people. They believe it is OK to allow lawsuits to achieve some sort of political end.

Clearly, I do not agree and a majority of people in this body do not agree. Indeed, most Americans certainly do not agree. Most Americans think this is just bluntly unfair.

Our Constitution protects the right to keep and bear arms. Indeed, 33 States have passed laws to preempt frivolous gun lawsuits—33 States. Still today, we have the antigun crusaders who are, in effect, aided and abetted by the special interest trial lawyers charging ahead.

Since 1997, more than 30 cities and counties have sued firearm companies in an attempt to force them to change the way they make guns and the way they sell guns. In California, then-Gov. Gray Davis signed legislation explicitly authorizing lawsuits against gun manufacturers.

Because the firearms business is relatively small, one big verdict, one substantial verdict could bankrupt the entire industry. In California, that is a real possibility.

Never mind that every trial court that has heard these municipality lawsuits has thrown them out in whole or in part. Appellate courts in three States have overturned lower court verdicts and allowed the suits to go forward. Thus, it is critical we act now.

If the gun industry is forced into bankruptcy, the right to keep and bear arms will be a right in name only. Lawsuits have already pushed two companies into bankruptcy. Even if some gun manufacturers are able to hold on, the prices for firearms will be so high that owning a gun, such as a hunting rifle, will be a privilege only the wealthy can afford.

There is one other important and little known aspect of the issue. America relies on private gun manufacturers to equip our soldiers and law enforcement officers. The guns issued to police officers use, the guns that our soldiers carry, are made in the United States by American workers.

We are all agreed, no one wants guns in the hands of criminals. There are thousands of laws and regulations to stop illegal gun sales, but we do not want these frivolous, unnecessary lawsuits to strip police officers and soldiers of their sidesarms. Do we really want unfair litigation to cripple our national security? The answer clearly is no, and thus we will act and we will act over the course of today, tomorrow, Monday, and complete this action on Tuesday.

The bill before us is narrowly tailored. It is focused. It is fair. It is equitable. It ensures that private parties are held responsible for their actions and that why this bill comes to this floor with broad bipartisan support. That is why passing this bill is the right thing to do.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to consideration of S. 1805, which the clerk will report.

The assistant journal clerk read as follows:

A bill (S. 1805) to prohibit civil liability actions from being brought or continuing against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their product by others.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are now on S. 1805. Last night, Senator REED and I worked into the evening with our colleagues and leadership on both sides to craft a unanimous consent that now governs us through late next Tuesday. It establishes a variety of amendments that will be voted on over the course of today. Some will be offered and set aside to be voted on on Tuesday. On Tuesday, other key amendments will be voted on and then final passage.

I am sure there are some Members on both sides who might have amendments that were not listed to be considered for votes today and/or Tuesday. What I would ask them to do is come to the Chamber and talk to Senator REED and myself to see if we might work those out certainly. We are happy to take a look at them. There may be an opportunity late Tuesday and possibly Friday to offer additional amendments. The unanimous consent request does not preclude any Member from doing that.

I said very early on yesterday that we wanted an open, robust debate on this issue. Clearly, 75 Members of this Senate, in a very bipartisan way, said let’s get on with it, with the cloture vote yesterday. We spent the day then fashioning an agreement that brings us to where we are this morning. I believe it is possible Senator DASCHLE will be in the Chamber in a few moments to offer a perfecting amendment, then Senator BOXER will have an amendment on gunlocks.

I believe the agreement that is in front of us gives us something that oftentimes is very hard to achieve in the Senate, and that is a procedure and a final passage locked into an agreement. While Senator REED and I worked late into the evening, as I mentioned, to allow that to happen, and all sides gave a little in it, what I think we have in front of us is just that, an agreement that allows a variety of amendments to be voted on.

Mr. President, we have in front of us is just that, an agreement that allows a variety of amendments to be voted on.

Mrs. BOXER. Mr. President, I send an objection. Without objection, it is so ordered.

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

The ACTING PRESIDENT pro tempore. The Senator from California.

AMENDMENT NO. 2620

Mrs. BOXER. Mr. President, I send an amendment to the Senate, and that is a procedure and a final passage locked into an agreement. While Senator REED and I worked late into the evening, as I mentioned, to allow that to happen, and all sides gave a little in it, what I think we have in front of us is just that, an agreement that allows a variety of amendments to be voted on.

I believe the agreement that is in front of us gives us something that oftentimes is very hard to achieve in the Senate, and that is a procedure and a final passage locked into an agreement. While Senator REED and I worked late into the evening, as I mentioned, to allow that to happen, and all sides gave a little in it, what I think we have in front of us is just that, an agreement that allows a variety of amendments to be voted on.

The timelines are very limited. We are not going to filibuster in any of this. It is clear that when there are 20-, 30- and 60-minute time limits to be shared equally, it does shape and limit the debate in a way that many of us would like to see.

Certainly on Tuesday, key votes are going to be the McCain-Reed gun show loophole and Senator FEINSTEIN’s gun ban, or assault weapon ban as it is argued. Those clearly will be the dominate issues on one side. Senator NIGHTHORSE CAMPBELL, conceal/carry will be another one voted on on that day, and possibly debate. I will debate that along with Senator CAMPBELL today. It is on the list to accomplish today. Possibly we will also have another amendment to be voted on on Tuesday which deals with Washington, DC, and some of the gun laws that free and law-abiding citizens have to cope with in this city.

What is the character of what we have been able to put together. Senator REED, the manager on the other side, is now in the Chamber. I yield the floor for any comments he would wish to make. Timewise, I hope Senator DASCHLE can make it to the Chamber to offer his amendment, but if he cannot, at this moment I see no reason Senator BOXER could not proceed with her amendment.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senator from Idaho has indicated we worked late last evening to craft a unanimous consent that will allow several important amendments to be debated today, and continuing on through Tuesday. It represents a recognition that there are serious issues to discuss. Now we are not only discussing those issues but also taking amendments up and voting on them. I know Senator DASCHLE will be here in a moment.

Mr. REID. Will the Senator yield?

Mr. REED. I would be happy to yield to the Democratic whip.

Mr. REID. We have explained to the majority that we would, in fact, ask consent that Senator BOXER be allowed to offer her amendment. Senator DASCHLE is occupied at the present time. If necessary, I could offer it on his behalf, but I think it would be better if he offered it himself. So we ask unanimous consent that Senator BOXER be allowed to go forward with her amendment.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

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

The ACTING PRESIDENT pro tempore. The Senator from California.
SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES.

(a) SHORT TITLE.—This section may be cited as the “Child Safety Device Act of 2004.”

(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

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(z) LOCKING DEVICES.—
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(B) if incorporated into the design of a firearm and secured electronically, or electromechanically operated combination lock;
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(C) are sufficiently difficult for children to deactivate or remove; and
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(iii) impose the penalties described in clauses (i) and (ii).
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(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.

(e) AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

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SEC. 39. CHILD HANDGUN SAFETY DEVICES.

(a) ESTABLISHMENT OF STANDARD.—
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(1) RULEMAKING.—
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(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(D), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Device Act of 2004 to establish a consumer product safety standard for locking devices. The Commission may extend this 90-day period for good cause.
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(B) FINAL RULE.—Notwithstanding any other provision of law, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which the Commission initiated the rulemaking proceeding under subparagraph (A). The Commission may extend this 12-month period for good cause.
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(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect on the date which is 6 months after the date on which the final standard is promulgated.
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(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—
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(i) are sufficiently difficult for children to deactivate or remove; and
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(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.
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(2) EXCEPTIONS.—
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(A) the manufacture for, transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty);
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(C) the transfer to, or possession by, a rail police officer employed by a rail carrier certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty)."
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February 26, 2004

The Senator from California [Mrs. BOXER] proposes an amendment numbered 2620.

Mrs. BOXER. I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provi-
sion of a locking device in connection with the transfer of a handgun and to pro-
vide safety standards for child handgun devices.)

On page 11, after line 19, add the following:

```
SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES.

(a) SHORT TITLE.—This section may be cited as the “Child Safety Device Act of 2004.”

(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

```
(z) LOCKING DEVICES.—
```

```
(B) if incorporated into the design of a firearm and secured electronically, or electromechanically operated combination lock;
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(C) are sufficiently difficult for children to deactivate or remove; and
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(iii) impose the penalties described in clauses (i) and (ii).
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(B) REVIEW.—An action by the Attorney General under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) does not preclude any administrative remedy that is otherwise available to the Attorney General.

(e) AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

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SEC. 39. CHILD HANDGUN SAFETY DEVICES.

(a) ESTABLISHMENT OF STANDARD.—
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(1) RULEMAKING.—
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(A) INITIATION OF RULEMAKING.—Notwithstanding section 3(a)(1)(D), the Commission shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enactment of the Child Safety Device Act of 2004 to establish a consumer product safety standard for locking devices. The Commission may extend this 90-day period for good cause.
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(B) FINAL RULE.—Notwithstanding any other provision of law, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which the Commission initiated the rulemaking proceeding under subparagraph (A). The Commission may extend this 12-month period for good cause.
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(C) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect on the date which is 6 months after the date on which the final standard is promulgated.
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(D) STANDARD REQUIREMENTS.—The standard promulgated under this paragraph shall require locking devices that—
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(i) are sufficiently difficult for children to deactivate or remove; and
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(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.
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(2) EXCEPTIONS.—
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(A) the manufacture for, transfer to, or possession by, a law enforcement officer employed by an entity referred to in subparagraph (A) of a firearm for law enforcement purposes (whether on or off duty);
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(C) the transfer to, or possession by, a rail police officer employed by a rail carrier certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty)."
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Mrs. BOXER. Mr. President, I thank my colleagues on both sides of the aisle who worked late into the night to put forward a list of amendments this body would consider. I am very proud my amendment the list. It is an amendment the Senate has supported before. It is an amendment that will protect our children from violence, and what could be more important to us as we gather here every day than to protect our children?

My measure would do two things. First, it would require that every handgun sold in this country come with a child safety device. The amendment is very broad on what that could be, so it really isn’t a micromanaging type of amendment. This device could be a lock using a key or a combination, a device that locks electronically, it could be a lockbox, or technology that is built into the gun itself. Many of the folks working on this type of technology are very enthusiastic about it.

There is no question in my mind, there is no question in the minds of the police in my State who just had a press conference on this issue, if we were to mandate this standard that the law of the land, the number of children involved in accidental shootings would go way down. So that is the first thing we do. We require some type of a lock when you buy a handgun.

Second, my amendment would make sure child safety devices are effective and that they are not shoddy or of poor quality. One of the worst things we could do is pass a bill that requires the Consumer Product Safety Commission to establish standards for the design of these locks and this standard would be nonexistent. That would be a terrible thing for our families. So the bill requires the Consumer Product Safety Commission to establish standards for the design of these locks and these standards are a standard of performance. We want to make sure, when parents use a child safety device, that they are confident it will work as intended.

In 1999 the Senate passed an amendment by a vote of 78 to 20 to require that all handguns in this country be sold with a child safety device. The majority of our colleagues very strongly
supported this in quite a bipartisan way. I believe we should again agree that we need to protect our children from accidental gun shootings.

My home State of California recently enacted an excellent child safety device law. It requires that all licensed dealers and manufacturers equip the guns they sell with State-certified child safety devices. This is a very important bill for my State and I am proud of my State for doing it. But it is clear that such a law along California’s border does not have this requirement. Not one of those States has child safety device laws. That means even if California—and we do—has a good law, anyone can purchase a gun without a safety lock from a border State and return to California with it. Therefore, the progress we hope to make in California will be set back because we don’t have a uniform and standard law.

The other important feature of our bill that impacts Californians is that while there is a State-certified standard for gunlocks in my State, those standards have not been set by the Consumer Product Safety Commission, and everyone agrees that the Consumer Product Safety Commission is the premier body in the country that sets the gold standard. Again, I think it is very important that we have this type of standard because, as many colleagues point out, the manufacturers of these devices deserve some guidance. California may have one set of standards, we could have another set of standards in New York, or in the Midwest, and we are going to have a potpourri of standards floating around rather than what I call the gold standard of the Consumer Product Safety Commission.

The other important point for my people of California—again, they have the safety lock law—is that the amendment allows for a Federal cause of action. It recognizes the problem with a child safety lock, and the State for some reason doesn’t get its act together, doesn’t put the case together, and so on, there will be a Federal cause of action. It is kind of a double protection for the children. I would like to talk about the need for this amendment for a moment. I have a chart that shows the statistics. In the United States of America, in our great nation, our great country, the greatest country in the world, a child or a youth is killed by an accidental shooting every 48 hours—every 48 hours. Where do these statistics come from? The FBI. For every child killed by a gun, four are wounded. Where does that come from? The American Academy of Pediatrics and Adolescent Medicine, December—I am assuming that is 2000—volume 55, No. 12.

What does this mean, when you multiply it out? Thousands of children are injured or killed by guns every year in this country. According to the CDC, the rate of firearm deaths of children under the age of 14 is nearly 12 times higher in the United States than in 25 other industrialized countries combined.

Let me repeat that. The rate of firearm deaths of children under the age of 14 is 12 times higher in the United States than in 25 other industrialized countries combined.

Colleagues stand up and say: Guns don’t kill people; people kill people. If you want to, say: Guns don’t kill children; children kill children. Yes, children kill children because they pick up a gun; they find a gun. They fire it at a brother. They don’t understand the consequences of this. More than 22 million children live in homes with guns. I want you to envision this—22 million children live in homes with guns. More than 3.3 million of those children live in homes where the guns are always or sometimes kept loaded and unlocked.

Too many children are playing with real guns found in their parents’ bedroom or a friend’s home, and too many are exploring; they are being curious. I don’t know how many times I have heard stories with tearsful parents saying: I kept that gun away from my child. It was loaded. It was in the highest, darkest corner of the deepest, tallest closet in my house. I never thought my baby could climb up and find that gun.

Well, they do. They do. Children are smart. They are tenacious. They are energetic. One study found that when a gun was in the home, 75 to 80 percent of first and second graders knew where their parents kept that gun. Seventy-five to eighty percent of first and second graders knew where their parents kept that gun.

In this country, we do so much to protect our children. We worry about them, as we should; it is our responsibility. We make sure that in a car they are buckled; they are restrained; when we are putting in a car seat for a child. It is our responsibility. I don’t know how many times I have been up and found that gun.

Let’s pass this measure. I know Senator Ensign, the Senator’s time is expired.

Mrs. BOXER. May I ask for one additional minute from each side so I can conclude?

The ACTING PRESIDENT pro tempore. The Senator’s time has expired.

Mrs. BOXER. Mr. President, I was told I had 30 minutes.

The ACTING PRESIDENT pro tempore. I believe under the order 30 minutes were equally divided. The Senator’s 15 minutes have expired.

Mrs. BOXER. May I ask for one additional minute from each side so I can conclude?

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mrs. BOXER. Thank you so very much.

There is another incident where a 1-year-old girl was critically injured by her 3-year-old brother. This little girl survived.

I could go on, but I don’t have the time at this point.

Let’s pass this measure. I know Senators DeWine and Kohl have an amendment to change my bill in a very small way. I don’t have a problem with that. I will be supporting that. I just know the overriding concern of mine, and I really do think most people in this chamber feel that the last time, is let us protect our kids. Let us do it in a smart way. It is the right thing to do for the families of America.
February 26, 2004

CONGRESSIONAL RECORD — SENATE

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we have someone who will speak in opposition to the Boxer amendment. There is a second-degree amendment on its way. It is not yet ready. It is coming; sometimes I don’t know from where. I ask unanimous consent that the amendment be temporarily set aside. In keeping with the unanimous consent agreement that was entered last night, at some subsequent time there will be the opportunity to offer the amendment.

Senators KOHL and DeWINE are going to offer as a second-degree amendment to Boxer.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Idaho.

Mr. CRAIG. Mr. President, we expect a second-degree amendment to be here to modify and perfect the Boxer amendment.

I want to speak about the Boxer amendment because I in no way discredit—I guess the best way to say it—fail to recognize the same kind of concern Senator BOXER has expressed. She is correct. The Senate has expressed its will on this issue in the past. But let me bring you up to date about what the gun industry is doing now. Clearly, the gun industry is responding very quickly to new technologies and what is available to make sure firearms are safe, if you will, from the curiosity of a child and a child who might misuse it. Tragically enough, when children find a firearm, there is great curiosity.

There are organizations out there that have worked awfully hard to educate firearm owners and parents about the reality of a gun placed in a home in an unsafe environment, or not locked behind a door, or in a situation where a child has access to it. That is simply critical in the responsible ownership and handling of a gun.

Ninety percent of new guns in the United States are already sold with a safe storage device. The Senator from California is right, the devices vary, but do so guns and so do the conformation and structure of guns. It will be very difficult to suggest that one size fits all.

The industry, with its engineers and its technology and its computers, is devising trigger locks and safety devices that fit the particular firearm. This is done through a voluntary program with the firearms industry. Tremendous numbers of gunshops today—responsibly, federally registered gunshops—are providing free of charge a trigger lock or a safety device as the weapon is sold. Many States and locales, such as Texas, have distributed safety devices free of charge, either in cooperation with the firearms industry or on their own initiative.

Trigger locks are mechanical devices. Like all mechanical devices they can fail if they are not well designed, and if your owners are not instructed on how to use them properly. The Consumer Product Safety Commission recently tested 32 types of gunlocks and found 30 could be opened without a key. That is why, clearly, uniformity is necessary. That is the important thing.

What I am trying to suggest is that devices that reduce all accidents. Clearly, if we can get most handguns in America in safe and responsible hands and in homes with safety devices or locked in a safe or locked in a device where a child cannot gain access, that is going to reduce the kinds of tragic accidents that occur when a small child in a curious way finds the gun that may not have been placed in a safe place by a parent.

Gunlocks are designed to address what I believe is a narrow range of threats. At the same time, when a child’s life is lost, how tragic it is, and all of us understand that. Of course, then it makes tremendous news and the world wonders why this is happening. The reason it happens is because in many cases there was a parent who was less than responsible, who really didn’t lock that gun up.

At the same time, let’s also recognize the phenomenal complication involved. Sometimes guns are placed in locations in houses for security and for safety, and easy access is critically important if that gun is to be used for the purpose of personal and property safety depending on the area in which a family lives or an individual lives.

At the same time, that does not deny the responsibility that is important. Gunlocks address that narrow range of threats. Clearly, they will deter the casual curiosity of a small child far more readily than it will deter what I call the perverted or the perverseness of a person bent on murder and mayhem. Some suggest a gunlock means a thief in the house will not steal the gun. Wrong. That simply is not the case. It simply means the thief will take the gun, take it out, knock the gunlock off, have it cut off, take it away so they can have access to a stolen firearm. That is the reality of thieves stealing guns.

This narrow range we are talking about and that we want to make sure hits in homes for security and for the curiosity of the small child. The firearms industry is already trying to develop standards to improve these devices. The industry has sought the creation of an industry standard for gun safety locks through the American National Standards Institute. The ANSI review process is well underway. In other words, because the gun industry is a responsible industry, they are well out in front of us already on legislation. No, there aren’t absolute mandatory requirements, but recognizing the reality and the tragedy that occurs on occasion, we want to make sure, and the industry certainly wants to make sure, that they are well out in front of it.

In a few moments we will have a second-degree perfecting amendment to deal with this issue. I will reserve the remainder of my time until that amendment is before the Senate.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. Murkowski). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from California.

Mrs. BOXER. I take this time to respond to the point made the other night that the gun manufacturers are taking care of the child safety locks and that we do not need to have this law.

The experts in this whole field have turned out to be the National SAFE KIDS Campaign. This is a bipartisan organization that has one mission only and that is to protect our children. When they saw these statistics that are still occurring today, they said enough is enough. A child or youth is killed by a firearm every 3 hours. This has not changed.

In 1997, the gun manufacturers said they would work on this themselves, that they did not need a law. Research assessing the compliance with this agreement found most manufacturers were not providing locks and those that did offered low-quality devices where the locks just fell off and did not work.

The SAFE KIDS Campaign is urging us to include a provision to issue safe standards for gunlocks. This is very important.

My colleague says this is taken care of. It is not taken care of. We still have children dying. We still have our constituents calling with the tragic cases. It is one of the reasons that I and others on the Boxer amendment turn this into the National SAFE KIDS Campaign. This is a bipartisan campaign organization that is one mission only and that is to protect our children.

I yield the floor.
say we know there are many different handguns—this only applies to handguns; in my State we have one that applies to rifles and long guns, but this is just a handgun—we say you can have in your array of products a box that locks. You can have the technology built in the gun. You can have a combination lock.

I appreciate my friend does not like to put regulations on gun manufacturers and dealers, I understand that. I understand he believes they are the best, he believes the best of the best. But the problem is, our kids are dying in the home. They are smart. They find out where the guns are. I cannot understand why this is not something we would all support. The last time it came to the Senate, we had a huge vote. I am hoping we will have a similar vote.

Look to the people. We are in charge of a lot of issues. The National SAFE KIDS Campaign is about one issue, the safety of our kids. They are bipartisan. They are begging us to make this the law of the land. The Senate did it once before. The Senate should do it again.

Children living in the South have an unintentional shooting death rate that is 7 times that of children living in the Northeast. That is a fact the National SAFE KIDS Campaign has shown. All we need to do is see the rate our kids are dying and compare it to 25 other countries to see our kids are at a great disadvantage. We can do something today. I hope we will.

I yield my time.

Mr. DASCHLE. Madam President, I ask unanimous consent the Boxer amendment that Senator ASUSBE proposes an amendment numbered 3621.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

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

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

AMENDMENT NO. 3621
Mr. DASCHLE. And then I ask consent that I be recognized to offer an amendment, and I send my amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 3621.

Mr. DASCHLE. Madam 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:

(Purpose: To clarify the definition of qualified civil liability action, and for other purposes)

On page 7, line 19, strike "including" and all that follows through page 8, line 19, and insert "including but not limited to—"

"(1) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept pursuant to State or Federal law, or alleged, abetted or conspired with any person in making any false or fictitious oral or written statement or promise as to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

But we should not invalidate the legitimate claims from being heard in court when those claims have a basis in fact—cases involving kids, cases involving defective products, cases involving gun dealers or manufacturers who broke the law.

So our concern was, as originally drafted, the legislation adversely impacted many of these cases. That is why I went to Senator CRAIG and Senator BAUCUS and others and expressed the hope that we would address some of these issues and concerns in a way that would accommodate a solution. And that is what I believe this amendment does.

We have worked in a bipartisan manner. I would hope this legislation could certainly be supported in a bipartisan manner. It goes a long way to balancing what are the rights of victims as well as the needs of the gun industry.

Our amendment makes several key changes in the legislation that was originally offered. It ensures the cases in which Federal or State laws have been broken can move forward. There was some lack of clarity with regard to that particular need. It restores the basic product liability standards so, in particular, if a child is injured by a defective gun, the victim’s loved ones can still hold accountable those responsible. It includes a provision to remove immunity from dealers who sell to straw purchasers; that is, purchasers who have no interest in buying the gun for themselves but passing on the gun, selling the gun to somebody who should not have it. Finally, it ensures that only trade associations connected to the business of manufacturing and selling firearms would be covered.

I think all of these changes—and many more; there are eight specific changes—do a great deal to enhance the bill, to make it a better, stronger bill and, at the same time, address the concerns that many share. It strives to preserve the long-term vitality of an important American industry, one that is very important to people in the West and Midwest, in particular, but all over the country. It protects the rights and safety of the American public.

So I am very appreciative of the effort that has gone into this amendment. This took a lot of time, a lot of negotiation. Obviously, the subtleties in some of the language has more than a subtle impact ultimately on how legislation is interpreted and how laws are ultimately enforced. We think this amendment takes us a long way in addressing the needs of both our manufacturers as well as those who are concerned for safety on the streets and in our neighborhoods today.

Madam President, I might just take a moment, if I could, prior to relinquishing the floor, to talk about another matter. I appreciate the accommodation of my colleagues in so doing.
AMERICA’S UNFULFILLED TREATY OBLIGATIONS TO NATIVE AMERICANS

Madam President, all week long, tribal leaders from Indian nations throughout America have been in Washington for the winter conference of the National Congress of American Indians. They include leaders from the Great Sioux Nation of South Dakota, and many others. Democratic Senators just met with many of these leaders; and some are in the gallery now, listening to these words. I am honored by their presence.

South Dakotans are very proud of our State’s tribal heritage. Some of the greatest leaders South Dakota has ever produced were Native Americans. They include Crazy Horse, the legendary warrior-leader; a man of extraordinary nobility, the great Lakota spiritual leader, Sitting Bull.

Sitting Bull helped lead his people in defense of their lands. When it became clear that defeat was inevitable, he helped lead his people’s efforts to secure a fair and just peace.

In negotiating the treaty under which the Lakota ceded their lands, Sitting Bull asked representatives of this Government: “Let us put our minds together and see what life we can make for our children.”

More than a century later, the tribal leaders who have come to Washington this week are asking us to do the same thing: “Let us put our minds together and see what life we can make for our children.”

Last July, the U.S. Commission on Civil Rights released a report that has already become a landmark. It is entitled “A Quiet Crisis.” It documents the harsh realities of life in Indian country today. I ask unanimous consent that the executive summary of the report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DASCHLE. We cannot undo the damage caused by more than a century of neglect and broken promises in 1 year or even one decade. But we must make honoring our trust obligations under those treaties we signed a real priority now. And we must take steps this year to address two of the most urgent obligations of Native Americans.

The first of these obligations is the need to find a just and fair settlement of the Indian trust dispute. Partly because so many American Indians live on remote reservations, not many Americans understand what the Indian trust fund dispute is about. It stretches back to the 1880s, when the U.S. Government broke up large tracts of Indian land into small parcels, which it then allotted to individual Indians and tribes.

The Government, acting as a “trustee,” took control of the Indian lands and established individual accounts for the land owners. The Government was supposed to manage the lands for account holders. It would negotiate sales or leases of land, and any revenues generated from oil drilling, mining, grazing, timber harvesting—or any other use of the land—was to be distributed to the account holders and their heirs. But that has not happened.

The Indian trust fund has been so badly mismanaged for so long by administrations of both political parties that today no one knows how much money the trust fund should contain. Estimates of how much is owed to individual Indians range from a low of $10 billion to more than $100 billion.

The people who are being hurt by this mismanagement are some of the poorest people in America. Many live in houses that are little more than shacks, with no heat, no electricity, and no phones. Many of them are elderly. They have been waiting their whole lives for money that belongs to them—money that our Government is holding and refuses to give them.

Ten years ago, Congress passed legislation requiring the Department of the Interior to make a full and accurate historical accounting of all trust assets and obligations. Seven years ago, a banker named Elouise Cobell, a member of the Blackfeet Indian Nation, sued the Department to force it to comply with our order.

Last fall, a Federal judge finally agreed. It seemed that was going to be the beginning of the end of the trust fund dispute, and it was now finally within reach.

Then, shockingly, the administration and leadership in Congress on the other side, behind closed doors, added language to the 2004 Interior appropriations conference report ordering the Interior Department actually to ignore and defy the judge’s ruling. Clearly unconstitutional, it violates the separation of powers and due process protections.

It has become increasingly clear that this administration’s interest is in limiting the Government’s financial exposure rather than seeking a just settlement of the trust dispute. Despite its obligations to consult with the tribes, the Interior Department is now trying to push through its own plan to reorganize the Indian trust.

Tribal leaders have not been consulted. Deep skepticism and opposition in Indian country continues to exist.

Earlier this month, the administration sent Congress its budget for next year. It now makes deep cuts in every program affecting Indians, except one. There is a 50-percent increase for the Department’s trust reorganization plan.

The BIA, the Bureau of Indian Affairs, divides America into 13 regions. Yesterday, congressional and tribal leaders held a “summit” on trust reform. At that summit, the tribal representatives to the Interior departments pleaded with Congress to slow the Department’s unilateral reorganization of the trust.

No trust reorganization plan can succeed without the involvement, support, and leadership of the tribes. It is time for Congress to take a more active role in trust reform. Three things are essential.

First, we need a new round of comprehensive public hearings. This week, Senator B. N. S. Campbell announced that the Indian Affairs Committee would hold hearings. I thank him.

Second, congressional meddling in the Cobell litigation must end. The “midnight rider” putting court orders on hold must not be extended; courts must be allowed to do their job. Last year Senators McCain, Johnson, Inouye and I introduced a bill, the American Indian Trust Fund Management Reform Act Amendments, requiring the Interior Department to conduct an historical accounting for all trust assets.

Third and finally, the Federal Government should start budgeting for an eventual solution. Money in those accounts belongs to Indians, and the Government cannot continue to hold it. Last year, In introducing the Indian Payment Trust Equity Act. It would create a $10 billion fund to begin making payments to trust holders who have received an objective accounting of their trust assets.

Somehow, the Federal Government must put its money where its mouth is and begin making trust holders whole. The complexity of the challenge cannot be used as an excuse to continue denying account holders what is rightfully theirs.

Another injustice that must end is the chronic underfunding of the Indian Health Service. The report last summer by the Civil Rights Commission, and another by the Centers for Disease Control, show that Native Americans live sicker and die younger than other Americans as a result of inadequate health care. The Indian Health Service budget accounts for one-half of 1 percent of the Department of Health and Human Services budget. The health system with the sickest people and the greatest needs get the smallest increases.

Last week, I held health care “town hall meetings” on Pine Ridge and Rosebud reservations in South Dakota. We expected 200; we got 700. I heard horrific, heartbreaking stories. People talked about losing parents, children, and homes because care wasn’t available. Some people had waited months to see an IHS doctor. Finally, they couldn’t take the pain any longer. They went to a non-IHS hospital, and they ended up with hospital bill they couldn’t pay, so they lost their good credit rating as well as their good name.

It is unacceptable that the Federal Government spends twice as much on health care for Federal prisoners as it does for Indian children and families.

It is immoral that sick people are turned away every day from IHS hospitals and clinics in this country unless
they are in immediate danger of losing
life or limb. “Life or limb” is not a figure
of speech. It is an actual standard for
care, and it is a national disgrace.

Last March, I offered an amendment to
the budget resolution to provide $292
billion in order to fully fund one part
of the IHS budget. Unfortunately, every
Republican Senator voted against it. They offered an amendment with
$292 million, one-tenth of the amount
we proposed. It was inadequate, but we accepted it, only to find
when we went to conference, the
 Republics killed their own amendment in conference. We tried repeatedly the last year to increase funding by $2.9 billion, and we will do so again this year.

More than a century ago, our Government
signed treaties with the Indian nations promising to provide them
and their descendants three things forever: health care, education, and housing. The only thing that our Government has done is to keep its promise and provide these benefits which the Indian people have already paid for in full with their lands.

If you let us put our minds together and see what life we can make for our children, I yield the floor.

Exhibit 1

EXECUTIVE SUMMARY

The federal government has a long-established special relationship with Native Americans characterized by their status as governmental independent entities, dependence on the Federal government for support and protection. In exchange for land and in compensation for forced removal from their original homelands, the government promised through laws, treaties, and pledges to support and protect Native Americans. However, funding for programs associated with those promises has fallen short, and Native people are still suffering the consequences of a discriminatory history. Federal efforts to raise Native American living conditions to the standards of others have long been in motion. Today, Native Americans still suffer higher rates of poverty, poor educational achievement, substandard housing, and higher rates of disease and illness. Native Americans continue to rank at or near the bottom of nearly every social, health, and economic indicator.

Smaller in numbers and relatively poor, Native Americans often have had a difficult time ensuring fair and equal treatment on their own. Unfortunately, relying on the goodwill of the Federal government to honor its treaties with Native Americans clearly has not resulted in desired outcomes. Its small size and geographic apartness from the rest of American society induces some to designate the Native American population the “invisible minority.” To many, the government’s promises to Native Americans go largely unfulfilled. Thus, the U.S. Commission on Civil Rights, through this report, gives voice to a quiet crisis.

Over the last 10 years, federal funding for Native American programs has increased significantly. However, this has not been nearly enough to compensate for a decline in spending power, which has been evident for decades. These programs have become critical to the survival of Native Americans across the United States. Inadequate investment has continued to exacerbate the life chances of generations of Native Americans. Efforts to improve living conditions for Native Americans have been underfunded, undersized, and undersupported by the Federal Government.

Thus, there persists a large deficit in funding Native American programs that needs to be paid to eliminate the backlog of unmet Native American needs, an essential predicate to raising their standards of living to that of other Americans. Native Americans living on tribal lands do not have access to the same services and programs available to other Americans, even though the government has a binding treaty obligation to them. In preparing this report, the Commission reviewed the budgets of the six federal agencies with the largest expenditures on Native American programs and conducted an extensive literature review.

DEPARTMENT OF THE INTERIOR

The Bureau of Indian Affairs (BIA), within DOI, bears the primary responsibility for providing services to the tribes and Native American tribes with federal services. The Congressional Research Service found that between 1975 and 2000, funding for BIA and the Office of the Special Trustee declined by $6 million yearly when adjusted for inflation. BIA’s mismanagement of Individual Indian Money trust accounts has denied Native American beneficiaries the opportunity to invest in the future on their own. BIA has not invested in the IHS as promised, and Congress has been unable to spend the money that was allocated for IHS.

