exemplary citizens upon their induction into the 1998 Dr. Nan S. Hutchinson Senior Hall of Fame. These men and women have each given a great gift to their communities—they have given of themselves.

Arnold Abbott, 73, works everyday to fulfill his self-appointed mission to feed and help the homeless on the streets of Broward County. He also organized a small, dedicated core of volunteers to assist him in finding clothes, counseling and living arrangements, and to reunite the homeless with their family members.

Ruth Forbes, 76, began her work of community service in 1993 with the Area Agency on Aging's Advisory Council. In her time there, she has held the positions of Legislative Chair, Vice Chair, and Chairperson. In addition to improving the lives of those in her own age group, she also aids disadvantaged children.

Arnold & Joann Lanner, 76 and 79, respectively, work with the ''I Am Somebody'' program at elementary schools. This program is aimed at increasing students' self esteem. In addition, they have raised over $120,000 for the Hepburn Center, an intergenerational, community-based organization that provides after-school care and organizes activities for the elderly.

Evelyn Jones Lewis, 70, began her volunteer work when she was appointed to serve on the Florida Advisory Council on Aging. Since then, she has been active in urging Congress to pass legislation that would improve the ever-changing nutritional and transportation needs of the elderly.

Claire F. Mitchel, 76, is truly an asset to the elderly community because she promotes acceptance and celebration of the aging process. She promotes these values in work with organizations like the Rape Crisis Center, Women in Distress and the Older Women's League.

Estella Mae Moriarty, 62, exemplifies the true meaning of altruism by embracing foster-care children of all ages who have been abandoned, abused or neglected. Realizing that children need a permanent home in the developing stages of their lives, she co-founded the SOS Children's Village, which provides care and comfort for children in distress.

Lily Ann Olfern, 68, is involved with a telephone service bank to build a public safety building. Thanks to her many hours on the phone, the new facility will be opening in Davie next year. She also bags toys for children on Christmas, feeds the homeless on Thanksgiving, and teaches senior citizens how to avoid various scam operations.

Reuben Sperber, 90, came to Florida to retire. However, he has worked just as hard during his twenty years in this community as while he was in the workforce. Over the years, Reuben has served in his temple, given of his time at the Margate General Hospital, and become one of the most respected members of the Alzheimer's Family Center's Board of Directors.

Jacob Statemann, 76, has dedicated his time to the Southeast Focal Point Senior Center in Hollywood for over 10 years. At the Center he has taught classes ranging from current events to foreign language, and he has never hesitated to organize holiday events or assist other classes that need help. He also leads a senior choral group at HUD housing.

Ira Subin, 83, spends much of his time and efforts helping the Area Agency on Aging's Advisory Council plan social events and fundraisers. His advocacy for the Seniors for Seniors Dollar Drive, along with matching funds that the program has received from the state, has substantially increased the quality of services that the Area Agency on Aging can provide.

Mr. President, all of these outstanding seniors have diligently and selflessly given of their time and energy to make Broward County a better place for all its residents. Florida is very fortunate to have these inspiring senior citizens who give so much to our communities. I congratulate them today

and wish for them many more productive and healthy years.●

TRIBUTE TO DR. VINCE DAVIS: 27 YEARS AT THE PATTERSON SCHOOL OF DIPLOMACY AND INTERNATIONAL COMMERCE

● Mr. MCCONNELL. Mr. President, I rise today to recognize the tremendous accomplishments of Dr. Vince Davis, who is retiring this spring after 27 years at the Patterson School of Diplomacy and International Commerce at the University of Kentucky in Lexington.

Since I was first elected to the United States Senate in 1984, Vince and I have had occasion to discuss important issues of the day in foreign affairs, as well as the underlying trends and currents that shape and guide world events looming just over the horizon. I have never failed to find his views both penetrating and insightful, and have always appreciated his counsel over the years.

But now, Vince has decided to pursue new interests after nearly three decades of toiling in the academic vineyard, and so it's appropriate that we bid him adieu with fondness and with gratitude.

Thinking back over the span of his career, I believe Vince Davis's mark on Kentucky and the world has been and always will be the enormous store of labor and love he poured into the Patterson School of Diplomacy and International Commerce. It's clear to me that Vince's tireless and inspired stewardship of the program has fashioned the Patterson School into the glimmering jewel of excellence for which it is now justly famous. Vince has given his all to the School, and two generations of bright young students have been immeasurably enriched by his exertions.

Mr. President, there is an old Irish proverb that says, ''The work praises the man.'' In that spirit, each time I think of the Patterson School, I will remember Vince Davis, for the Patterson School is his work, and we all should praise that which he leaves as his legacy.

Mr. President, I also ask that an article from the Lexington Herald Leader of Sunday, April 19, 1998, be printed in the RECORD.

