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## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sovereign Lord, who fills our hearts with songs of thanksgiving, each day we lift our hands in prayer to You, for You are always merciful. Thank You for blessing us each day.

You have rescued us from dangers and kept our feet from slipping. You banish our worries and calm our fears. Thank You for Your eagerness to forgive us and for Your unfailing love. You alone are God.

Today, strengthen the Members of this body. Help them to trust You without wavering. Teach them Your ways, that they may live according to Your truth. Give them purity of heart, that they may honor You. Use our Senators as instruments of peace on Earth. We pray in Your great and Holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RESERVATION OF LEADER TIME

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

### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 1 hour, with the first 30 minutes under the control of the majority leader or his designee and the

second 30 minutes under the control of the Democrat leader or his designee.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, we will have a 60-minute period of morning business today, prior to resuming consideration of S. 5, the fairness bill. The bill managers will be here between 10:30 and 10:45 to begin debate. Amendments also are in order today, and I expect we can make good progress over the course of the day on the bill. I reiterate, Members should notify their respective cloakrooms if they intend to offer amendments to this legislation.

The Senate will stand in recess today from 12:30 to 2:15 for the weekly policy luncheons.

Also, I alert Senators that the Chertoff nomination to be Secretary of Homeland Security is now available on the Executive Calendar. We will be looking for the first available window to schedule that nomination for floor consideration as well.

I yield the floor.

The PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. I take it we are in morning business, Mr. President?

The PRESIDENT pro tempore. We are in morning business.

Mr. GREGG. Mr. President, I yield myself such time as I may consume under morning business up to 10 minutes.

The PRESIDENT pro tempore. The first 30 minutes is under the control of the majority leader or his designee.

### THE BUDGET

Mr. GREGG. Mr. President, I am rising to discuss the budget as presented

yesterday to the U.S. Congress and to the American people by the President of the United States. Let me begin by saying I think the President has been courageous. He has stepped forward and addressed some of the most critical problems that we have as a nation, one of them being the fact that we are running excessive deficits, another one being the proper prioritization of our spending in a time of fiscal restraint. It is appropriate, as the President has proposed, that we return to a period of fiscal restraint so that we do not end up passing on to our children massive amounts of debt, and so that we can assure the international community and our own people that we are going to live in a fiscally responsible way as a Government. That is what the President's budget has proposed.

I think it is important, before we address the specifics of the budget, to talk a little bit about the context in which this budget is sent to us. Remember, when this President took office we were headed into a fairly significant recession. It was a recession that had arisen out of the most rapid economic expansion in our history. It was called a bubble, and was appropriately defined as a bubble, the Internet bubble of the late 1990s. When that bubble broke, it was very likely and it would be historically consistent if we had gone into an extraordinarily deep recession. But the President of the United States had the foresight at the beginning of the recession to propose to the Congress, and the Congress supported it, a fairly significant tax cut which was able to shallow out the recession. That is the classic approach to addressing a recession, in trying to move out of recession: cut taxes so you create more economic activity. You leave more revenues at home with the people, allow them to spend more of their own money, and as a result you come out of the recession more quickly. And that is exactly what happened.

Today we are seeing a robust recovery. We are seeing a very low jobless

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



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rate. I think it is down to 5.2 percent, in fact. Even though there was a significant revenue reduction, a tax cut in the first term of this Presidency, we are now seeing revenues growing at an extremely robust rate: Last year, 9.2 percent, this year they are going to grow by 6.5 percent, it is projected next year at 7 percent, and so on into the future. As a result of his economic policies, we are seeing a recovery.

In addition to being confronted with a recession, he was, of course, confronted with the fact that the United States was attacked, attacked mercilessly by evil people. The damage caused by that attack was not only personal loss, which was dramatic and obviously horrible, but it was also economic loss, having a significant impact on our economy and, as a result, causing us in the Federal budget to specifically have to spend a lot of money we hadn't anticipated spending fighting the war, and also having an impact on our revenues as a Federal Government.

The President has been prosecuting this war against terrorism in an extremely aggressive and appropriate way and the results are pretty obvious. We have not been attacked, now, for almost 3 years. We invaded Iraq to change a totalitarian, despotic regime, and we have been successful there. We have seen an extraordinary event there, the elections which just occurred. Afghanistan is on the road to democracy. The success in the war on terror cannot be denied. We are making significant progress, but it is still a war we need to fight and we need to expend considerable resources to accomplish that. So there has been this dual pressure put on our Federal Government: first a recession, and, second, fighting a war on terror that had not been anticipated when this President came into office but has been well handled by this President since he has been in office.