Since the IHS was established in 1955, federal funding for Native American programs has increased by about 1% per year at least until 1998, and the amount spent is significantly less than the amount needed to meet basic health care needs. The IHS has not been sufficiently funded to meet the health care needs of Native Americans. The IHS, although the largest source of federal funding for Native Americans, constitutes only 0.55% of the entire HHS budget, and the IHS’ discretionary budget today is substantially less than it was five years ago. By most accounts, HHS has done well to work within its resource limitations. However, the agency currently operates with an estimated 53% of the amount necessary to stem the crisis. If funded sufficiently, IHS could provide more money to meet health care needs, including emergency care, cancer, mental health, and substance abuse treatment. Over-crowding and its effects are a persistent problem. Furthermore, existing housing structures are substandard: approximately 40% of on-reservation housing is considered inadequate, and one in five reservations lacks indoor plumbing. Native Americans also have less access to home-ownership resources, due to limited access to credit, land ownership restrictions, and discrimination. They face environmental conditions that make construction difficult and expensive.

While HUD has made efforts to improve housing, lack of funding has hindered progress. Funding for Native American programs at HUD increased only slightly over the years (8.8 percent), significantly less than the agency’s total budget. After controlling for inflation, HUD’s Native American programs actually lost spending power. The tribal housing loan guarantee program lost nearly 70 percent of its purchasing power over the last four years, and the Native American Housing Block Grant lost funding for three years in a row. Given the unique housing challenges Native Americans face, greater and immediate federal financial support is needed.

Housing needs on reservations and tribal lands cannot be met with the same interventions that HUD uses to meet rental housing or homeownership goals in the suburbs or in Indian Country. Innovative and comprehensive approaches are needed, and the government’s trust responsibility to provide housing to Native Americans must be fully factored into these efforts.

DEPARTMENT OF JUSTICE

All three components of law enforcement—policing, justice, and corrections—are substandard in Indian Country compared with the rest of the nation. The arrest rates are twice as high as arrest rates in other communities, and twice as high as arrest rates in other communities, and twice as likely as any other racial/ethnic group to be the victims of crime. Per capita spending on law enforcement in Native American communities is 60 percent of the national average. Correctional facilities in Indian Country are also more overcrowded than even the most crowded county or federal prisons. In addition, Native Americans have long held that tribal court systems have not been funded sufficiently or consistently, and hence, are not equal to other court systems.

Law enforcement professionals concede that the dire situation in Indian Country is unlikely to change. The Commission recommended its stated intention to meet its obligations to Native Americans, promising projects have suffered from inconsistent or discontinued funding. Native American law enforcement funding constituted about 85 percent between 1998 and 2003, but the amount allocated was so small to begin with that its proportion to the department’s total budget hardly changed. Native American programs make up roughly 1 percent of the agency’s total budget. A downward trend in funding has begun that, if continued, will severely compromise public safety in Native communities.

Additionally, many Native Americans have lost faith in the justice system, in part due to perceived bias. Many attribute disproportionately high incarceration rates to unfair treatment by the criminal justice system, including racial profiling, delays in prosecution, and lack of access to legal representation. Solving these problems is vital to restoring public safety and justice in Indian Country.

DEPARTMENT OF EDUCATION

As a group, Native American students are not afforded educational opportunities equal to other American students. They routinely attend schools incorporating some of the nation’s underpaid teachers, weak curricula, discriminatory treatment, outdated learning tools, and
While some agencies are more proficient at managing funds and addressing the needs of Native Americans than others, the government's failure is systemic. The Commission identified several overlapping jurisdictions, lack of articulation among agencies, and a lack of federal accountability. The result is inefficiency, service delay, and wasted resources. Resolution on already funded Native American programs is so severe. Agencies must prepare budgets that account for the proportionality of Native American funding. Native American programs should be situated within the Federal agencies that have the requisite expertise, but agencies should continually improve processes for redistributing funds to other federal and tribal government programs. Funds for a common purpose should be consolidated within a single agency so there is less overlap and clearer accountability.

5. Federal agencies should avoid implementing across-the-board budget cuts when Native American programs are so severely impacted. Native American programs should be situated within the Federal agencies that have the requisite expertise, but agencies should continually improve processes for redistributing funds to other federal and tribal government programs. Funds for a common purpose should be consolidated within a single agency so there is less overlap and clearer accountability.

6. Native American programs should be situated within the Federal agencies that have the requisite expertise, but agencies should continually improve processes for redistributing funds to other federal and tribal government programs. Funds for a common purpose should be consolidated within a single agency so there is less overlap and clearer accountability.

7. To the extent possible, programs for Native Americans should be managed and controlled by Native Americans. Distribution of funds to tribes should be closely monitored by the source agencies to ensure that funds are used as directed in a manner developed in consultation with Native Americans and tribes.

8. Federal appropriators must compensate for costs that are unique to tribes, such as those required to build infrastructure, those associated with geographic remoteness, and those required for training and technical assistance. The unique needs of Native American programs must also be assessed, and adequate funding must be provided for programs to serve these individuals.

9. Congress should request an analysis of spending patterns of every Federal agency that supports Native American programs, either by the U.S. General Accounting Office or Congressional Budget Office. In addition, an independent, external contractor should audit fund management of all Federal agencies distributing Native American appropriations.

10. Each agency should have one central office responsible for oversight and management of Indian funds, and which prepares budgets and analyses that can be compared and aggregated across agencies.

11. The Office of Management and Budget should develop governmentwide, uniform standards for tracking spending on Native American programs. Agencies should be required to include justifications for each Native American project in annual budget requests, as an incentive to reduce the discontinuation of such programs. They should also be required to maintain comprehensive spending logs for Indian programs, including actual grant disbursements, numbers of beneficiaries, and un-funded programs.

[Disturbance in the galleries.]

The PRESIDING OFFICER. Expressions of approval or disapproval are not in order.

The Senator from Idaho.

Mr. CRAIG. Madam President, we are on the Daschle amendment which I support. The minority leader has expressed the value of that amendment fairly by his vote. I will be very brief about it. We can have a vote on it and immediately move back to the Boxer amendment.

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

Mr. CRAIG. I am happy to.

Mr. REID. I am wondering if there is a need for a recorded vote.

Mr. CRAIG. I do not see that need.
Mr. REID. I think we can do this by voice because it is my understanding that the Kohl second degree is also going to be done by voice vote, so that would eliminate the need for two votes. We could go directly to the Boxer amendment as amended.

Mr. CRAIG. Madam President, when Senator Daschle and I began to visit with the Secretary yesterday, I expressed my understanding that it would be. Senator Daschle came up with some ideas that would strike the “knowing and willing” in the preceding sentences, potentially increasing the likelihood that this exception in the general immunity afforded under the law would be applicable in any given case.

That is what we did. They are two very distinct provisions. I discussed them last night. I will not go into them today for the record. But I handed that over to the Congressional Research Service. What they have said is this: Applying these changes to the scenarios at issue—and those relate both to manufacturers and gun sales—it appears the amendment could have the effect of making it more likely that this exception to immunity would be applicable in certain facts, as established.

In other words, we truly have clarified the immunity provision. It is every bit as strong as ever. I would say that, all current Federal laws pertaining to the minimization, mishandling, the criminal actions that are in violation of the Federal firearm license or that are in violation of a manufacturer’s responsibility are adhered to.

I believe the amendment is a good one. It perfects and improves S. 1805. I encourage its passage.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 2621.

The amendment (No. 2621) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, under the terms of the order that is now before the Senate, Senator DeWine and Senator Kohl were to offer an amendment. Senator DeWine is not offering the amendment. I ask unanimous consent that Senator Kohl be allowed to offer a second-degree amendment to the Boxer amendment.
This legislation has the support of the current administration as well. During his campaign in 2000, President Bush indicated that if Congress passes a bill making the sale of child safety locks mandatory with every gun sale, he would sign it into law. Attorney General Ashcroft affirmed the administration support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

The bill is not a panacea. It will not prevent every single avoidable firearm-related accident, but the fact is all parents want to protect their children. This legislation will ensure that people purchase child safety locks when they buy guns. Those who buy locks are more likely to use them. That much we know is certain. Those who use the locks will be protected from liability if those guns are fired.

The Child Safety Lock Act is a modest proposal. Though imposing a minimal cost on consumers, it will prevent the deaths of many innocent children every year. The Senate spoke overwhelmingly in favor of this proposal in 1999.

Madam President, I urge my colleagues to support and vote for the amendment before us today.

Mr. CRAIG. Madam President, I am glad the Senator from Wisconsin has stepped forward to offer a second-degree amendment. It clarifies the nature of damages in civil immunity language. It defines the inoperable in the immunity language. It reduces the penalty violation but sets a good one—a $2,500 civil fine. Revocation may be a bit harsh, but there is a small clarification in the Rules of Evidence. It takes effect 180 days after enactment.

Of course, as I mentioned earlier in the debate—and I will discuss this later after this amendment is accepted—nearly all manufacturers today comply with this very point as guns leave the factory. So the industry is moving rapidly toward compliance.

With that, I think we are prepared to vote on the second degree.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 2622 to amendment No. 2620.

The amendment (No. 2622) was agreed to.

Mr. REID. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, what is the business before the Senate? Is it the Boxer amendment, as amended by the Kohl amendment?

The PRESIDING OFFICER. The Boxer amendment, as amended.

Mr. REID. What time is remaining on that?

The PRESIDING OFFICER. The Senator from Idaho has 8 minutes remaining.

Mr. CRAIG. Madam President, I will take some of those minutes to speak to the Boxer amendment, as amended. I do oppose this amendment and here are some very simple facts why.

I have already talked about the industry itself moving rapidly in a voluntary way toward compliance. Clearly, the bill has been improved by the Senator from Wisconsin, but let me suggest this to all of us because I think we should understand it in simple terms. The home is a private place and for the first time the long arm of Government will reach into the private place and suggest to the average American how they will store an object in that private place.

I am not arguing about the care, the emotion, the concern, and the reality, not that all. I understand that. But I do not believe that Government ought to be telling the average citizen how they store objects within their home.

We are hearing about the tragedies of children losing their life by the misuse of a firearm. I think the Senator from Wisconsin mentioned suicides. My trigger locks do nothing to suicides.

The great tragedy of a suicide is that a teenager thinks it out, and if they think it out they are probably going to find the key to the trigger lock or they will know where it is as a teenager and that will not stop that tragedy. That is an emotional situation that none of us quite understand sometimes why teenagers resort to that kind of action and violence.

I will talk about the home environment and what is going on in the home environment. Since 1968 accidental deaths by firearms in the home have declined 62 percent. Firearms are now involved in only 1.5 percent of accidental fatalities nationwide within the home. Here is the tragedy: Deaths caused to children by motor vehicle accidents is 47 percent; a child falling down in the home, deaths 15 percent; poisoning, 10 percent; drowning, 4 percent; fire, 8 percent; suffocation on small objects going down the throat of a small child, 3 percent. More children are killed by an object lodged in their throat than by finding an improperly stored handgun. Now, those are the facts, as we know them. Those facts
come from the National Safety Council, the National Center for Health Statistics.

Again, I do not dispute the emotion or the concern or the care that the Senator from California has on this issue and the desire of the Federal Government to enter the home and tell the average citizen they have to comply with mandatory storage laws that exist with penalties. I believe that is unnecessary in a free society.

I believe the responsibility of this is always necessary, and the industry is rapidly moving in that direction. Ninety percent are in compliance with the fundamental principles of the law itself.

This is the thing that concerns me most: Most States already provide penalties for reckless endangerment under which an adult found grossly negligent in the storage of a firearm under certain circumstances can be prosecuted for a felony offense. Universal mandatory storage requirements are counterproductive. That is going at the individual, instead of allowing the long arm of the law to come into the home. Clearly, that is the way it ought to be.

We know that no one-size-fits-all requirements can possibly meet the needs of all gun owners, and that is what is being suggested. We have already seen the industry involve science and technology to try to deal with this issue, and they are trying to develop those kinds of standards that work. I have already mentioned that the National Safety Council tested 32 types of gunlocks and found that 30 of them could be opened without a key. While the industry is rushing to get there, what we are needing, and the industry is now doing it, is standardization.

In any emergency, and now we are talking about oftentimes why a gun is in a home, a trigger lock can handicap a person who needs a gun for protection. We do not want the industry in that position to make them applicable so they can be accessed within seconds or minutes in case the burglar is breaking into the home, the reality is that if the gun is locked away in a safe it is ineffective as a use for personal protection in an unsafe environment. Those are the kinds of concerns I think all of us have as we talk about these kinds of issues and as we tick away at the right of the individual, instead of allowing the long arm of the law to come into the home.

I will give a little bit of history and then I will close. In 1936, British police began adding the following requirements for firearms certificates: Firearms and ammunition to which this certificate relates must at all times, when not in actual use, be stored in safe and secure places. That was 1936. What has transpired in British law until today is that if one wants to own a gun and they get a certificate to own a gun, they must comply to their home and ask where they are going to store it. They look at where it is going to be stored and if the gun owner does not have a lockbox or if they do not have a safe, they do not own a gun.

Will that ever happen in this country? I would hope not. I hope Americans would rebel about the reality of the Interior Department entering their homes to tell them what to do as it relates to storing an object in the home, especially an object that we believe is a constitutional right. That is the issue at hand.

Again, I am not going to argue with the Senator from California. States are moving now, and I think in some ways responsibly, to encourage, educate, and train. The industry is moving in that direction. To establish a Federal requirement that says this is the way one is going to do it in their home—I believe in a fundamental right of privacy—this is a breach of that right and an entry into the home with the long arm of Federal law. I do not think we ought to go there.

I hope Senators will join with me in opposing this amendment as amended by the KoHL amendment. I am prepared to yield back the remainder of my time in relation to a vote on this issue.

The PRESIDING OFFICER. The Senator from California?

Mr. CRAIG. I accept that if I have an additional 1 minute to close after the Senator from California.

Mr. REID. I ask an unanimous consent that the request be so modified.

Mr. REID. I ask unanimous consent that the request be so modified. The PRESIDING OFFICER. Senator.

Mr. CRAIG. Following that, I would like a moment for a quorum call.

Mr. REID. Madam President, that is fine. I am trying not to follow however long the quorum takes, we would vote on the Boxer amendment as amended by KoHL. Then I would alert everyone that we would then have a period of time for up to 1 hour, that Senator CAMPBELL—at least the way I understand the order now before the Senator—would have up to an hour on his amendment. Senator KENNEDY would follow with an hour on his amendment. Then two 2 hours would, of course, have expired. Senator Frist has the opportunity to offer an amendment. We do not know if he will at the time.

My point being on those two amendments, the Campbell and Kennedy amendments, there will be no votes until Tuesday. That is a significant amount of time. Following that, CANTWELL has 60 minutes. So this afternoon we should have a lot of debate with no votes in the immediate future. I would simply ask that those Senators be ready to go as soon as the vote is completed. I appreciate the Senator for that. I yield the floor to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I appreciate my friend yielding.

I think this argument has now been joined. The argument Senator CRAIG makes against this amendment, to me, is just off point. This bill is not a mandatory storage law. This has nothing to do with a mandatory storage law. The fact is we have passed this before, 78 to 20. I do not say we are not safe. We are saying that when you go to buy a handgun, it has some type of device on it. We do not mandate what that device is. We say it could be one of five or six different things. There will be standards set. It is not one-size-fits-all. It is not a mandatory storage law.

I agree with my friend, if the gun manufacturers do this on their own, that is great. But as we have learned from the SAFE KIDS Campaign, not all guns are doing it, and some of our kids are exposed.

I have two quick further points to make.

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

Mrs. BOXER. I ask for an additional minute and give my friend 2 additional minutes.

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

Mrs. BOXER. Let me make this point. When my friend compares an accidental shooting with a gun resulting in a death to a suicide, I would say that is quite different, because in the taking of suicide, although it is quite right, we do try on some of our bridges to build barriers, but if there is an intent, although we do our best, we often fail. But a 3-year-old or 5-year-old child picking up a gun really doesn't know what it is going to do. So it is up to us to make sure we do our best. That is all; we do our best.

My last point. There are standards for aspirin caps, cribs, Play-Doh, Teddy bears, pajamas. There ought to be a standard for a safety lock on a gun. I don't think we do violence to freedom in any way.

I wish my friend were with me on this, but if not, I hope we can repeat the vote we had last time; 78 to 20 sounds really good. I hope we can do that again.

I yield the floor.

Mr. CRAIG. Mr. President, I will be brief. I don't question the sincerity of the Senator from California. I recognize what she is attempting to do.

The industry is rushing. It is at near 90 percent compliance today. We want firearms to be as safe as possible in this country.

Let me close with this. Firearms are involved in 1.5 percent of the accidents within a home that involve a child; motor vehicles and children: 47 percent of the deaths of young children are caused by motor vehicles; falling, 15 percent makes a comeback; poisoning, 10 percent; drowning, 4 percent; fire, 3 percent; objects ingested and lodged in the throat in which they suffocate, 3 percent.
I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have the Campbell concealed-carry bill. We are minutes away from being ready to offer that, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. REID. Will the Senator yield?

Mr. DODD. May I inquire of the man responsible for the scheduling process along. If it is agreeable with the Chair, I just want to understand the order.

Mr. DODD. I see my colleague from Massachusetts. Ten minutes.

Mr. KENNEDY. I understand we will have an hour. It will be an hour equally divided. I have 30 minutes. I would like to feel a few minutes before you get to this, I would like to take a few minutes and speak on the underlying bill.

Mr. CRAIG. Yes. I see no reason why the Senator could not speak. How long does the Senator intend to speak?

Mr. DODD. I see my colleague from Massachusetts. Ten minutes.

Mr. KENNEDY. Mr. President, I am trying to find out how we are going to proceed. I have seen the agreement. I am trying to find out how we are going to proceed.

Mr. DODD. I see my colleague from Massachusetts. Ten minutes.

Mr. KENNEDY. I understand we will have an hour. It will be an hour equally divided. I have 30 minutes. I would like to feel a few minutes before you get to this, but I would like to take a few minutes and speak on the underlying bill.

Mr. DODD. Mr. President, I would ask that Senator DODD be allowed 10 minutes from Senator KENNEDY's time on the amendment that will soon be offered.

Mr. DODD. I will yield for purposes of the purpose proposed.

Mr. HATCH. Well, let me go first.

Mr. DODD. Are you going to take 30 minutes? I would like to be able to be heard.

Mr. HATCH. No.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 2623

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senators CAMPBELL, LEAHY, HATCH, DEWINE, SESSIONS, and CRAIG, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant Journal clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. CAMPBELL, Mr. LEAHY, Mr. DEWINE, Mr. SESSIONS, and Mr. CRAIG, proposes an amendment numbered 2623.

The amendment is as follows:

(Purpose: To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns)

On page 11, after line 19, add the following:

SEC. 5. LAW ENFORCEMENT OFFICERS SAFETY ACT.

(a) Short Title.—This section may be cited as the "Steve Young Law Enforcement Officers Safety Act of 2004".

(b) Exemption of Qualified Law Enforcement Officers From State Laws Prohibiting the Carrying of Concealed Firearms.—

(1) In general.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

(2) Prohibiting possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term 'qualified law enforcement officer' means an employee of a governmental agency who—

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm; and

(3) is not the subject of any disciplinary action by the agency.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.

(e) Defined Term.—As used in this section, the term 'firearm' does not include—
ENFORCEMENT OFFICERS FROM STATE LAWS

subsection is photographic identification required by the agency for which the individual is employed as a law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b)." 

(b) This section shall not be construed to supersede or limit the laws of any State that— 

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or 

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who— 

(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability; 

(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or protection of any person from, any violation of law, and had statutory powers of arrest; 

(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or 

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency; 

(4) has a nonforfeitable right to benefits under the retirement plan of the agency; 

(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification of law enforcement officers to carry firearms; and 

(6) is not prohibited by Federal law from receiving a firearm. 

(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.

(e) DEFINED TERM.—As used in this section, the term ‘firearm’ does not include— 

(1) any machinegun (as defined in section 5845 of title 26) 

(2) any firearm silencer (as defined in section 921); and 

(3) any destructive device (as defined in section 921).

(2) CEREMONIAL AND MILITARY USES.—The term ‘firearm’ does not include— 

(1) any firearm silencer (as defined in section 921); and 

(2) any destructive device (as defined in section 921).

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(1) any firearm silencer (as defined in section 921); and 

(2) any destructive device (as defined in section 921).
I wish to share with my colleagues some general thoughts. I know there are amendments going to be offered on assault weapons and a variety of other proposals, but I want to put my colleagues on notice. I do not think we can vote on any amendment or bill that will address the harm done by the underlying proposal and the precedent we are setting in this body. We are taking an industry and saying: No matter what you do, no matter how much harm you may cause, you never have to be held liable and accountable for your actions. In this day and age, that this body would so overwhelmingly endorse an idea such as this is breathtaking.

I wish to take a few minutes to say why it is so outrageous. I want to add, with all the matters we should be addressing with the limited time in this session, with the thousands of people losing their jobs today, we have nothing to say about outsourcing. When we have Americans losing their health insurance, we have nothing to say about those issues. We are drowning in budget deficits and trade deficits. We have the worst job deficit since the Great Depression. Poverty is increasing, and this Chamber has nothing to say on those issues except we are now going to take one group of manufacturers and say: Don’t worry about anything, you don’t have to ever be held accountable for your wrongdoing.

That is my view of this industry immunity policy for a number of reasons. First, it will have absolutely no impact whatsoever on reducing the rate of gun violence in our Nation. In fact, this bill ignores the devastating toll firearm violence continues to have on the country.

According to the Centers for Disease Control and Prevention, there were nearly 29,000 deaths in the United States from firearms in the year 2001 alone—29,000 deaths. That is, of course, 10 times more than asbestos companies nor polluters have. In 2000, the average costs of treating gunshot wounds were $22,000 for each unintentional shooting and $18,400 for each gun assault injuries. These costs would undoubtedly be much higher today.

Total societal cost of firearms is estimated to be between $100 billion and $126 billion per year. Who pays these expenses? By and large the American taxpayers do.

My colleagues speak against unfunded mandates, and yet this bill, if enacted, burdens the Nation’s cities and counties with billions and billions of dollars in medical care, emergency services, police protections, courts, prisons, and school security. It is shameful that while tens of thousands of people are dying each year due to firearms, and while the American taxpayers pay tens of billions of dollars to cope with the effect of gun violence, the United States Senate is doing absolutely nothing to make our streets and homes safer. In fact, we are doing quite the opposite by our actions today.

Second, the legislation will give this industry special legal protections that no other industry in the United States has. Neither cigarette companies nor asbestos companies nor polluters have such sweeping immunity as we are about to give this industry. In fact, gun manufacturers and sellers are already exempt from Federal Consumer Product Safety Commission regulation, despite the fact firearms are among the most dangerous and deadly products in society. We have more regulations on toy guns than we do on the ones that fire real bullets.

Imagine that, a toy gun that you buy from Mattel, the Consumer Product Safety Commission issues literally pages of regulations on what must be included in the production of that toy gun. There is not a single word in the Consumer Product Safety Commission regulation about the production of a gun that may kill 29,000 people each year in this country. The National Rifle Association made sure of this exemption 30 years ago, just as highly addictive tobacco products are not subject to regulation by the Food and Drug Administration.

I have supported tort reform in specific areas where I believe it is appropriate. My colleagues and I have done that at the same time. I recognize that litigation has been a powerful tool in holding parties accountable for their negligence and providing them with incentive to improve the safety of their products. It has been employed on behalf of other potentially dangerous products, such as cars, lawnmowers, household products, and medicines, to protect the health of the American people. The fact that guns are already specifically exempt from the oversight of the Consumer Product Safety Commission is reason enough, in my view, why we cannot afford to grant the firearm industry legal immunity.

If this legislation is enacted, and I know it will be given the number of cosponsors and how this bill is sweeping through the Congress, would it remove any incentive under current products liability law for gun manufacturers to make their firearms safer? Studies have shown that the technology is both readily available and very inexpensive to install in order to help avoid future gun-related tragedies.

For example, a load indicator could be included to tell the user that the gun is unloaded. That is never going to happen now, I promise. A magazine disconnect safety could be installed by the manufacturers to prevent guns from firing if the magazine is removed. Even child proofing the gun with safety locks can be done relatively easily. However this bill is enacted into law, gun manufacturers will lose a huge incentive to include such reasonable safety devices in their products.

I know I am going to hear shortly, we will have just adopted a gun safety lock amendment. We did that a few years ago as well. What happened to it? I got dumped. That is what happened. Do not have any illusion about these amendments being adopted. My colleagues have been around long enough to know what is going to happen. When this bill leaves the Senate and goes down the hall to the other Chamber all of these nice provisions that are included will be dropped, just as they have been in the past.

Third, this legislation would close the courthouse door on our Nation’s mayors, gun victims, and law enforcement officers who are seeking to hold the gun industry accountable for their negligent conduct. Just last week, Los Angeles Police Chief William Bratton and over 80 other prominent law enforcement leaders from 26 States sent a letter to the Senate opposing the legislation.

These chiefs warned that passage of the immunity legislation would result in more illegal gun running and deter efforts to develop child-resistant guns. In the words of Chief Bratton:
The passage of this bill would deliver a devastating blow to justice. The NRA and Congress need to understand that special interest groups cannot come before public safety. Gun manufacturers must be held to the same standards of safety as any other industry. And if they fail to act responsibly, they must pay the price.

Evidence uncovered which reveals that the gun industry has been engaged in irresponsible behavior for many years. Senator REED and others have already mentioned one such industry actor: Bull’s Eye Shooter Supply of Connecticut. This gun store claims that it “lost” the gun used by the Washington, DC snipers John Muhammed and Lee Boyd Malvo as well as more than 200 other guns. Many of these firearms were later traced to other crimes.

In fact, Bull’s Eye Shooter Supply had no record of the gun ever being sold and did not report it until after the Bureau of Alcohol, Tobacco, and Firearms traced the weapon and returned it to the store.

Even after the rifle was linked to the sniper shootings and the newspapers reported on the disappearance of the guns, the rifle’s manufacturer, Bushmaster Firearms, declared that it still considered Bull’s Eye as a “good customer” and was happy to keep selling to the shop. The judge in this case has since ruled twice that the state’s families along with the families of the DC-area sniper victims against both Bushmaster Firearms and Bull’s Eye Shooter Supply should proceed to trial, and a preliminary appeal of these rulings has been rejected.

Nevertheless, this case as well as other important pending and future lawsuits against negligent gun dealers and manufacturers would be banned under the Senate bill, according to the opinion of two of the Nation’s most prominent attorneys, David Boies and Lloyd Cutler.

There are many other instances of the gun industry not taking steps to prevent guns from reaching the illegal market. For example, the rifle manufacturer, Bushmaster Firearms, declared that it still considered Bull’s Eye as a “good customer” and was happy to keep selling to the shop. The judge in this case has since ruled twice that the state’s families along with the families of the DC-area sniper victims against both Bushmaster Firearms and Bull’s Eye Shooter Supply should proceed to trial, and a preliminary appeal of these rulings has been rejected.

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The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator from Connecticut for agreeing to change the name of this amendment from the Law Enforcement Officers Safety Act to the Steve Young Law Enforcement Officers Safety Act.

This name has particular meaning to me. I believe the renaming of this provision is a fitting tribute to a man who dedicated his life to keeping our community safe and free from crime.

Steve Young was a dear friend of mine from the State of Ohio. He was also a well-known and well-respected figure in the law enforcement community. Steve was elected by his peers to serve as the national president of the Fraternal Order of Police and held this post until his death from cancer on January 9, 2003. Steve was just 49 years of age at his death.

Steve grew up in Upper Sandusky, OH, and was a graduate of Upper Sandusky High School. He joined the Marion City Police Department in 1976 and spent his entire law enforcement career as an active-duty officer there. It was in Marion that Steve first became a member of the Fraternal Order of Police lodge No. 21. He later went on to serve as president of this lodge in the year 2000. He received the prestigious lifetime honor of president emeritus.

Leadership in the law enforcement community came naturally to Steve, as his hard work and dedication earned him the respect and admiration of his peers. Steve went on to become active in the Ohio State lodge of the FOP and served first as vice president and then as president, representing Ohio’s 24,000 law enforcement officers. Through the Ohio State lodge, Steve helped to create the Ohio Labor Council. This council created a model for improved labor-management negotiation in police forces, a model that has now been adopted in at least 14 other States.

Steve’s leadership in the Ohio law enforcement community and really his expertise in labor issues earned him a national reputation. In 2001, after serving for 4 years as national vice president, Steve was unanimously elected to serve as the national president of the FOP. In this capacity, Steve represented over 300,000 law enforcement officers and worked to protect the interests of our Nation’s finest. This was a job I know Steve loved and one he did with great dignity and pride.

While Steve Young had an incredibly successful career with multiple accomplishments, I would also like to take a few moments to discuss my personal connection with Steve. I had the privilege of knowing not just Steve Young the police officer but also Steve Young the man. Steve was, as I said, a dear friend of mine for many years. He was someone I could always count on. He was someone I could trust, and was fortunate to be able to call on him as a trusted adviser. I can’t tell Members of the Senate and you, Mr. President, how often I would call him for advice, whether it was when I was Lieutenant Governor of Ohio or later when I was a Senator.

I had the opportunity to work with Steve for many, many years. I relied heavily on his advice and his counsel. I consulted with him regularly on criminal justice matters, and his keen insights have helped shape nearly every piece of crime legislation with which I have been involved.

One of the last times I saw Steve he was in Washington for a Judiciary Committee hearing. I am fortunate that I had a chance to spend a few moments with him that day. It is that meeting that reminded me of Steve’s honesty. He was a humble man. He had no airs about him. He was quiet and self-effacing. He didn’t put on a show or try to impress people with his position or his power within the national FOP.

But you know, at the same time, his affable nature did not hide the fact that Steve Young was also a very strong man: brave, courageous, fearless, and tough as nails. After all, he was a policeman, and exactly the kind of policeman I would have wanted helping me if I were a victim of crime, the kind of policeman I would have wanted protecting my children or grandchildren or any member of my family. That was Steve Young—a model for all law enforcement.

He was a humble, dedicated man who devoted his career to working for the good of Ohio, for the good of this Nation. Steve’s commitment to our communities was evident in everything he did. Criminals were caught because of him and crimes were prevented. He was a protector. He was a leader. He was a good and decent, hard-working man for whom I have the greatest respect and admiration.

It is fitting that this amendment now is named after Steve Young.

Mr. DEWINE. Mr. President, I yield 5 minutes.

Mr. LEAHY is recognized for 5 minutes.
I think of a very sad funeral I went to in Vermont last summer. The trooper’s family was left behind—young children, his widow. Roughly 5 percent of officers who die are killed when taking law enforcement action in an off-duty capacity, and more than 62,000 law enforcement officers are assaulted annually.

Convicted criminals often have long and exacting memories. I still have people come up to me and tell me they remember that I put them in prison. This happens to a lot of law enforcement officials. That law enforcement officer, the one who arrested the person who went to prison, is a target in uniform and out, active, retired, off-duty or on-duty.

So what we tried to do by bringing together Republicans and Democrats, Liberals, moderates, conservatives, is to put together an amendment designed to establish national measures of uniformity and consistency to personnel trained and certified—and I underline that certified—on- and off-duty law enforcement officers to carry concealed firearms in situations so they may respond to crimes immediately across State and other jurisdictional lines as well as to protect themselves and their families from vindictive criminals.

Mr. President, I thank my friend from Idaho for yielding time. I think this is an important matter. I yield the floor.

Mr. CRAIG. Mr. President, may I ask how much time our side has remaining?

The PRESIDING OFFICER. Eleven minutes, Senator Kennedy has 18 minutes 39 seconds.

Mr. CRAIG. Does the Senate from Massachusetts wish to speak at this time?

Mr. KENNEDY. I thank the Senator. I saw the Senator from Alabama. I had planned to be here as well, but I would be glad to follow the Senator from Alabama.

Mr. CRAIG. I thank the Senator for that consideration. If he doesn’t mind, I would defer our allocation of 10 minutes of time to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator Craig and Senator Kennedy for the opportunity to speak. I am pleased to hear the ranking member of the Judiciary Committee, Senator Leahy, speak in favor of this amendment. It does indeed have 67 cosponsors. It is designed to allow qualified law enforcement officers to carry a concealed weapon while they are off duty.

Back at my home in Alabama, when I drive into the neighborhood, I know that a police officer lives at the corner. It gives me some comfort and my wife comfort. We have discussed it. When we pass that police car parked there, I know if something happened in that neighborhood and somebody needed help, he would respond. I also hope when he is traveling around off duty that he would be allowed to carry his weapon. We pay him to do it when he is on active duty. We pay him to carry that weapon and to be ready to respond.

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personal security. But more than that, it is a free, available asset to America to protect citizens.

We have terrorists out there. If we had a terrorist attack in a shopping mall, or on the streets, or in some building, the guy going about his business in the community, wouldn’t we be pleased that a law officer with a gun was there who would plug this guy if need be to save innocent lives? Wouldn’t that be good to think so. It is a frustrating thing, however, for law officers as they move from jurisdiction to jurisdiction. This country has a host of different gun laws. Gun dealers, gun possessors, and gun manufacturers are subject to the most intense Federal, State, and local regulations. An officer who goes about his duties and goes from one town to the next could find himself going through Boston, MA, and end up in a slum for doing something we are being prepared to defend a Boston citizen from a mugging or assault or a terrorist attack; or coming to Washington, DC; they could end up in jail. They have some of the toughest laws anywhere in the country—maybe even tougher than Boston. They could end up in jail for doing nothing but being prepared to defend people in this community who may be under attack.

I think this makes good sense. I think it makes good sense for Federal legal action because you can’t do it piecemeal. Every community has a different rule and a different law. Under the interstate commerce clause, I think we have a constitutional right and powers to subject this legislation.

