money to help assist those kinds of efforts in our States. That is an important program, and I understand has been agreed to.

We have the Afterschool Program which last year had been a $40 million program; this year, now, some $200 million. We have 5 million American children who are under 14 years of age who are left alone every afternoon in this country—5 million of them. And we wonder what happens when we see these kinds of charts that reflect the spiking up in indexes of violent crime right after school, at 3 o'clock in the afternoon; 3 o'clock to about 6 o'clock in the afternoon have the highest incidents. These people should be involved in afterschool programs. They are working. They are working in my own city of Boston. Not all the city of Boston has it, but Mayor Menino is working to improve these programs. This is a good $200 million program.

But that would not be there unless we had been battling—as in the past few days the President has—to have a modest program to try to help, to work through the nonprofit organizations, even some of those church-related groups, so children in this category can complete their homework in the afternoon. That way, when they go back home they can spend some quality time with their parents rather than come home and have the parents say, ''Jimmy, go upstairs and finish your homework.'' This happens. This is a family issue. These are two very, very modest but important programs.

But we have more to do, Mr. President. This important program reflects what has been happening in our schools across this country in terms of the total number of students going to the schools. We have seen, now, the escalation in the number of students; 53 million now are going. This number is increasing. The demography, the number of children going in, is putting additional burdens on local communities and States. All we are saying is let's be a partner with them. Let's be a partner with them.

We have listened on the floor to those saying, ''This is not a role for the Federal Government.'' You ask the parents. They want their child educated. They want a well trained teacher in a modern classroom with modern equipment so their child can learn. They want a partnership. With all due respect to our colleagues on the floor yesterday, talking about local control, saying, ''We ought to let the local communities make those judgments,'' the fact is, the local community has control, now, over 93 cents of every dollar that is spent at the present time. Only 7 cents out of that dollar is related to expenditures that are made by the Federal Government. That reflects a very narrow, targeted area of child needs like the title I programs for those children that come from economically deprived communities across this country, whether they are urban or rural communities.

It has been worked out with bipartisan support, that program and the programs that are related to the needs of disabled children and the other limited, targeted programs here. What we are saying, and what the President is saying, is this: With this escalation, we are going to need more teachers. Let us develop the help and assistance so we will have more teachers so these children, particularly in the most formative time of their lives, are going to be in smaller classes so the children will have 16, 17, 18—hopefully, 17 children in the first three grades. That is when the children coming out—perhaps the children coming from a Head Start Program, maybe others who are not, who are coming from some kindergarten, entering first grade—that is when they are making their decisions in terms of developing their confidence, developing their interests in academics. As we have heard from virtually every teacher across the country, the advantage of having that number of students is that a teacher can spend individual moments every single day with that child. That is enormously important.

The PRESIDING OFFICER. The Chair advises the Senator he now has 2 minutes remaining.

Mr. KENNEDY. Mr. President, this is the issue that still remains: Increasing the funding for teachers and also helping, assisting to try to do something about what the General Accounting Office has pointed out is the condition of schools all across this country. They say, to try to address the old schools, to modernize the old schools, nationwide, it would cost $110 billion. The President's program is only $22 billion. Listen to the conclusion, not of Democrats, not of Republicans, listen to the General Accounting Office that says:

> Virtually all communities, even some of the wealthiest, are wondering how to address school infrastructure needs while balancing them with other community priorities.

This is a national problem. We want to make sure our children are in the best classrooms with the best teachers and that they have the best opportunity to learn. This afternoon I will be going out with the President to the Forrest Knoll Elementary School just out in suburban Maryland. We are going to an event. The whole sixth grade is housed in trailers. The Forrest Knoll Elementary School was originally built to hold 450 students. It now teaches over 700 students.

We could find these kinds of conditions in communities, not only in urban, but in rural areas. We need the best local and State efforts, and also Federal help and assistance. That is what we are talking about in terms of modernization. That is what we are talking about in terms of enhanced teachers. These are priorities for American families. We ought to be able to work out a process, Republicans and Democrats alike, to try to address those very, very important and special needs. They are the No. 1 priorities for families in this country and we ought to, even in these final hours, we ought to be able to work through this process to make sure we are going to give our best efforts to the protection of children in our society, for their own interests and for our national interest.