The article follows:

TEACHER PRAISED FOR YEARS AT UK DIPLOMACY SCHOOL

(By Holly E. Stepp)

For years, the University of Kentucky's Patterson School of Diplomacy and International Commerce has urged the state's residents—from the business community to average Joes—to think globally.

And one of the leaders behind that charge was retiring professor and former director Vincent Davis.

Last night, Davis, the Patterson Chair professor, was honored for his dedication to that mission during a black-tie dinner at Lexington's Wyndham Garden Hotel. More than 200 alumni and friends of the 39-year-old-school came out to celebrate Davis' commitment to the program.

His retirement becomes effective at the end of this semester.

''With Vince's retirement, not just the Patterson School, but the University of Kentucky, loses one of their academic giants of the past half century,'' said current director John D. Stempel.

Davis, 67, was the school's second director for 22 years after an active and reserve career in the U.S. Navy. He receives much of the credit for building the school's prestige as a world-class international relations program.

''Patterson School has a unique combination of superior foreign-affairs training and related community outreach,'' said David D. Newsom, former ambassador and adviser to the Patterson School. Newsom, who was undersecretary of state during the Carter administration, was the featured speaker.

Although the Patterson School was founded in 1959, it was the brainchild of UK's first president, James K. Patterson, who served from 1878 to 1910.

Patterson died in 1922 at the age of 89. In his will, he ordered that his estate's assets go to the university for the creation of such a school, with the proceeds invested for a prolonged period before UK could gain the money.

The school, Patterson also ordered, should be named in honor of William Andrew Patterson, his son.

Davis worked to build the program into one nationally known for the quality of its graduates. Although enrollment is limited to 25 to 30 students, the Patterson School is often compared to similar but larger programs at prestigious universities, such as Harvard and Princeton.

Current and past students of the school praised Davis as an interested mentor with a quick wit.

Davis, himself, didn't dwell on the accolades bestowed on him, including a $100,000 endowed trust to support Patterson students' internships.

''All I have done is to work to carry on the great tradition started by my predecessors,'' Davis said.

On his retirement, he said he got a hint from a former student a couple of months ago that it was time to retire.

''When your former graduate students start to retire, perhaps it's wise to consider joining them.''●

ANTI-SLAMMING AMENDMENTS ACT

● Mr. LEAHY. Mr. President, yesterday, an amendment offered by Senator FEINSTEIN to the anti-''slamming'' bill, S. 1618, was passed without debate. While this amendment was intended to enhance the privacy rights of patients, the consequence of this amendment would be far different. Specifically, this amendment would change current federal law and put patients at risk of criminal liability if they record their conversations with health providers and health insurers without first alerting and obtaining the consent of those providers and insurers.

This Feinstein amendment modifies the wiretap law, in title 18 of the United States Code, but was never considered by the Committee of the Judiciary, which has jurisdiction over this law. The risk of passing legislation quickly and bypassing the Committee with jurisdiction over the subject matter is amply revealed by the unintended consequence of this amendment.

If this amendment becomes law, the minority rule adopted by only a small number of States—sixteen—requiring the consent of all parties for the lawful interception of telephone calls, would be applied to all conversations that take place between patients and health insurers or providers. There are a number of legitimate reasons for patients to want to record their calls with a health provider or insurer: medical instructions can be complicated. Insurers' explanations of coverage or decisions regarding reimbursement may be complicated. Patients may have sound reasons for recording those conversations if they are unable to take notes or want to keep the oral instructions for future reference. For example, patients, especially Alzheimer sufferers, may want to record their calls as a memory aid, and be too embarrassed to say so.

A more carefully crafted amendment would have reduced the unwarranted risk of criminal liability to patients. If this provision were to become law, we would have to revisit this issue promptly.●

APPOINTMENT OF CONFEREES—H.R. 2676

The PRESIDING OFFICER. Under the previous order, the Chair appoints the following conferees to H.R. 2676.

The Presiding Officer (Mr. BROWNBACK) appointed Mr. ROTH, Mr. CHAFEE, Mr. GRASSLEY, Mr. HATCH, Mr. MURKOWSKI, Mr. NICKLES, Mr. GRAMM, Mr. MOYNIHAN, Mr. BAUCUS, Mr. GRAHAM, Mr. BREAUX, Mr. KERREY, and from the Committee on Governmental Affairs, Mr. THOMPSON, Mr. BROWNBACK, Mr. COCHRAN, Mr. DURBIN and Mr. CLELAND conferees on the part of the Senate.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 105–44

Mrs. HUTCHISON. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on May 13, 1998, by the President of the United States: Treaty with Saint Vincent and the Grenadines on Mutual Legal Assistance in Criminal Matters (Treaty Document No. 105–44).

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty

Between the Government of the United States of America and the Government of Saint Vincent and the Grenadines on Mutual Legal Assistance in Criminal Matters, and a related Protocol, signed at Kingstown on January 8, 1998. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of crimes, including drug trafficking offenses. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking of testimony or statements of persons; providing documents, records, and articles of evidence; serving documents; locating or identifying persons; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; assisting in proceedings related to immobilization and forfeiture of assets; restitution; collection of fines; and any other form of assistance not prohibited by the laws of the Requested State.