The question is: Is it good policy? Is it something we should do? I think it is good policy, especially in light of all the proliferating rules around this country, all the requirements in every community, all the laws, gun laws, that are enacted across America, every city regulation in Philadelphia where they sue gun dealers—the mayor sues gun dealers, and they get the attorneys general in these States to gang up on them and sue them. They are doing it, manufacture a firearm consistent with what the Federal and State laws are in America. But because somebody used it illegally, they want to sue them and put them out of business because they do not like guns. They are not able to do it completely; they are not able to pass legislation in their States or in the Federal Government to deal with this problem. So they want to use the power of the lawsuit to do it. That is why I support the underlying bill. I think it is good public policy because all it does is make clear what existing law is, has been, and should continue to be—that a manufacturer of a legal product who manufactures, according to the laws and the distributors of that product who distribute it according to the complex laws over all this country should not be responsible if there is an intervening criminal act by a person who gets his hand on that weapon.

What are lawsuits for? Lawsuits historically have been when something fails to perform—if a weapon blows up, knocks out your eye, shoots off at an angle and hits something it is not supposed to, you should be able to sue the manufacturer. But if the gun is legal, if it is prepared according to the law and sold, and if some criminal gets it and commits a crime, should the manufacturer be responsible for that? It goes against all of our understanding of what appropriate rule of liability in America is.

We are losing these distinctions. We want to protect the law. We have Members who, because they cannot win a political vote, want to have some lawsuit—some favorable jurisdiction, whether it is in Philadelphia, or Boston, and they find a judge who is hostile to gun ownership end up getting the case. They say there are only 30 lawsuits of this kind, but if you keep filing these lawsuits, pretty soon you may find 12 people who agree with you, or a judge who agrees with you. The next thing you know, you have a big verdict.

The question is: Is it justified? Should a company have to defend itself from this kind of a political attack? If they are irresponsible, yes. If they violated the laws, yes. They should be sued. If the gun is defective, yes. They should be sued.

But again, I think there is no more strongly felt issue among law enforcement officers in America than their willingness to have a gun and the risk they undertake in doing it because they may even forget they are crossing the State line into another city and end up being prosecuted for being prepared to defend the citizens of that community. They do not like that. It is troubling to them. Many talk to me about it personally.

I am glad we have overwhelming support in this body to pass this amendment. I thank the Senator from Idaho for it, I support it and I believe we will pass it.

I yield the floor and respect the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 18 minutes 50 seconds.

Mr. KENNEDY. I ask the Chair to notify me when 15 minutes are up.

I hope that we aretones in the Senate more about States rights and the importance of local communities making local judgments; they are in touch with the local people; they know best what is in the interests of the protection of a local community; or that a State knows more than a Federal Government about how to protect its citizens.

Those arguments are out the window with the proposed amendment to the underlying legislation. The amendment itself gives away duty and retired police officers the right to carry any firearm on duty or off duty, notwithstanding any State or local gun safety laws, even if the officers’ own department rules prohibit the carrying of such concealed firearms.

I know this is hoping too much, that our friends on the other side of the aisle will refrain themselves from making the argument we always hear in the Senate from the other side, pointing over here that the Federal Government always knows best.

There is a lot of knowledge at the local and State level. Let’s respect that point. That is through the window with this amendment. This amendment is overriding gun safety laws that are decided by the people in local communities, overriding State laws, overriding them pointblank no matter what the State has said. We are talking about concealable weapons that will be able to be carried by police officers or retired officers, as well.

It is opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

Let me explain why. This amendment is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding the State and local gun safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger the amendment poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police.

There is no precedent for what the supporters of this amendment intend to accomplish. Congress has never passed a law giving current and former State and local employees the right to carry weapons in violation of controlling State and local laws. Congress has never passed a law interfering with the ability of State and local police chiefs to regulate their own carrying of firearms. Do we understand what this does? Congress has never passed a law interfering with the ability of the States or local police chiefs to regulate their own police officers carrying firearms. This amendment does. This overrides it.

Today, each State has the authority to decide what kind of concealed-carry law, if any, best fits the needs of the community. Each State makes its own judgments about what private citizens should be allowed to carry concealed weapons or whether on-duty or off-duty or retired police officers should be included or exempted in any prohibition. There is no evidence that States or local governments have failed to consider the interests and needs of law enforcement officers. No case has been made.

Consider, for example, the New Jersey law. In 1995, retired police chief John Deventer was shot and killed while legally attempting to stop a robbery. This incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number
of different conditions. In drafting this law, the New Jersey Legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large by including a number of important safeguards that are not contained in this amendment.

For example, New Jersey law is limited to handguns. This amendment is not. As long as the police officer is qualified to carry one type of gun, he can carry any type of gun, any type of concealable weapon. New Jersey law is limited to handguns. This amendment is not. New Jersey law has a maximum age of 70. This amendment does not. Under New Jersey law, retired police officers must file renewal applications yearly. There is no application process here. Under New Jersey, retirees must list all their guns. No such record is required under this amendment. New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under this amendment.

By enacting this amendment, Congress will be gutting all of the safeguards contained in the New Jersey statute as well as the judgment of other States that have considered this issue.

The supporters of this amendment have presented no evidence that States and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than States, cities, and towns to decide how best to protect police officers, schoolchildren, churchgoers, and other members of their communities.

Congress should bolster, not undermine, the efforts of States and local communities to protect their citizens from gun violence. In many States, cities, and towns, special places—churches, schools, bars, government offices, hospitals—are singled out as deserving special protection from the threat of gun violence.

Michigan is a State that prohibits concealed firearms in schools, sports arenas, bars, churches, and hospitals. Georgia law allows active and retired police officers to carry firearms in publicly owned buildings but not in churches, sports arenas, or places where alcohol is sold. Kentucky prohibits carrying concealed weapons in bars and schools. South Carolina prohibits carrying concealed firearms in churches and hospitals.

This amendment will override most such safe harbor laws at the State level. It will override laws that categorically prohibit guns in churches and other places of worship, but only laws that permit private entities to post signs prohibiting concealed firearms on their property will remain in force. In most States, churches are not currently required to post signs in order to have a gun-free zone.

This amendment will also override laws that prohibit concealed weapons in places where alcohol is served. This amendment will override State laws and local laws that prohibit carrying concealed weapons in places where alcohol is served.

Surely it is responsible for a State to prohibit people from bringing guns into bars, to remove the danger that results when liquor and firearms are together. It is no wonder that in the House of Representatives, Chairman SENSENBRENNER has described this legislation as an affront to State sovereignty on the Constitution. At this time, the amendment overrides all gun safety laws without exception. In the 1990s, Boston, New York, and other cities made great strides in fighting against crime precisely because they were able to pass laws that address the factors that led to violence, including the prevalence of firearms in inner cities. As Congresswoman HENRY HYDE has said, the best decisions on fighting crime are made at the local level. We saw extraordinary progress in my own State of Massachusetts. We went for 18 months without a homicide. We have strict gun laws in Massachusetts. We have very strict gun laws in the city of Boston. This legislation will override all gun safety laws, this amendment was made just because of the laws, but it was a combination of a variety of different events a few years ago. Tragically, we have seen an increase in homicide with the deterioration of the economy in the recent months and years.

By overriding all local gun safety laws, this amendment will undermine the ability of cities to fight crime. It will indiscriminately abrogate safe harbor laws in Boston, New York, Cincinnati, Columbus, Chicago, Kansas City, and many other towns.

Congress has no business overriding the judgment of States and local governments in deciding where concealed weapons are prohibited. Supporters have argued this amendment is needed because of the complex patchwork of Federal, State, and local concealed-carry laws that prevent officers from protecting themselves and their families from vindictive criminals. They have distributed lists of officers or prison guards who were killed while off duty or in retirement. The stories of these slain men and women are tragic, and their killers deserve to be severely punished. But none of these lists involved officers who were killed outside their home State. They do not demonstrate a need for a Federal override of State and local gun safety laws.

To the contrary, as New Jersey’s response to the tragic shooting of Chief Deventer shows, States and local governments are best equipped to implement policies, regulations, and laws that protect the safety of their own law enforcement officers, and also protect the public at large.

The supporters have also argued by authorizing officers to carry guns across State lines, in violation of what-ever State and local gun safety laws would otherwise apply, they will be able to effectively respond to crimes and terrorist attacks. They apparently envisage a nationwide unregulated police force, consisting of retired officers and off-duty officers who are armed while on vacation or traveling outside their home jurisdictions.

Allowing off-duty or retired officers with concealed weapons to go into other jurisdictions will only make conditions more dangerous for police officers. The Congress will be gutting all of the safety laws. This teamwork requires months of training to develop and provides the officers with an understanding of how their coworkers will respond when faced with different situations. Injecting an armed, unknown officer, who has received different training and is operating under different laws, will turn an already dangerous situation deadly.

This amendment neither promotes consistent training policies among different police jurisdictions nor limits the conditions under which officers may use their firearms. The idea that more crimes will be prevented when more concealed weapons are carried by untrained and unregulated out-of-State off-duty and retired officers is pure fiction.

It is important to note that in giving off-duty and retired police officers broad authority to nullify State and local gun safety laws, the amendment is not limited to the carrying of officers’ authorized weapons. In most police departments, officers may seek authorization to carry any type of weapon. If an officer wants to carry a weapon other than his service weapon—typically, a 9 millimeter semiautomatic pistol—he must prove he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, this amendment provides as long as an officer at some point received authorization to carry a particular kind of firearm, such as his service weapon, he can carry, concealed, any other kind of firearm while off duty or retired, even if he never received authorization from his own police department to carry that other weapon.

In the 107th Congress, I introduced an amendment in committee providing an off-duty or retired officer could carry a concealed firearm only if he had been authorized to carry that firearm by the agency he works for, or if he had been authorized at the time of his retirement. That amendment was rejected by an evenly divided vote, 9 to 9. Thus, the legislation now before us will give officers

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duty and retired officers carte blanche to carry concealed shotguns, sniper rifles, or other weapons their own police departments have not authorized them to carry. Its failure to limit this privilege to authorized police weapons—or even to handguns, as New Jersey law provides—to undermine the safety of American communities.

Serious safety problems are also raised by the amendment’s override of gun-safety laws for retired officers, a category that is defined to include anyone with a law enforcement capacity for 15 years “in the aggregate” before retiring or resigning and taking a different job. There is no requirement that a retiree demonstrate a special need for a firearm. While the amendment provides that an officer must have technically left law enforcement in “good standing,” it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The amendment does not draw a distinction between officers who served ably and those who did not. Officers who retire in “good standing” while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their lives. As the International Association of Chiefs of Police has observed:

This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of “mental instability.” Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a panel that structures an individual’s mental condition and identifies such problems in current officers.

Perhaps the most troubling aspect of the amendment is its potential to undermine the effective and safe functioning of police departments throughout the country. It removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on duty or off duty.

Second, the amendment provides that regardless of “any other provision of the law of any State or any political subdivision thereof,” any individual who qualifies as a law enforcement officer and who carries a photo ID will be authorized to carry any firearm. In a variety of contexts, including the Federal preemption of State law, courts have interpreted the term “law” to include agency rules and regulations. The Supreme Court has ruled this term specifically includes contractual obligations, work rules, policies, and practices promulgated by State and local police departments.

The PRESIDING OFFICER. The Senator has consumed 15 minutes.

Mr. KENNEDY. As I discussed, there is no requirement in the amendment that active-duty officers be authorized to carry each firearm that they wish to carry concealed. In other words, once an officer qualifies to carry a service weapon, he will have the right under this amendment to carry any gun, on duty or off duty—even if doing so violates his own police department’s rules.

Thus, if Congress enacts this legislation, police chiefs will be stripped of their authority to tell their own officers, for example, that they cannot bring guns into bars while off duty; that they cannot carry their service weapons on vacation; or that they cannot carry a concealed weapon, even though you are in good standing. Even a police officer who retires under threat of discipline and appears to have left his own police department’s rules.

As the International Association of Chiefs of Police stated in a letter to the Judiciary Committee, “under the provisions of [this legislation], police chiefs will lose the authority to regulate what type of firearms the officers they employ can carry even while they are on duty.”

As a result, the legislation would effectively eliminate the ability of a police department to establish rules restricting the ability of officers to carry only department-authorized firearms while on duty. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with the weapon. The amendment also risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff’s injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the commission of a crime risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff’s injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that this amendment “has the potential to significantly and negatively impact the safety of our communities and our officers.”

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and states to cut back on funding for law enforcement. The administration has tried its best to eliminate federal funding for such critical programs as the COPS Universal-Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program.

The last thing Congress should do now is enact legislation that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers’ use of firearms and to maintain discipline. By denying police chiefs the right to run their own departments, the amendment would deal a severe blow to common sense and public safety.

Each State and local government should be allowed to make its own judgment as to whether citizens and out-of-State visitors may carry concealed weapons, and whether active or retired law enforcement officers should be included in or exempted from any prohibition.

This amendment will unnecessarily damage the efforts of States and local governments to protect their citizens from gun violence. It will also expose States and local governments to unneeded risk and raise the question of police chiefs to maintain discipline and control within their own departments.

The Nation will be better served if the Senate puts this misguided legislation aside and turns its attention to measures we know will reduce crime and enhance the safety of police officers and all Americans.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. A minute and a half.

Mr. KENNEDY. Mr. President, the bottom line on this—we are going to have a chance to vote on this next Tuesday—is this is an action by Congress to override State-considered legislation and local legislation on how to protect their local communities. Some States have made the judgment that they do not believe they ought to permit concealed weapons in bars and clubs, schools, and churches of this country. Some States have made the judgment that they do not believe concealed weapons ought to be in schools, because they do not want to have the proliferation of guns in schools, they do not want to have the proliferation of guns in bars, they do not believe concealed weapons ought to be in churches. The States and local communities have made that judgment in order to protect their local communities. But somehow we are deciding here in the Senate, on the basis of about an hour and 20 minutes of debate on this amendment, to override the common good sense of States and local governments and say: We know best. If you are a police officer or retired officer, you can carry that concealed weapon, even though you are not trained to be able to use it or authorized to use it, into the bars, schools, and churches of this country.

That makes no sense and is a contradiction of what the States and local communities do.

How much further do we have to go to see how to the National Rifle Association?

The PRESIDING OFFICER. The Senator’s time has expired.
The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand I have 1 minute.

The legislation exempts qualified active and retired law enforcement officers from State and local prohibitions on the carrying of concealed firearms. What this means is that active and retired police officers will be able to carry their firearms virtually anywhere in the U.S. without having to worry about violating any local or State gun laws.

The bill is noncontroversial and enjoys wide, bipartisan support in both the Senate and the House of Representatives. The Senate bill, S. 253, passed the Judiciary Committee in March 2003 on an 18 to 1 vote. The bill has 67 cosponsors, including Majority Leader BILL FRIST, Minority Leader Tom DASCHLE, and every other member of the Senate leadership from both sides of the aisle. Senator Ben Nighthorse Campbell, a former law enforcement officer, cosponsored the amendment, along with Judiciary Committee Chairman Orrin G. Hatch, Ranking Member Patrick J. Leahy, and Minority Whip Harry Reid.

The House bill, H.R. 218, has 266 cosponsors. In addition to a House majority, the bill has a majority of both the full Judiciary Committee and the subcommittee of jurisdiction. In 1999, the House passed a nearly identical measure as an amendment to another bill by an overwhelming 372 to 55 majority.

This isn’t a “firearms issue”—it’s an officer safety issue. And, on 11 September 2001, it became a critical public safety and homeland security issue.

Law enforcement officers need this bill—it is the number one issue among rank-and-file officers today. Police officers are frequently finding that they, and their families, are the targets of vindictive criminals. A police officer may not remember all the faces of all the criminals he or she has put behind bars, but every one of those criminals will. This legislation gives all police officers the means to legally protect themselves and their loved ones—even if off-duty or retired.

Public safety and homeland security would benefit immensely from this bill becoming law. Law enforcement officers are a dedicated and trained body of men and women sworn to uphold the law and keep the peace. Unlike other professionals, an officer is rarely “off-duty.” When there is a threat to the public or public safety, the police officer is sworn to answer the call of duty. Officers who are traveling from one jurisdiction to another do not leave their instincts or training behind, but without their weapon, that knowledge and training is rendered virtually useless. These bills will provide the means for law enforcement officers to enforce the law and keep the peace—enabling them to put to use that training and knowledge the need arises. Without a weapon, the law enforcement officer is like a rescue diver without diving gear; all the right training and talent to lend to an emergency situation, but without the equipment needed to make that training of any use. Given the ongoing threat of terrorist activity against U.S. citizens, it just makes sense to give our first line of defense the tools they need in a first line of defense. Perhaps the strongest endorsement we can make is that thousands of violent criminals and terrorists will have to see it pass.

This is not a States’ rights issue and the bills are drafted to ensure that it conforms to the U.S. Constitution and the precepts of Federalism. Congress has the authority, under the “full faith and credit” clause of the Constitution, to extend full faith and credit to qualified active and retired law enforcement officers who have met the criteria to carry firearms set by one State, and make those credentials applicable and recognized in all States and territories in these United States. States and localities issue permits to their police officers and set their own requirements for their officers in training and qualifying in the use of these weapons. This legislation maintains the States’ power to set these requirements and determine whether the active or retired officer is qualified in the use of the firearm, and would allow only this narrow universe of persons to carry their firearms when traveling outside their jurisdiction. We believe this is similar to the States’ issuance of drivers’ licenses in that the states differ slightly from State to State, but all States recognize that the drivers have been certified to operate a motor vehicle on public roadways.

All 50 States require their officers to receive many hours—the average is 48—of firearms training before they leave the academy. Before receiving their appointment, law enforcement officers must meet certain score requirements in order to qualify with their weapons, with a passing score of 70 percent. No officer with a score below the 70th percentile is considered qualified with his weapon.

Most States require their officers to requalify with their weapons on a regular basis. Individual agencies may require their officers to qualify more frequently, but they must meet the State’s minimum, which ranges from annually to every 5 years.

How Do Retired Officers Qualify: In order to carry under this legislation, a retired law enforcement officer would have to qualify with his firearm at his own expense every 12 months and meet the qualifications as an active duty officer in his State of residence. For example, a New Jersey police officer that retires to North Carolina must qualify annually at his own expense and meet the same standards that an active duty officer in North Carolina must meet.

Many Federal law enforcement officers rely on the authority to carry their firearms. Training and qualification for Federal law enforcement officers is not so dissimilar to that of State and local law enforcement officers. There have been no issues of concern with Federal officers carrying in all jurisdictions, why would there be for State and local law enforcement officers?

There is Congressional precedent on this issue. Congress has previously acted to force States to recognize permits to carry issued by other States on the basis of employment in other instances. In June 1993, the Senate and House approved an amendment to a law, PL 103-55, mandating reciprocity for weapons licenses issued to armored car company crew members among States. Congress amended the act in 1998, PL 105-78, providing that the licenses must be renewed every 2 years. This precedent allows armored car guards—who do not have nearly the same level of training and qualifications as law enforcement officers—to receive a license to carry a firearm in one State and forces other States to recognize its validity.

Airline pilots can obtain the authority law enforcement officers are seeking. In addition to airline guards, Congress passed a law exempts airline pilots who participate in the “Federal flight deck officer” from Federal and State law with respect to the carrying of concealed firearms. Note that this authority is not limited to the cockpit—but also while the pilots are on the ground and off-duty.

Congress has the authority to preempt State and local prohibitions on the carrying of concealed firearms. In 1994, after Congress amended the “state-preemption” provisions in the 1994 Omnibus Crime Control Act, Congress has in the past granted a certain class of persons—based on the nature of their employment and their value in an emergency situation—the authority to carry firearms in all jurisdictions. To do the same for law enforcement just makes good sense.

On the last weekend in June, FOP members from Maryland Lodge No. 70 were packing up their campsite following a 3-day camping trip with their families in Harpers Ferry. That Sunday afternoon, after many of the officers and their families had left, a gunman opened fire on another camper, wounding him in the lower leg. Detective Timothy Utzig and Officer Andrew Albach reacted quickly, instructing their families to leave the scene, while they retrieved their firearms and confronted the man. The gunman, yelling incoherently, eventually obeyed the officers’ orders to lie down on the ground. After securing the campsite and discovering that the man had several more live rounds for his shotgun in his possession, Detective Utzig and Officer Albach held the man until West Virginia authorities could arrive. It was discovered later that the gunman had an extensive criminal history—including a murder conviction.

Sergeant Sam Harmon of the Jefferson County Sheriff’s Department said, "There’s no telling how many lives these police officers saved Sunday afternoon. These guys are my heroes for life."

They were certainly heroes, but they were also in violation of West Virginia
State law because they possessed firearms. These brave officers—who stopped a gunman’s rampage on their day off, outside of their own jurisdiction—were not charged, but their action placed themselves in legal jeopardy, physically. Had they complied with State law that they or their families could have been victims. This is just one example of how public safety could be served if this bill were made law.

In 1991, off-duty Minneapolis Police Officer Jerry Johnson was vacationing in Phoenix, Arizona. He witnessed a man knock an elderly female to the ground, take her purse, and run. He immediately gave chase, without stopping to think that he was unarmed because he could not legally carry a firearm in Arizona. He caught the thief after a mile-long foot chase, and fought to subdue him. Had the criminal been armed, Officer Johnson would surely have been killed. Now retired, Officer Johnson through a great deal of trouble in his own State of Minnesota to get a concealed carry weapon permit as it is up to each individual chief whether or not to issue. When he moved into a different jurisdiction, he had to intervene because the chief of police in his new locality initially refused to issue him a permit.

Off-duty and retired officers are often targeted for attack by vengeful criminals. Off-duty police officer Tim Brauer was shot outside a restaurant in an Oklahoma City restaurant, outside his jurisdiction. While in the restroom, he was attacked by a man he had previously arrested. At the time, Oklahoma State law permitted off-duty law enforcement officers to carry their firearms only within their home jurisdiction. In obeying the law and leaving his firearm at home while out with his family, he was left vulnerable to his attacker. Officer Brauer suffered severe injuries, but he lived and his family was not harmed. Oklahoma law now permits officers to carry throughout the State.

Officer Shynelle Marie Mason, a 2-year veteran with the Detroit, Michigan Police Department, was shot and killed on July 14, 2000, by a man she had previously arrested for carrying a concealed weapon. She encountered the man while off-duty; he confronted her and shot her several times in the chest. Though she was shot with the junior, her death was considered a “line of duty” death and her name appears on the Wall of Remembrance at Judiciary Square in Washington, DC.

In 2000, off-duty Las Vegas Police Officer Dennis Devitte, a 20-year veteran was relaxing at a local sports bar when the establishment was attacked by three men. On the clock, the man opened fire on the crowd, hitting a man in a wheelchair. Officer Devitte did not hesitate—he pulled his tiny .25-caliber semiautomatic. Officer Devitte got within one foot of the man, fired and killed the gunman—but not before he was shot eight times. The remaining two gunmen fled. All six civilians wounded in the attack recovered. One must say Officer Devitte’s action as “the most courageous thing I’ve ever seen.” Officer Devitte lost six units of blood, his gun hand was badly damaged and his knee had to be entirely reconstructed with bones taken from a cadaver. And yet, he was back on the job 6 months later. For his incredibly heroic actions, Officer Devitte was selected as the “Police Officer of the Year” by the International Association of Chiefs of Police, IACP, and Parade magazine.

On the 4th of July, 1999, off-duty Police Officer Alfredo Rodriguez of the Nassau County, NY Police Department was driving to Norwich, CT with his wife and four children when he observed a Norwich Police Officer attempt to arrest a highly intoxicated man running in and out of traffic. A second man attacked the Norwich officer from behind and shot and killed him. Officer Rodriguez, although unarmed, pulled over, left his family and rushed to the aid of the officer. He was able to free the Norwich officer from a chokehold and disarm the attacker, who had successfully gotten the Norwich officer’s firearm. The two officers restrained the initial suspect and battled the second until additional uniformed Norwich officers arrived.

Officer Rodriguez was awarded Nassau County’s Medal of Meritorious Service for his actions, which undoubtedly saved the life of Norwich Police Officer Peter Camp.

In July 1995, recently Retired Police Chief John Diventer of the Hanover, NJ Police Department, was with his family visiting his family’s grave plot in Newark, when he observed several robbers attack two elderly women and steal their purses. He attempted to intervene, but was shot and killed. At the time of the chief’s murder, retired police officers were not authorized to carry firearms in New Jersey. This incident prompted a change in New Jersey law, which now permits retired officers to carry throughout the State.

In closing, let me say about the amendment that is before us, concealed-carry, 67 Members of this Senate, Democrats and Republicans, believe this is a necessary and appropriate amendment. We believe it is. We think it is important that it be adopted, and that we extend these law-abiding, well-trained and schooled law enforcement officers and retirees this opportunity and privilege.

With that, Mr. President, my time has expired. I understand we will now lay this amendment aside, to be voted on Tuesday next, and by the order of the unanimous consent agreement we arrived at last night. Senator Kennedy is now to have the floor to offer one of his amendments to be debated.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I yield the floor.

Mr. REID. Mr. President, I rise to join Senators CAMPBELL, HATCH and LeAHY to offer the Law Enforcement Officers Safety Act amendment.

The purpose of the amendment is simple: a world is expecting the retired law enforcement officers from State and local laws that prohibit carrying concealed firearms, as long as
the officers were bearing valid ID issued from their employing agency.

The Fraternal Order of Police, representing more than 1,000 Nevada law enforcement officers and more than 300,000 members nationwide, supports this amendment.

They support this bill because it would improve public safety. It would allow law enforcement officers to protect the public, as well as themselves. This amendment mirrors a bill sponsored by more than two-thirds of America’s Senators.

Again, our overwhelming support underscores the fact that this measure will protect our communities, as well as the brave police officers who serve us so well.

As I learned many years ago when I was on the Capitol police force, law enforcement officers are never truly “off-duty.” They are dedicated public servants trained to uphold the law and keep the peace.

When there is a threat to the peace or to our public safety, law enforcement officers are sworn to answer that call—and answer it, whether they are on duty or not. Law enforcement officers are always protecting the innocent just as they are always under threat from the guilty.

Although a police officer might not remember the name and face of every criminal he or she has put behind bars, criminals have long memories. A law enforcement officer is a target, whether in or out of uniform, whether active or retired, and whether on duty or off.

In fact, roughly 5 percent of officers who are killed in action are actually “off duty” at the time of their death.

This amendment is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers to carry concealed firearms that will help them protect innocent citizens.

I urge all my colleagues to support this measure, which will make our communities safer and protect our brave police officers.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 2619

Mr. KENNEDY. Mr. President, I understand we have a half an hour; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself 15 minutes.

The PRESIDING OFFICER. Does the Senator wish to send the amendment to the desk?

Mr. KENNEDY. I believe the amendment is at the desk.

The PRESIDING OFFICER. The clerk will report. The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KEN
nEDY proposes an amendment numbered 2619].

Mr. KENNEDY. 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:

(Purpose: To expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor)

On page 11, after line 19, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION. —Section 921a(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking “or” at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(iii) a projectile that may be used in a handgun and that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or

(iv) a projectile for a centerfire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR. —Section 926 of title 18, United States Code, is amended by adding after the following:

“(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

“(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, the performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.

“(3) As used in paragraph (1), the term ‘Body Armor Exemplar’ means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.”.

Mr. KENNEDY. Mr. President, I mentioned that there had been a homicide in Massachusetts in October of this year, seven months. It was juvenile homicide. I ask that the Record be so corrected.

As we all know too well, the debate about gun violence has often been aggressive and polarizing with anti-gun violence advocates on one side of the debate, pro-gun advocates on the other. There are deep divisions in the country on the issue of gun safety, and the current debate on the gun immunity bill has thus far only served to highlight those divisions.

I believe, however, that there are still some principles on which we can all agree. One principle is that we should do everything we can to protect the lives and safety of police officers who are working to protect our streets, schools, and communities.

The amendment I am offering today is intended to close the existing loopholes in the Federal law that bans cop-killer bullets. Police officers depend on body armor for their lives. Body armor has saved thousands of police officers from dangerous injury by firearm assault. Most police officers who serve large jurisdictions wear armor at all times when on duty. Nevertheless, even with body armor, too many police officers remain vulnerable to gun violence.

According to the Federal Bureau of Investigation, every year between 50 and 80 police officers are feloniously killed in the line of duty. In 2002, firearms were used in 51 of the 56 murders of police officers. In those shootings, 34 of the officers were wearing body armor at the time of their deaths. From 1992 to 2002, at least 20 police officers were killed after bullets penetrated their armor vests and entered their upper torso.

Some gun organizations have argued that cop-killer bullets are a myth. The families of these slain police officers know better. In fact, we know that armor-piercing ammunition is not a myth because it is openly and notoriously marketed and sold by gun dealers.

I direct my colleagues’ attention to the Web site of Hi-Vel, Incorporated, a self-described exotic products distributor and manufacturer in Delta, UT. You can access its online catalog on the Internet right now. Hi-Vel’s catalog lists an entry for armor-piercing ammunition. On that page you will find a listing for armor-piercing bullets that penetrate body armor. The bullets are available in packages of 10 for $9.95 each. Hi-Vel carries armor-piercing bullets for both the .223 caliber rifles such as the Bushmaster sniper rifle used in the Washington area attacks in October 2002, and the 7.62 caliber assault weapons. Over the past 10 years, these two caliber weapons were responsible for the deaths of 14 of the 20 law enforcement officers killed by ammunition that penetrated body armor.

In a recent report, the ATF identified three, .223 and the 7.62 caliber rifles, as the ones most frequently encountered by police officers. These high-capa\ny rifles, the ATF wrote, pose an enhanced threat to law enforcement, in part because of their ability to expel particles at velocities that are capable of penetrating the type of soft body armor typically worn by law enforcement officers.

Another rifle caliber, the 30.30 caliber, was responsible for penetrating three officers’ armor and killing them in 1993, 1996, and 2002. This ammunition is also capable of puncturing light-armed vehicles, ballistic or armored vehicles, armored limousines, armored 600-pound safe with 600 pounds of safe armor plating.

It is outrageous and unconscionable that such ammunition continues to be sold in the United States of America. Armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a license. There is no Federal minimum age of possession. Purchases may be made over the counter, by mail order, by fax, by Internet, and there is
no Federal requirement that dealers retain sales records.

In 1999, investigators for the General Accounting Office went undercover to assess the availability of .50 caliber armor-piercing ammunition. Purchase of such bullets, it turned out, is only slightly more difficult than buying a lottery ticket or a gallon of milk. Dealers in Delaware, Pennsylvania, and West Virginia informed the investigators that the purchase of these kinds of ammunition is subject to no Federal, State, or local restrictions. Dealers in Alaska, Nebraska, and Oregon who advertised over the Internet told an undercover agent that he could buy the ammunition in a matter of minutes, even after he said he wanted the bullets shipped to Washington, DC, and needed them to pierce an armored limousine or theoretically take down a helicopter.

Talk about homeland security.

In a single year, over 100,000 rounds of military surplus armor-piercing ammunition were sold to civilians in the United States. In addition, the gun manufacturer, Smith & Wesson, recently advertised a powerful new revolver, the .500 magnum, 4½ pounds, 15 inches long, that clearly has the capability of piercing body armor using ammunition allowed under the current law.

The publication, Gun Week, reviewed the new weapon with enthusiasm: “Hold the magic, feel the power,” it wrote.

Many of our leaders will buy the Smith & Wesson system for the same reason that Edmund Hillary climbed Mt. Everest: Because it is there.

Current Federal law bans certain armor-piercing ammunition for handguns. It establishes a content-based standard. It covers ammunition that is, first of all, constructed from tungsten or depleted uranium, or, secondly, larger than .22 caliber with a jacket that weighs no more than 25 percent of the total weight of the bullet.

However, there are no restrictions on ammunition that may be manufactured from other materials but can still penetrate body armor. Even more important, there are no restrictions on armor-piercing ammunition used in rifles and assault weapons. Armor-piercing ammunition has no purpose other than penetrating bulletproof vests. It is not for sporting or self-defense. Such armor-piercing ammunition has no place in our society—none.

Armor-piercing bullets that sidestep the Federal ban, such as that advertised on Hi-Vel’s Web site, put the lives of American officers and those who defend American citizens in jeopardy every single day. We know the terrorists are now exploiting the weaknesses and loopholes in our gun laws. The terrorists training manual distributed by American soldiers in Afghanistan in 2001 advised al-Qaeda operatives to buy assault weapons in the United States and use them against us.

Terrorists are bent on exploiting weaknesses in our gun laws. Just think of what a terrorist could do with a sniper rifle and only a moderate supply of armor-piercing ammunition.

My amendment amends the Federal ban on armor-piercing ammunition to include a performance standard and extends the ban on centerfire rifles, which include the sniper rifles and assault weapons responsible for the deaths of 17 police officers whose body armor was penetrated by bullets.

My amendment will not apply to ammunition that is now routinely used in hunting rifles or other centerfire rifles.

To the contrary, it only covers ammunition that is designed or marketed as having armor-piercing capability. That is—it designed or marketed as having armor-piercing capability, such as armor-piercing ammunition that is now advertised on the Hi-Vel Web site, is some kind of a secret that must be brought out so we can understand them.

Let me, first and foremost, read into the RECORD a letter from the president of the Fraternal Order of Police.

Mr. Craapo. Who yields time? The Senator from Idaho.

Mr. Craig. Mr. President, we have heard over the last few minutes what might appear, at first listening, to be alarming facts, figures, and statistics, but we all know that in any good debate the devil is in the details, and in the details of the Kennedy amendment are some secrets that must be brought out so we can understand them.