It is in our national interest clearly, so America is going to be able to compete in a global economy and we are going to have the best trained and best educated children and young people in this world. We can do no less. We owe that to our country. That is a great deal of what this debate is about here in the Nation's Capitol, over the time we are meeting here today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998—CONFERENCE REPORT

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to accompany S. 1260.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1260), have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 9, 1998.)

Mr. D'AMATO. Mr. President, I would like to encourage my Senate colleagues to support the conference report on S. 1260, the Securities Litigation Uniform Standards Act of 1998. The conference report is closely modeled on the bill that the Senate passed by an overwhelming bipartisan vote this spring, and that the Banking Committee reported by a vote of 14 to 4.

Mr. President, I believe that the conference report will also enjoy strong bipartisan support. The conference report is the result of a lot hard work and thoughtful consideration. The House and Senate committee staffs worked closely with the staff of the Securities and Exchange Commission to ensure the Commission's continued support for the legislation. Mr. President, I ask unanimous consent that the letter from the S.E.C. be 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, October 9, 1998.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Hon. PAUL S. SARBANES,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN D'AMATO AND SENATOR SARBANES: You have requested our views on S. 1260, the Securities Litigation Uniform Standards Act of 1998. We support this bill based on important assurances in the Statement of Managers that investors will be protected.[1]

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. In addition, the bill contains important legislative history that will eliminate confusion in the courts about the proper interpretation of the pleading standard found in the Private Securities Litigation Reform Act of 1995 and make clear that the uniform national standards contained in this bill will permit investors to continue to recover losses attributable to reckless misconduct.

We commend the Committee for its careful efforts to strike an appropriate balance between the rights of injured investors to bring class action lawsuits and those of our capital market participants who must defend against such suits.

As you know, we expressed various concerns over earlier drafts of the legislation. In particular, we stated that a uniform standard for securities fraud class actions that did not permit investors to recover losses for reckless misconduct would jeopardize the integrity of the securities markets. We appreciate your receptivity to our concerns and believe that as a result of our mutual efforts and constructive dialogue, this bill and the Statement of Managers address our concerns. The strong statement in the Statement of Managers that neither this bill nor the Reform Act was intended to alter existing liability standards under the Securities Exchange Act of 1934 will provide important assurances for investors that the uniform national standards created by this bill will continue to allow them to recover losses caused by reckless misconduct. The additional statement clarifying that the uniform pleading requirement in the Reform Act is the standard applied by the Second Circuit Court of Appeals will likewise benefit investors by helping to end confusion in the courts about the proper interpretation of that Act. Together, these statements will operate to assure that investors' rights will not be compromised in the pursuit of uniformity.

We are grateful to you and your staffs, as well as the other Members and their staffs, for working with us to improve this legislation and safeguard vital investor protections. We believe this bill and its Statement of Managers fairly address the concerns we have raised with you and will contribute to responsible and balanced reform of securities class action litigation.

Sincerely,

ARTHUR LEVITT,
Chairman.

ISAAC C. HUNT, Jr.,
Commissioner.

PAUL R. CAREY,
Commissioner.

LAURA S. UNGER,
Commissioner.

[1] Commissioner Norman S. Johnson continues to believe that this legislation is premature, at the least, for the reasons stated in his May 1998 prepared statement before the House Subcommittee on Finance and Hazardous Materials.

Mr. D'AMATO. Mr. President, the broadbased support that this bill enjoys is a tribute to Senators DOMENICI, GRAMM, and DODD, the chief cosponsors of its legislation. This bill provides a case study on how to get legislation done. They focused on solving a specific serious problem, and built a wide base of support for the bill. The problem to which I referred is a loophole that strike lawyers have found in the 1995 private securities litigation reform bill.

Mr. President, the 1995 act was enacted in the last Congress in response to a wave of harassment litigation that threatened the efficiency and integrity of our national stock markets, as well as the value of stock portfolios of individual investors. This threat was particularly debilitating to so-called high-tech companies who desperately need access to our capital markets for research, development and production of cutting-edge technology. These companies not only help to create jobs and drive our economic growth, they create substantial wealth for their shareholders. As one witness before the Securities Subcommittee testified:

> The continuing specter of frivolous strike suits poses still another threat to investors: the inordinate costs these suits impose on corporations—and ultimately on their shareholders.