As a result, we now confront some significant fiscal questions that we must address. Having put in place the tax cut, which has caused very strong economic recovery and which is starting to show significant revenue increases, and having pursued a course of fighting a war that has cost us a great deal of money, we now must make decisions on how we properly balance our fiscal house in Washington. The President has suggested we do that essentially by looking at all functions of the Federal Government and trying to address them in a comprehensive, thoughtful way, and at the same time in a fiscally responsible way.

There are two issues we confront in the area of fiscal responsibility. The first, of course, is the short-term deficit. How do we get this deficit down? How do we reduce its size so we do not end up taking bills that we are incurring today and passing those bills on to our children to pay tomorrow. The President has put forward a budget that reduces the deficit in half over the next 4 to 5 years. That is an extremely

aggressive timetable, but it is one which is very doable. The President has put forward an aggressive and effective outline to accomplish that.

The second thing this administration has proposed is to address the outyear issue, which is even a bigger problem for us as a nation. This is a function of the huge population in this country called the baby boom population. We are going to see a massive shift in the demographics of this country. Beginning in the year 2008, the baby boom population will start to retire. It is the biggest population segment of our society, and the pressure that it will put on the systems that support our retirement, people who are in retirement, will be dramatic, both in the area of Social Security and in the area of health care.

As a nation we have had a very strong commitment to senior citizens, ever since the days of FDR. We can take great pride in the success of that commitment, and we intend to continue that commitment, but the whole genius of the Social Security system, and to a large degree the Medicare and Medicaid system, was the concept it would always be a pyramid; that there would always be a lot more people working than would be those taking out of the system; that there would be many people paying into the system to support individuals who are on retirement.

In 1950, for example, there were 12 people paying into the Social Security system for every 1 retired person supported by that system. Today it is about 3.5 persons paying into the retirement system for every 1 taking out of that system. But because of the size of the baby boom generation, beginning in the year 2008 those numbers change dramatically, and by 2016 there will only be 2 people paying into the system for every 1 taking out, and we go from a pyramid to essentially a rectangle and it is simply not supportable in its present form.

The practical effect of that is that those children who will be working, our children and our grandchildren whom we want to see have a better lifestyle, those two people will have to pay a much higher burden of taxation in order to support that one person who is retired unless we do something about that, unless we address that issue.

So the issue is, do we want to pass on to our children a system that we know will not work, or that we know will put them in a position where they have to pay so much in taxes that their lifestyle will be less favorable than ours has been or will we address this issue today and start to get ready for that retirement boom, that large demographic shift, and as a result taking the burden off our children and grandchildren to a certain degree and assuring them that they also have a retirement system that works?

The President has not only suggested a budget which in the short term addresses the deficit by reducing it by

half over 4 years, as I mentioned, he has also stepped forward on this critical issue and suggested we do need to address these major entitlement programs. And he has made proposals in the area of Social Security that have been hotly debated here and that will continue, obviously, to be a subject of considerable consideration.

In this budget he has specifically addressed the issue of entitlement spending, especially in the area of health care and Medicaid, and in a number of other areas such as agriculture. It is those entitlement programs which we as a Congress have an obligation to try to fix today so that they do not end up bankrupting our children and our children's children tomorrow.

The importance of this is highlighted by this chart behind me, the effect of entitlements on the spending of the Federal Government. If you look at this chart, the orange line is entitlement spending, the yellow line is defense spending, the red line is non-defense discretionary spending, and the bright red line is interest.

You can see that in the year 2000, entitlement spending was about 55 percent of the Federal budget. This year it will be about 56 percent. By the year 2015 it will be 64 percent of the Federal budget. As a result, it will essentially absorb all the revenues of the Federal budget—unless we address these programs today so we have them in order so they do not put that type of pressure on our Federal budget and on our children who have to pay the costs of that budget through their tax burden in the future. That is why reforming Social Security is so important. It is why this budget is such a positive step, a step in the right direction toward reforming the way we, as the Federal Government, operate. That is why I congratulate the President for it.