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The President. Mr. President, we have heard over the last few minutes what might appear, at first listening, to be alarming facts, figures, and statistics, but we all know that in any good debate the devil is in the details, and in the details of the Kennedy amendment are some secrets that must be brought out so we can understand them.

To the contrary, it only covers ammunition that is designed or marketed as having armor-piercing capability. That is—designed or marketed as having armor-piercing capability, such as armor-piercing ammunition that is now advertised on the Hi-Vel Web site.

This is an issue on which mainstream gun owners and gun safety advocates can agree. I urge my colleagues to vote in support of this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. Craig). Who yields time? The Senator from Idaho.

Mr. Canterbury goes on:

The Kennedy amendment was considered and defeated by the Senate Judiciary Committee in March of 2003 on a 10–6 vote. We believe that it should be rejected again.

On behalf of more than 311,000 members of the Fraternal Order of Police, I thank you for taking our views on this issue into consideration.

Here is the president of the National Grand Lodge of the Fraternal Order of Police saying that the Kennedy amendment is not what it is. What he is, in fact, saying is that the current armor-piercing, cop-killing bullet law in place is the kind of adequate protection they need.

I have made that letter available to all of our colleagues as we debate this issue.

What will the Kennedy amendment do? I think it is important for us to understand in reality the impact of expanding this kind of definition and understanding.

What it does—and I don’t know that the Senator intends this purpose—is that it begins to eliminate ammunition that is used in a legitimate way for hunting. He is right, Bambi doesn’t wear body armor. Bambi doesn’t need to wear body armor. But in the legal sportsmen’s industry and in hunting, here are some very common rifles: .30-06, Winchester, 30.06 Springfield, 308 Winchester, 300 Savage, 7 mm Remington, 270 Winchester, 257 Roberts, 253 Winchester, and 223 Remington, just to name a few. We believe based on our understanding of the definition that this kind of ammunition is eliminated.

What we also know is that there is ammunition out there used with a rifle
that can pierce body armor. That is a fact. But the ammunition we are talking about that is traditionally known as the cop-killer bullet that is now outlawed in this country has nothing to do with the rifle. It had everything to do with the pistol, that weapon of choice by criminals in our country, and we know why.

Criminals do not walk down the street with a 30.06 over their shoulder. Somehow there is the visible factor that denies them the use of that rifle. They use handguns. They conceal them. They hide them on their person. They carry them in a package or in a carrying type of value. They do not carry rifles. Yet the Senator's amendment goes directly at the hunting sports; it goes directly at hunting ammunition. This is why at the appropriate time when we have concluded the debate on the Senator's amendment, I will offer an alternative amendment under the unanimous consent agreement that we think reflects what ought to be done in relation to what the Senator is offering.

Let me also add that the most extensive study on this issue pursuant to a congressional mandate to the Antiterrorism and Effective Death Penalty Act of 1996 was a BATF draft report provided in 1997 to those individuals and organizations that had assisted in a BATF study of the issue of armor-piercing ammunition. That study mandated, in response to President Clinton's repeated call, for a congressional mandate to the Antiterrorism and Effective Death Penalty Act of 1996 was a BATF draft report provided in 1997 to those individuals and organizations that had assisted in a BATF study of the issue of armor-piercing ammunition. That study mandated, in response to President Clinton's repeated call, for a congressional mandate to the Antiterrorism and Effective Death Penalty Act of 1996 was a BATF draft report provided in 1997 to those individuals and organizations that had assisted in a BATF study of the issue of armor-piercing ammunition.

That study focused on how to improve police training, both in teaching officers how to defeat snatches by criminals and to encourage officers to wear vests routinely. We do not believe, and I would hope the Senator from Massachusetts would agree, that is what we would intend to do. We believe, and I would hope the Senator from Massachusetts would agree, that is what we would intend to do.

In conclusion, what I am saying is the current law is adequate. This is not perfecting language. This is language to try to defeat the underlying bill, S. 1805. Obviously, the Senator has spoken openly against that. This is in no way a bill that improves the underlying bill itself and we think very questionably does it improve any existing Federal law. What it begins to do is what the sporting community and the legitimate police officers who are facing law enforcement officials, and no attempt to discard the existing law is my opinion and many others, should be undertaken.

At the same time, because the existing laws are working, no additional legislation is necessary or required. Certainly that that deals with performance-based standards, because one goes directly at ammunition used in target practice and in hunting. We do not believe, and I would hope the Senator from Massachusetts would agree, that is what we would intend to do.

In conclusion, what I am saying is the current law is adequate. This is not perfecting language. This is language to try to defeat the underlying bill, S. 1805. Obviously, the Senator has spoken openly against that. This is in no way a bill that improves the underlying bill itself and we think very questionably does it improve any existing Federal law. What it begins to do is what the sporting community and the legitimate police officers who are facing law enforcement officials, and no attempt to discard the existing law is my opinion and many others, should be undertaken. That is what this amendment is about. That is what this amendment is about.

The Senator referred to the earlier bill we had on the law. I am the author of that. It took 5 years to get that passed. Five years it was opposed by the NRA. I do not doubt it probably is going to take 5 years to do something about armor-piercing bullets that can shoot through body armor, through a limousine, or bring down a helicopter. That is what we are talking about, 17 of the fatal shootings.

I ask unanimous consent that tables 10 and 36 of a document entitled "Law Enforcement Officers Feloniously Killed by Firearms" be printed in the RECORD.

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

### TABLE 10.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

(Recorded in Upper Torso While Wearing Body Armor, 1993–2001)

<table>
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</thead>
<tbody>
<tr>
<td>Entered between side panels of vest</td>
<td>114</td>
<td>5</td>
<td>11</td>
<td>10</td>
<td>12</td>
<td>16</td>
<td>14</td>
<td>11</td>
<td>10</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Entered through armpit or armpit area of vest</td>
<td>39</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Entered above vest (front or back of neck, collarbone area)</td>
<td>36</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>9</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Entered below vest (abdominal or lower back area)</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Penetrated vest</td>
<td>19</td>
<td>2</td>
<td>3</td>
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### TABLE 36.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

(Recorded in Torso Wounds and Use of Body Armor, 1993–2002)

<table>
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<tr>
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</thead>
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<tr>
<td>Total</td>
<td>120</td>
<td>11</td>
<td>11</td>
<td>10</td>
<td>12</td>
<td>16</td>
<td>14</td>
<td>11</td>
<td>10</td>
<td>14</td>
<td>11</td>
</tr>
<tr>
<td>Entered between side panels of vest</td>
<td>34</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Entered through armpit or armpit area of vest</td>
<td>38</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>8</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entered above vest (front or back of neck, collarbone area)</td>
<td>34</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>8</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Entered below vest (abdominal or lower back area)</td>
<td>18</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
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</table>
Mr. KENNEDY. Seventeen of the fatal shootings were done by .223, .762, or .30.30 caliber rifles. Armor-piercing ammunition for these caliber rifles is widely advertised and available, and there are no restrictions at all on the deadly ammunition.

My amendment will not apply to the ammunition routinely used in the hunting rifles or other centerfire rifles. To the contrary, it covers only the ammunition that is designed to market bullets having armor-piercing capability. This investigation is not satisfactory to the Senator from Idaho, work with me over the weekend to get the right language that stops this, and he and I will offer a unanimous consent to be able to vote on that on the Senate floor. The Senate knows what we are driving at, the kind of armor-piercing bullets that can penetrate the vests our law enforcement officers are going to wear.

I know the Fraternal Order feels we are trying to slow this bill down. With all respect to them, I have been the author of the armor-piercing bullets for 20 years. I have put it on this. I will put it on something else. They will support us. The Senator from Idaho will support us. This is about the next bill that comes down here. They know that it is not the issue.

As I have pointed out, we are talking about the kind that is being advertised on the Web site. Here it is for everyone. As I have pointed out, we are talking about the kind that is being advertised on the Web site. Here it is for everyone. Here it is for everyone.

This is the discussion the General Accounting Office had. It is a GAO study, which I will put in the RECORD.

The whole section III of it is only 2½ pages. I ask unanimous consent that it be printed in the RECORD.

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

III. THE AVAILABILITY OF ARMOR PIERCING AMMUNITION IN THE CIVILIAN MARKET

As part of their investigation, GAO agents went undercover to assess the availability of armor-piercing ammunition. This investigation showed that military surplus ammunition is widely available. First, GAO contacted weapons dealers in Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. GAO found that these dealers were willing to sell armor piercing .50 caliber ammunition. According to GAO, the dealers in Delaware, Pennsylvania, and West Virginia informed the agent that purchasing these kinds of ammunition was not subject to any federal, state, or local restrictions.

The dealers in Virginia told the agent that this specialized ammunition was illegal to sell or possess in that state. The dealer in Maryland:Bullet shell such ammunition only to Maryland residents. Although the investigator told the dealers in Delaware, Pennsylvania, and West Virginia that the Virginia resident, none of the other dealers warned the agent about Virginia’s restrictions.

An undercover GAO agent also telephoned several ammunition dealers that advertised specialized ammunition online. The agent called ammunition dealers in Alaska, Nebraska, and Oregon and recorded conversations in which he purported to be a customer interested in buying ammunition for shipment to Washington, D.C., or Virginia. Each dealer refused to sell such ammunition to the GAO investigator. However, the Alaska dealer said he would sell such ammunition if he could secure the purchase of specialized ammunition from any of the three dealers within a matter of minutes.

The dealers in Nebraska and Oregon stated that they could make the transaction when the agent faxed a copy of his driver’s license with a signed statement that he was over 21 and was violating no federal, state, or local restrictions on the purchase. Although the agent said he was from Virginia, which bans this type of ammunition, neither dealer expressed reservation even restricted to a Virginia resident. According to the GAO investigator, the dealer in Alaska said he had 10,000 rounds of armor-piercing .50 caliber ammunition and was prepared to sell such ammunition to the investigator. However, the Alaska dealer said the investigator would have to pick up the ammunition in Alaska because UPS Ground did not ship goods from Alaska to the lower 48 states.

The GAO investigator taped the conversations with the ammunition dealers. These conversations reveal that the ammunition dealers employ an “ask no questions” approach. They were willing to sell military surplus ammunition even after the investigator said he wanted the ammunition shipped to his work address in Washington, D.C., and needed it to pierce an armored limousine. The, theoretically, to “take down” a helicopter.

One of the dealers that GAO contacted was Cascade Ammo, in Roseburg, Oregon. Cascade Ammo is one of the largest dealers in the Northwest. They are testing armored cars. Like 30-06 AP rounds. They'll go through bullet-proof glass?

Dealer: (laughing) You don’t want to see a bullet hole in there.

Agent: Okay. So, yeah, I guess you say testing against armored limousines . . . Yeah, I’ll be testing against armored limousines. But, but it’s gotta work.

Agent: Good. You know. I’m very happy to see that we’ll be able to do business here, because, I’m a little bit concerned, because here on the East Coast when you go to buy ammunition—these heavy-duty .50 cal—they ask a lot of questions.

Dealer: Oh.

Agent: So I don’t like people asking me questions why I want this ammunition.

Dealer: Well, see, they use them out here for hunting.

Agent: Um, huh. Well, you could say I’m going to be using this for hunting also, but just hunting of a different kind.

Dealer: (laughing) As long as it’s nothing illegal.


The conversations with the other ammunition dealers were similar. For example, the dealer in Nebraska assured the agent that this ammunition would go through metal, an armored limousine, and bullet-proof glass. Later in the conversation, the agent and the dealer discussed whether ordinary “sniper round” ammunition or specialized armor-piercing rounds could be purchased in the Spokane area. Again, the best deal the agent could get was to be using this against . . . an armored limousine and something with ballistic glass.

In the dealer’s other conversation, the dealer in Alaska claimed his armor piercing ammunition would “go through six inches of steel up to a 45 degree angle at a thousand yards.” Then when the agent explained that it was very important for him to “defeat an armored-type vehicle,” the dealer responds...
“when they cattle carts come running down your drive, you’d better be able to stop it.”

The agent respond by saying, “Exactly, but you know, you can think who drives in armored limousines, that’s why I’m going to need it someday, those people in armored limousines.” Audio tapes of these conversations are available on Rep. Waxman’s website.

Mr. KENNEDY. This is the part I want to read. They had discussions with different dealers, and we can go through some of those, but listen to what the Oregon dealer said. He was discussing armor-piercing bullets, and people are talking about that. That is the agent from the GAO:

Right. And then, if I theoretically wanted to use these rounds—

Armor-piercing ammunition of this type—
to take down an aircraft, say either a helicopter or something like that, I should be able to take a helicopter down, shouldn’t I?

Dea, we need these. I remember we’re not armored to a point that it would stop... .

Then it continues. These are the discussions with the dealers. They talk about how they can penetrate the armor, different munitions, and how they can bring down helicopters, and we are talking about continuing to let them be sold unregulated in this country, over 100,000 rounds for it, and the result of which is we are seeing brave police officers wearing those armor-piercing vests killed.

What is the possible justification? Why are we so intimidated by the National Rifle Association that we are not willing to deal with armor-piercing bullets? That is it. That is it. We haven’t heard the argument—and I would welcome it—how these kinds of bullets are necessary for hunting. I would love to hear that argument.

Oh, I remember when we first offered legislation on the cop-killer bullets in the Judiciary Committee we heard they are necessary because we want to be humane to the deer, and those bullets go on and kill the deer rather than wound it. That is what we heard. Cop-killer bullets. That was the answer we heard for 5 years before we finally got that passed.

I remember the time it passed. It was with the help and support of, actually, the Senator from South Carolina, Mr. Strom Thurmond. I remember it very clearly because I could not understand why we could not make progress. Now we know, with the new technology in this country, we have seen in other areas, exactly what is happening. It is putting these police officers more and more at risk. That is why we are attempting to do this.

We hear from the Senator if he is going to offer amendments of other substance. Why not do the real thing? What are we going to have, armor-piercing bullets “lite”? So instead of 20 officers being killed there will only be 8? 12? Why not do the whole job? That is what this amendment will do. It will do something.

When this amendment is eventually accepted, and it eventually will be, they will be able to look on page 40, the list of the law enforcement officers killed from armor-piercing bullets, and it will be empty because we will have done something that will be meaningful. But I tell you, we are going to come back every single year. We are going to fight, and the numbers are going to continue to go up and up, as they are going up, according to the FBI report, with no justification whatsoever for including these provisions.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, how much time is left on both sides?

The PRESIDING OFFICER. The proponents of the amendment have 10 minutes, the opponents of the amendment have 18 minutes.

Mr. KENNEDY. If the Senator would like to agree, I would just as soon have each of us have a little time before we vote. I know the leadership has it tight, and I know it has been difficult to work, but I would rather take 3 or 4 minutes before we vote on Monday. But I don’t know whether that is possible. I don’t like to ask consent here. I will continue the opportunity to continue to discuss this, but I think we probably would have more involved in it later on.

I am instructed by the floor staff we will have a very brief time prior to the vote.

Mr. CRAIG. Let me respond to the Senator’s inquiry. I don’t disagree with him. I think it is important we do have some limited time to discuss the difference between his amendment and what will be known as the Frist-Craig amendment that will be offered in a few moments. That is important.

I think we have all heard the Senator from Massachusetts very clearly. He said he wants to ban assault weapons and rifle ammunition. What he didn’t say, or what he will not say, is that the standards he establishes in his legislation, performance-based standards, ban what is currently on-the-shelf hunting ammunition. Does the hunting ammunition in a high-powered rifle have the ability to penetrate soft body armor? Yes, it does.

Does it have the ability to penetrate other soft armor? Yes, it does. Is it used for that purpose? No. It is rarely ever found purpose.

We have a choice. Clearly it is against the law when it is used for that purpose and we all know that and we ought to go to those people who use legitimate firearms in illegal ways instead of trying to eliminate the firearm or, in this case, the ammunition.

But, of course, we know, and all of America’s hunters know, they could have a 30.06 in their gun safe, they could have a 30.30 in their gun safe, they could have a .30 in their gun safe, they could have a .270 in their gun safe, and if they didn’t have the ammunition for it, it would be a marvelous historic relic of America’s past. Is that what the Senator from Massachusetts wants?

He says not. But we all know what performance-based standards do. When you establish a band through that, that is what you accomplish. The fact is, virtually all hunting rifle ammunition is capable of penetrating soft body armor. That is a reality. So by his definition does that go off the market? I believe it does. That is why I think it is unnecessary. That is why the President of the Fraternal Order of Police said the Kennedy amendment is to kill the underlying amendment or to make it dramatically of less value, and he and 311,000 members of the Fraternal Order of Police and I say, probably a good many of them are hunters, and they recognize more than anybody else because they are probably pretty talented people when it comes to understanding ballistics. When it could not understanding ammunition, they probably know a great deal more about it than Senator KENNEDY or this Senator, Mr. CRAIG.

They say no, it is not necessary. The current law that the Senator speaks to, that he is proud of because—he is a relic of our historic past. I don’t believe a majority of the Senate will go there. I hope the amendment I will soon offer will provide ample reason to say, yes, we are going to get tough on anybody who uses an armor-piercing bullet of any kind that is capable of penetrating a vest, soft body armor. That is what we ought to be about, instead of using the language and not the definition—and using the language and not the reality—and using performance-based bans to eliminate a very large category of hunting ammunition and other types of ammunition used for target practice and professionally in this country.

I strongly oppose and will encourage my colleagues to oppose this amendment. Mr. President, we have possibly one other Senator wishing to come to speak. Let me check on that. If that is not true, I see no reason we couldn’t reserve the remainder of our time or move on to another amendment.
February 26, 2004

CONGRESSIONAL RECORD — SENATE
S1639

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I just want to remind the Senate what we have just heard. It is a wonderful techni- que. I do not disparage my friend from Idaho. He and I have had discussions on this. But that is to misrepresent what the amendment does and then to differ with it.

I have been here several years and I know that technique. It is one that I have use of in a while.

People ought to understand, when we are talking about life and death, we ought to be willing to at least deal with the facts.

The facts are as described in the amendment about what the definition would be in terms of the armor-piercing

bullets. That talks about a projectile for centerfire rifles designed or marketed as having an armor-piercing capability that the Attorney General determined pursuant to the section 922(d) be likely to penetrate body armor than standard ammunition of the same caliber, period.

Armor-piercing bullets—as my good friend says, wants to eliminate all ammunition for these weapons and, therefore, we will just be relics on the shelves of time.

This is what it is; it is written into the amendment: a projectile for centerfire rifles designed or marketed as having armor-piercing capability that the Attorney General determines—not the Senator from Massachusetts, not the Senator from Idaho—but the one that has the capability to more likely penetrate body armor.

That is what we are talking about—penetrating body armor that law enforcement officers wear and which stands between their life and their death.

That is what this amendment does. We have already seen and sadly reviewed the statistics that are out there now about the brave officers who have already been killed. We will have an opportunity to do something about that on Tuesday next. Let us not fail to do so.

Over the weekend, if there is language that is necessary to ensure that particular purpose can be achieved with more effective language, let me give the assurance to the Senator from Idaho and others interested who take that position that we are more than glad to work that out.

We will not compromise on dealing with the fundamental issue; and that is armor-piercing bullets penetrating those vests or put at risk the lives of brave officers today and in the future.

I withheld the remainder of my time. I saw the Senator from the State of Washington who I believe is ready to move ahead. I will either yield back my time or retain my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask at this moment that the Senator not yield time. I have a few moments remain- ing on my time. I am going to ask for a very short period of time to go into a quorum call at which time we will come out of it and offer the Frist-Craig amendment. I don’t need to debate that for any length of time. That is in the order of the unanimous consent. As the Senator from Massachusetts knows, those two then will be set aside to be voted on Tuesday next.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. How much time remains on the current amendment, the Ken- nedy amendment?

The PRESIDING OFFICER. The sponsor has 6 1⁄2 minutes and the oppo- nents have 1½ minutes.

Mr. CRAIG. I am prepared to yield back if the Senator is, and I will offer the first Craig amendment and speak for a few short minutes on that and then Yield back.

Mr. REID. We yield back the time of Senator KENNEDY.

The PRESIDING OFFICER. Without objection, the time of the proponent of the amendment is yielded back.

Mr. CRAIG. Mr. President, I am prepared to yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. CRAIG. It is my understanding that the Kennedy amendment will now be set aside to be voted on Tuesday next.

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 325

Mr. CRAIG. I send to the desk the Frist-Craig amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. Frist, for himself and Mr. CRAIG, proposes an amendment numbered 325.

Mr. CRAIG. 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:

(Purpose: To regulate the sale and possession of armor piercing ammunition, and for other purposes)

At the appropriate place, add the follow- ing:

SEC. 3. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

“(7) for any person to manufacture or im- port armor piercing ammunition, unless—

“(A) the manufacture of such ammunition is for the purpose of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) the manufacture of such ammunition is for the purpose of exportation; or

“(C) the manufacture or importation of such ammunition is for the purpose of test- ing or experimentation that has been author- ized by the Attorney General.

“(b) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless sale or delivery is yielded back.

“(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(b) for the purpose of exportation; or

“(C) is for the purpose of testing or experi- mentation and has been authorized by the Attorney General.”

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

“(C) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provi- sion of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of vio- lence or drug trafficking crime that provides for enhanced punishment imposed by the use of a deadly or dangerous weapon or device) for which the person may be pros- ecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, poss- esses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

“(A) be sentenced to a term of imprison- ment of not less than 15 years;

“(B) if death results from the use of such ammunition—

“(i) if the killing is murder (as defined in section 1111), be punished by death or sen- tenced to a term of imprisonment for any term of years or for life; and

“(ii) if the killing is manslaughter (as de- fined in section 1112), be punished as pro- vided in section 1112.”

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uni- form standard for the uniform testing of projec- tiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study con- ducted under paragraph (1) shall address—

(A) variations in performance that are re- lated to the length of the barrel of the hand- gun or centerfire rifle from which the projec- tile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attor- ney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

Mr. CRAIG. Mr. President, Senator KENNEDY has a copy of this straight- forward amendment that strengthens the current armor-piercing bullet law. It does a couple of things.

It says the Attorney General shall commission a study to determine whether a uniform standard for the uniform testing of projectiles against body armor is feasible and what impact it would have on sporting and hunting uses. It also says to be studied variations in performance that are related to the length of the barrel of the handgun or the
Mr. CRAMER. Mr. President, in response to the Senator from Massachusetts, his legislation goes at long guns, rifles, and their ammunition. What I did not say, nor did not say in my amendment, is that in this country the kind of hunting ammunition we believe it will, and that certainly a good many others do.

I am not insensitive to what the Senator is saying, but I am saying, let’s get the facts. We do not want to wipe out half the hunting or two-thirds of the hunting ammunition and the target ammunition in this country. That is legitimate. It is law abiding. Does it get misused? Yes. Does some of it have armor-piercing capability, to some extent? Yes.

Certainly this is what our intent is. In the meantime, let’s toughen the law. Let’s make it clear that we are telling our criminal element in our country that armor-piercing ammunition is flat off limits or you pay a phenomenal price for it.

Is it a deterrent? The Senator from Massachusetts would say that it is not. In most instances, we find good, tough law enforcement, and a reality known by those who would commit crimes with this kind of ammunition in this country, does serve as a deterrent.

That is the intent of the amendment. We believe it is a good amendment. I am prepared to yield back the remainder of my time if the Senator believes he has adequately covered this issue.

Mr. CRAMER. Mr. President, if I may, Mr. President, I yield myself time.

Let me remind my colleagues that armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States of America. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a background check, and there is no Federal minimum age for possession. Purchases may be made over the counter, by mail order, by fax, or by Internet, and there is no Federal requirement that dealers retain sale records.

It is this current lawlessness that jeopardizes the safety of police officers. It is this failure of the existing law that has led to 20 fatal shootings of police officers, and will lead to many more unless Congress acts, not studies—acts, not studies. The facts are well established. The FBI statistics do not lie. We do not need another study. We do not need another report. All we need to do is adopt the underlying legislation that gives the Attorney General the authority and the power to ensure the kind of armor-piercing bullets that are being used, that pierce the armor and kill our law enforcement officials, will be prohibited from use today.

As I outlined in my amendment: “a projectile for a centerfire rifle, designed or marketed as having armor-piercing capability, that the Attorney General determines, the Senator from Idaho or the Senator from Massachusetts—'to be more likely to penetrate body armor than standard ammunition of the same caliber.'”

We either have a problem or we do not believe what we believe. Certainly the families of those brave men and women who believe we do—their families and those police departments. We have an opportunity to do this on next Tuesday.
hope the Craig amendment will be defeated and that the amendment I offered will be accepted.

I am prepared to yield back the remainder of time if the Senator is.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the Senator. I too am prepared to yield back the remainder of our time.

Let me conclude my comments by saying this: It is the role of the Attorney General of the United States to determine what can or cannot be used in this country as forms of ammunition. It is our job, if we are going to do it. And we should not do it. The marketplace has done it. The Senator has shaped legislation that has controlled types of it, and that has been supported.

I do not think we need to get as arbitrary as some Attorneys General can be or have been in the past as it relates to what we believe ought to be illegal or legal in this country.

Our job is to make it the law. That is what we are about here at this moment. It is important that we establish parameters and understandings clearly to determine the kinds of tests that are performance based in what they do to what is now currently legal ammunition in this country.

With that, I yield back the remainder of my time, and ask that the Frist-Craig amendment be set aside to be considered on Tuesday next.

I believe the next item under our unanimous consent is to move to Senator Cantwell for her amendment for unanimous consent is to move to Senate resolution to current temporary extended unemployment compensation.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I ask the unanimous consent of the Senate to have the Frist-Craig amendment set aside to be considered on Tuesday next.

The PRESIDING OFFICER. Time is yielded back. The amendment will be set aside.

The Senator from Washington.

AMENDMENT NO. 2617

Ms. CANTWELL. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant Journal clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 2617.

Ms. CANTWELL. 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:

(Purpose: To extend and expand the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes)

At the end, add the following:

TITLE —UNEMPLOYMENT COMPENSATION

SEC. 01. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.


(1) in subsection (a)(2), by striking ‘‘December 31, 2003’’ and inserting ‘‘June 30, 2004’’;

(2) in subsection (b)(1), by striking ‘‘December 31, 2003’’ and inserting ‘‘June 30, 2004’’;

(3) in subsection (b)(2)—

(A) in the heading, by striking ‘‘December 31, 2003’’ and inserting ‘‘June 30, 2004’’;

(B) by striking ‘‘December 31, 2003’’ and inserting ‘‘June 30, 2004’’; and

(4) in subsection (c), by striking ‘‘March 31, 2004’’ and inserting ‘‘September 30, 2004’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

SEC. 02. TEMPORARY STATE AUTHORITY TO WAIVE APPLICATION OF LOOK-BACKS UNDER THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

For purposes of conforming with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), a State may, during the period beginning on the date of enactment of this Act and ending on June 30, 2004, waive the application of either subsection (d)(1)(A) of section 203 of the Act or subsection (f)(1)(A)(i) of such section, or both.

Ms. CANTWELL. Mr. President, how much time is allowed for debate on the amendment?

The PRESIDING OFFICER. One hour, evenly divided.

Ms. CANTWELL. Thank you, Mr. President. If I can be notified when I have used 10 minutes.

The PRESIDING OFFICER. The Senator will be notified.

Ms. CANTWELL. I thank the Chair. Mr. President, while we are talking about gun liability, I think a more important priority to be debating is the liability we are leaving the American workers with when, in fact, this body refuses to pass unemployment benefit extensions at a time when our economy is not recovering at the speed it takes to create new jobs.

As our own newspaper in Washington State, the Seattle Post Intelligencer, said this past week:

Everything is not fine in the job market.

That is what many Americans are saying. That is what many people are talking about starting to debate when they talk about the issue of outsourcing. Everything is not fine in the job market.

The President and his economic advisers issued a report, the Economic Report from the President of the United States, as to how the growth we were supposed to expect in our economy in 2004, if my colleagues have a copy of that report, and turn to page 98, they will see that the President and his economic advisers, when talking about growth in real GDP over the long term, predict that jobs for this year are going to grow by 2.6 million. That was great economic news to a lot of Americans who have been sitting around waiting for December without Federal unemployment benefits, sending out resume after resume, only to find that they are competing with hundreds of other more qualified Americans for a very few jobs.

What became more frustrating to those unemployed Americans who have lost their jobs through no fault of their own, many as a result of 9/11 and the impact of terrorist activities on our economy, such as in aviation, aero-defense, and a general feeling that many of those Americans would rather have the paycheck than the unemployment check. But without jobs being created, they would like to have some assistance in making the mortgage payment, paying the rent, paying for health care, and taking care of their families.

They were stunned when they found out that the President didn’t really stick by the 2.6 million number. Last week, the President and two Cabinet Secretaries, the Secretaries of Treasury and Commerce, ventured to Washington State and refused to meet with unemployed workers there. We have had, for the better part of the last 2 years, an unemployment rate over 7 percent. We are a little bit below that right now, and we are concerned about stimulating the economy and from where job growth is going to come. When these two members of the President’s Cabinet came to town and were asked about the President’s economic forecast—asked what the impact of the 2.6 million jobs that will be created, both of those Secretaries said: Those were assumptions based on economic models and the calculations have a margin of error.

The American worker is not a rounding error on a statistician’s desk. They are real people who are not getting the economic assistance they deserve.

It is no surprise that other newspapers across the country have also noted this. The Atlanta Journal Constitution said:

But the economic bounce has not yet been strong enough for cautious employers to get beyond squeezing more production from existing workers and taking the initial step of hiring. This leaves millions of unemployed sinking further into debt and desperation.

That points to what is going on here. The President is backing away from his economic numbers. People realize that job growth is not happening. Yet we remain as the only country with an extension of unemployment benefits.

Why is that so important? It is important to many Americans who would
Rather have that paycheck than an unemployment check, and it can provide a real stimulus because for every dollar in unemployment insurance, it generates $2 of economic stimulus into the local economy.

We must continue to see these projections versus reality. The President’s economic advisors said in 2002 that we were only going to lose a few jobs. We ended up actually losing 1.4 million jobs. In 2003, they said we were going to grow and economic recovery became aggressive about unemployment benefits. We ended up losing another almost 500,000 jobs. Now in 2004, they say we are going to grow 2.6 million jobs in what is left of this year. So far we have only gained 112,000 jobs.

The economy is moving very slowly. We should not leave people out in the cold. That is exactly what we are doing by not passing Federal benefits on to those unemployed workers when they exhaust their unemployment benefits. In December, we left out lots of workers: in Illinois, about 17,000 people; Texas, about 23,000; North Carolina, 10,000; Ohio, over 10,000; Pennsylvania, 17,000 people; Georgia, 14,000 people. At the end of December, when the benefits program expired at the State level, these people were no longer eligible for benefits at the Federal level because we curtailed the Federal program.

What that means is that every month more and more people exhaust their State benefits as no jobs are found and thereby are denied Federal benefits. For example, for the first 6 months of this year, over 50,000 additional people from Washington State would be eligible, but were denied help. On a national level, 2 million people would be eligible to receive Federal benefits.

These numbers represent what happened to people in these States in December. We elected the other side of the aisle to continue until other of the Presidents were no longer able to do it. The country as a whole will benefit. It is a program with a heart. It is a real stimulus to the economy. What happened if the 2 million people who lost Federal benefits over the next 6 months can avoid mortgage payments and end up defaulting on their home mortgages. How is that good for America? Or say, for example, individuals can’t make health insurance payments and end up costing more in uncompensated health care? How is that good for America?

I was not surprised when I saw in the San Jose Mercury News that the other side of the aisle had been accused of being of little interest or being silent on this issue. Basically, the San Jose Mercury News said:

Despite a recent uptick in hiring across the country in 2004, they could bring more hardship for millions of Americans out of work. A callous Congress is sitting behind as their hope for receiving extended unemployment benefits fades.

The PRESIDING OFFICER (Mr. BUCHANAN). The Chair advises the Senator she has used 10 minutes. Mr. CANTWELL. Mr. President, I thank the Chair for that information. I would like to continue until other of my colleagues from different regions of the country, which have been hit with high unemployment, come to the Chamber.

I wish to focus on reality versus rhetoric. We have been promised 2.6 million new jobs, but instead, we have seen a loss of 2.3 million. The rhetoric doesn’t stand up. If the President is going to deny his own economic report and say we are not going to create 2.6 million jobs, then give American workers a hand—extend unemployment benefits as a lifeline to help stimulate their family incomes and help stimulate our national economy.

I ask the President and the other side of the aisle to take a little bit of time and go back in history. I know not everybody on the other side of the aisle agrees with the policies of a Democratic administration juxtaposed to this administration, but let’s look at what the last Bush administration did when we had a downturn of our economy and how President George H. W. Bush handled the situation.

He had a similar problem when he came into office: the 1990s recession. In April of 1992, the President saw that we had tremendous job loss in the millions, but the economy had started to grow again. The first President Bush saw that the economy had picked up 379,000 jobs. He could have stopped the unemployment benefit program right then and there. He could have said: My job is over; the economy is starting to grow again; I don’t have to do anything else about this issue. But the President did not.

The first President Bush extended unemployment benefits for an additional 9 months. He did it for 9 months—and it was a program with more weeks of benefits than the current program. It was 20 weeks instead of the 13 weeks we have for basic unemployment States.

The second President Bush said: Yes, there was a little bit of job growth going on, but the negative impact of the recession means we should not stop Federal unemployment benefits.

What has the second President Bush done? He has been faced with a similar recession. As we saw from the previous chart, we have lost 2.4 million jobs in the last 2 years and this President sees a little uptick in the economic numbers. He sees the numbers crested in January. And what does he say? That’s it; that’s it; no more Federal unemployment benefit program. No unemployment benefits. No weeks, no program.