Mr. President, that is a statement that bears repeating: that ultimately the cost of strike suits are borne by shareholders, including ordinary people saving for their children's education or retirement. It is these people, the ordinary investor, who foot the bill for high-price settlements of harassment litigation.

Now, let me make one thing clear—we are not talking about preventing legitimate litigation. Real plaintiffs with legitimate claims deserve their day in court. But we should not condone little more than a judicially sanctioned shakedown that only benefits strike lawyers. Companies that engage in fraudulent conduct should be held fully liable for their actions; however, companies should not be forced to settle cases that have no merit just to minimize their loses.

Mr. President, I want to express my gratitude to our colleagues in the House, particularly Commerce Committee Chairman BLILEY and Subcommittee Chairman OXLEY, for their continued cooperation and good will in a truly bicameral partnership to protect investors.

Mr. DODD. Mr. President. I rise today to offer my strong support for Senate passage of the conference report on S. 1260, the Securities Litigation Uniform Standards Act of 1998. This important bill will help to close a loophole that allows for the continuation of frivolous and abusive securities class action lawsuits, while ensuring that investors will still be able to bring suits when defendants have acted recklessly.

In 1995, the Congress enacted legislation, the Private Securities Litigation Reform Act, that was designed to curb the many abuses that had cropped up in that system over the years. Ironically, it was the very success of the 1995 act in shutting down avenues of abuse on the Federal level that created a new home for that abusive and frivolous litigation in state courts.

Prior to the enactment of the 1995 Reform Act, it was extremely unusual for a securities fraud class action suit to be brought in a state court. But by the end of 1996, it became 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 lawyers sought to evade those provisions of the Reform Act that made it much more difficult to coerce a settlement.

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 class actions. In contrast, at least *seventy-seven* 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 be even 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 report to 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. 1998 looks to maintain those historically high levels.

This change in the number and nature of cases filed in State court has had two measurable, negative impacts. First, for those companies hit with potentially frivolous or abusive state court class actions, all of the cost and expense that the 1995 Reform Act sought to prevent are once again incurred.

Some might question whether a state class action can carry with it the same type of incentives that existed on the Federal level prior to 1995 to settle even frivolous suits. In fact, they can and let me provide just one example of how this is so.

Adobe Systems, Inc., wrote to the Senate Banking Committee on April 23, 1998, about its experience with state class action lawsuits. As many of my colleagues know, 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. Under the old system, Adobe had won a motion for summary dismissal but only after months of discovery by the plaintiff that cost the company more than $2.3 million in legal expenses and untold time and energy by company officials to produce tens of thousands of documents and numerous depositions. With the 1995 act in place, those kinds of expenses are far less likely to occur on the federal level.

But in an ongoing securities class action suit filed in California state court after passage of the 1995 act, 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 that April 23 letter to Banking Committee 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 litigation costs provide a powerful incentive for most companies 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 avoid using the safe harbor for forward looking statements that was a critical component of the 1995 Reform Act.

In this increasingly competitive market, investors are demanding more and more information from company officials about where it thinkgs that the company is heading.

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 in 1995, the importance of such information in the marketplace:

> 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 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.'' 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 recent 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 its 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 afforded little extra protection to investors and while imposing unnecessarily steep costs on raising capital.

Last July, then-SEC 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.

At the same hearing, Keith Paul Bishop, then-California's top state securities regulator testified 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:

> [a]ddresses an issue that . . . deals with a certain level of irrationality. That to have 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.

The message from all of these sources is clear and unequivocal: a uniform national standard of litigation is both sensible and appropriate.

The conference report 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 the issuer of 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 1995 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.

The Statement of Managers that accompanies the conference report on S. 1260 clarifies any misconception that may exist on the part of some courts about congressional intent with unambiguous language:

> It is the clear understanding of the Managers that Congress did not, in adopting the Private Securities Litigation Reform Act of 1995 [PL 104–67], intend to alter the standards of liability under the Exchange Act.