I recommend that the Senate give early and favorable consideration to the Treaty and related Protocol, and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 13, 1998.*

AUTHORIZING USE OF CAPITOL GROUNDS FOR GREATER WASHINGTON SOAP BOX DERBY

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 255, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 255) authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.

The Senate proceeded to consider the concurrent resolution.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (H. Con. Res. 255) was agreed to.

AUTHORIZING TORCH RUN THROUGH CAPITOL GROUNDS

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 262, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 262) authorizing the 1998 District of Columbia Special Olympics Law Enforcement Torch Run to be run through the Capitol Grounds.

The Senate proceeded to consider the concurrent resolution.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (H. Con. Res. 262) was agreed to.

AUTHORIZING USE OF CAPITOL GROUNDS FOR NATIONAL PEACE OFFICERS' MEMORIAL SERVICE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 263, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 263) authorizing the use of the Capitol Grounds for the seventeenth annual National Peace Officers' Memorial Service.

The Senate proceeded to consider the concurrent resolution.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (H. Con. Res. 263) was agreed to.

AUTHORIZING PRODUCTION OF RECORDS BY THE SELECT COMMITTEE ON INTELLIGENCE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 230, submitted earlier today by Senator LOTT and Senator DASCHLE.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 230) to authorize the production of records by the Select Committee on Intelligence.

The Senate proceeded to consider the resolution.

Mr. LOTT. Mr. President, the Select Committee on Intelligence has received a request from the Office of the Inspector General of the Department of Justice for copies of committee records relevant to the Inspector General's pending inquiry into the handling by the Department of Justice and the Federal Bureau of Investigation of certain foreign intelligence and counterintelligence information obtained in the course of the Department's ongoing campaign finance investigation.

This resolution would authorize the chairman and vice chairman of the Intelligence Committee, acting jointly, to provide committee records in response to this request, utilizing appropriate security procedures.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that a statement of explanation by the majority leader be placed at the appropriate place in the RECORD.

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

The resolution (S. Res. 230) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 230

Whereas, the Office of the Inspector General of the United States Department of Justice has requested that the Senate Select Committee on Intelligence provide it with copies of committee records relevant to the Office's pending inquiry into the handling and dissemination by the Department of Justice and the Federal Bureau of Investigation of certain foreign intelligence and counterintelligence information;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, acting jointly, are authorized to provide to the Office of Inspector General of the United States Department of Justice, under appropriate security procedures, copies of committee records relevant to the Office's pending inquiry into the handling and dissemination by the Department of Justice and the Federal Bureau of Investigation of certain foreign intelligence and counterintelligence information.

ORDERS FOR THURSDAY, MAY 14, 1998

Mrs. HUTCHISON. 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 14. I further ask unanimous consent that on Thursday, immediately following the prayer, the routine requests through the morning

hour be granted and the Senate then begin a period for the transaction of morning business until 10:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator DEWINE, 15 minutes; Senator LAUTENBERG, 15 minutes; Senator ALLARD, 15 minutes.

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

Mrs. HUTCHISON. I further ask unanimous consent that following morning business, the Senate resume consideration of S. 2057, the Department of Defense authorization bill.

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

PROGRAM

Mrs. HUTCHISON. Mr. President, for the information of all Senators, tomorrow morning at 9:30 a.m., the Senate will begin a period of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the Department of Defense authorization bill. It is hoped that Senators will come to the floor to debate this important piece of legislation and offer amendments under short time agreements. Members should expect rollcall votes throughout Thursday's session in an attempt to make progress on the defense bill.

Also, the Senate has reached time agreements with respect to the Abraham immigration bill and the WIPO copyright treaty legislation, and those bills could be considered during Thursday's session.

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.

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Nos. 572 and 573. I further ask unanimous consent that the nominations be confirmed, the motion to reconsider be laid upon the table, any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

Mrs. HUTCHISON. Mr. President, for reference, those are the confirmations of U.S. District Judge Arthur Tarnow from Michigan and U.S. District Judge George Steeh from Michigan.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Arthur J. Tarnow, of Michigan, to be United States District Judge for the Eastern District of Michigan.

George Caram Steeh, III, of Michigan, to be United States District Judge for the Eastern District of Michigan.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

RECESS UNTIL 9:30 A.M. TOMORROW

Mrs. HUTCHISON. 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 7:37 p.m., recessed until Thursday, May 14, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 13, 1998:

EXECUTIVE OFFICE OF THE PRESIDENT

JACOB JOSEPH LEW, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, VICE FRANKLIN D. RAINES, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 13, 1998:

THE JUDICIARY

ARTHUR J. TARNOW, OF MICHIGAN, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

GEORGE CARAM STEEH, III, OF MICHIGAN, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.