Basically, we have left the American workers out in the cold as it relates to this opportunity to sustain themselves and sustain our economy in great economically challenging times.

I ask my colleagues on the other side of the aisle to look at this history, to look at what the first Bush administration did under similar circumstances, to look at his results. They were very positive for the U.S. economy and for the American worker. Analyze that juxtaposed to the position we have taken in this body today, primarily because the other side of the aisle, a dozen times now, has refused us the right to have a vote on this issue. We are going to lose that vote. My colleagues will stand up for the American worker and, most importantly, for the American economy that needs this stimulus.

I see some of my colleagues have joined me in the Chamber. I say to the Senator from Maryland, who has been eloquent on these issues, I don’t know how much time the Senator is seeking, but I will be happy to yield to the Senator.

Mr. SARBAJNEB. Is the Senator controlling time?

Ms. CANTWELL. Yes, I am. Mr. President, how much time remains?
Ms. CANTWELL. I am happy to yield the Senator 3 minutes.

Mr. SARBANES. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I rise in very strong support of the amendment offered by the able Senator from Washington, Ms. CANTWELL, of which I am pleased to be a cosponsor. This amendment will extend the unemployment benefits which lapsed at the end of December—they have lapsed and are not available—and continue the program for 6 months, through the end of June.

The program lapsed not because the fundamental economic problem which led to its creation—the very weak labor market—has been solved. That market's weakness remains a serious concern.

Long-term unemployment—the problem for which this program was created—is near record levels. There are nearly 1.9 million unemployed workers in America who are long-term unemployed. That is, they have been unemployed for more than 26 weeks. They constitute almost 23 percent of all unemployed workers. This level has been above 20 percent for the past 16 months, the longest stretch of long-term unemployment at this level in more than 20 years.

It has been 34 months since the recession began. The economy has almost 2 percent fewer jobs than it had 34 months ago. Jobs are not being created in sufficient number to close this gap. Job creation is far below what is needed to improve the situation for unemployed workers.

Some colleagues have argued that we do not need the program because we are no longer losing jobs. However, the job growth that the economy is producing is near record lows. Two-thirds of those who have lost their jobs. Of course, the administration predicted after they passed the 2003 tax cut, that the payroll survey would show the creation of thousands and thousands of Oregonians and other Americans who are out of work.

These are folks who simply have nowhere to turn to pay the bills. They are paying an economic tithe to household fuel costs against food costs and fuel costs against medical costs.

Without this extension and without the look-back rule that this legislation would provide, these are folks who are going to fall into the economic abyss. They deserve better.

The fact is, the stock market is doing well. We are glad to see it. We are glad to see profits up at so many of our companies. Unfortunately, those are pluses for our country. But the fact is, middle-class folks, and particularly the middle class that is unemployed, are feeling pinched like never before. I am very hopeful my colleagues will support this legislation. It is essential to provide a measure of relief to those folks who are enduring so much economic hurt.

I have just gone through a series of community meetings at home, and it came up again and again. So I hope, in thinking about an economic tightening, but also in thinking about the name of helping these middle-class folks get back on their feet as they look for alternatives, as they look for other positions that pay them enough to support their families, that my colleagues would support this important Cantwell amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I rise in opposition to the Cantwell amendment, and want to put this in a little perspective. We have an unemployment benefit insurance program and then we have the temporary extension of the benefit program which we have been debating. In fact, I think the temporary extension has been done two different times. I also want to clear up some of the confusion because there is a payroll survey which measures the amount of jobs created, and the household survey which measures the amount of people employed.

We know what statistics can do depending in whose hands they are, but let us at least know what the facts are.

Payroll survey measures—if someone goes to work for somebody, they get a job and go on their payroll, that is the payroll survey. So if a person is employed by somebody, it is counted in the payroll survey.

When I was practicing as a veterinarian, I opened a practice. I was self-employed. That does not go on the payroll survey, but it does go on the household survey. Right now, on eBay—we have all heard of eBay—there is a fairly solid estimate that there are now over 200,000 people with full-time businesses operating. These are full-time jobs and the individuals are doing very well operating on eBay. They are buying and selling things on eBay.

However, those 200,000 jobs are not counted in the payroll survey. That is the survey the Democrats are commonly referring to all the time when they are saying there are job losses.

To show the difference between the payroll survey and the household survey with statistics, in January the payroll survey said we had created about 100,000 jobs. The household survey showed the creation of almost half a million jobs. Now if one believes the other side, they are saying to somebody who is self-employed that they do not have a job. Well, I am sorry, but when I was a self-employed veterinarian working 100 hours a week, I thought that was work. I thought that was a job. Listening to the other side, they are saying it is not a job.

Having said that, let's look at unemployment rates, which is a measure of the payroll survey. When the Democrats were in charge of the House, the Senate, and the White House, all three bodies, they had the ability to extend this program on their own because they had the votes to do that. Let's look at the historical unemployment rates versus today's unemployment rates to see whether they extended the program; in other words, to see when they had the ability to act whether they matched it against what they are saying today.

In the early 1990s when the Democrats were in control of the Senate, the House, and the White House, the unemployment rate at the start of the program was 7.0 percent. When we started this program this time, the unemployment rate was at 5.7 percent. At the peak of the program in the 90s, the highest unemployment rate under the Democrats went up to 7.8 percent. The peak unemployment rate this time went to 6.3 percent.

When the Democrats voted to end the program to terminate the extension of unemployment benefits, the unemployment rate was at 6.4 percent.

What is that unemployment rate today? It is at 5.6 percent, almost a full percentage point less than when the Democrats controlled the Senate, the House, and the White House, and they voted to terminate the program. Why did they vote to terminate it? Because...
the extension of unemployment benefits is put in during times of high unemployment rates.

Well, they are saying times have changed. Statistics back then do not compare with statistics now. I do not know why, but that is what they are saying.

Let’s point out what this Senate and the House did last year. We gave the States $8 billion to help fund their own unemployment programs—especially those States that have high unemployment like Oregon. The Senator from Oregon was just on the floor speaking. We gave that money to the States to handle serious problems with individuals facing long-term unemployment.

What have the States done with that money? We gave them that money 2 years ago. In March 2002, we gave $8 million to the States. What have they done with it? Well, there is $4.3 billion the States have not used. Are our States not compassionate? Do they not care about people as the other side would have us believe?

They have not spent over half of the money we gave from the Federal Government to the States.

So I think just to look at what is going on today with this amendment. I believe this is very well intentioned by the other side, but what has happened is our mindset has changed. What used to be considered full employment is now considered high unemployment. All of us back in the early 1990s thought a 5.5 percent unemployment rate would be considered full employment in this economy, because there are always people who are changing jobs so they are temporarily unemployed. There are always people who have difficulty because of training, they are getting some new training so it takes them longer to find a job. Then sometimes, frankly, in a changing economy, people do have to move to find a job and sometimes it takes a long period of unemployment for people to make that decision. It is a very difficult decision to make.

I think we need to be sensitive to people, but we also have to look at the reality we are facing. We are facing huge budget deficits today. How many of the people running for President have been talking about the budget problem? On the other side of the aisle, I have heard it talked about time and time again.

Well, the extension of the unemployment benefits costs almost $1 billion dollars a month. So if we extend it out to the end of this year, we are going to be talking about another $10 billion, or somewhere those tabouts, added to the budget deficit. That money will be borrowed from the Social Security trust fund, because when there is deficit spending, that is where it is taken out of. We all know that. It is a paper trust fund anyway, but we all know that is where it is taken out of.

So I think it is important for us to understand, first, what got us here, what the historical implications have been as I have laid them out, and then what do we do to get out of this dilemma. What do we do to get out of it is to make sure we have a strong enough economy so new jobs will be created.

What are all of the economists—and I do not subscribe to the economists' philosophy that the economists subscribe to, the one thing everybody agrees with is these large budget deficits we are experiencing today and that are projected out into the future are the No. 1 single threat to our economy. So if we want to have a secure future going forward, we must watch and curtail additional Federal spending.

The reason we have the deficit today, over half of it, I believe, of the poor economy. So when businesses and individuals are not making as much money, they do not pay as much in taxes. Over half of the budget deficit is caused by that. About another 27 or 28 percent of the budget deficit is caused by increased Federal spending. And about 20 percent of it were the last two tax cuts that were enacted. But without those tax cuts—it is widely accepted now those tax cuts have helped the economy—we would be in even worse shape.

The number one thing we can do for the economy, as a Federal Government is to create the atmosphere where those jobs are created. So the number one thing we need to do is to make sure we keep our fiscal house in order by restraining Federal spending.

Looking back at the payroll survey, eight months prior to the tax cuts we lost 330,000 jobs. Eight months after the tax cuts we produced 300,000 jobs. That is just the payroll survey statistics. That does not count the household survey, or all of those self-employed people I was talking about earlier. There are literally a couple of million jobs that have been produced since the tax cut, when you count self-employed people.

The other side says that doesn’t count. Just ask somebody who is self-employed, who think their job counts and should count in the national statistics. I think everybody who is self-employed out there, if you have a mom-and-pop business, if you are a doctor who used to work for a hospital and have your own practice, or you are a nurse-midwife and you decided to take the risk and go out on your own, does your job count? A nurse practitioner or a physical therapist, whatever their job is, should that job count? I believe it should. I believe that is why there are two different surveys, the household survey and a payroll survey. It is important that we have both of them so we can look at the big picture. The economy is changing. We have some policies that reflect those changes.

I yield the floor at this time so we can go back and forth and continue the debate. I see my friend from Oklahoma.

Next time I get recognized, I will yield some time to him.

Ms. CANTWELL. I yield to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.
of the Senator from the State of Washington will do. It will give them a life-line for the next 13 weeks so they will be able to keep their families together, have a sense of dignity, have a sense of pride, have a sense of optimism in their future, and their family’s future. We ought to be in the business of pursuing that and I hope we do this afternoon.

I withhold the remainder of my time. The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am going to reclaim 30 seconds, if I can.

I will just take the time to read from this letter. I have a score, but this one says it all. It is from Tim O’Neal of Lexington, MA.

I strongly urge your immediate action to support and to implement supplemental federal funding of unemployment benefits. I have been unemployed for approximately 18 months, though I am a Vietnam veteran with a baccalaureate, a recent JD, and more than 20 years of computer industry experience.

Here you have in the paper today, number of mass layoffs rose sharply in January, the third highest number of so-called mass layoffs since the Government began tracking them a decade ago. That is in today’s Washington Post. There is the need.

Senator CANTWELL has the answer.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. ENSIGN. I would like to ask the Senator from Washington a question.

I mentioned before that we gave the States about $8 billion a couple of years ago and that there is still over half of that money unexpended.

I wanted to know if the Senator from Washington was aware that her State was given about $367 million and so far the unexpended available balance to the State of Washington is about $165 million out of $167 million that was given to your state.

I realize you have a higher unemployment rate than the rest of the country. I am kind of curious why your State has not spent the money we gave from the Federal Government?

Ms. CANTWELL. I am happy to answer the Senator’s question. I would like to do so on your time, since you would have a little more time left than I do. Mr. ENSIGN. I will yield you 1 minute.

Ms. CANTWELL. I thank the Senator.

As the Senator from Massachusetts said, the States have that money obligated. They are committed to use it. The issue about the Federal program is that the Federal program is to lay on top of the State program.

The point about $15.4 million being in the Federal trust fund is that $15.4 billion is continually added to by the American employer on behalf of them and the employee and that fund grows.

So the amount at the Federal level can be dedicated to help with this Federal extension program.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I will take my time, while the Senator from Oklahoma is getting ready to make a couple of other points.

At some point we have to have some fiscal discipline around the Senate. There are good arguments to make in support of extending unemployment benefits. There is always anecdotal evidence, stories of hardship cases. You can always find those. If we had a 1 percent unemployment rate, you could find people out there who were unemployed, and unemployed for a long period of time, no matter how low the unemployment rate.

The question is, by extending these benefits, do you create more of a problem than you are solving? In other words, we know that about 50 percent of the people who are on unemployment will get a job in the last 2 weeks before their benefits run out.

We have to have some discipline around here, put our fiscal house in order so that in the future we don’t harm the economy, so that those jobs will be there for those people who want employment. For every person who wants to get a job and is willing to work, we need to have a job available.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

Ms. CANTWELL. Mr. President, how is the time being counted under the quorum call?

The PRESIDING OFFICER. The time has been charged to the Senator who put the quorum call in.

Ms. CANTWELL. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator’s time is 4 minutes 29 seconds; 14 minutes 34 on the opposite side.

Ms. CANTWELL. Mr. President, I will take a minute to report something to my colleagues. Hopefully this debate has stimulated some great thinking.

As I pointed out, we can look at the history of the two different Bush administrations. The first Bush administration decided after creating 379,000 new jobs that it was going to extend unemployment benefits for 9 months—20 weeks—that it had already received State benefits could get a Federal benefit. This administration, having a similar recession in challenging economic times, only created 112,000 jobs in January and decided there would be no benefit program and no weeks for employees.

I am not surprised to see the Washington Post headline “Number of Mass Layoffs Rose Sharply”—“2,400 employers let go 50 or more people.” That is the economic news facing the country.

This administration and the other side of the aisle are not promising jobs or promising unemployment benefits.

If someone wants to stand up and say we are going to have real job creation in 2004 and stand by the President’s numbers, that is one thing. But if you are not promising either growth or economic assistance, then we have a serious problem.

I reserve the remainder of my time. Mr. LEVIN. Mr. President, extending unemployment benefits would be one of the most important and significant actions Congress takes this year. The economy and jobs are consistently the top areas of concern back home. The people that I speak to are far more interested in extending unemployment benefits than extending tax cuts to the wealthy. The House recently acted in a bipartisan fashion and passed an amendment to extend unemployment insurance benefits to workers who have exhausted their state and federal benefits. Now it is time for the Senate to act as well.

According to the Center for Budget and Policy Priorities, the number of individuals exhausting their regular State unemployment benefits and not qualifying for further benefits is higher than at any other time on record—about 90,000 workers a week. Painful history is being made. This Senate cannot stay silent. In January alone, about 375,000 unemployed workers exhausted their regular state benefits and are not eligible for any Federal unemployment aid. This is on top of the 395,000 unemployed workers who exhausted their state benefits last December 2003.

Action is needed now. President Bush predicted that in 2003, we would create 1.7 million new jobs. Instead, the Nation lost 53,000 jobs. On Monday, President Bush said he thought the current unemployment numbers are “good.” Not where I’m from.

In earlier slow economic times, previous Congresses have acted. In the 1974-75 recession, Congress provided 29 weeks of Federal unemployment benefits. In the 1981-82 recession, Congress provided 26 weeks of Federal unemployment benefits. In the 1990-91 recession, Congress provided 26 weeks of Federal unemployment benefits. In the program that expired on December 31, 2003, Congress provided 13 weeks of Federal unemployment benefits. That was below previous levels of Federal weeks but it was something.

The Federal extended benefits program implemented during the last recession was not allowed to end until the economy had produced nearly three
Let us pass an extension of unemployment benefits now. It is simply the right thing to do. It is the traditional thing to do in times like this.

I ask unanimous consent that the following chart be printed in the RECORD, illustrating previous Congressional action.

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Mr. DODD. Mr. President, I thank Senator CANTWELL for offering a very important amendment on unemployment insurance. This amendment is absolutely necessary because this administration has put this country on the wrong economic path.

The economy is not improving, jobs are not being created, and workers and their families are suffering. Since this administration took office, America has lost more than a million manufacturing jobs. Despite last month’s growth, America’s manufacturing core has shed an average of 53,000 jobs per month for the last 12 months. If a recovery is going on, it is essentially a jobless recovery. A jobless recovery is no recovery at all. The term is an oxymoron.

The Labor Department statistics also reveal that a 1 percent national unemployment rate drop is proof positive that his tax cuts and other economic initiatives are beginning to work. However, what President Bush did not tell the American people that factory employment declined for the 42nd consecutive month by eliminating approximately 24,000 manufacturing jobs. Despite last month’s growth, America’s manufacturing core has shed an average of 53,000 jobs per month for the last 12 months. If a recovery is going on, it is essentially a jobless recovery. A jobless recovery is no recovery at all. The term is an oxymoron.

The Labor Department statistics also reveal that five million American jobs have been lost because they are not full-time jobs. Since President Bush took office, about 3 million private sector jobs have been lost and a total of almost 9 million Americans are now unemployed. We have also reached record levels of long-term unemployment.

Manufacturing jobs, which helped to build and sustain America’s middle class, are disappearing. A total of 2.6 million manufacturing jobs have been lost since January 2001. 11,000 last month alone. Manufacturing jobs are good jobs that pay high wages, provide good health benefits and retirement security. We cannot afford to lose these good jobs to our country overseas. Michigan has been particularly hard hit, losing approximately 225,000 jobs since January 2001 of which 185,000 were manufacturing jobs. Our states and our nation cannot sustain such losses. On Labor Day President Bush acknowledged that “thousands” of manufacturing jobs were lost in recent years. He was off by about 2.6 million.

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Mrs. FEINSTEIN. Mr. President, I rise to support Senator CANTWELL's amendment to reinstate the temporary emergency unemployment compensation program.

The amendment will reinstate the 13-week Federal unemployment insurance program for 4 million Americans and ensure that "high unemployment" States continue to be covered.

Given all of the pressures that workers face today—outsourcing, a political environment hostile to organized labor, and a lack of high-paying jobs—there is no more pressing issue facing our nation's workforce. And yet, although Senate Democrats have asked more than a dozen times to unani mously pass the unemployment extension—each time Senate Republicans have said no. It is time that the Senate stop putting partisanship ahead of what nearly everyone agrees is smart policy.

On February 4, the House of Representatives voted to reinstate unemployment benefits by a vote of 227 to 179, with 39 Republicans defying their leadership and voting in favor of the benefits.

But until the Senate acts, hundreds of thousands of workers will be in the impossible position of trying to feed, clothe, and house their families with no work and no benefits.

These are people who are persistently trying to re-enter the workforce, and yet they are faced with an economy that has less than one job opening for every three workers.

Today we can change this. This amendment provides crucial temporary assistance to those who have been hardest hit by the recent economic downturn, and provides them a chance to support themselves and their families while they look for work.

Although the amendment would not provide more than 13 weeks of additional benefits to Californians, since my State's unemployment rate is 6.4 percent, not high enough to meet the 6.5 percent unemployment rate trigger in the amendment, it provides a meaningful extension for Californians by allowing unemployed Californians who were previously unqualified for unemployment benefits to collect 13 weeks of benefits as they look for new work.

As of today, 2.3 million Americans have lost their jobs since President Bush took office in January 2001. In California, 1.5 million Americans are out of work, including discouraged and underemployed workers.

Historically, job loss during a recession is about 50 percent temporary and 50 percent permanent. Today, nearly 80 percent of the job loss is permanent. As a result, many of the unemployed will not return to work soon.

In his Annual Economic Report, President Bush said that the outsourcing of jobs was the inevitable byproduct of an emerging economy.

The White House says the "benefits" of exporting American jobs "eventually will outweigh the costs as Americans are able to buy cheaper goods and services and new jobs are created in growing sectors of the economy." How are people without jobs supposed to buy all these goods and services? How do you keep a consumer economy going when you export the jobs? The chairman of the President's Council of Economic Advisors, the office that wrote the report, says the "government should try to save the jobs it can. The short-term help dis placed workers obtain the training they need to enter new fields, such as health care." As Senator DASCHEL pointed out, that sounds like a cruel joke. The President's proposed budget for next year cuts money for Federal job training programs. And how do they know that the jobs they are training for will not be the next jobs targeted to be shipped overseas? It certainly will not be because the President is fighting to keep them here.

It seems to me that the jury is in on the course we must take. I think it is wrong to move to a protectionist stance by raising tariffs or promoting a weak U.S. currency. Historically, such strategies have led to more problems than they have solved.

U.S. companies should not be rewar ded through our tax code for moving jobs offshore and then be allowed to bring foreign earned profits back into the U.S. at a tax rate that is a fraction of what they pay on their U.S. earned profits—just 5 percent, as compared to 38 percent in some cases.

You and I pay more than five times that in personal income taxes.

We should be encouraging firms to keep jobs here by producing the best trained, best educated workforce in the world.

And, we must help those who are displaced by outsourcing by providing emergency unemployment insurance. This amendment provides just such a safety net for those who are temporarily displaced by economic changes that are engulfing us.

I ask President Bush to put his weight behind this effort to get unemployment benefits extended to those who have been looking for a job more than 13 weeks.

If you are the President, you should be cheerleader number one for the American worker. And you should be supporting workers when they find themselves overcome by economic circumstance beyond their control.

When the national economy was booming 4 years ago, California was particularly blessed. California's economy grew at double-digit rates, and California became the fifth-largest economy in the world.

Billions of dollars of investment flowed into our State, and thousands of talented workers moved to California to take advantage of opportunities in Silicon Valley and other growth engines of the New Economy. Now that picture is dramatically different.

After dropping to a decade-long low of 4.7 percent in December of 2000, the unemployment rate in California is back up to 6.4 percent as of the end of 2003.

During this period of economic hardship, we have a duty to give people the chance to get back onto their feet. This is an obligation that we have met in the past, most notably when faced with an economic downturn during the first Bush Administration. The Senate voted in 1991 to extend temporary unemployment insurance on five separate occasions. Each time such extensions were approved by overwhelming bipartisan majorities.

I urge my colleagues to support this amendment and those Americans who have fallen on hard times.

Mr. ENSIGN. Mr. President, how much time does the Senator from Oklah oma wish?

I yield to the Senator 10 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 10 minutes.

Mr. NICKLES. Mr. President, I compliment my colleague and friend from Nevada for his statement.

It is important that we create an environment to create jobs. We did that last year. We didn't have bipartisan support, with the exception of Senator MILLER. But we passed a jobs bill last year. We passed a bill to help grow the economy. Guess what. It is working.

We passed a bill last year that cut the tax on individuals about in half—15 percent. We passed a bill last year that cut the tax on capital gains from 20 to 15 percent. We passed a bill that reduced marginal rates; that took the rate from 27 percent, for example, and made it 25 percent.

As a result of that, the economy is growing. With a rather stagnant economy, the stock market a year ago was less than 8,900; that is, the Dow Jones. It is over 10,500 today. The Nasdaq is over 50 percent. For the last three quarters, we now have significant economic growth. During the last two quarters, one quarter was 8 percent and the other quarter was 4.4 percent.

We have had the most significant rapid expansion of job growth and economic growth in the last several months. In the last 6 months, according to the Wade survey, we have added about 300-some thousand jobs. If you look at the household survey, it is a couple of million jobs. The household survey includes self-employed, working at home on their computers, and so on.

Also, I know this amendment says let us continue this Federal program. We have a State program of 26 weeks. We had a temporary Federal program for an additional 13 weeks. Many tried to make that a permanent program and many tried to double it. They weren't successful in doubling it. Now they are trying to make it permanent.

They want to take a 13-week program that is traditionally temporary and usually phases out when the unemployment rate drops down. The unemployment rate has been dropping down. In
2003, it was 6.3 percent, and it has declined almost every month to 5.6 percent. We have had significant improvement in the number of jobs, and the unemployment rate is 5.6 percent.

But I notice that the proponents of the amendment said: What about the early 1990s? In the early 1990s we had continued unemployment temporary assistance when the rate was 6.4 percent. Today, it is 5.6 percent—a full percentage point less than it was several years ago when we had this temporary program.

Some people do not like the idea that it is a temporary program. They would like it to be a permanent program.

It is not.

A couple of other things:

The number of unemployed is falling. If you go back to last year, it dropped from 9.2 million to 8.3 million—again, a significant improvement by almost a million.

The number of Federal extended unemployment benefit claims has fallen dramatically as well. It is declining. That is because economic growth is going up. Yes. Sometimes there is a lag between economic growth and the number of new jobs created because you have a lot of inefficiency in the system.

You have a more productive system. People are producing more with less, people are more efficient, and people are very productive. The productivity index for workers is moving up while people have had a very productive, efficient workforce. So that is contributing.

I want to make these points. We spent about $30 million in the last 36 months for this program. Again, some people would like it to continue forever. When you have a national unemployment rate of 5.6 percent—I don’t know that we have had the Federal temporary unemployment assistance apply at a rate that low. I mention that.

I also might mention that almost half the States have less than 5 percent unemployment.

I used to be in manufacturing. When the unemployment rate was less than 5 percent, it was almost full employment.

You are always going to have an unemployment rate. You are always going to have some people moving from job to job. With a dynamic economy, people change jobs from job to job. Their job may be phased out, but they are going to another job. That is part of high tech. That is part of modernizing industry. That is part of keeping up. That is part of the dynamics of the marketplace which maybe a lot of people have been slow to recognize. People change jobs. That is not all that unhealthy. Sometimes that next job is a better job. Sometimes that next job might have great growth potential.

This program is a Federal temporary program, and it shouldn’t be made permanent. To make it permanent will add $5.4 billion on to the deficit this year. The deficit this year is already over $500 billion, according to OMB. CBO is going to say it is less than that. I happen to agree with the Congressional Budget Office. If you have a deficit of 400-plus or 500-plus billion dollars, let us not add on another 5.4 billion on top of it for this year. Enough is enough.

How long are we going to continue the program? Do we continue this program if the unemployment rate gets below 5 percent? There has to be a time when we say enough is enough.

The current law is in the process of phasing out. When we passed the last bill, we avoided a cliff by December 30. If somebody was in the 13-week program by the end of December, they got the full Federal 13-week extension. We didn’t have somebody automatically losing their benefit after 1 week on the Federal program.

We also have a program for high unemployment States. That is a permanent Federal Extended Benefits program. Right now, Alaska qualifies for extended benefits. Nationally, they already get a 13-week Federal on top of the State 26 weeks. So Alaska already has 39 weeks. That is three-fourths of the year.

We have to determine when is enough. I think we have crossed the line. There is a direct relationship—and the Senator from Nevada alluded to this—when we discontinue making extra payments, more people will find work. This law—the law is to get people out and find that job, to make sure you get a job, to make sure you can take care of your family.

Tradition has shown—and we saw this in the 1990s—when this program stopped in the 1990s, the unemployment rate declined by another percentage point because a lot of people went out and found jobs. In other words, the more you pay people not to work, the less inclined they are to work. There is a direct relationship. So, hold on, at some point, I draw this program to a conclusion.

We are saying keep the 26 week State program, keep the permanent Federal program for high unemployment States, those States that are really suffering through economic decline. But for the rest of the country, this is not called for. It is not affordable. It will be adding to the deficit. It is out of order as far as the budget is concerned. I will vote on an amendment to order on this, but I withhold the vote until all time has expired on both sides. The pending amendment No. 2617 offered by the Senator from Washington increases direct spending in excess of the allocation to the Judiciary Committee. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Chair advises the Senator the point of order is not timely. It can be made when all time has expired.

Mr. NICKLES. I will reserve the point and see if additional Senators wish to speak.

I yield the floor.
House. They are filibustering a bill that was passed unanimously.

Mr. NICKLES. A further clarification. I find it totally unacceptable and I cannot imagine not agreeing to appointing conferees on a bill that will help get people back to work.

Also, I make an editorial comment. There is way too much of that happening. Our colleagues should be advised, this not agreeing to appointment of conferees is a travesty on the Senate procedure. On this side people think it is commonplace. It is not commonplace in the tradition of the Senate.

Mr. ENSIGN. The Senator from Oklahoma is correct, it is a rarely used tactic from the past that has been used increasingly more. It is obstructing the work of the Senate.

I reserve the remainder of my time.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Washington has 3 minutes, 7 seconds and the other side has 2 minutes, 3 seconds.

Ms. CANTWELL. Mr. President, I will take 2 minutes to try to explain for my colleagues that while I have a great deal of respect for both my colleagues on the other side of the aisle as they argue their points, obviously, we all hope for a better economy; we all hope things are going to get better.

I have some experience with these issues. I have been in the private sector myself and been part of an organization that was about job creation, been part of an industry that has great hope for the future.

The question is whether we want to take stimulus out of the economy by denying people unemployment benefits.

I will not debate the chairman of the Budget Committee about his budget point of order, but I will say most Americans know that they pay into a trust fund, through their employers, and those funds are available at the Federal level in a trust fund for this program. So you can call it what you want as it relates to the Budget Act; these dollars are in a trust fund, paid into by employers on behalf of employees, and those funds can only be used for this purpose.

We can decide we do not want to use them because we think the economy is getting better. That is what the other side of the aisle argues through their employers, and that is not what the administration is willing to own up to. Basically, it will not promise job growth after issuing a report saying there will be 2.6 million jobs. And the other side will not own up to the need for job growth or own up to helping unemployed workers.

The last Republican administration took the same problem and had a different outcome. It stepped up its efforts. Even though unemployment was dropping, even though the rate of unemployment was month by month by month, dropping, and even though employment or new job creation was happening, the first Bush administration said, we believe 9 more months of unemployment benefits is needed.

I am only asking for 6 months today. I ask my colleagues to take that into consideration when they are thinking about all the economic assistance we could be providing assistance today, to say the tax cut is working. Great. Then ask the President to stick by his economic plan of 2.6 million jobs.

Mr. NICKLES. I am finding out more about this amendment, and the more I find out, the less I like it. The sponsors of the amendment has written it in a way that her State receives extra benefits that most States do not. So this is not a simple extension. It is a simple extension, except a few States will get additional high unemployment assistance.

I am bewildered. I came to the floor and thought it was a simple extension. It is not. It rewrites the definition of high unemployment. It changes the criteria and benefits for the State of Washington, and a probably one or two other States. The State of Washington has money on the table that we have already appropriated that the State legislature has not used, as the Senator from Nevada alluded to.

One final note. We discontinued the Federal temporary assistance program in the early 1990s when the unemployment rate was at 6.4 percent. The unemployment rate today is 5.6 percent. It is much lower. It is time to say, let's go back to the program that has permanent extended benefits only for high-unemployment States, not for every State.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I will wrap up my remarks. I have a couple comments. First of all, the economy is improving now, it is not just going to improve in the future. We are in the middle of a recovery. We just had the strongest quarter of GDP growth in 20 years. Jobs are being created.

Payroll versus household—I do not know how many times we have to say it, but self-employed people count. They count in the household survey. Over 2 million jobs have been produced in the last year. When you count the households and all those self-employed people, those jobs should count in what we are talking about here.

If somebody lost their job and then started their own company, that should count as a job. And that is what a lot of people have done. We know incredible success stories of when people have lost their jobs and then started their own companies.

Mr. President, it is time to end this continued unemployment benefit extension, this billion-dollar-a-month program and encourage people to go to work.

The PRESIDING OFFICER. The Chair advises the Senator from Nevada that all his time has expired.

The Senator from Washington has 34 seconds.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I think the point is clear; and that is, this side of the aisle believes the American workers, who have lost their jobs through no fault of their own, should have access to assistance is on the upswing in America so we can move further along this path and so that stimulus is still in the economy.

That has been the result in the past two administrations. The last Bush administration believed in this, and now, somehow, we want to forget that economic success.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, the amendment No. 2617 offered by the Senator from Washington increases direct spending in excess of the allocation to the Judiciary Committee. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. TALMONT). The Senator from Idaho.

Mr. CRAIG. Mr. President, pursuant to the unanimous consent agreement, I now ask unanimous consent that this amendment be set aside, and we will now move to the issue on voting rights.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. CRAIG. Mr. President, the amendment No. 2626.

Mr. MCCONNELL. Mr. President, shortly the majority leader will send an amendment to the desk to provide for a permanent extension of the Voting Rights Act of 1965. This was one of the truly landmark pieces of legislation in American history.

Last Congress, Senator DODD and I sponsored, along with Senator BOYD, what became a 2-year quest to reform the way elections are conducted in this country. Senator DODD was correct in saying the election reform legislation we passed was the most important civil rights bill of this century, the 21st century.

With the support of 92 Members of this Chamber, we were successful in protecting the rights of all Americans—all Americans—to cast a vote and have it counted, but to do so only once. Gone will be the days of dogs and dead people registering and voting, and so, too, will be the days of faulty equipment and being turned away at the
polls. Now the majority leader shortly will offer an amendment which makes permanent the most important civil rights bill of the previous century, the 20th century.

If I may, let me recall a personal experience I had during that period in the 1960s that is indelibly impressed on my mind. The day was August 28, 1963. It was the day Martin Luther King Jr. made that “I Have A Dream” speech from the steps of the Lincoln Memorial. The Mall was crowded with folks from every part of the Capitol and literally all the way down to the Lincoln Memorial. And in that crowd I found myself. I was there that day on the March on Washington and the day of the “I Have A Dream” speech. Unfortunately, I could not hear it because I was so far down the Mall, and there were so many people I did not hear the speech. But you had the sense, if you were in the crowd that day, and sympathetic with the effort to get voting rights, public accommodations, and housing, that you were in the presence of one of those seminal moments in American history.

Of course, we now all reflect on that day, August 28, 1963, with great reverence, and Rev. Martin Luther King Jr.’s name is remembered as the author of the great speeches in American history, delivered that day on the steps of the Lincoln Memorial, August 28, 1963. I will always remember that I had an opportunity to be a part of that most important day.

A couple years after that, we passed the Voting Rights Act of 1965. There were three things that march was about: public accommodation, passed in 1964; voting rights, which passed in 1965; and fair housing, 1968. But voting, of course, is the most important in a democracy.

Over the years, the Voting Rights Act has successfully addressed truly egregious problems which existed at that time. Fortunately, though, the pattern of the Voting Rights Act is to not make it permanent and, once again, it is set to expire in 2007.