What the President has proposed is essentially a budget which, for lack of a better term, goes everybody's ox. He essentially has said: Listen, if we are going to get our fiscal house in order, we can have no sacred cows. Everybody's programs have to be on the table. We have to look at every program and prioritize in those programs. Yes, there is a significant increase in defense spending, but the increase in the defense spending is not as great as it had been projected it would be. In other words, the President has looked at the base, the defense spending base, and actually reduced that. If you don't believe me—you don't have to believe me on that. All you have to do is listen to some of the folks outside this building who advocate defense spending for programs they support. We are already hearing from a number of defense contractors, a number of people in the activity of supporting the Defense Department, that their contracts are being impacted because the defense budget has been reduced from what it was projected to be.

The President has put defense on the table. Obviously, he has put nondefense

discretionary on the table; that is, all the other spending on the discretionary side in that he has limited the increase in these accounts to about 1 percent less than the rate of inflation. He has picked priorities. He has named 150 programs that he is either willing to reduce or actually eliminate. That is a courageous step on his part. The Congress doesn't have to stick with those priorities.

There are some programs I have concerns about, which everybody else in this Chamber has talked about—this program or that program. But we have to acknowledge the basic goal of limiting nondiscretionary to an increase of 1 percent, which is a reasonable goal. And within that increase, we as a Congress can set the priorities. We don't have to accept all 150 programs the President sent up here as his suggestion for places where we cut or where we will reduce programs. We can pick other programs, but we do have to pick. That is our responsibility in governance.

We have to be willing to step up to the table and say yes, there are priorities in times of a tight fiscal process. We have to make some difficult judgments, and those judgments should be subject to a limitation—a number on which we all agree. And, in my opinion, the President has picked a reasonable number, which is about a 1-percent rate of cut in these accounts.

In the entitlement area, the President has also said we have to slow the rate of growth of entitlements. This chart, as I mentioned, shows that as being an absolutely critical decision. It is about time we do.

He, of course, has suggested an entire national debate on the issue of Social Security. It is not part of this budget. In the Budget Committee, I don't have much impact on Social Security. It is outside our purview. But he also has been willing to step forward on a number of other entitlement programs—specifically Medicaid, where he has made a suggestion which I think makes a lot of sense as a goal. He essentially said, Governors, we will give you an increase that you can use for the purposes of bringing more kids into the Medicaid Program, which is what our goal should be under Medicaid, but the increase isn't going to be as great as you want. However, at the same time, we are going to give you dramatically more flexibility on how you spend that money.

I don't know a Governor who is worth his or her salt in this country today who wouldn't be willing to get a little less money with a lot more flexibility and feel they can do a lot more effective job of delivering that money and getting services out to people who need Medicaid.

I think it is a good proposal, the type of proposal we should embrace and say that is probably going to be very good policy.

In any event, the difficulty of slowing the rate of growth of Medicaid and

giving more flexibility to the Governors is one which I think we as a Congress can move forward and hopefully can be part of the budget.

I don't get to make the decisions as Budget chairman. I don't get to make any decisions. The leader may make decisions, and the Senator in the chair. But as Budget Committee chairman, I theoretically put forward a budget—sort of a blueprint, the mark that people work off of for the rest of the year. The Budget Committee comes out with top-line numbers. Then it is up to the Finance Committee to do the mechanics of how that number is going to work.

The President has laid out those specific ideas. But the Finance Committee is led by some very creative people. Senator GRASSLEY is one of the most creative people around. He has a talented group of people who may come up with a different way to approach this. But we should be able to agree that the rate of growth of those entitlements should be slowed. The same is true in other entitlement accounts which the President has addressed. I congratulate him for that.

There are two issues which have received a fair amount of attention from the press, and from the naysayers who gather around this Capitol talking about fiscal discipline, trying to use this basically as a straw-dog argument. I always ask these folks, Where is your idea? Where are you going to make your difficult decisions for controlling spending? You don't usually get that answered. What you usually get is this: He doesn't include the issue of the war costs; or, he doesn't account for his tax cuts; or, the tax cuts are too high.

Let us address both of those issues.

First, on the war costs, the war costs should not be in the basic budget. They should be accounted for, and we are going to account for them. They should be very visible and transparent, and they will be. But these are not one-time items. Unfortunately, they are not. They are certainly two- or three-time items, and they won't be occurring 4 or 5 years out. This is a 5-year budget. The war will be over, hopefully, within a year or a year and a half when our need to put a lot of money into Iraq will drop dramatically. It is looking like that may be the case after these elections. We don't want to build into the base of the Defense Department the war costs so that 5 years from now we are giving the Defense Department all the money they are spending in Iraq as part of their base, because they are not going to need it.