Let me also address another issue that has been raised about recklessness. Some have suggested that while the PSLRA did not remove recklessness as a basis for liability, it was removed as a basis for pleading a securities fraud class action. This is just plain wrong.

Again, the Statement of Managers accompanying this legislation is instructive on this point:

> It was the intent of Congress, as was expressly stated during the legislative debate on the PSLRA, and particularly during the debate on overriding the President's veto, that the PSLRA establish a heightened uniform federal standard based upon the pleading standard applied by the Second Circuit Court of Appeals

The 1995 act clearly adopted the second circuit's pleading standards. The Statement of Managers accompanying this conference report definitively shows that it was also our intent that the application of that standard was also based upon the second circuit's application. While I agree that both this act and the 1995 act envision other courts following the most stringent of the second circuit's cases applying the pleading standard, we do expect other courts to look to the second circuit for guidance. Under the second circuit's most stringent application, the strong inference of the required state of mind may be pled by either alleging circumstantial evidence of scienter, or by alleging a rational economic motive and an opportunity to achieve concrete benefits through the fraud. Where motive is not apparent, the strength of the circumstantial allegations must be correspondingly greater.

Anyone who claims that either the 1995 act or S. 1260 raises the pleading standard beyond that point is engaged in wishful thinking—that kind of statement simply cannot be borne out by even the most cursory examination of either the statute or of the legislative history.

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 conference report keeps a very tight definition of class action and applies its standards only to those securities that have been previously defined in law as trading on a national exchange.

That is why, on March 15, the Securities and Exchange Commission stated that ''we support enactment of S. 1260''; and that is why again on October 8, the Commission again voiced its support by stating: ''we believe this bill and its Statement of Managers . . . will contribute to responsible and balanced reform of securities class action litigation.'' And that is why the Clinton administration has also expressed its support for the legislation.

In the final analysis, it is 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.

Mr. DOMENICI. Mr. President, I rise today in strong support of the conference report to S.1260, the ''Securities Litigation Reform Uniform Standards Act of 1998'' and I want to commend the Majority Leader for bringing this conference report to the floor for a vote prior to the Senate's adjournment. Few issues are more important to the high-tech community and the efficient operation of our capital markets than securities fraud lawsuit reform.

So today, I want to congratulate Senators D'AMATO, DODD, and GRAMM for all of their hard work on this legislation to provide one set of rules to govern securities fraud class actions.

This conference report completes the work I began more than six 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 abusing our securities laws and the federal rules related to class action lawsuits to file frivolous 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 wrongdoing by the company. 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 were innocent of the charges leveled against them. 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, the powerful plaintiffs' bar opposed our efforts, and the bill did not move very far along in the legislative process.

After Senator Sanford left the Senate, I found a new partner—the senior Senator from Connecticut, Senator DODD. Senator DODD and I continued to work hard on this issue and in 1995, with tremendous help from Chairman D'AMATO and Senator GRAMM, we succeeded in passing a law. The Private Securities Litigation Reform Act of 1995 passed Congress in an overwhelmingly bi-partisan way—over President Clinton's initial veto of the bill.

And since enactment of the 1995 law, 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 sham 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.

From my perspective, it has begun to look like our new law has worked too well. Entrepreneurial trial lawyers have begun filing similar claims in state 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 a tremendous 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. Believe it or not, plaintiffs' lawyers actually admit that they are attempting to avoid federal law.

The increase in state court lawsuits also has prevented high-tech companies from taking advantage of one of the most significant reforms in the 1995 law—the safe harbor for forward-looking statements. Under the 1995 law, companies which make predictive 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 stifles 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 send to the President 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 high-tech industry—the fastest growing segment of our economy—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. That is unacceptable to this Senator.

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 new law also will be 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 to those rules. 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 effort, which has the support of the SEC and the Clinton Administration. I also want to thank my colleagues over in the House—Chairman BLILEY, Representative COX, and others who have worked so hard on this issue. This is the culmination of a tremendous amount of work, and I think that our capital markets, high-tech companies and our litigation system will be better served because of it.

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 that 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 1995 Reform Act adopted a pleading standard that was more rigorous than the second circuit'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 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 1995 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 1995 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 1995 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 1995 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 courts deprive investors of this important protection, such legislation would be in order.