The protections in the Voting Rights Act are, frankly, too important to provide on only a temporary basis, and that is the reason the majority leader will be offering shortly his amendment to make the Voting Rights Act permanent.

The majority leader, in fact, just within the last couple of weeks organized a civil rights pilgrimage which was attended by a number of our colleagues on both sides of the aisle. My wife Elaine and I went to part of this 3-day pilgrimage that began in Alabama and ended in Nashville, with the dedication of the Civil Rights Room of the Nashville Public Library, which is replete with photographs of the lunch counter sit-ins in Nashville in the 1960s, which led to the peaceful integration of Nashville during that period.

The powerful experience for all of us who participated, at the majority leader’s request, in this pilgrimage. Congressman John Lewis was along, one of the great heroes of the civil rights movement. We talked about August 28, 1963. He got to speak. He was the youngest speaker on the podium that day. Young John Lewis was there and thrilled to have an opportunity to speak, at age 23 or 22, on the same day as the great podium as Rev. Martin Luther King.

I can think of no better way to memorialize our commitment to a free and equal society than the adoption of the FRIST amendment. This amendment makes the preclearance and bilingual requirements permanent, providing a clear message from the Senate that we stand committed to not only the protection of civil rights but also to the preservation of those rights as well.

Some may suggest this action is premature. But how can the law of the land for 39 years be premature? Further, the language of the amendment is abundantly clear: “the provisions of this section shall not expire.” Let me repeat, in powerful words, Selma’s Edmund Pettus Bridge where almost 40 years ago Congressman Lewis had led marchers in the name of voting rights for all.

The stories were powerful. They endured through the beating and what was later called the Selma march back, and they faced the hatred with the power of compassion and love.

Their courage captured a victory that has been to the benefit of millions today, not just for African Americans but for others around the country. I was deeply moved by their courage and their sacrifice at the time, and I am grateful for their service.

This year, the 39th anniversary of the Voting Rights Act occurs. That act enshrined fair voting practices for all Americans. The act reaffirms the 15th amendment to the Constitution and prohibits individuals and governments from sabotaging the ability of African-American citizens to vote.

Dorothy Cotton, who was one of the participants with Congressman Lewis and I, who ran the Citizenship Education Project of the Southern Christian Leadership Council with Andrew Young, remarked that she remembers when voting registration offices were open only when most African Americans were working during that time of day. Rev. Bernard Lafayette, who was also with us, another great civil rights leader, remembers routine harassment at the registration office, such as being required, to interject, to read, to read certain sections of the U.S. Constitution or—and his words are so vivid in my mind—being required to give the number of bubbles in a bar of soap.

Clearly this was wrong. It was ugly, and it was unconstitutional. That is why the Congress moved to pass the Voting Rights Act of 1965, to once and for all protect the right of every American to vote.

The Voting Rights Act also includes section 4, and it will be up for reauthorization in 2007. President Reagan reauthorized it for 25 years in 1982. Section 4 is the section that contains the
temporary preclearance provision that applies to certain States: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and parts of Alaska, Arizona, Hawaii, Idaho, and North Carolina. These States must submit any voting changes to the Department of Justice for preclearance and, if the Department of Justice concludes that the change weakens the voting strength of minority voters, it can refuse to approve the change.

Sec. 2 also includes an important measure of assurance that the full force of the U.S. Government stands behind voting rights for all Americans. That is why Senator MCCONNELL and I today are offering an amendment to permanently reauthorize section 4 of the Voting Rights Act. With or without section 4, every American has the right to vote. That will never change. However, Senator MCCONNELL and I want to make clear that America will never renege on the right gained by the civil rights movement. We don’t want anyone to fear that their right to vote will ever be taken away. Those shameful days are over.

Some of the heroes of the civil rights movement have endorsed this particular amendment. Congressman JOHN LEWIS supports it.

Rev. Bernard Lafayette, who joined Congressman LEWIS and I—actually Bernard Lafayette went with us on our pilgrimage last week, but also he and JOHN LEWIS were together at that fateful time in 1965 for the march in Selma. His words were this amendment would be an “important psychological and political victory for democracy.”

It is my fervent hope that one day soon racism and discrimination will be totally a thing of the past. Until that time, it is critical that the Justice Department retain this preclearance authority to review changes to State voting requirements, not only to allay fears that might arise but also to ensure our progress to date.

I do hope all of my colleagues will join me in ensuring that Federal Government will do all it can to protect the right to vote for all Americans. I ask my colleagues on both sides of the aisle for their support of this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I may consume.

It is my honor today to offer his strong statement and commitment of ensuring that the Voting Rights Act, which is of fundamental and key importance in terms of what American democracy is all about, is something that we see and will extend it and that he is fully committed to working in every possible way to make that commitment come true. I also commend my friend and colleague from Kentucky, Senator MCCONNELL, for expressing similar sentiments. But this is not the best way to achieve that goal.

What is important to come out of this debate is that the Senate, as an institution, is firmly committed, as we hear from the majority leader and from the leadership from that side, to making sure we continue the Voting Rights Act. The real question is, How is the best way to make sure that is possible? I raised in my amendment how we addressed the public accommodations laws and offered the amendment to eliminate the poll tax, and it was defeated. I was here in 1965. I am very familiar with the weeks we spent on that bill to actually get the Voting Rights Act. I was on the Justice Committee in 1962 and listened to the Republican Attorney General William French Smith—I can remember it almost as if it were yesterday—because the extension of the Voting Rights Act had been offered by myself and my wonderful friend and a great Senator, a Republican Senator, Senator Mathias. We had 32 votes. The Reagan administration was opposed to extending the Voting Rights Act. That is the history.

Until the representatives passed the Voting Rights Act overwhelmingly, we were unable to get to 50 votes and get a majority of the Judiciary Committee to vote to pass that bill. It was only in the final hours actually that we were able to accept what was the Dale amendment.

Those who are interested in looking at the history, we were able to get up to more than a veto-proof majority, and President Reagan signed the bill.

This is not an issue to be lightly dealt with. This right to vote is a core issue in our country. We enshrined slavery into the Constitution. We fought a civil war to free ourselves from the pains of discrimination. It was Dr. King, quite frankly, who awakened the conscience of the Nation and the Nation came together and we saw the great progress that was made in the early 1960s to move us ahead with voting rights and public accommodations. I remember the Housing Act which really did not do a great deal in housing until actually the 1988 act.

This has been a long March, as the Senators have pointed out. We have to ask ourselves whether now is the time to take this action.

Let me read into the RECORD the letter I have received from the Leadership Conference on Civil Rights. I read it at this time:

On behalf of the Leadership Conference on Civil Rights, the Nation’s oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the amendment offered by Majority Leader Frist to the protection of the Lawful Commerce in Arms Act, S. 1805, to make the preclearance of the minority language provisions of the Voting Rights Act permanent. The Voting Rights Act is one of the most important civil rights statutes ever enacted by Congress. This law, which enforces the Thirteenth Amendment with amendments successful in removing direct and indirect barriers to voting for African Americans, Asian Americans, Latino Americans, and Native Americans. And since its basis has survived narrow interpretations by the United States Supreme Court only to be amended by Congress to restore its original strength. Nevertheless, voting disenfranchisement still exists today.

As you know, the VRA’s preclearance and minority language provisions are scheduled for reauthorization in 2007. We in the civil rights community plan to actively engage in the process, including working to establish a permanent preclearance record in support of reauthorization.

I underline, Mr. President, the language that says “establish a strong legislative record in support of reauthorization.” That is a key phrase in terms of the letter I am reading and for reasons to which I will refer in a moment.

Nevertheless, we oppose the Frist amendment because it is premature. Critical analysis of issues surrounding preclearance of minority language provisions of the Voting Rights Act have not yet been fully examined and analyzed carefully to reflect the current status of our laws, court decisions, enforcement actions, and society.

The Supreme Court has made it clear in recent years that it will require Congress to establish a detailed record through hearings and legislative findings in order to ensure that provisions such as these survive constitutional scrutiny.

Therefore, while we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment.

The reasons for this urging are the relevant parts of this letter which have strong justification, given holdings by the Supreme Court on other actions that the Congress has taken in trying to expand rights and liberties for American citizens, and which have been struck down.

Time in and time out and time again the courts have referred to the legislative record that has been made on the Voting Rights Act. I remember it. I was a member of the Judiciary Committee. I remember the days and months of hearings and testimony, an extraordinary record was made, unparallelled in recent history, justifying that act, respected by the Supreme Court.

And we are going to say that last night at 11 o’clock the Senate agreed to take up an amendment with a 1-hour time limitation that is going to extend this, and the possibility of the Supreme Court looking back, when it is challenged—as we know it will be challenged—at the legislative history, the background, and they will find we had 1 hour of debate on the floor of the Senate and put at risk the Voting Rights Act.

There are some—not the Senator from Tennessee, the majority leader, or the Senator from Kentucky, but there are those who want to see this undermined. We know that. We have to be guarded against that possibility. Voting rights are too important to risk it.

Those families, those individuals, those American citizens who are concerned about the issue of voting rights and in so many instances have been denied the right to vote and whose families have been denied the right to vote and have suffered, and in some instances have friends and family members who lost their lives in the struggle for civil
Mr. CRAIG. Might I inquire how much time is remaining on either side? The PRESIDING OFFICER. The Senator from Idaho has 16 minutes and the Senator from Massachusetts has about 16 minutes 40 seconds. Mr. CRAIG. Might I inquire of the Senator from Massachusetts if he has anyone further who wishes to speak in opposition to the Frist amendment? Mr. KENNEDY. First, I will make a few comments. I have been notified I have five minutes. I will be on my way in the next 4 or 5 minutes. If not, we will be glad to go on. Mr. CRAIG. Fine. The PRESIDING OFFICER. The Senator from Idaho has the floor. Does the Senator yield the floor? Mr. CRAIG. I do. The PRESIDING OFFICER. The Senator from Idaho yields the floor. The Senator from Massachusetts. Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, we have to understand, as I think all of us do, that obviously the underlying legislation is important. I have spoken on this issue. I take strong exception to what is special interest groups are doing, singling out a particular industry from liability. That is important. The provisions that have been debated earlier this afternoon on the concealable weapons are very important as well in terms of safety and security. We debated the armor-piercing bullet. That is important in terms of lives and family. When we are talking about the right to vote and ensuring the right to vote, this reaches the core value of our society and what this Nation is all about. We know the history of our Nation. I mentioned very briefly slavery was enshrined in the Constitution. We fought a civil war in order to free ourselves from it. But it was only in the early 1960s that we began to make the real progress and the fact of all of those kinds of civil rights was the right to vote and the extension of that right and the elimination of the poll tax, the literacy tests, all of the other kinds of tests that were put up there. This country has been reminded once again about the importance of the right to vote in the recent Presidential elections where we saw this enormous fissac that took place in the State of Florida, the future of this country ultimately, how much the Supreme Court of the United States rather than the hands of the American people.

So the American people understand the importance. It is almost like a sacred right. If we were to talk about sacred rights in terms of what this society and country is about, it is about the right to vote. Nothing else is possible unless we have the right to vote, guaranteed to all of those citizens in our country who are eligible to have that right. It is fundamental to everything else we do today.

We know it is being challenged and we know there are many who would set it aside. We have seen that in recent times. We have seen the threat to the right to vote. Even after we understand some of the difficulties we had in the last Presidential election, we have seen the difficulty we have had in this body and around the States to make sure we were not going to have that problem again and again. We have not solved the problems we had, but we have to preserve it and protect it and we cannot tamper with this very important and significant responsibility we have. As I said before, I will only look forward to working with our two colleagues, who have spoken eloquently about their strong commitment, in ensuring that we are going to have an extension of the Voting Rights Act. I look forward to working with them in the Judiciary Committee. I know our two colleagues are not members of the Judiciary Committee, but we have enormous respect for them and their strong support will make an incredible difference in ensuring we will get the extension, we will build the record, and we will ensure the next time we pass this, we will have the kind of record that will be sustained by this Supreme Court and any future Supreme Court.

We do not want to put that at risk now. We do not want that. That is not a wise decision. The people who have suffered too long and been denied that right to vote believe very strongly that to be the case. I think we should observe their very serious concerns, follow those, and work to build the kind of record that will survive any constitutional scrutiny and ensure that the American people, with the existing protections we have, are going to create even greater ones.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The assistant legislative clerk pro- ceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. If the Senator from Idaho wishes to yield back his time, we can do so.

Mr. CRAIG. I thank the Senator. I believe we have one of our colleagues still yet to come so we will wait for him for a short time. Time is running on this amendment.

How much time remains on this side? The PRESIDING OFFICER. The Senator has 15 minutes 7 seconds. The Senator from Massachusetts has 11 minutes 46 seconds.

Mr. CRAIG. I appreciate that. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk pro- ceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, I just received word on what we are now debating. I make a parliamentary inquiry.
Am I correct that this is a Frist amendment to this bill?  

The PRESIDING OFFICER. That is correct. The majority leader offered the amendment.  

Mr. DODD. The Frist amendment is amending the Voting Rights Act; is that correct? It would make the preclearance and minority language provisions of the Voting Rights Act permanent; is that correct?  

The PRESIDING OFFICER. That is the Chair's understanding.  

Mr. DODD. I thank the Chair very much for that.  

First let me express my gratitude to the majority leader for having a strong interest in this. As someone who for the last several years, since the election of 2000, has spent a great deal of time on the conduct of Federal elections, I worked closely with Mr. MCCONNELL and Mr. BRAND of Missouri and Congressman BOB NEY of Ohio, who chairs the House committee and has jurisdiction over Federal elections over in the other Chamber, along with a number of other people. There were a lot of people involved in this, but we were able to put together the HAVA Act, the Help America Vote Act. It is in the view of many the first civil rights legislation of the 21st century. Some have called it the most significant legislation affecting the right to vote since the Voting Rights Act of 1965.  

Certainly, one of the issues we looked at and discussed rather briefly was the issue of the reauthorization of the Voting Rights Act when it comes to language minorities. But when we were dealing with that bill, we did not vote to make permanent those provisions. And for good reason.  

This is an extremely important part of the Voting Rights Act, these language minority and preclearance provisions. It is hardly the place, I suggest, with all due respect to those who are interested in this, as a floor amendment to any bill that people are on a bill addressing the issue of guns, and rather suddenly we are asked to permanently change one of the most profoundly important laws in our nation.  

Just to cite one example to my colleagues, if we adopt this today—there is a group very much in the news at this very hour. And that is the people of Haiti. Now, there is a substantial population in the State of Florida of people who are formerly from Haiti. Haitians. If this language is adopted, some have raised concerns that it could have the effect of making it more difficult for Americans of Haitian background, who do not speak English as a first language, to obtain the voting information and technologies to which they might otherwise be entitled and which they might require in order to cast a ballot. The same concern has been raised about Americans of other backgrounds, as well, of whom English is not a first language.  

I don't think there is a single Member in this Chamber who wants to vote today on a provision that could make it more difficult, if not impossible, for thousands if not tens of thousands of citizens, in effect, to vote. But we are told by those who deal in this issue every day that this amendment could have that effect. I am confident that none of us wants to see that happen.  

This is hardly the time, place, and manner to make such a profound change in law. Frankly, I don't have a prepared speech. I was just listening to this debate in my office, and having worked on this issue, I know how much time you take to get this right. To come over and have an amendment adopted that could permanently exclude a substantial part of our citizenry from periodically being protected. I, for one, cannot vote for this. I wouldn't want to be on record supporting this. I would like to work with the majority leader and others who would like to figure out how to get this done. I will do my best.  

The Leadership Conference on Civil Rights has stated as much themselves in a letter they sent to the majority leader. It was dated today, to give you some idea of how fast this is moving. They say in their concluding paragraph:  

While we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment. The reasons are that this is a complicated process that takes some time to make sure you are including those who deserve to be included and excluding those who may not. What we would prefer this amendment be withdrawn and then resubmit it under proper circumstances so we can have the opportunity to do the analysis necessary to arrive at right conclusions. I am the only one speaking about this at this particular moment. I don't know what the time frame is. Is there a limited time of debate? I make an inquiry of the Chair. Are we going to vote on this matter in a few minutes?  

The PRESIDING OFFICER. The Senator's side has 3 minutes 16 seconds remaining. The Senator from Idaho has 12 minutes 52 seconds remaining. The Senator from Idaho requested a unanimous consent agreement according to which 1 hour was allowed for debate of this amendment.  

Mr. DODD. Do I understand that at the conclusion of roughly 15 or 16 minutes we will then vote on amending major provisions of the Voting Rights Act?  

The PRESIDING OFFICER. After voting on the Cantwell amendment, under the previous order, the Senator was not allowed to vote on this amendment.  

Mr. DODD. Mr. President, I urge colleagues to think twice about this. It is the Voting Rights Act of 1965 that we are talking about. We are talking about amending this act permanently and possibly excluding major ethnic groups in this country permanently. Please. This issue requires more thought than it can be given here. This is not the way to go about changing one of the most important laws ever enacted in our great country. We must not in effect tell our colleagues that they have 15 minutes to decide on whether or not potentially millions of Haitians, Africans, Asians, Hispanics,
and Europeans would be permanently excluded from key protections of the Voting Rights Act when we have 3 more years to make that decision. To do this on an amendment to a gun manufacturer bill is stunning to me. Why would we take something as critical and important as the Voting Rights Act and throw it on the table without further consideration and thought?

I urge my colleagues in the time they have to please talk to the majority leader and see if we can't pull this back by unanimous consent and let those of us who spend time on these issues sit and work on this. This is no way to be dealing with millions of people in our country who deserve the right to vote and to be protected properly under language minority and preclearance provisions.

I make that plea to my colleagues. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Idaho.

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

The assistant Journal clerk proceeded to call the roll.

Mr. CRAIG. I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. The Senator from Texas.

Mr. CRAIG. I yield the remainder of our time to the Senator from the State of Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I come to the Chamber in a hurry because it has come to my attention that this amendment, which is perhaps in a technical sense not germane to the main bill in the Senate—but I understand there is a provision in it that would be considered and would not be out of order—but my concern is this: The Voting Rights Act of 1965 was an important landmark in the Nation's history. It was passed by the Congress in an attempt to make sure that no person, regardless of race, regardless of color, was denied their right, their fundamental right to vote. This was long overdue, very important, and certainly a result to which we all continue to aspire.

Perhaps Members of the Senate who have, like me, not had a chance to study this amendment in great detail, or perhaps what the ramifications of this amendment are, might be interested to know a few facts; that is, that the Voting Rights Act does not apply to all the States in the Nation. In other words, we are being asked to extend the Voting Rights Act only as it applies to a handful of primarily Southern States. In 1965, it makes sense to apply the Voting Rights Act to just a handful of States that historically and, yes, tragically, had a history of denying minorities their rights to be American citizens and enjoy the franchise unimposed by those who would deny them that right. But this is not 1965. This is the year 2004.

If, indeed, this presumption, in essence, that says in order to change the way in which you conduct your elections, before you redistrict your State and electoral line, you must seek permission from the Department of Justice, if indeed, that is still good policy for the States that are covered by the Voting Rights Act, I submit it is good policy for the Nation as a whole. I doubt in all seriousness that many Members of this body understand what they are being asked to do, which is to extend this act only to a handful of States.

As I say, if it is good policy, I believe it should be extended to the entire Nation. Obviously, we have come a long way in this country since 1965. Some may argue that some States should have a presumption of guilt while others should have a presumption of innocence. But, indeed, I believe there ought to be a uniform policy that applies to the entire Nation when we are talking about something as important as voting rights and when we are talking about something as important as protecting the voting rights of all Americans, including minorities who have, in fact, suffered discrimination in the past.

I raise the question for my colleagues, those who are listening, to ask whether we truly understand what the implications are of this amendment and how it would affect the entire country, and how in practice, if I understand the amendment correctly, it could only apply to a handful of States. There is an agreement under which second-degree amendments are out of order, or I would offer an amendment to apply to the entire Nation, if that were permitted. But under this arrangement, under this agreement, I can merely ask the question for my colleagues to ponder if this policy should apply nationwide and not just to a handful of States, including my State of Texas.

I yield back any remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Texas. I inquire as to the time remaining on both sides.

The PRESIDING OFFICER. The Senator from Idaho has 1 minute 42 seconds, and the Senator from Massachusetts has 1 minute 10 seconds.

Mr. CRAIG. The Senator from Idaho is prepared to yield back. The Senator from Massachusetts is prepared to do so.

Mr. REID. He is not ready yet.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. CRAIG. I do not.

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

Mr. SPECTER. Mr. President, I in support of this important amendment for permanent extension of the Voting Rights Act. Voting is fundamental in our democracy. It has yielded enormous returns.

We know of the historical discrimination against minorities, against African Americans.

The essence of a democracy is a free electorate. Voting rights are very important. It ought to be on our books on a permanent basis.

I think it is so fundamental that it doesn't take long to express the underlying reasons for its importance and the fundamental reason why it should be in existence of the law on a permanent basis.

I support this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. CRAIG. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CRAIG. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator from Texas has 6 minutes 51 seconds.

Mr. CRAIG. I yield the remainder of our time to the Senator from the State of Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I come to the Chamber in a hurry because it has come to my attention that this amendment, which is perhaps in a technical sense not germane to the main bill in the Senate—but I understand there is a provision in it that would be considered and would not be out of order—but my concern is this: The Voting Rights Act of 1965 was an important landmark in the Nation's history. It was passed by the Congress in an attempt to make sure that no person, regardless of race, regardless of color, was denied their right, their fundamental right to vote. This was long overdue, very important, and certainly a result to which we all continue to aspire.

Perhaps Members of the Senate who have, like me, not had a chance to study this amendment in great detail, or perhaps what the ramifications of this amendment are, might be interested to know a few facts; that is, that the Voting Rights Act does not apply to all the States in the Nation. In other words, we are being asked to extend the Voting Rights Act only as it applies to a handful of primarily Southern States. In 1965, it makes sense to apply the Voting Rights Act to just a handful of States that historically and, yes, tragically, had a history of denying minorities their rights to be American citizens and enjoy the franchise unimposed by those who would deny them that right. But this is not 1965. This is the year 2004.

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to two votes, the Cantwell unemployment extension and the Frist voting rights. Have the yeas and nays been called on both of these amendments? The PRESIDING OFFICER. The yeas and nays have been ordered on the Cantwell amendment. Mr. CRAIG. I ask for the yeas and nays on the voting rights amendment. The PRESIDING OFFICER. The yeas and nays have been requested on the Frist amendment. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 2617

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion to waive the Budget Act with respect to the Cantwell amendment. The yeas and nays have been ordered. The clerk will call the roll. The assistant bill clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent. Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent. I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea." The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote? The yeas and nays resulted—yeas 58, nays 39, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—58

Akaka             Dole             Mikulski
Baucus             Dorgan             Murkowski
Bayh              Durbin             Murray
Biden             Feinstein             Nelson (FL)
Bingaman           Feinstein             Nelson (NE)
Bond              Graham (FL)             Pryor
Boxer             Harkin              Reed
Breaux             Hollings             Reid
Byrd             Inouye             Rockefeler
Cantwell          Johnson             Sarbanes
Carper             Johnson             Schumen
Chafee             Kennedy             Smith
Clintons            Kohl              Stabenow
Collins             Landrieu             Stabenow
Conrad             Lautenberg             Specter
Currie             Leahy              Talen
Daschle             Levin              Voynich
Dayton             Lieberman             Wyden
DeWine             Lincoln             Wyden

NAYS—39

Alexander          Domenici             Lott
Allard             Ensign              Logar
Allen              Ensign              McConnell
Bennett            Fitzgerald            Miller
Brownback          Frist              Nickles
Bunning            Graham (SC)             Roberts
Burns              Grassley             Santorum
Chambliss          Grassley             Sessions
Cochran            Hagel              Shelby
Coleman             Hatch              Stevens
Corzine            Hatchison             Sununu
Craig              Inhofen             Thomas
Crapo              Kyl                 Warner

NOT VOTING—3

The PRESIDING OFFICER. On this vote, the ayes are 58, the nays are 39.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment falls. Mr. CRAIG. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington is recognized. Ms. CANTWELL. Mr. President, while there were 58 votes—a majority voted for this amendment—we will come back to address this again and again because growth is not happening at the pace people believe. While we have postponed it today, thinking the UI trust fund is not being used as part of our deficit, the UI trust fund should go to these unemployed workers. We will be back to debate this issue again. I yield the floor.

AMENDMENT NO. 2616 WITHDRAW

Mr. FRIST. Mr. President, I ask unanimous consent that my amendment No. 2626, which was to be considered next, be withdrawn. The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Massachusetts. Mr. KENNEDY. Mr. President, I thank the majority leader for his superb statement, and I also thank the Senator from Kentucky for his comments in support of the extension of the Voting Rights Act. He made a eloquent statement and sent a message which I know is well received across this country. As a member of the Judiciary Committee, I want to work with him and the Senator from Kentucky to try to achieve what he wants, and that is the permanent extension of the Voting Rights Act. We will work closely with him to try to get it done in a timely way.

I thank him very much for focusing attention on this issue. I am grateful to him for his leadership. Mr. President, on a final point, I draw the attention of the Senate to this important compensation. A wide majority, a broad majority of Republicans and Democrats in the Senate voted for extension of unemployment benefits. I commend the Senator from Washington for her leadership on this issue. I know he believes, as I do, that this is not the end of the fight but just one of the innings of fight. I thank her for her leadership. The PRESIDING OFFICER. The Senator from Connecticut. Mr. DODD. Mr. President, briefly, I also thank the majority leader and others for agreeing to vitiate the vote on the Voting Rights Act. I underscore the comments made by the senior Senator from Massachusetts to work with the majority leader and others interested in getting this done. It can be done rather simply. We do need to build a record on the issue. That is exactly the point.

I commend the majority leader for moving on this. We do not want to wait until the year 2007. I thank him.

The PRESIDING OFFICER. The Senator from Idaho. Mr. CRAIG. We will move on now, under our unanimous consent request, to a Mikulski amendment, a Frist amendment, a Corzine amendment, a Frist amendment, and a Bingaman amendment. At that time, I do not think we are quite ready to move on, so I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered. Mr. REID. Mr. President, I have spoken to the manager of the bill for the majority and spoken to the majority leader. It is their intention, and I think it is a good idea, to have Senator MIKULSKI finish her amendment. She has 40 minutes. Following that, there will be an amendment offered by the majority. When we complete the debate on those two matters, we would vote on those two matters. We would, in fact, have two votes, and they would be stacked. Following that, we would again look at the schedule and see where we are. The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 2627

Ms. MIKULSKI. Mr. President, I have an amendment concerning the DC snipers, and I send it to the desk on behalf of myself, Senators SARRANES, LAUTENBERG, CORZINE, and CLINTON. The PRESIDING OFFICER. The clerk will report. The assistant legislative clerk read as follows:

[The Senator from Maryland [Ms. MIKULSKI], for herself, Mr. SARRANES, Mr. LAUTENBERG, Mr. CORZINE, and Mrs. CLINTON, proposes an amendment numbered 2627.]

Ms. MIKULSKI. 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: (Purpose: To exempt lawsuits involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo from the definition of qualified civil liability action)

On page 8, line 22, strike "or". On page 9, line 2, strike the period and insert "or". On page 9, between lines 2 and 3, insert the following: "(vi) an action involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo from the definition of qualified civil liability action"

Ms. MIKULSKI. Mr. President, I rise on behalf of my Maryland constituents and other neighbors across the Potomac to offer an amendment on behalf of the sniper victims. My colleagues might remember that over 1 year ago, the citizens of Maryland, Virginia and the District of Columbia were terrorized by snipers. Soccer games were cancelled. People were afraid to buy gas...
and terrified to go into a Home Depot. What was happening was that 10 innocent people were killed while they were mowing their lawn or getting gas or while a new bride was going shopping at Home Depot to gussy up her home, or one who was a driver getting ready to do his duty. The families have experienced tremendous loss, and the Nation mourned with them.

We so thank our law enforcement agencies for helping us catch the snipers and the judicial system that is working to try them, but now we also need to make sure that we protect the victims and the victims' families.

I bring to the attention of my colleagues that the legislation Congress is considering now could inflict further pain on the families. It could slam the courthouse door on the families of the sniper victims and on all Americans who believe they are harmed by negligent actions related to guns. It gives gun dealers and manufacturers a free pass, regardless of whether families and survivors from holding irresponsible stores accountable if they are negligent.

It actually would prohibit these families from going to court to seek redress, actually prohibit them from letting a jury of their peers decide if a gun store or a manufacturer was negligent.

If this legislation passes, one could still go to court over a toy gun but not a real gun. I think that is wrong.

My amendment is to make sure the sniper victims and their families have a right to go to court. Before I tell my colleagues about those families, let me tell my colleagues what my amendment will do. My amendment protects the legal rights of the families. It allows current and future cases by sniper victims and their families to proceed.

Currently, one case is pending in Washington State court. It creates an exemption on the bill text of S. 1805 for all cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is a very narrowly drawn bill. It does not impact on any of the legal standards of the bill, and it does not prevent a court from dismissing a case if there is no negligence.

What it does is create an exemption only, and I emphasize "only," for cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is the Maryland-DC-Virginia sniper case.

I in no way want to create any ambiguity in this bill or create a loophole in this bill. But this is a very serious matter. I am here in behalf of those families.

Conrad Johnson, who was the sniper's last victim, I remember hearing the news when he was shot at a bus stop in Montgomery County. He was killed by the sniper just as he was getting ready to get on his route. He was so beloved in that community that 2,000 people came to his funeral. He drove this route for so many years. They loved him. Thirty members of his family gathered at the hospital after he was shot. He was always finding ways to take care of his family and his community. Conrad Johnson was one of the many Marylanders whose families are still grieving because of this reign of terror. Five Maryland families lost their loved ones in the sniper's first 24 hours.

Today I stand here for the rights of those families, to have their day in court: the rights of Jim Martin's family; he was shot when he stopped to buy groceries for his church program; James "Sonny" Buchanan, a landscape architect who was soon to be married; or the husband and the 7-year-old son of Sarah Rambo, who was shot 25 minutes later as she sat on a bench waiting for a ride to go to her babysitting job; also for the little boy named Iran Brown, who was shot in the chest as he was dropped off to go into middle school. Thanks to a guardian angel, it was his aunt, a nurse, who was with him that day when he was dropped off so she could sweep him up and be with him as he lay hemorrhaging in the hospital. Thank God, for the genius of American medicine that little boy is alive.

Family after family has endured incredible pain. Also, there are other cases that are pending. These families have been through so much they can never recover their tremendous loss. We owe it to them to make sure they have their day in court. That is why my amendment is offered to protect them, and that is why it is in such plain and simple language. It is limited to victims of John Muhammad and Lee Boyd Malvo. I don't need any legal experts to interpret this amendment. A judge has to decide if the case fits one exemption or another. That is because, under my amendment, any case involving them must.

This is very serious. When we look at the matter, there is evidence that indicates the snipers bought something called a Bushmaster from the Bull's Eye Shooter Supply Company. The Bull's Eye Shooter Supply Company had lost the assault rifle used by the sniper victim. In 3 years, it managed to lose 237 other guns. Imagine a gunshop that not only couldn't find records on this gun, it had lost 237 guns.

I am not going to prejudge cases, but I am going to point fingers. Something was terribly, terribly wrong at this place.

When we look at this, Bull's Eye could not account for 238 guns. Bull's Eye's missing gun rate was greater than 99 percent of all Federal arms licenses. Eighty percent of all dealers that year as a matter of fact could provide records to account for every one of them. Why couldn't that happen there?

There is item after item about this case. When you look at Malvo and look at Muhammad, what you find is the sniper victims obtained a one-shot, one-kill assault weapon that was from the Bull's Eye Shooter.

When we look at their records, we find that Muhammad was under a domestic violence protective order and Malvo was both a juvenile and an illegal alien.

How did they get their hands on these weapons? That is for law enforcement to decide. That is how our legal process should follow its regular order, to seek redress. But this points out a set of terrible situations that led to the death of these 10 people in our region. This is why I am offering this amendment. After the deaths of these wonderful people, their families should have redress in court. The boy who was shot in his chest and is still recovering, though at school, should have redress.

I am going to be very clear that in this bill we do not create ambiguity, confusion, or something that would derail this. I urge the Senate to adopt my amendment and to allow the cases affecting this particular group of people to be able to proceed without prejudice or without any unintended consequences of this legislation.

I yield the floor and reserve such time as I have.
they don't have a right to recovery, so be it. But should we pass a law to say these families do not even have a chance to go after the reckless misconduct of these gun dealers that resulted in the deaths of their loved ones? This is what this bill is all about. The Senator from Maryland has dramatized it in terms that everyone who works in this Capitol will understand.

There was a time when you couldn't go home from work, from this building, for fear of being shot in the street. It happened over and over and over again. Why in the world would the Senate pass a bill to insulate this reckless gun dealer from his civil liability for selling these guns?

I thank the Senator for her leadership.

Ms. MIKULSKI. I yield such time as he may consume to the Senator from Rhode Island.

Mr. REED. Mr. President, Senator MIKULSKI is here, doing something that is, unfortunately, necessary because the underlying legislation would cause currently pending suits on behalf of the families and estates of these victims of the snipers to be thrown out of court. That is not only unfortunate but it is unconscionable.

There are arguments that this legislation is crafted so these suits go forward. But that is not the case at all. The two salient facts in the sniper shootings with respect to this legislation are, first, the sniper, Malvo, claims he shoplifted the gun. The store owner claims that he was unaware of these weapons being missing until he was contacted after the shooting by the ATF.