This argument that the war costs are not included is a straw dog. It simply is not a good approach to fiscal accountability. It is appropriate that we account for it, and we will. It is appropriate that it be highlighted, and it will be. But it shouldn't be built into the base of the budget if 3 or 4 years from now we would be spending a lot of money on defense which was spent on the Iraq war and it should not be spent

any longer on defense; it should be spent on something else or returned to the taxpayers in tax cuts, which gets me to the second issue.

You can't have it both ways, but some of our colleagues would like that. You cannot be opposed to the tax cut 2 years ago and then say taxes need to go up this year when the numbers show pretty distinctly two things.

One, as I mentioned earlier, because of the tax cut the recession was shallower, more people got back to work quicker, more people had money in their pockets to spend sooner, and as a result the economy recovered faster.

Two, tax revenues are up. They are up dramatically, and they are projected to continue to go up. They are up by 9.2 percent last year, 6.5 percent this year, and headed toward 7 percent next year. They are headed to continue to grow at that type of compounding for the foreseeable future, which means tax revenues are headed back to their historical place as a percentage of gross national product, which is about 7.9 percent; and they are getting there because we have more economic activity as a result of having put in place tax laws which create an incentive for capital formation—jobs and economic activity.

The tax cuts are working in generating more revenue. If you were to raise taxes now on top of this embryonic economic recovery we are experiencing, you would flatten the recovery. And as a result, you would probably be reducing revenue rather than raising revenue because the economy would start to slow down. It would be the absolute wrong policy.

I await with great anticipation a budget from the other side of the aisle. I certainly hope they will put one out this year. They did not put one out when they were in charge of this place, and they didn't put one out last year, or the year before. I await with great anticipation to see the tax increases they will actually bring forward. Maybe they will be the same taxes or the exact same policy which we saw from Senator KERRY when he was in charge—not in charge. I should not say that, but when he was running for President. His proposal was to raise taxes on the highest income Americans and then spend the money, the net effect of which he was going to spend \$1 trillion more than he would take in which would have aggravated the deficit by \$1 trillion. That is, of course, a policy which, if those on the other side of the aisle want to continue to debate, we look forward to debating.

The bottom line is this: The President has proposed a stringent, responsible budget which moves us toward reducing the deficit by half in the next 4 years. That is what we need to do.

More importantly, the President has stepped forward on the key issues of the outyears—specifically Social Security and entitlement spending—to try to address so we can assure our children do not end up having to pay so

much in taxes in order to support us in our retirement years when they cannot live as good and as full of a life as we have had.

I congratulate the President on his budget, and I look forward to working with this Congress in passing such a budget and moving toward fiscal responsibility in this country.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. ALLEN). The majority leader.

#### EXTENSION OF MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that morning business be extended 10 minutes to each side.

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

The Senator from Georgia is recognized.

#### FISCAL RESPONSIBILITY

Mr. CHAMBLISS. Mr. President, I am pleased to hear our Budget chairman stand up and talk about real fiscal responsibility. I am also very pleased to see that we have a President who continues to provide the kind of strong leadership Americans demand.

In 1994, when I was elected to the House of Representatives, I campaigned long and hard on the fact that we needed to move the Federal Government back to the same type of fiscal responsibility we ask every single American to make every month when they sit around their kitchen table; that is, not spend more money than we take in. Thank goodness, due to the economy thriving and surging ahead and due to fiscal responsibility on the part of Republicans and Democrats in the 1990s, we were able to not only balance the budget but achieve surpluses. Then along comes September 11, 2001. Since that point in time, we have operated in a deficit situation for a number of reasons.

First, revenues have been declining from the projected increases we thought we would have. But most significantly, we have seen an increase in Federal spending both in defense and nondefense areas, but also in homeland security-related areas irrespective of whether it is defense or nondefense. Therefore, we have seen ourselves projected back into a deficit-spending situation.

But we have a President who has made a commitment to the American people. He made it during the course of the campaign, and he is living up to what he talked about during the campaign; that is, we need to return to more of a balanced budget scenario so our children and grandchildren can see us operating in the black in the future, and we can tell them that we were fiscally responsible and that we will turn this country over to them with a new, sound fiscal condition.

Unless we have somebody who is as bold as this President is with this

budget which he has come forward with, that is never going to happen. I am very pleased to see the President is leading us in the right way from a fiscally responsible standpoint.