Mr. DODD. I 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 1995 Reform Act are still being decided by the courts, we must act based on what we intended and understand the 1995 Reform Act to mean. As a sponsor of both the Senate bill that became the 1995 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. SARBANES. Mr. President, I opposed the securities litigation preemption bill when it was before the Senate. I am sorry to see that the conference report now before us is no better. I continue to believe that this bill is a solution in search of a problem, and that it will do more harm than good.

Why do I call this bill a solution in search of a problem? Because there has been no explosion in frivolous lawsuits filed in State court. The supporters of this bill allege that class action lawsuits alleging securities fraud have migrated from Federal court to State court since 1995. In fact, as I have pointed out previously, every study indicates that the number of securities fraud class actions brought in State court increased in 1996 but then declined in 1997.

Why do I say this bill will do more harm than good? Because this bill likely will deprive individual investors of their opportunities to bring their own actions in State court, separate and apart from class actions. Although the bill's supporters suggest that it deals only with class actions, in fact the scope of the bill is much broader. The bill's definition of ''class action'' will pick up, against their will, individuals who choose to file their own lawsuits under State law.

These shortcomings were not remedied in conference. Indeed, the one improvement made to the bill on the Senate floor was weakened in conference. Senators will remember that the Senate adopted an amendment to this bill, offered by Senators BRYAN, JOHNSON, BIDEN, and myself. The amendment exempted State and local governments and their pension funds from the coverage of the bill. The conference report now before us weakens this provision. The conference report contains the House-passed version, which requires that State and local governments be named plaintiffs and authorize participation in the specific suit. This version offers scant protection to State and local officials. The Government Finance Officers Association, Municipal Treasurers Association, National Association of Counties, National League of Cities wrote to us concerning this provision on September 28, 1998. Their letter states, ''many smaller governments and small pension plans are unable to keep abreast of pending actions. Thus, any affirmative steps on their part may not occur simply because they are unaware of the existence of such a case.'' These organizations expressed their strong support for the Senate version of this provision, only to be ignored by the conference committee.

On a positive note, I am pleased that the Statement of the Conference Committee makes clear that neither this bill nor the Litigation Reform Act of 1995 alter the scienter standard applied by the courts under the Securities Exchange Act of 1934. Courts in every Federal circuit in the country hold that reckless conduct constitutes scienter sufficient to establish a violation of section 10(b) and rule 10b–5, the principal antifraud provision of the 1934 act. Chairman Levitt of the SEC has described the recklessness standard as ''critically important'' to ''the integrity of the securities markets.''

For the reasons I have described, 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 may deprive defrauded investors of remedies. The headline of a column by Ben Stein in the USA Today newspaper of April 28, 1998, summarizes this opposition: ''Investors, beware: Last door to fight fraud could close.'' He wrote of this bill, ''state remedies . . . would simply vanish, and anyone who wanted to sue would have to go into federal court, where . . . impossible standards exist.'' He warned, ''this is serious business for the whole investing public.'' the associations of public officials I have cited are concerned about this bill because they invest taxpayers' funds and public employees' pension funds in securities, and fear they will be left without remedies if they are defrauded. Over two dozen law professors, including such nationally recognized securities law experts as John Coffee, Joel Seligman, and Marc Steinberg, expressed their opposition in a letter earlier this year. They oppose any legislation ''that would deny 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's 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.'' I would also like to point out 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 urge Senators, out of caution, to vote against this conference report. The recent bull market was the longest in history, and bull markets tend to conceal investment frauds. Should the decline in stock market values continue, it is likely that frauds will be uncovered. The level of participation in the stock market by America's families is at a record level, both directly through ownership of stocks and indirectly through pension funds and mutual funds. Should this bill be enacted, 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 markets, and ultimately raise the cost of capital for deserving American businesses.

Mr. President, I ask that an exchange of correspondence between Chairman Levitt and Senators D'AMATO, GRAMM, and DODD be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, March 24, 1998.

Hon. ARTHUR LEVITT,
Chairman, Securities and Exchange Commission, Washington, DC.