As a result, none of the appropriate exemptions from the preemption to sue would be applicable in this particular situation.

There are two particular exemptions that are often pointed to. One talks about the negligent entrustment, which is a theory of law, and negligence per se. None would apply because it requires the defendant to have knowledge of a violation of the statute or knowledge that something untoward would happen. Under the facts as we know them, the defendant alleges he was unaware of the missing weapons.

In addition, the other exemption would be if there was a violation of Federal and State statute and that violation was the proximate cause, almost directly the substantial cause of the harm caused to the plaintiff.

That, too, can be substantiated. We have a situation where this statute not only does not cover this situation and would require these cases be thrown out of court, but it raises the extraordinary question about what other cases there might be in the future that would cry out for justice, to bring a suit and demand some type of compensation because of negligence caused by a gun dealer, manufacturer or trade association. They, too, would fall. That would be as compelling as these cases of the Washington area sniper victims.

I commend Senator MIKULSKI for standing up for these families. They are good people. This is a cutout of these cases from law and allowing them to go forward. But it just begs the question of how many other worthy cases will be frustrated by this legislation, if we pass it. I, of course, urge that we do not pass the legislation. But I certainly urge the amendment proposed by Senator MIKULSKI be agreed to.

I yield my time.

Mr. CRAIG. Mr. President, may I inquire as to the time?

The PRESIDING OFFICER. The Senator from Idaho has 20 minutes, and the Senator from Maryland has 5 minutes.

Mr. CRAIG. Mr. President, I will use some of my time at this moment.

At the outset, let me say Senator MIKULSKI and I are best of friends. We appreciate our friendship, and we work closely on a variety of pieces of legislation. There is nothing I would do nor is the Senator I would do other than work, in good faith, to see that appropriate justice is done.

I ask the Senator to go with me to page 7 of the bill and to look at section 4 of the bill. Let us talk about that in relation to the phenomenal tragedy that hit this city and the families she is discussing.

Not only did her friends and neighbors hunker down in fear, but so did we as John Lee Malvo and John Allen Muhammad terrorized the neighborhoods in Maryland and Virginia.

Here is the problem. What are the facts? The Senator said I am not going to try the case on the floor, but I am going to point fingers. I am going to try the case on the floor, but I am going to point fingers.

We probably have reasonable cause to point fingers at Bull’s Eye in Tacoma, WA. Something went wrong up there. There are over 300 guns missing. Lee Malvo himself said, I stole the Bushmaster I used in the sniper incidents in Virginia and in Maryland. “I stole the gun.” He said so. It is on the record. Already he sets up an interesting scenario.

As a result of that, the BATF pulled the license of the gun dealer and recommended felony charges be brought by the Justice Department. This case is maturing at this moment.

What does our bill do? It tries to very narrowly create an environment and an exception.

Let us go to that bill and to page 7. Let me read starting on page 6 of the bill because I think it is important. Many Senators have ignored this in the rhetoric of the day. They shouldn’t ignore it.

In general, the term “qualified civil liability action” means a civil action brought by any person against a manufacturer or seller of a qualified product or a trade association for damages resulting from the criminal or unlawful misuse of a qualified product by a person or a third party but shall not include—

In other words, the exceptions under which the Malvo and Muhammad case can be tried in which those parties the Senator is talking about contain compensation are the following:

No. 1, an action brought against the transactor convicted under section 924 of title 18 United States Code or a comparable or identical State felony law by a party directly harmed by the conduct for which the transferee is convicted.

Parties harmed. In other words, did the transferee, the gun dealer, malfunction? Did he break the law? There is a strong appearance that he might have.

No. 2, an action brought against a seller for negligent entrustment or negligent per se.

No. 3, an action in which a manufacturer or a seller of a qualified product knowingly or recklessly violates a Federal statute applicable to the sale or marketing of a product and the violation was a proximate cause of the harm and for which the relief is sought.

No. 4, an action for breach of contract or warranty in connection with—

And then we go on to deal with basically product liability.

My point is quite simple. I believe we are protecting those families. I would not write the kind of law that is being suggested would be written. What I am concerned about are lawsuits in which we are trying to hold accountable the innocent party—in this case potentially a manufacturer of a product—unless there is criminal intent, or unless they have broken the law.

Mr. DURBIN. Mr. President, will the Senator yield?

Mr. CRAIG. I can’t yield. My time is limited. I am sorry. The Senator has had time. Let me continue.

That is the sense of the argument we are dealing with here. Negligent entrustment:

In subparagraph (a)(2), the term “negligent entrustment” means the supplying of a qualified product by a supplier for use by another person when the supplier knows or should know—

That is very important.

—the person to whom the product is supplied is likely to and does use the product in a manner involving unreasonable risk of physical injury to the person or to others.

What are we trying to do here? Again, I have said time and time again over the last 24 hours this is a very narrow exception, but to entrust us to a century of tort law that says innocent parties are not guilty nor should they be swept into lawsuits if they have met certain standards of the law—in this case, licensed gun dealers and manufacturers.

Did the folks up at Bull’s Eye in Tacoma meet those standards? We don’t know. But I will tell you the BATF pulled the license. They said they didn’t have a federal firearms license. There is an investigation underway. If they lost that many firearms and they didn’t notice it and they didn’t report
it. I am not an attorney, but I have to assume they have a big violation on their hands. If Malvo walks in and pulls a Bushmaster from off the rack and walks out with it and that is not detected, they have a problem on their hands. I believe they have a problem on their hands and they are not detecting it.

The argument is—and some have used it—they do not even make it to the courthouse. That is not a valid statement.

This is a basis from which you argue before the court and a knowledgeable, and I hope trusting, judge will take these evaluations in hand and make the determination that this is not a frivolous or a junk lawsuit; that there is basis, and the reason there is basis is because there has been a clear violation of Federal law.

If there has not been a violation of Federal law, even though many of us can certainly have great concern about the families involved, do we continue to support that we go out and harass through the courts legal, law-abiding citizens and producers of a legal product in this country simply because it fits the passion of the day or the politics of the moment? I think not. I don’t think so. The Senator from Idaho wants to do that. It is clear if you carve out this exception, you gut the bill because you are saying no, no. We are saying we are giving you all of these exceptions very clearly in the law, and they are not excepted. The Federal law is there. It is clear. It is present. The investigation is underway. We cannot try that case here. But I do agree with the Senator from Maryland, we cannot try to, but we can point fingers.

Our bill, S. 1805, sets up a very clear case in which these lawsuits can be effectively argued and a decision made whether there was a rupturing of Federal law or whether we do have law-abiding practitioners in the business of the manufacturing and sale of firearms in this country. That has to be and it must remain the basis of the argument and the basis of this law. The amendment the Senator offers goes directly in the opposite, to carve out special exceptions within the law now and into the future.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I have two legal opinions, one from Lloyd Cutler, a very distinguished American lawyer who has served as White House counsel to a President, who says that S. 1805 contains language that would require the dismissal of the Johnson case. I have another legal opinion from Boise, Schiller & Flexner who essentially say the exceptions would only preserve civil claims brought under other kinds of law. Other than that, what they are saying is this would preempt their ability to bring this case.

The opinions clearly state that section 4 on page 7 articulated by my esteemed colleague does not hold water. It does not protect the victims of Malvo and Muhammad because it is in such plain English limited to those cases by the name of the perpetrator and predator. This does not create a loophole.

Talk about loophole, talk about the gun shield loophole, talk about all the other loopholes in the gun bills. My amendment does not create a loophole. The law has there is ambiguity in S. 1805 and that section 4 could preempt the ability of these families to bring this case.

The distinguished Senator from Idaho has his opinion. I have my two legal opinions from Boise, Schiller & Flexner who essentially say the exceptions would only preserve civil claims brought under other kinds of law. Other than that, what they are saying is this would preempt their ability to bring this case.

His point and my legal opinions prove the necessity of the amendment, to clear up the confusion, end the ambiguity, protect these victims and the families and their right to pursue.

I yield to the Senator from Idaho, a distinguished lawyer himself, to further amplify this argument.

Mr. DURBIN. I thank the Senator from Maryland.

I say to the Senator from Idaho who stood up and said he did not believe the survivors of the DC sniper shooting had a right to go to court and therefore he was going to oppose the Senator’s amendment, I guess that is clearly his point of view, but he said just the opposite. He said he reads this law to allow the victims and their families of the DC sniper to go court against the dealer.

If that is his opinion, then he ought to accept the amendment from the Senator from Idaho and because that is what she is asking for.

If you do not believe the victims of the DC sniper should have a day in court against the dealer to determine whether or not he is guilty of wrongdoing, then just say it. But if you believe that these sniper victims and their families should have a day in court, for goodness’ sake, accept the amendment of the Senator from Maryland. If you do not, it really tells the story of your amendment.

If your bill is going to stop the families and victims of the DC snipers from holding a gun dealer guilty for irresponsible, reckless misconduct, frankly, that is another good reason for us to defeat the bill. Let us stand behind the innocent victims of the DC snipers.

Talk about people who hate guns. I do not hate guns but I hate snipers who shoot children and innocent people on the street and I hate the people who manufactured the guns. I think they ought to be held accountable. That is all the Senator from Maryland is asking.

Ms. MIKULSKI. Continuing my argument, there is ambiguity and there is honest disagreement. I know the Senator from Idaho might bring us a CRS opinion saying the cases might survive. My colleague from Rhode Island has an earlier CRS opinion that says the opposite. The point is, there is ambiguity both in the law and in opinions about the law.

My amendment is a simple, straightforward way to clear up the ambiguity and let these cases move forward.

The PRESIDING OFFICER. The Senator is reminded to address each other in the third person.

The Senator from Idaho has 10 minutes 27 seconds remained.

Ms. MIKULSKI. Parliamentary inquiry: Did I do something wrong? The Senator from Idaho, the Senator from Illinois referred to the Senator from Idaho in the first person.

Mr. DURBIN. I beg your pardon. Parliamentary inquiry: I referred to the Senator from Idaho on the floor; is that improper?

The PRESIDING OFFICER. The Senator several times during his talk used the pronoun “you.”

Mr. DURBIN. I apologize for using the pronoun “you.” I will never do it again.

Mr. CRAIG. Mr. President, may I inquire as to the time remaining on both sides of the Mikulski amendment?

The PRESIDING OFFICER. Ten minutes 28 seconds for the Senator from Idaho 14 seconds for the Senator from Maryland.

Mr. CRAIG. With 14 seconds remaining for the Senator from Maryland to argue, this is her amendment, and under the unanimous consent I will then offer the Frist-Craig amendment.

As we now know, then they will be stood up to be voted on, Frist-Craig first, Mikulski second.

If the Senator would like to make any concluding remarks about her amendment, I would certainly welcome that. She then controls 20 minutes of the 40 that would be on my amendment and the debate could go on.

Ms. MIKULSKI. Excuse me, Senator. The Frist-Craig amendment is on what topic, I am not sure.

Mr. CRAIG. On your topic.

Ms. MIKULSKI. What is the Frist-Craig amendment?

Mr. CRAIG. I have not offered it yet. Ms. MIKULSKI. You want to conclude the debate on this amendment.

Mr. CRAIG. Then you set your aside for the Frist-Craig debate on the same subject matter and then stand these up for votes.
Ms. MIKULSKI. I have no objection to that.

Mr. CRAIG. With that, I assume all time is yielded back.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 3286

Mr. CRAIG. I ask that the Mikulski amendment be set aside for the purpose of introduction of an amendment on behalf of Majority Leader FRIST and myself.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. Craig], for Mr. Frist, for himself and Mr. Craig, proposes an amendment numbered 3286.

Mr. CRAIG. 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:

(Purpose: to deny any liability lawsuit involving a shooting victim of John Allen Muhammad or John Lee Malvo from the definition of qualified civil liability action that meets certain requirements)

On page 9, line 2, strike the period at the end and insert ‘‘; or ‘‘.

On page 9, between lines 2 and 3, insert the following:

(v) an action involving a shooting victim of John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (v).

Mr. DASCHLE. Reserving the right to object, I will not object, but I am told we have not had the opportunity to see the text of these amendments. If we are going to work in good faith, it is very important that on all of these alternative amendments the text be provided if they are available and certainly before they are offered.

Mr. CRAIG. If the minority leader will yield, it is my fault. I apologize. We will place ourselves in a quorum until they have copies. It is brief and to the point and easy to understand for everyone.

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. CRAIG. 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. CRAIG. Mr. President, I apologize once again to the Senator from Maryland that the stand-beside amendment I offer in conjunction with hers was not to her. We have a stand-beside Frist-Craig amendment to the Corzine amendment, which may follow immediately. We are copying that now to make sure Senator Corzine and the other side has a copy of it.

My amendment, as you can see, is really very simple, but it is also extremely important. It is simple in this respect: 55 cosponsors of S. 1805 have cosponsored S. 1805 because of its narrowness, of its cleanliness in the fact that we do not clutter up a lot of laws and we create one very limited but very important exemption, and that is that junk lawsuits filed by a third party cannot reach through and suggest that someone who has sold a legal product can be held liable for that product unless they have broken the law or a person selling that product is not held liable for that product unless they have broken the law.

My amendment says, in essence, if an action involving a shooting victim of John Allen Muhammad or John Lee Malvo meets any of the exceptions of S. 1805, the action will not be barred by this bill.

Again, what are those exceptions? Well, I have read them earlier. Let me repeat them. They are very clearly outlined in section 4 of the bill, and what we say is:

The term ‘‘qualified civil liability action’’ means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or the third party.

In other words, if that third party is a guy who breaks the law, but the seller and the manufacturer are not, then the judge looks at that and makes that determination and says no.

But here is where it gets interesting. It is a qualified product in Maryland and in Virginia, if it is found that:

an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted—

‘‘Transferee,’’ in this case, in my opinion, at least, is Bull’s Eye. They are the ones responsible for that firearm. They are the ones that would have sold it legally. In this case it was stolen from their shop. It appears to have gone unreported.

Secondly:

an action brought against a seller for negligent entrustment or negligence per se...

So we have not swept that away nor will we sweep that away. In fact, I believe we strengthen it, and so does the Congressional Research Service. While there may be a difference of opinion on that, I think what is significant is that Senator Daschle and I agree. We teamed up together to strengthen this and to clarify. The Congressional Research Service, our amendment:

would strike ‘knowingly and willfully’ in the preceding sentence, potentially increasing the likelihood that this exemption to the general immunity afforded under the bill would be applicable in any given case.

In this case, it probably strengthens the position we are dealing with here, as the Senator from Maryland and I visit about in the case in Maryland and I visit about in the case in Maryland and I visit about in the case in

The third exception that clearly could be applicable, and that my amendment says if found is applicable, in the Muhammad and Malvo case:

an action in which a manufacturer or seller of a qualified product violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.

In other words, relief for these families who were the victims of John Muhammad and John Lee Malvo.

I believe it is a clear, clean amendment. I don’t think it is ambiguous at all. It does argue the premise in the law that always must be argued, and that is, did Bull’s Eye break the law? Well, we are investigating that now. Did the manufacturer of the Bushmaster in any way violate the law? That is probably getting investigated, too, although even the Brady Center doesn’t impugn in any way that the manufacturer was involved in this.

Those are the facts.

In other words, what I am suggesting by this amendment, what I believe is still clear in 1805, is that we are not exempting the victims of the sniper shootings of DC and the Virginia and Maryland area. It is not our intent to do so. It is our intent to allow them to go to court. It is our intent to allow them to argue this before a judge. It is our intent to allow a judge to make a decision based on these exceptions and now the clearly repelled out exceptions in the Frist-Craig amendment as to whether, based on this law, there can be compensation to these families from, in this instance, a dealer and a manufacturer. That is the essence of it.

I don’t believe the courthouse door is locked. All attorneys are entitled to their own opinions. Everybody reads the law a bit differently. So is my opinion stronger than your opinion? I know what my intent is. I know what Senator Daschle’s intent is. I know our intent is not to lock the courthouse door.

We believe we don’t. And it has been thoroughly checked by numerous lawyers. We think our amendment is sound.

I am going to ask the Senate not to gut the underlying 1805 but to vote for the Frist-Craig amendment which will not only strengthen the amendment, strengthen the position but, I believe, fulfill the concern and the arguments of the Senator from Maryland.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senator from Idaho points to every exception because he can’t point to one exception that will clearly establish the right of these plaintiffs to go forward to make their case. The way this legislation is structured, from the qualified civil liability action may not be brought in any Federal or State court. You are thrown out of court unless you can get yourself back in by an exemption. In these cases, you are dismissed. You are already in the door, but you are out the door. The intent is very clear. It is to stop individuals from suing dealers, manufacturers, and trade associations.
What about these exemptions? The first exemption deals with the transferor or convicted. There have been no charges in Bull’s Eye, no conviction. What happens? The case is already dismissed. Is there language the Senator from Idaho will apply reinstating the case automatically?

The second is a possibility that is negligent entrustment or negligence per se. All of these require knowledge on the part of the defendant. The facts of Bull’s Eye clearly suggest there is no evidence so far proven that the owner knew the gun was shoplifted and, in fact, he alleges he was not aware of any missing weapons until he was confronted by the ATF after the crime. This does not apply.

Finally, there is the violation of a Federal or State statute. The Senator from Idaho often talks about, well, if there is a violation of Federal or State statute, that, of course, allows a person to go forward with this case. But there are two parts of this test. State or Federal statute violated, and that violation causes proximately, substantially the injury. In effect, what would have to be shown for any type of liability to adhere to the Bull’s Eye case under this arrangement is that he was aware of the missing weapons more than 48 hours before he was confronted by the ATF, and he consciously disregarded his obligation to report not just a missing weapon but the particular weapon that was taken by Malvo. None of these exceptions apply to Bull’s Eye or, if they apply, it is a very tortured reach to make the application.

Then this amendment simply says: Well, if you fall under the statute, you get to use the statute. This is a circular, is a kind way to describe what this is. You could substitute anybody’s name in the United States. It doesn’t have to be John Allen Muhammad or John Lee Malvo. It could be the victim of any criminal today walking around the streets of America with a handgun. Because if you are injured by that individual with a handgun and you fall into these categories, you get to go to court.

But this is an easy amendment because very few people, if any, will qualify under these criteria. That is the whole point of this carefully worded, excruciatingly arcane approach to shutting people out of court. That is what this is about.

Essentially you can’t have it both ways. You can’t stand up here and claim you are protecting the industry from frivolous suits but every suit we bring up is a possible worthy and meritorious suit. Well, of course, that will get into court. Of course, it is one of the exceptions. You don’t get it both ways.

You get it one way in this bill. Innocent people injured by the negligence of dealers, of manufacturers lose. And they win.

We are not just giving out Federal firearms licenses, if this legislation passes. We are giving a license to be negligent and reckless—grossly negligent and grossly reckless. That is what a Federal firearms license means, if this legislation passes.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REED. I yield 5 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator for yielding the time to me. I associate myself with the amendment that was initially introduced by my colleague from Maryland, Senator Mikulski. I rise to raise questions about that which is currently now being offered by the Senator from Idaho.

There is no doubt about the appropriateness of the amendment, as it was presented by the Senator from Maryland, because it was her constituents, seven of them, who were shot by the sniper, six of whom died.

For over a month in the fall of 2001, John Muhammad and John Lee Malvo terrorized the Washington metropolitan area through a series of vicious sniper attacks on innocent men, women, and children. In the area around Washington, D.C., in Maryland, and in Virginia. Ten of the 13 died. We have heard the names of those such as Linda Franklin, 47-year-old FBI analyst, standing with her husband in the Home Depot parking lot in Virginia. She was killed. Another was Pascal Charlot, a 72-year-old retired carpenter standing on a street corner, shot and killed. Another victim was Iran Brown, a 13-year-old boy who had just been dropped off at school.

My fellow Senators now prepare to tell mothers and victims throughout the United States that they don’t have a right to file a civil lawsuit against individuals and businesses that helped cause this tragic event.

We had a debate on the floor yesterday. There was a question, a semantic question, about whether or not the Bull’s Eye store was really closed. One of my staff members called the numbers and they said: Yes, we are open until 7 o’clock. Do you want anything—this is my edition: if you want anything shipped out, we will get you guns.

We argued about whether or not they were really closed or who had the license or what. These are extraneous things having no significance in the debate.

We see the same thing replicated here. If you meet certain conditions, you are still able to bring suit. But if one of the provisions is present, then you can’t bring suit.

Why don’t we tell it like it is? And that is, by whatever stretch of the imagination you want to bring, these people, the victims of the sniper attacks, are unable to bring a suit. There is no doubt about it. We can discuss language all you want, but it is the intent.

I throw another obstacle in the way for these victims to get some justice, some sense of what it is that took place that was wrong and how we can help prevent it in the future.

To hear these discussions immersed in language changes, I suppose if you study it closely enough, you will find punctuation changes. Bull’s Eye claimed they didn’t have any record of sale. They cannot explain how the snipers obtained the assault weapon. I have not heard any condemnation of their poor practices; that 277 weapons were lost. What a shame. If any normal store lost items that cost this much, they would be in a state of panic. Apparently, these guys did not care that much, but we still want to prevent the same thing from happening.

Why we have to take away people’s rights is something, frankly, I do not understand. I hope the public at large begins to raise questions: What is this? Do you mean if I am injured in an automobile accident and the automobile manufacturer has been negligent, that they did not protect the people, that the manufacturer when it was hit in the back. I shouldn’t be able to get compensation for that small error? It may have burned you alive. Or if there was such a casual structure of behavior with a pharmaceutical company, and they put the wrong tablets in a bottle, and if someone there, in a moment of madness, put the wrong tablets in a bottle and a person becomes ill or dies, they shouldn’t be able to bring an action? This strikes me as something that the citizenry, who is expecting us to take care of them, is unable to comprehend.

This debate goes on and there is always another trick, another maneuver to try and interrupt the flow of what we would consider normal justice. I hope we will defeat the amendment because it adds nothing to the compromise that we have to arrive at to get the kind of voting pattern—the record that says, yes, we made sure the people who suffer these terrible damages have a right to compensation or to a review by the court to decide that issue.

I hope we will defeat the Frist-Craig amendment and get on to the Mikulski amendment, which approaches the problem directly. These people have been severely injured by the actions of the snipers who got the gun illegally, inappropriately, improperly—call it what you will.

I yield back the remaining time.

Mr. REED. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 8 minutes 22 seconds.
Mr. CRAIG. Mr. President, may I inquire as to the amount of time I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. CRAIG. Mr. President, I will use a limit of that time. If the Senator from Maryland wishes to close out the debate, I will make my closing statement, and we can move to a vote quickly.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. No, I am only responding.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. The Senator knows I am only responding to a comment he made. I am simply suggesting that for the next few moments he might wish to read the amendment. Here we are not dealing with product liability.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. No. I am only responding.

Mr. CRapo. Mr. President, this amendment which puts them in court.

Ms. MIKULSKI. Mr. President, this amendment is needed. The amendment is needed.

Mr. REED. Mr. President, before going to other issues of negligence.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. Mr. President, may I in-quire as to the amount of time I have remaining?

The PRESIDING OFFICER. The Senators has 13 minutes remaining.

Mr. CRAIG. Mr. President, I will use a limit of that time. If the Senator from Maryland wishes to close out the debate, I will make my closing statement, and we can move to a vote quickly.

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Mr. REED. Mr. President, before going to other issues of negligence.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. Mr. President, may I in-quire as to the amount of time I have remaining?
I really do believe the Frist-Craig amendment would gut their ability to move ahead. It is trying to shoehorn into these exceptions and yet at the same time these very exceptions would prohibit them from bringing their claim. It is absolutely on behalf of these families to be able to do this.

Also, in another section, the negligent entrustment/negligence per se exceptions embodied in paragraph (5)(A)(iii) will not save them. As an initial matter, these exceptions are limited to a seller, and it goes on and on. What it says in a nutshell is that it would preclude them from moving forward.

For the information of my colleagues, this legal opinion letter was printed in yesterday’s Record.

I also acknowledge that the Senator from Idaho has a different view than this legal opinion but that is the point of the amendment. I have a legal opinion. He has his expertise and the CRS opinion.

I think it is the opinion of the American people, that when someone brings a whole community to a paralyzing halt, when people have been ghoulishly and perversely shot down in a deliberate, predatory, and cruel manner that in this country one ought to at least be able to go to court to seek some redress. All I am doing is preserving their right to do so.

When we say we want to stand up for the two amendments. They are very clear before us. It is as old as tort law itself. The responsibility is tied to the individual, unless the individual under law is found totally negligent.

She and I have agreed the case cannot be tried here because we simply do not know the facts. We know a little bit about it. We know bits and pieces about it but we have not seen the BATF’s report. We have not seen the kind of investigation that has gone on.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. Kerry) would vote “nay.”

Those voting—yeas 59, nays 37 as follows:

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Mr. CRAIG. It is my understanding that, under the agreement, the Frist-Craig amendment would go first and the Mikulski amendment would follow.

The amendment (No. 2628) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

The yeas and nays were ordered.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There are now 2 minutes of debate on the Mikulski amendment, evenly divided, to
be followed by a vote. And the yeas and nays have already been ordered.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, my amendment, I believe, is far superior to the amendment the Senate just adopted. It is a straightforward amendment. It exempts from the bill all cases related to those committed by the despicable predators John Malvo and John Muhammad. This is a very specific, very limited exemption. I urge the Senate to consider it.

If we really want to honor the victims of the sniper cases, please give them the opportunity to pursue their cases in court. We have a substantial legal opinion from an eminent scholar such as Lloyd Cullter, and they says if this bill passes, and passes with Frist-Craig, the victims’ cases will be thrown out of court absolutely or, at the very least, be left in great ambiguity.

Please, let us do justice to the victims and at least give them the opportunity to seek justice.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I say to my colleagues, you have just voted for the Frist-Craig amendment. If you now vote for the Mikulski amendment, you have totally reversed your vote. The Mikulski amendment guts the underlying bill, S. 1805, carves out a substantial exemption. If you are supportive of S. 1805, then you vote no.

But do we protect the right of the victims for their day in court? We absolutely do. There are four major exceptions in which we say, if these parties are found guilty, if there was a negligent gun dealer, if there was a negligent manufacturer—and that is a fact and it is proven—then their day in court is there, as it should be.

But we do not allow frivolous third-party exceptions. That is the underlying premise of the bill. Again, if you voted for Frist-Craig, I would ask you to vote against Mikulski. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the Mikulski amendment. The yeas and nays have previously been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Alaska (Mr. MUKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “aye.”

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

The result was announced—yeas 40, nays 56, as follows:

YEAS—40

Akaka
Bayh
Biden
Bingaman
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Corzine
Daschle
Dayton
Dole
EDWARDS
Eldridge
Enzi
Eskridge
Feinstein
Gingrich (FL)
Harkin
Hollings
Hoeven
Klobuchar
Lautenberg
Leahy

NAYS—56

Alexander
Allen
Baucus
Bennett
Bentsen
Biden
Burns
Buxbaum
Bunning
Burr
Chambliss
Chambliss
Cheney
Collins
Cornyn
Craig
Crapo
Cochran
Collins
Cornyn
Craig
Crapo
Dole
Domenech
Edwards
Edwards

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business is an amendment by the Senator from New Jersey with 30 minutes of debate equally divided.

Mr. CORZINE. Mr. President, I think this amendment is so important and needs to be dealt with.

My hope is we can at least reach an agreement that even if we are going to strip away the rights for most Americans, we will not take away the rights from the men and women who serve as our Nation’s law enforcement officers, the protectors of the peace, the people who serve on our streets, in our neighborhoods, our first responders.

I know all my colleagues appreciate the tremendous service and risk our law enforcement on our streets provides to our communities, so I hope they will share my interest in protecting their rights.

The AMENDMENT NO. 2612 was rejected.

Mr. CORZINE. Mr. President, I ask unanimous consent that the reading of the amendment, disagree. On the cosponsorship, disagree. On Tuesday, this legislation will likely be approved. That is why my amendment is so important and needs to be dealt with.

The amendment (No. 2627) was rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business is an amendment by the Senator from New Jersey with 30 minutes of debate equally divided.

Mr. CORZINE. 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:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 11, after line 19, insert the following:

SEC. 5. LAW ENFORCEMENT EXCEPTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

Mr. CORZINE. Mr. President, I strongly oppose the underlying legislation before the Senate which waives liability for gun dealers and manufacturers.

In my view, the legislation strips away the legal rights of victims of gun violence and shields wrongdoers from accountability. It provides special exemptions for the narrowest of special interests, and it would make our country less safe.

The bill uses a variety of complicated legal concepts, narrowly drawn exemptions, to shield irresponsible gun dealers and manufacturers from accountability. When we get beyond the legalese and Washington speak, the bottom line is the bill will limit the legal rights of victims.

I think that is wrong. In my view, no victim of gun violence should be denied their day in court. Each should be allowed an opportunity—a chance—to make their case. That is why I believe this whole bill is a mistake.

That said, I am a realist. I recognize the majority of my colleagues, based on the cosponsorship, disagree. On Tuesday, this legislation will likely be approved. That is why my amendment is so important and needs to be dealt with.

My hope is we can at least reach an agreement that even if we are going to strip away the rights for most Americans, we will not take away the rights from the men and women who serve as our Nation’s law enforcement officers, the protectors of the peace, the people who serve on our streets, in our neighborhoods, our first responders.

I know all my colleagues appreciate the tremendous service and risk our law enforcement on our streets provides to our communities, so I hope they will share my interest in protecting their rights.

The important of protecting the rights of our police officers was brought home to me and, I am sure, Senator LAUTENBERG through a case of two police officers in the State of New Jersey: New Jersey Police Detective David Lemongello and Officer Ken McGuire.

In 2001, they were seriously injured when a career criminal shot them while they were working undercover. This criminal was prohibited from purchasing a firearm but he obtained his gun illegally from a trafficker. As it turns out, the trafficker also was prohibited from buying weapons and had used a so-called straw purchaser to make multiple gun purchases from a store in West Virginia.

The cash sale for thousands of dollars was so obviously suspicious that the dealer apparently felt guilty. On the very same day, but after he took the money and after the guns walked out the door, the dealer called into the ATF and identified him. But that was
after the guns were gone. Unfortunately, at the time of the sale the dealer apparently thought it was more important to make a profit than to protect the lives of innocent victims.

Sure enough, Officers Lemongello and McGuire were responding to a situation in Chicago. There is a case under Illinois law, but in this case our officers, such as Officer McGuire, and tell them we are going to take away their rights? How can we tell David Lemongello that he risked his life on behalf of our community, and he almost lost it because of an irresponsible gun dealer? Will he be suffering from the attack for the rest of his life but if he wants to go to court, if he wants justice, our answer to him is no?

Remember, the question before the Senate is not whether these two police officers, or any police officer, has a good case. It is simply whether they have a right to make their case. It is whether they have a right to try to convince a jury that a gun dealer acted irresponsibly and whether they deserve compensation as a result. I do not call this a frivolous lawsuit. I consider this a right for a law enforcement officer to have a right to make their case in court before a jury. This bill would deny them that day in court. Not only would it strip these two heroes of their legal rights, it would do so retroactively.

I know we are going to hear about narrowly defined exceptions that will not allow for it. I do not think law enforcement officers should be limited in their ability to make their case before a jury. As far as I am concerned, it is an affront to these officers and an insult to every police officer who puts his or her life on the line for the community, and it sends precisely the wrong message when we are supposed to be enhancing homeland security and reinforcing the risks that people are taking to protect our families and our communities across this country.

My amendment is very simple. In fact, I will read it word for word:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or an employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

I suspect we will hear about amendments that draw these narrow lines of exception. Why is it that a law enforcement officer cannot go into a court of law and get redress if they have been wronged in the illegal sale or the negligent sale of firearms to criminals? I do not get it.

That is the entire amendment. That is what we are talking about. In essence, this amendment stands for the proposition that we should not strip police officers of their rights. It says that members of law enforcement who are victims of gun violence should have their day in court—no new rights, nothing guaranteed, just their day in court.

The advocates of this legislation argue that it is necessary to prevent frivolous litigation. I think they are wrong. But does this Senate really believe that law enforcement officers are flooding the courts with frivolous lawsuits? Is that what our law enforcement officers are doing? Do we really believe that men and women who devote their lives to enforcing our laws are trivializing the judicial process, that Congress needs to take away their rights because they are? I do not believe that and I do not believe anybody in this body does.

There is no evidence of it, and even to suggest it seems out of place given the trust that we give to these men and women in our local communities. Our men and women in uniform put their lives on the line for us every day. The least they should be able to expect from us is that we would not strip away their rights when they suffer from gun violence, and that is what I think we are doing. I hope my colleagues will stand with me and the men and women of law enforcement and support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CORZINE. How much time is remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes 25 seconds.

Mr. CORZINE. I yield to my colleague from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleague and good friend from New Jersey with whom I have worked very closely on many issues.

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes 25 seconds.

Mr. LAUTENBERG. First of all, I want to say that I was talking to Senator DURBIN about a situation in Chicago. There is a case under West Virginia law, and that a gun dealer argued in court that it had no responsibility to use reasonable care in its shipment in town.

Sure enough, Officers Lemongello and McGuire gave them to a gun trafficker. . . who sold 12 handguns to a straw pur-

That's all I want today: my day in court, my day in court—no new rights, nothing guaranteed, just their day in court.

It is certainly what we are all thinking. My amendment is very simple. In fact, I will read it word for word:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or an employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

I think that is the entire amendment. That is what we are talking about. In essence, this amendment stands for the proposition that we should not strip police officers of their rights. It says that members of law enforcement who are victims of gun violence should have their day in court—no new rights, nothing guaranteed, just their day in court.