That having been said, there are a number of programs in the President's budget that he has proposed eliminating. I think there are some 150 programs. In last year's budget that came from the White House, we saw a proposal to eliminate some 61 or 71 Federal programs that were not performing up to the standards at which they should be performing. Therefore, the President was proposing to eliminate those, very much like what he has done this time.

The problem is when those proposals reach Capitol Hill, we tend to look at those programs and then somebody has some parochial interest in those programs and they never get eliminated. I don't know what the programs are this time. I have not looked at the budget in that kind of detail. But I do hope—and I know under the leadership of Senator GREGG as well as Senator CONRAD, who is very fiscally minded always—that we look at these programs which the President is suggesting, that we look at eliminating them, and that we give them serious consideration relative to their efficiency, to whether they are performing at the standard we have always anticipated they perform at, and if they are not performing, then we ought to consider eliminating them.

There are two areas of the budget I do have some concerns about. First of all, we are seeing an increase of about 5 percent in defense spending. I know the President is like me. He is very strong minded when it comes to defense issues. We have a very difficult situation, a very complex situation on our hands right now, relative to Iraq. We are still in the midst of a war. It is imperative that we continue to spend the money necessary to make sure America's military forces are the best trained, the best equipped fighting forces in the world. We need to make sure they have in their possession the latest, most technologically advanced weapons systems that are made anywhere in the world so they can protect freedom and democracy around the world; that they can accomplish what is being accomplished in Iraq today; that is, the liberation of the Iraqi people; that we are giving hope and opportunity to the people of Iraq in making sure they live in a free, open, and democratic society, in a country where freedom does reign; where they have an opportunity to provide a better quality of life for themselves and their children, unlike the society in which they have lived for the past 30 years under Saddam Hussein.

In order to do that, it is imperative we look at the weapon systems we are going to be purchasing over the next decade, over the next two decades, and into the future, because we not only have this conflict to consider, but we must also keep in mind there will be

future conflicts out there. We need to make sure our men and women will continue to have the best weapon systems available to them to continue the fight for freedom around the world when freedom calls us.

In that regard, there are two particular weapon systems that are proposed to be eliminated in this budget that I have serious questions about: the FA-22—not that we are eliminating it, but the number we are going to buy—and also the C-130, which is a great weapon system, a weapon system that has been in our inventory for at least four decades, and we are into the fifth decade. Any time you turn on the TV, whether you see the Baghdad International Airport or whether you see the tsunami relief effort, you see C-130s flying the flag of America as well as other countries participating in national security issues.

It is critically important that we review the proposals relative to these two weapon systems. The C-130 is proposed to be eliminated, and the FA-22, we are thinking in terms of not buying as many as we originally thought we would buy.

I was in a meeting this morning at the Pentagon that the President happened to be in, and we had a very good discussion, a frank discussion with the Secretary of Defense and his colleagues relative not just to this issue but to the overall issues relative to Iraq, as well as the budget. I was pleased to hear they are going to continue to look at these two weapon systems, and hopefully we will make some changes from the budget that are more realistic, more reasonable, and decisions that are a lot more correct than the decisions contained within the budget.

The second area I will talk about that concerns me relative to this budget is the proposal to reduce the budget of the Department of Agriculture by some \$5.7 billion over 10 years. In 2002, we wrote the latest farm bill. That farm bill was a controversial farm bill. It has been criticized by conservatives. It has been criticized by liberals. It has been applauded by both sides as well. I happen to think it is the right kind of farm bill that allows our consumers in America to go to the grocery store and be able to continue to buy the most reasonable food products of any industrialized country in the world. We spend less money per dollar on food products in this country than any other industrialized country in the world. We have a guarantee that those products are safe and secure, and at the same time we provide the research that allows our farmers to produce the highest quality and the largest yields of agriculture products of anyone in the world.

All of that happens for one simple reason; that is, the action this body, as well as the House of Representatives, takes when we write a farm bill. That is exactly the result that happened from the 2002 farm bill.

This budget seeks to rewrite that farm bill and to reduce the amount of

funding under that farm bill. That is wrong. We have to look at the proposals and make sure farmers and ranchers participate in the deficit reduction, which they have always been willing to do. They are the greatest people in America, even though they are small in number these days. They are hard-working, dedicated men and women who have made plans under the current farm bill for 6 years, which is the length of that farm bill. They made financial commitments, they leased land. They have their crop rotations planned out for 6 years. We are in the middle of that. We are in the third year of that.