DEAR CHAIRMAN LEVITT AND MEMBERS OF THE COMMISSION: We are writing to request your views on S. 1260, the Securities Litigation Uniform Standards Act of 1997. As you know, our staff has been working closely with the Commission to resolve a number of technical issues that more properly focus the scope of the legislation as introduced. We attach for your review the amendments to the legislation that we intend to incorporate into the bill at the Banking Committee mark-up.

On a separate but related issue, we are aware of the Commission's long-standing concern with respect to the potential scienter requirements under a national standard for litigation. We understand that this concern arises out of certain district courts' interpretation of the Private Securities Litigation Reform Act of 1995. In that regard, we emphasize that our clear intent in 1995—and our understanding today—was that the PSLRA did not in any way alter the scienter standard in federal securities fraud suits. It was our intent, as we expressly stated during the legislative debate in 1995, particularly during the debate on overriding the President's veto, that the PSLRA adopt the pleading standard applied in the Second Circuit. Indeed, the express language of the statute itself carefully provides that plaintiffs must ''state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind''; the law makes no attempt to define that state of mind. We intend to restate these facts about the '95 Act in both the legislative history and the floor debate that will accompany S. 1260, should it be favorably reported by the Banking Committee.

Sincerely,

ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing & Urban Affairs.
PHIL GRAMM,
Chairman, Subcommittee on Securities.
CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities.

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, Washington, DC.
Hon. PHIL GRAMM,
Chairman, Subcommittee on Securities,
U.S. Senate, Washington, DC.
Hon. CHRISTOPHER J. DODD,
Ranking Member, Subcommittee on Securities,
U.S. Senate, Washington, DC.

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 amendment.*

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,
ISAAC C. HUNT, Jr.,
Commissioner.
LAURA S. UNGER,
Commissioner.

Mr. THOMAS. Mr. President, I ask unanimous consent that the conference report be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the conference report appear at this point in the RECORD.

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

The conference report was agreed to.

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

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I want to congratulate the Presiding Officer for his work in disposing of the conference report on S. 1260, the securities litigation legislation. I appreciate very much that at long last this legislation is now going to become law. This is a bill that is widely supported on both sides of the aisle.

A number of Senators have had a lot of opportunities to take some responsibility for the fact that this passed. I want to cite one Senator, in particular, who deserves great credit. That is the Senator from California, Senator BOXER. She has been a persistent advocate and one who has been extraordinarily engaged in this matter now for some time. I talked with her again this morning because she was calling about the status of the legislation. I was able to report that it was my expectation we would be able to finish our consideration of the bill today, and thanks to the agreement we have been able to reach on both sides of the aisle with Senators who have been as involved as the Senator from Wyoming has, we have now reached this point.

I congratulate all who have had a part to play in our success, and particularly the Senator from California, for her persistence, for her leadership, and the effort she has made to bring us to this point.

I yield the floor and 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. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

HONORING WALTER SELLERS

Mr. DEWINE. Mr. President, I rise today to pay tribute to the distinguished career of Walter G. Sellers of Wilberforce, Ohio—who has recently completed his term as president of Kiwanis International.

Mr. Sellers is the first African-American to serve as Kiwanis International President. For 32 years, he was a member of the Kiwanis Club in Xenia, Ohio. In 1990, he was elected to the Kiwanis International Board of Trustees. He served as Vice President and Treasurer before becoming President.

All Ohioans are proud of Mr. Sellers' outstanding stewardship of one of the largest service clubs in the world. But we also know that his service to our community extends beyond his work with the Kiwanis organization. He has served as President of the Xenia Board of Education and President of the Ohio School Boards Association. And he has done great work on many other public-service boards in Ohio.

Walter Sellers has dedicated his life to improving the lives of the people of Ohio, especially in the field of education. We are all extremely grateful for his efforts—and I ask my colleagues to join me in wishing him all the best in his next endeavors.

Mr. President, on a personal note, I have known Walt Sellers for many, many years as a community leader in my home county of Greene County. I also have known Walt for the great work he has done at Central State. I know when I served on the Board of Trustees at Central State in the late

*We understand that Commissioner Johnson will write separately to express his differing views. Commissioner Carey is not participating.