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes 25 seconds.

Mr. LAUTENBERG. That was the message from Officer Lemongello.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, before I get to the amendment, I want to talk about the case before the Senate. I call on all Senators to do everything in their power to prevent this bill from becoming law.

That was the message from Officer McGuire, but it could have just as easily come from the countless other law enforcement officers who have been injured or killed by guns trafficked by irresponsible gun dealers and manufacturers.

During a stake-out, Detective Lemongello and I were shot by a felon. I ended up getting into a gunfight with the criminal in a snowy backyard. That has changed my life forever. I was shot right femur, and it blew apart my femur and also caused extensive damage to my leg. I was also shot through the aorta, and it hit the mesenteric artery. I lost 17 units of blood that night. . . . Because of the injuries I suffered from that shooting, I will never be a police officer again.

That is the same for Officer Lemongello.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. That is the message from Officer Lemongello.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. That is what I am talking about. In essence, this amendment stands for the proposition that we should not strip police officers of their rights. It says that members of law enforcement who are victims of gun violence should have their day in court—no new rights, nothing guaranteed, just their day in court.

The advocates of this legislation argue that it is necessary to prevent
and lose your life. The difference is the military takes some care of you. There are insurance programs, other programs. Many of these small police departments don’t have the kind of resources to provide on their own for the well-being of those families.

This is an outrage that is being perpetrated on these law enforcement people. It is an outrage. I hope the public understands what we are doing here. We want the people to work in those dangers, but we don’t want to let them on their own go to the courts. That is the process in this country of ours. We will not let them go to court to see if there are any damages. They never repair the damage to the mind. They never repair the damage to the heart. You can’t repair the damage to the soul. But we at least ought to be able to say: Listen, if you can bring a suit that shows either the manufacturer or the distributor or the retailer, like the shop in Oregon, was negligent in the handling—no to the weapons—safeguards on these weapons—we ought to be able to say to them, if anything happens to you, you can go to court and you can seek damages.

But there is a group here who says no, we want to take away your right to sue. Do you know why? Because the NRA doesn’t like it—putting it straight up. The NRA doesn’t want that to happen. The NRA writes the legislation, for goodness sake. They don’t want it to be available. They don’t want these people to have the same rights everybody else has. If you are killed in an airplane crash or a car crash or otherwise, you have a right to go to court.

I have heard the story about product liability. We are not going through that again. We don’t worry about product liability. We worry about negligence and recklessness and you are blocked from bringing suit. It is outrageous.

In the year 2003, 148 law enforcement officers across the nation were killed in the line of duty; 52 of those fallen officers were shot to death. I would like it if the managers of the bill who so desperately want this to pass would go to those families and say: You know what, we are sorry. Gosh, Joe was a good guy. We heard about him. He was a Boy Scout leader, all of those things. But that is the nature of the job. So you lose him. Go find another way, Madame Smith, to see if you can support your kids. See if you can get a job. You may have to leave the kids at home because you don’t have enough money to take care of them and buy other things.

Every law enforcement officer fatality is a national tragedy. The only place it doesn’t ring true is here. They don’t want you to have the same rights ordinary citizens have when they are injured. It is incredible to me.

We go through these semantic schemes here about: No, it doesn’t really mean that. But it does block their right to collect damages if they are injured.

The PRESIDING OFFICER. The time controlled by the Senator from New Jersey has expired. Who seeks time?

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to have printed in the RECORD a list of police officers who have been killed and feel they are not protected, including an ad run by the Brady Campaign.

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

POLICE ORGANIZATIONS THAT OPPOSE THE IMMUNITY BILL

Major Cities Chiefs Association (represents police executives from over 50 of the largest cities in the United States)

National Black Police Association (NBPA) (nationwide organization of African American Police Associations representing approximately 35,000 individual members)

Hispanic American Police Command Officers Association (HAPCOA) (represents over 1,500 command level law enforcement officers from local, state and federal agencies)

Police Foundation (a private, nonprofit research institution supporting innovation in policing)

Michigan State Association of Chiefs of Police

Rhode Island State Association of Chiefs of Police

Chief Randall J. Ammerman, Two Rivers, WI Police Department

Chief Ron Atienza, Blackstone, MA Police Department

Chief William Bratton, Los Angeles, CA Police Department

Commander (Ret.) Lloyd Brat, Cleveland, OH Police Department

Chief (Ret.) Neil K. Brodin, Minneapolis, MN Police Department

Ronald J. Brown, D.A.R.E. America, Special Agent (Ret.) DEA

Chief Thomas V. Brownell, Amsterdam, NY Police Department

James L. Buchanan, Officer (Ret.) Montgomery County, MD Police Department

Detective Sean Burke, Lawrence, MA Police Department

Chief John H. Grace, Wilmington, NC Police Department

Chief Michael J. Chitwood, Portland, ME Police Department

Superintendent Philip J. Cline, Chicago, IL Police Department

Chief Kenneth V. Collins, Maplewood, MN Police Department

Agent Patrick A., D.U.S. DOJ

Deputy Javier Custodio, Passaic County Sheriff's Department, NJ

Chief James DeLoach, South Bethany, DE Police Department

Chief Gary P. Dias, Rhode Island Division of Sheriffs, East Providence, RI

Chief Jed Dolnick, Jackson, WI Police Department

Chief Martin Duffy, Newton Township, PA Police Department

Officer David Elliott, Scranton, PA Police Department

Chief Richard C. Fahle, Baltimore City, MD Police Department

Chief David G. Farrington, Burnsville, MN Police Department

Officer Linden Franco, Chicago, IL Police Department

Enrique Gallegos, Department of Homeland Security, U.S. Border Patrol

Officer Doris Garcia, New York City Police Department

Chief Charles Gruber, South Barrington, IL Police Department

Patrick Gulton, Asst. Special Agent in Charge, Treasury Dept., Seattle, WA

Chief (Ret.) Thomas K. Hayselden, Shawnee, KS Police Department

Former Superintendent Terry G. Hillard, Chicago, IL Police Department

Chief Higgins, Director (Ret.), ATF

Officer Otis Hosley, Chicago, IL Police Department

Deputy Chief Victor E. Hugo, Amsterdam, NY Police Department

Chief Ken James, Emeryville, CA Police Department

Chief Calvin Johnson, Dumfries, VA Police Department

Captain Michael Johnson, Philadelphia, PA Police Department

Officer Bernard Kelly, Chicago, IL Police Department

Agent Lavra A. Kelso, U.S. Marshals’ Service

Chief R. Gil Kerlikowske, Seattle, WA Police Department

Sergeant Robert Kirchner, Chicago, IL Police Department

Chief Michael F. Knapp, Medina, WA Police Department

Officer Chad Knorr, Amity Township, PA Police Department

Officer Edward Krey, Philadelphia, PA Police Department

Deputy Chief Jeffery A. Kumorek, Gary, IN Police Department

Detective John Kutnour, Overland Park, KS Police Department

Lieutenant Curtis S. Lavarello, Sarasota County, FL, Sheriffs Department

Sheriff Ralph Lopez, Bexar County Sheriffs Department, San Antonio, TX

Chief Cory Lynn, Ketchum, Idaho Police Department

Chief Larry W. Mathieson, Ormond Beach, FL Police Department

Officer J.R. Malveiro, Philadelphia, PA Police Department

Officer Joseph Markler, Philadelphia, PA Police Department

Chief Mark A. Marshall, Smithfield, VA Police Department

Chief Burnham E. Matthews, Alameda, CA Police Department

Captain Michael McCarrick, Philadelphia, PA Police Department

Sergeant Michael McGuire, Essex County, NJ Police Department

Chief Jack McKeever, Lindenhurst, IL Police Department

Chief Roy Meisner, City of Berkeley, CA Police Department

Jill B. Musser, Legal Advisor, Boise, Idaho Police Department

Chief William Musser, Meriden, Idaho Police Department

James Nestor, NJ Attorney General’s Office Detective, Kevin Nolan, Salem, NH Police Department

Gerald Nunnzato, Special Agent-In-Charge (Ret.), ATF

Chief Howard O’Neal, Neptune Township, NJ Police Department

Chief Albert Ortiz, San Antonio, TX Police Department

Chief Richard J. Pennington, Atlanta, GA Police Department

Officer Thomas Pierce, Chicago, IL Police Department

Chief Charles C. Plummer, Alameda County, CA Sheriff’s Office

Chief Irvin Portis, Jackson, MI Police Department

Chief Sony T. Proctor, Bladensburg, MD Police Department

Agent Michael J. Pratt, U.S. Marshals’ Service

Lieutenant Raj Ramnarace, Lakwiss, WA Police Department

Chief Edward Reines, Yaaapi-Pescott Tribal Police, AZ

Jerry Robinson, Acting Deputy Superintendent, Bureau of Investigative Services, Chicago, IL Police Department

February 26, 2004

CONGRESSIONAL RECORD — SENATE

S1665
of legal standards in this country we believe all people should stand under.

The Senator from New Jersey is a man who creates law. The picture beside him is of a man who enforces law. We have obvious and open respect for both, and we shout in this country, because we respect the culture of laws. That gentleman you talked about eloquently who is pictured beside you is a man who puts on the uniform every day and goes in harm’s way. There is no doubt about it; it is not a Senator on this floor who doesn’t respect men and women in uniform, whether they be civil police in this country or are men and women in the armed services.

At the same time, that man enforces law. His life oftentimes is put in much more jeopardy by plea-bargaining the criminal back onto the street day after day in urban America, and they have to go out and rearrest them and re-arrest them again. Tragically enough, those dealers who are caught and steal guns. Sometimes they buy them. And sometimes they lie when they buy them. But most of them are stopped by background checks today. That officer has to face them again.

We understand that principle. That is the history of America. That is the history of law enforcement. The great tragedy today in law is criminal law, in my opinion, that we keep kicking them back to the streets instead of doing the time. I am talking that the gentleman to have to go out and face them once again because they are a repeat, repeat, repeat offender.

What S. 1805 attempts to establish is plaintiffs’ rights should be dependent on settled principles of law, not emotion and not sympathy. If a lawsuit has enough merit under traditional tort standards to be allowed by the bill, we believe that cause of action should be available to all plaintiffs, regardless of their occupation. It is either a cop or whether particularly an attacker had harmed them. In other words, we are not suggesting there be carve-outs and special exemptions.

But clearly, and I can argue and the Senator has already said, I would come back to those five very key exceptions we have placed in S. 1805. I am not going to repeat those. I have repeated them several times tonight. They are in the bill. They are in the bill a majoritity of cop organizations, Democrat and Republican. Why do they? Because they bring stability to the law. They create clear standards. They don’t say that a law-abiding citizen producing a lawful product is somehow liable if someone takes it and misuses it; that the person who misuses it is the person who ought to be liable. That person ought to be the criminal, if so found guilty. That is a premise of the law and it is an important premise of the law.

I hope my colleagues tonight will oppose the Corzine amendment. It guts the underlying bill. I doubt the Senator from New Jersey planned to vote for S. 1805. I can’t view this as a friendly amendment. I don’t think it is intended to be. I think it is intended to tear down the fundamental structure built under S. 1805, to establish solid principles, clear understandings, not to allow junk lawsuits to move through, because what that gentleman pictured beside you his day in court. Because the courthouse door is not locked. The opportunity to argue before the judge still remains so that suit can be filed, so that case can move on if the principles of the law are met and the standards meet the test.

With that, I yield back the remainder of my time and ask the Corzine amendment be laid aside.

AMENDMENT NO. 2930

Mr. CRAIG. I send to the desk the Frist amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. Frist for himself and Mr. CRAIG, proposal amendment numbered 2930.

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

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

The amendment is as follows:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 9, between lines 21 and 22, insert the following:

(E) LAW ENFORCEMENT EXCEPTION.—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

Mr. CRAIG. I will be brief. I think our colleagues wish that of us tonight. This amendment is not unlike the amendment the Senate accepted a few moments ago in relation to the Mikulski amendment. Let me say it. It is every bit as simple and straightforward as the amendment of the Senator from New Jersey:

Law enforcement exception—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clause (i) through (v) of subparagraph (A).

Of course, I have read that subparagraph and all of those exceptions to you time and time again over the last several days.

I believe it is clear-cut. We believe that creates the stability within the law. It sets in motion something very important; that is, the old principle of tort law—that it is the individual who is guilty for their actions and they should not be trying to reach through the legal system to find somebody who produced a quality product and say you are guilty because you produced it and, therefore, you ought
to pay because somebody misused and damaged or took someone’s life. We have never done that as a country, and we shouldn’t. We have found negligence, and we should where it exists, where there has been negligence, we should hold a person accountable for a violation of law that is found. People ought to pay the price if they don’t play by the rules.

In the gun community, I know how important this right is in America, and with this right goes phenomenal responsibility.

The line of duty is a junk lawsuit as you have characterized these over and over again. down through the decades has established very specifically those responsibilities because we view this as an extremely valuable right.

I say to the Senator from New Jersey that I am not going to keep that policeman out of the courthouse. I and Americans respect him and his profession too much to say you cannot go after redress, but you must find that the laws you enforce are the same laws you respect and must live by. I retain the remainder of my time.

The PRESIDING OFFICER. Who seeks time? The Senator from Idaho.

Mr. DURBIN. Mr. President, who controls time in opposition to the Craig amendment?

The PRESIDING OFFICER. The majority manager controls the time. That would be the Senator from Rhode Island.

Mr. REED. Mr. President, I yield 5 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 5 minutes.

Mr. DURBIN. I thank my colleague from Rhode Island, and I thank the Presiding Officer.

The Senator from Idaho says when he wrote this bill, he did it without emotion and without sympathy. Clearly, if he is going to oppose this amendment offered by the Senator from New Jersey, he has not been doing it without sympathy for the 54 law enforcement officers who are killed each year in the line of duty with guns. That is what the Senator said.

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes 28 seconds.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. DURBIN. Of course I will not because you would not yield when you had the floor.

Mr. CRAIG. Fine. I will take my time.

Mr. DURBIN. I will say this to the Senator from Idaho: It is hard for me to imagine, to believe that you believe that a lawsuit brought by that policeman or his family for the rest of their lives because a gang banger shot them in the line of duty. And you tell that officer and his family—the Senator from Idaho should tell that officer and his family—that if they are going to seek redress from a gun dealer who sold those guns to the gang bangers, that that lawsuit for that officer and his family is a junk lawsuit—a junk lawsuit. Please.

How in the world can we in the Senate have prejudged admiration and respect for the men and women in uniform who protect us every single day, and then when they are stricken in the line of duty, when they are shot defending us, tell them when they want to go against the gun dealers, tell them they cannot go on the street, these Saturday night specials through straw purchasers and gun traffickers, that that lawsuit brought by that officer and his family is a junk lawsuit that you want to stop with this legislation?

That troubles me. It troubles me because, frankly, I think we understand if we are going to ask anyone in our community to risk their lives every single day for us by wearing that badge and that uniform, we owe them something more than words. We should be standing by them when they, frankly, give their lives and risk their lives for us every single day.

The choice we have with the Corzine amendment is a clear choice: Stand by the police or stand by the gun dealers. The Senator from Idaho says we need to stand by the gun dealers; that this is a jobs bill. We need to stand by the gun manufacturers; this is a jobs bill. What about the men and women in uniform and our law enforcement agencies across America? What about their jobs? Are they worth standing by or standing by their families?

I say to those who are going to oppose the Corzine amendment that if you have a problem in your neighborhood and there is crime in the neighborhood, don’t call 9-1-1. No, dial up your local gun dealer because if you dial 9-1-1, you are going to get one of those men and women who just might get hurt and file a junk lawsuit. You had better dial up that gun dealer. Call the gun dealer and ask him to please come out and protect your family.

I cannot imagine that we are going to allow this to occur. The Frist-Craig amendment is meaningless when it says whatever the bill said originally it applies to law enforcement officials. It doesn’t do a thing for them.

The Corzine amendment does. It says we are going to stand behind the police. If he is in the line of duty, we will stand by him and his family to go after the wrongdoer and the gun dealer who is selling those guns to the gang bangers and street killers, the cop killers on the street.

If you want to vote for the Frist-Craig amendment in this underlying bill, frankly, we are turning our back on those men and women who are risking their lives every single day for us. I thank the Senator from New Jersey for his effort. We should be offering this amendment not only for law enforcement officials but for firefighters, medical responders, and every single person in America who puts their life on the line for us every single day and risk death by firearms because this underlying bill is saying to them, if you are hurt and you sue, you are filing a junk lawsuit.

Mr. CRAIG. Mr. President, may I ask how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes 28 seconds. The Senator from Rhode Island has 9 minutes 49 seconds.

Mr. CRAIG. Mr. President, I yield to sessions.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, I was a prosecuting attorney for a number of years. Some of my best friends are police officers. I try to meet with them when I am in my State. I met with 11 or 12 of them in Cherokee on the Georgia line last week. They are not telling me that if they are shot or one of their fellow officers is shot they want to sue the gun manufacturers. None of them have ever suggested that to me. They believe that criminals with guns ought to be prosecuted aggressively and go to jail when they catch them. They ought to be punished. And if they shoot and kill a police officer, they want to see them go to jail or be executed. A lot of people who are opposing this legislation oppose the death penalty for those who kill police officers.

The point of this is very simple. In American law, from our ancient traditions, wrongdoers are the people who ought to be sued. If a terrorist comes in here and shoots a policeman, a cold-blooded criminal who has come here as a citizen, you should sue the person who shot you. That is what we are all about. That is what the law has been about.

Now we are in a situation in which the law has been politicized and used to carry out an agenda. To say that a gun dealer or a gun manufacturer that has complied with all the extensive regulations for the sale of firearms, has done everything right, that somehow they should be the ones to be sued if a criminal is using a weapon from another person perhaps and commits a crime with it and shoots someone, that is not what
American law is about. It is an abuse of the liability system in America. It is consistent with current law and our traditions. It is why, to date, none of these lawsuits against gun manufacturers or dealers have been successful and why few are being filed against gun dealers. However, if a gun manufacturer or if a gun dealer, in particular, sells a weapon contrary to the complex and detailed regulations the Federal Government, State, and cities require, that person can be not only sued for damages, that person can be prosecuted.

When I was a Federal prosecutor, I prosecuted criminals who used guns; I prosecuted gun dealers who sold guns illegally. They have to get an ID from the purchaser. They make him sign an affidavit that he is not a felon. They do a gun check. They have to be a resident of the State, as I recall. They cannot be a drug addict. If they know there is an impropriety and sell the gun anyway, they are responsible and can be sued for it and should be—and should be prosecuted, for that matter.

What we need to focus on in America today is that the Constitution of this country allows the American people to keep and bear arms. Those who do not agree, get over it. That is where the American people are. That is what the Constitution says. That is what the rules are. If you want to offer legislation to put further controls on the right of an individual in America to keep and bear arms, put it out here and make two or three quick points and let’s debate it and see if it has enough votes to win.

This idea of mayors, attorneys general, district attorneys, and government officials filing lawsuits against gun manufacturers who complied with the law, to try to make them responsible in an end run effort to carry out an antigun agenda in some of our big, liberal cities in America—they do not understand. Most Americans are about hunting and gun use—improper. It is not the way we ought to go about this business.

The Senator from Idaho is correct; this liability question is one we need to deal with. There is a concerted effort in America to utilize the legal system in some of our liberal courts to try to knock down the right to manufacture and sell guns. It is protected by Federal law. It is controlled by Federal law. It is mandated by Federal law. People who comply with the law should not be sued. If they do not comply, they should be sued and prosecuted.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, let me make two or three quick points and then yield to Senator Lautenberg and then to Senator Corzine.

First, a neutral assessment of this legislation suggests strongly that it is not just frivolous lawsuits that are going to be barred by this legislation; there are going to be many meritorious lawsuits. We already know about these suits. We know about Officer McGuire; we know about the victims of the Washington snipers. Those individuals will be barred from courts. Those are not frivolous suits.

Again, there has been discussion about junk claims. I believe there will be a lot of junk guns in the lawsuits because essentially what this legislation does is this. When a Federal firearms dealer gets his license, he also gets a license to be negligent. He can follow the rules but he can be negligent. There is the Federal State legislative, in many cases, that requires the storage at a facility of weapons, so you can keep them lying around. That is what they apparently did at Bull’s Eye.

That is negligence, and that negligence harmed several individuals. And this particular law, if adopted, will prevent people from exercising their rights for compensation based upon that activity.

All this discussion leads to the inescapable belief on my part that the proponents want it both ways. They stand here and decry the attack on the industry, the gun industry besieged by lawsuits, and then turn and say: Of course, Officer Lemongello will get to court and Officer McGuire will get to court and the sniper victims will get to court. They cannot have it both ways.

The law is not impartial. The law is what we make it. We are making a law today that favors, in an unprecedented way, the gun manufacturers, dealers, and the National Rifle Association. That is our making. It is not some cosmic event taking place and suddenly we have the law. We are telling them, be negligent, be irresponsible, be reckless, do not worry about it, we have taken care of you.

What do we say to the victims of the crimes? Tough luck. You were in the wrong place, officer. You were in the wrong place, Conrad Johnson, starting your day early in the morning. Your family will live with a memory of the companies or individuals who were negligent.

I yield 3 minutes to the Senator from New Jersey.

Mr. REED. How much time do we have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. REED. I yield 3 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I ask to have the Presiding Officer call attention to the fact when I have 30 seconds remaining.

We listen to the same rhetoric, decry the risk that our law enforcement people take when they go out to work and how we really respect them—except that we do not want to give them the same environment that every ordinary citizen in this country has.

We hear about the fact that if you get the criminals off the streets and they do not come out again, and then they go back again, what does it have to do with whether or not we block the suit from law enforcement personnel who have been injured, who have families who want redress for them having been killed at work? It has nothing to do with it.

That is the whole thing. It is an obfuscation of what this bill is about. This bill does not change a bit with the discussions. It reinforces what the bill says, and that is, take away people’s rights to sue, people’s rights for redress. Whether it is an errant gun manufacturer, a dealer, a distributor, an errant airline, or an errant criminal manufacturer, people should have the right to sue.

There have been opinions thrown around that, unfortunately, do not match that of a distinguished attorney such as David Boies who says this bill will cause a dismissal of the suit of Lemongello and McGuire immediately. The proposed immunity legislation would require the immediate dismissal of these claims.

I ask unanimous consent to have printed in the RECORD what the office of David Boies, one of the prominent criminal attorneys in the country, has confirmed.

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

Lemongello v. Will Company, No. Civ.A. 02-C-2962, 2003 WL 2148828 (W. Va. Cir. Ct. Mar. 19, 2003). New Jersey Police Detective David Lemongello and Officer Kenneth McGuire were seriously injured in January 2001 when they were shot by a career criminal while performing undercover police work. Even though the shooter was a person named by law from purchasing a firearm, he obtained his weapon, a nine millimeter semi-automatic Ruger handgun, illegally from a gun trafficker. The trafficker, in turn, was also prohibited from buying weapons due to a prior felony, so he used an accomplice (a so-called ‘‘straw purchaser’’) to make multiple gun purchases from defendant Will Jewelry & Loan of Union. In their lawsuit against Will Jewelry & Loan and others, the officers allege that the gun dealer acted negligently in selling the straw purchase十二 guns (including the Ruger used in the shooting of the two officers) that had been selected in person by the gun trafficker and paid for in a single cash transaction. The circumstances of that sale were so suspect that the defendant dealer reported it to the AFT—but only after the purchase price had been collected and the guns had left the store. The officers further charges gun manufacturer Sturm Ruger & Company with negligently failing to monitor and train its distributors and dealers and negligently failing to monitor and train them engaging in straw and multiple firearm sales. Although a West Virginia trial court has held that the plaintiffs have stated valid negligence and public nuisance claims under West Virginia state law, the proposed immunity legislation would require the immediate dismissal of those claims. Notwithstanding the plaintiffs’ claims that the defendants failed to exercise reasonable care in their sales of firearms, neither the dealer nor the manufacturer violated any statute prohibiting in selling the gun. Nor could the plaintiffs prove that their case falls within the ‘‘negligent entrustment’’ exception to the proposed immunity legislation because the gun dealer supplied the firearm to the straw buyer—not to someone whom the seller knew or should have known was likely to, and did use the
product in a manner involving unreasonable risk of physical injury to the person or others.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. LAUTENBERG. Many police officers and police chiefs wrote in their opposition to this bill, law enforcement personnel from various police departments around the country, including Chief William Musser of Meridian, OH, Police Department. He writes that he is opposed to this. We have officers from other States as well, including Chief Cory Lynn from Ketchum, ID, which is opposed to this. We have officers from around the country, including Chief William Musser of Meridian, OH, Police Department. He writes that he is opposed to this. We have officers and police chiefs wrote in their opposition to this law enforcement—

Mr. LAUTENBERG. For law enforcement—not just generally. These are not frivolous suits. These are people who know the law. They are not bringing up frivolous suits, and I do not think I am hearing anything from being brought against another officer who is trying to make sure they are protected. If we vote on my amendment, we are doing the opposite. I hope we will stand strong and stand firmly with law enforcement because that is what we need to do if we say we appreciate what they are doing for our families and our communities.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. REED. I yield the remaining time to the Senator from New Jersey, Mr. Corzine.

The PRESIDING OFFICER. The Senator is recognized for 3½ minutes.

Mr. CORZINE. Mr. President, I yield the remainder of my time to the Senator from New Jersey, Mr. Corzine.

The PRESIDING OFFICER. It is 7:15 p.m., and the Senate is at a recess until 9 a.m. tomorrow. The PRESIDING OFFICER. The Senator from Idaho.

Mr. REED. Mr. President, I yield the remaining time to the Senator from New Jersey, Mr. Corzine.

The PRESIDING OFFICER. Mr. CRAIG.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand the opposition has yielded back all their time.

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I will be as brief as possible. The hour is late.

I know the Senator from New Jersey speaks with a good heart, and I appreciate that. I think we all do. He mentioned two important words just in the last minute. He mentioned the word ‘criminal.’ Criminal action, the right to sue, and he mentioned ‘negligence’ and the right to sue. Then he said: We block that policeman from the courthouse door.

I must ask him to refer to page 7 of the bill, exception one and exception two:

an action brought against a transferee convicted under section 92(h) of title 18, United States Code, or a comparable or identical State law, by a party directly harmed by the conduct of which the transferee is so convicted.

He is talking about criminal action. That action is deemed as a criminal act in the law.

How about negligence? Well, it is the next one down.

It is No. 2:

an action brought against a seller for negligent entrustment or negligence per se.

Let me tell you what the FOP says. I think they all know what the FOP is. That is the Fraternal Order of Police, some 311,000 strong. They oppose the Corzine amendment. We have just visited with them. They called us and they said: Why? Because they do not believe it accomplishes what they would like accomplished, and they like the underlying law.

I think it is fundamentally important that we try to build clean principles within the law. I would have to agree with the Senator from New Jersey that policeman is not going to file or have his attorneys file a junk lawsuit. The Senator is absolutely right. But 31 apparently have been filed, some are under appeals, and 21 of them have been thrown out of court by judges who said: Go away, because that is what this lawsuit is.

Now, oftentimes the municipality and/or the individuals and/or the county will file it in the name of a fallen officer. I can understand the emotion. I think we all feel it. But the judge said the law is the law and there was no basis, and he threw them out. Yet it cost the industry—the law-abiding industry—hundreds of millions of dollars. It is beginning to weaken many of our local police, legal gun manufacturers, that oftentimes build the firearm that officer carries on his side to protect himself and his fellow officers in the commission of their responsibilities.

We should not be doing that as a country. But clearly we must insist that the law be clear, unambiguous, and that the officer have his day in court if he is harmed by a criminal or by someone who has acted in a criminal way, someone who has violated the law, someone, through negligence, has somehow caused a firearm to get into the hands of a criminal.

Then the case is brought, and S. 1805 does not block that.

I yield back the remainder of my time, and I ask for the yeas and nays on the Frist-Craig amendment and the Cornyn amendment.

The PRESIDING OFFICER. The Senator seeking the yeas and nays on both amendments with one show of hands?

Mr. CRAIG. If there is no objection. The PRESIDING OFFICER. Without objection, it is so ordered. The yeas and nays are requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 2630. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. Campbell), the Senator from New Mexico (Mr. Domenici), and the Senator from Alaska (Ms. Murkowski) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. Kennedy) is necessarily absent.

Mr. McCONNELL. The Assistant Journal Clerk called the roll.

The Assistant Journal Clerk: The yeas and nays are ordered.
I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay."

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

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 21 Leg.]

**YEAS—60**

Alexander
Allard
Allen
Baucus
Bayh
Bennett
Bond
Breaux
Brownback
Bunning
Burns
Chambliss
Cooper
Columbia
Collins
Conrad
Corzine
Coyle
Daschle
Dodd
Domenici

**NAYS—34**

Akaka
Biden
Bingaman
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Cornyn
DeWine
Dodd

**NOT VOTING—6**

Campbell
Domenici

The amendment (No. 2630) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business is consideration of the Corzine amendment. There are 2 minutes equally divided to be followed by a vote. The yeas and nays have already been ordered.

Who yields time?

The Senator from New Jersey.

Mr. CORZINE. Mr. President, my amendment is very simple. In fact, I will read it:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

This is a police officer who was shot, injured, and is no longer able to work in New Jersey. Fifty-two were killed in 2002 by guns in the hands of criminals, sold negligently—people should have the ability to go to court and get re-損害s. These are not junk lawsuits, not frivolous lawsuits.

Law enforcement officers ought to have the ability to protect their rights in court. They should have their day in court. That is what this amendment does, and the narrow definitions that are allowed for in the underlying bill will keep Officers McGuire and Lemongello out of court.

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

The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask my colleagues to vote against the Corzine amendment. I ask it on behalf of the Fraternal Order of Police, some 311,000 strong, who oppose this amendment, who oppose a small carve out in a law that is meant to treat all fairly and equitably. This amendment would gut the underlying bill, S. 1885, and I ask my colleagues to oppose it and vote against it.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2629. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “yea.”

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

The result was announced—yeas 38, nays 56, as follows:

[Rollcall Vote No. 22 Leg.]

**YEAS—38**

Akaka
Biden
Bingaman
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Cornyn
DeWine
Dodd

**NAYS—56**

Alexander
Allard
Allen
Baucus
Bennett
Bond
Breaux
Brownback
Bunning
Burns
Chambliss
Cooper
Columbia
Collins
Corzine
Craig
Crapo

**NOT VOTING—6**

Campbell
Domenici

The amendment (No. 2629) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have worked a long day and through what this time last night was appearing to be a very complicated unanimous consent. But I think it worked well today. All of our colleagues worked hard, and we have been able to meet all but one vote we had on that unanimous consent.

It is my understanding that it is possible Senator BINGAMAN will offer his amendment in the morning.

Mr. REID. Mr. President, if my friend will yield, on our side, Senator DAYTON will be here in the morning to offer his amendment. Following that, Senator LEVIN will offer an amendment. Senator BINGAMAN wishes to offer his amendment on Monday.

I also say to my friend that Senator REED has told me he will come tomorrow or Monday to start laying the groundwork for his amendment and the amendment with Senator FEINSTEIN. The votes on those amendments will occur Tuesday morning. When they get the floor, they can talk about their amendments either tomorrow or Monday.

Mr. CRAIG. Mr. President, I thank the Senator from Nevada for his cooperation in working with us to facilitate this bill today, to move it in a timely way and get the votes necessary throughout the day. He has worked hard, along with all of us, to get that accomplished. We have had several votes.

Let me also thank, midway through this, my staff and certainly the staff of the Judiciary Committee and others who worked to make sure we had the information in a timely way to move forward.

It is my understanding this is the last vote of the day.

Mr. REID. Mr. President, I rise in support of this most important legislation. In fact, I am a cosponsor of this bill, which is sponsored by Senators CRAIG and BAUCUS.

This legislation protects firearm and ammunition manufacturers from lawsuits related to deliberate and illegal misuse of their products. Even more important, it protects the rights of Americans who choose to legally purchase and use their products.

As a gun owner since I was a young boy, I strongly support the constitutional right of law-abiding citizens to keep and bear arms. This constitutional right of responsible individuals should not be compromised or jeopardized by a small handful who use firearms to commit crimes.
In my native State of Nevada, many people own firearms and the vast majority of them use their guns responsibly and safely. It is their right to do so, guaranteed in the United States Constitution. It is not some privilege granted at the whim of Congress or any other part of government. So I will work on a bipartisan basis to protect and safeguard that right. I will work to pass this bill, and I think we have the votes to pass it.

Toward the end of last year, we tried to consider this bill in the United States Senate. Unfortunately, we didn’t have enough time left in the first session of this Congress to consider this bill in a fair manner.

Now the time has come to pass this bill. We will now debate and vote on the amendments that Senators want to offer to this bill, and then we will pass it. And when we do, we will be standing up for the Constitution and the rights of every American citizen. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

SECOND NOTICE OF PROPOSED PROCEDURAL RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the RECORD today pursuant to section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)).

OFFICE OF COMPLIANCE

The Congressional Accountability Act of 1995: Second Notice of Proposed Amendments to the Procedural Rules. Submitted for cable to Consideration of Alleged Violations of the Act, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for appeals of a decision by the Board of Directors of the United States Court of Appeals for the Federal Circuit. The rules also contain other matters of general applicability to the operation of the Office of Compliance.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office of Compliance in processing disputes under the CAA during the period since the original adoption of these rules in 1995.

How to read the proposed amendments: The text of the proposed amendments shows [deletions within brackets], and added text in italic. Textual additions which have been made for the first time in this second notice of the proposed amendments are shown as italicized bold.

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