Those who wrote the farm bill told the Members of the House of Representatives and the Members of the Senate as well as the farm community that when we wrote that bill we were changing it philosophically to a farm bill that would extend a helping hand to our agriculture community in times of low yields and low prices, but when prices were good and yields were good the Federal Government was not going to be there in the way of commodity payments; that is exactly what happened.

It was projected by the CBO that we would spend for the first 3 years \$52 billion. The fact is, we have spent \$37.9 billion. The reason is, for 2 of those years, we have had good yields and we have had good prices, so payments have been down.

While I applaud the President and I applaud his administration for being fiscally responsible and coming forward with a budget that does meet his goal of cutting the deficit in half during the next 4 years, we have to be careful and make sure we do not throw the baby out with the bath water and that we make sure we approach this budget for the next 5 years in a sound and sensible manner, in a manner that makes sure our defense community is looked after and makes sure that all of America is looked after when it comes to our agriculture production and our ability to buy safe and secure products in the grocery store.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

#### BUDGET

Mr. ENSIGN. Mr. President, I rise today to talk about a process that many Americans face each year. Imagine your average American family with paper and pencil in hand, gathered around the kitchen table discussing their budget for the year. Their funds are limited—and going into a deficit is not an option for them, like it is for their Government. They must choose their priorities, cut the wasteful spending, and make sure that their spending does not add up to more than their income.

Here in the U.S. Congress, we've been tasked with the same job. Those tax-paying families that toil over their

own budgets expect us to put the same thoughtfulness into how we spend their hard-earned money here in Washington, DC. And for too long, we have been largely irresponsible with how we spend their money. First, we have to prioritize our spending—and that means making tough choices.

Our top priority today must be our security. That includes the security of our borders and the safety of the brave servicemen and women in Iraq, Afghanistan, and around the world who are helping secure our borders and our freedom. We must be vigilant in making sure that our military has the tools it needs to get the job done.

We also cannot afford to turn our backs on the economic growth that we have been experiencing. Economic growth continued job creation are what will help bring increased revenue into the Government coffers and ultimately help reduce our deficit even further.

Now some critics of the President's budget in the Senate might say that we should raise taxes on the American family to reduce the deficit. I don't think that takes us in the right direction.

That kind of thinking fails to recognize how the tax cuts of 2001 and 2003 have helped our economy grow. This growth has resulted in 20 straight months of increased employment. In 2004 alone, America created 2.2 million new jobs. Each of these workers is gainfully employed and taking care of their own family. They are also paying taxes.

In fact, as a result of increased employment, even with lower tax rates, individual income tax revenue will increase almost \$73 billion this year. Overall revenue is expected to increase by almost \$125 billion this year. I think this is proof that the tax cuts worked. This is one important reason we have to make sure that we don't raise taxes on American families this year and in the years to come.

After we decide what our priorities are when it comes to spending, we have to make more difficult decisions about what we will cut from our budget. As we would tell our children and as we must sometimes remind ourselves, "Money doesn't grow on trees." Our budget must reflect the understanding that there are limits to how much we can spend—as is true for the typical family creating a budget.

Although it might be easier to continue throwing money at failing programs, it is not the right thing to do. If a program is not effective, it cannot expect to cruise on the Federal dole indefinitely. We must demand accountability, and we must focus on programs that are making a difference. I applaud President Bush for taking the position that "... a taxpayer dollar must be spent wisely, or not at all." That is the leadership we need in order to make these difficult reductions.

All Americans can work together to reduce Federal spending. Every tax-

paying American should demand spending reform, demand that earmarks and pork barrel spending in the appropriations bills be eliminated, and call on Congress to eliminate the ineffective programs. Rather than having lobbyists and activists calling on Congress to increase spending for every program, Congress should force these groups to identify cost savings too.

For example, if you want more spending for one of the more successful housing programs, housing activists should be forced to identify a housing program that is a failure. That way Congress can reallocate resources to the better run programs. This goes for every federally funded program. It should no longer be acceptable in America for our elected officials not to ask that hard question before increasing spending from one year to the next. The future of America's financial house demands a changed way of thinking.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Chair.

(The remarks of Mr. LAUTENBERG and Mr. CORZINE pertaining to the introduction of S. 308 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, may I inquire how much time remains on our side?

The PRESIDING OFFICER. There is 21 minutes 9 seconds.

Mr. HARKIN. I thank the Chair.

#### BUDGET PRIORITIES

Mr. HARKIN. President John Kennedy used to say that to govern is to choose. Certainly that is what a proposed budget is all about. It is about choices and priorities and the values that underlie them.

A budget is not just numbers. There are a lot of figures in there, but ultimately a budget is about people and priorities and what kind of an America we want. It speaks about the values of our country.

On that score, President Bush's proposed budget for 2006, sent yesterday to the Congress, speaks in the starkest of terms. Gone is any pretense of compassionate conservatism. Gone is any pretense of concern for the most needy in our society. Instead, what we see in the budget released yesterday is an unvarnished message that the far right rules, that the gloves are off, and future budgets will reflect traditional hard right priorities.

Specifically, the President's position is that the tax cuts for the very rich must not be touched. In fact, they must be made permanent. Moreover, two additional tax cuts for the very wealthy—tax cuts passed in the 2001 tax bill which become effective next year—must also not be touched. Meanwhile, President Bush proposes to slash critical life-supporting programs for veterans, schoolchildren, the sick, the poor, the disabled, the most vulnerable in our American family.

This proposed budget is the antithesis of compassionate governance. Yes, President Bush still trots out the conservative rhetoric about tightening our belt and making difficult choices in next year's budget. But he has a double standard. On the one hand he says times are tough. We can't afford to properly fund education for Iowa's schoolkids, health care for our veterans, economic development for rural communities or programs to keep police officers on our streets. On the other hand, the President says, times are not too tough for yet another tax giveaway bonanza for the wealthiest Americans.

Specifically, the budget released yesterday calls for implementation next year of two new tax cuts worth billions of dollars, with more than half of the benefits going to those making more than \$1 million a year. In short, President Bush's proposed 2006 budget is easy on the rich and privileged and tough on children and the poor.

Hard-working Americans are looking at these proposals and saying: Those aren't our priorities. Those are not our values. This is not our idea of fairness or shared sacrifice. Why should a Wall Street speculator making more than \$1 million a year get yet another big tax cut while kids in rural Iowa are getting kicked off of Head Start?

I made an inquiry about the slashes in Head Start. I was told: It is only 25,000 kids. The cuts in the Head Start Program in the President's budget would only deny 25,000 kids nationally to Head Start.

Only? I thought we were not going to leave any child behind. Yet we are going to say to 25,000 of the neediest kids in America: Sorry, we don't have room for you in Head Start. Only 25,000?

These are wrong choices and misplaced priorities, and they reflect bad values, values that are offensive to the basic decency and caring and fairness of the American people.

Let's be clear about the game being played here—only it is not a game; it is a deadly serious ideologically driven plan—the objective of this plan is best expressed by Republican leader Grover Nordquist who said his goal is to “cut government in half . . . to get it down to the size where we can [drag it into the bathroom and] drown it in the bathtub.” That is their goal.

To that end, over the last 4 years President Bush has engineered a fiscal train wreck, a methodical, purposeful,

deliberate train wreck. He has cut taxes by trillions of dollars, vastly increased spending on the Pentagon, spent hundreds of billions on the war in Iraq, rammed through an ill-conceived prescription drug plan costing half a trillion dollars, he has proposed borrowing more than \$4 trillion for his scheme to privatize Social Security, a scheme that does nothing to address the long-term shortfall in Social Security, and now the President has the gall to point to this fiscal train wreck, his train wreck, and say the deficits are out of control, but since the tax cuts are untouchable, we have to cut programs for our most needy citizens: We need to cut education, cut health care, cut rural development, cut police officers, and firefighters.

In short, what the President is saying is, we have to tighten belts on members of our American family whose belts are already tightened to the last notch. But to those whose coffers are full, whose stomachs are full, he says: We will give you a bigger belt. In case you are down to the end notch, we will give you a bigger one.

Here are just a few of the most egregious cuts in the budget that was sent to us. First, there are deep cuts in education for the first time in 10 years, at a time when our schools are struggling to meet the requirements of No Child Left Behind, eliminating funding for education technology, school counselors, alcohol abuse reduction, dozens of other education initiatives.

Secondly, at a time when U.S. workers are fighting for jobs in the global economy, the President's budget cuts job training by \$330 million and eliminates vocational education funding.

Next, the budget would slash \$1.6 billion in funding for local police, while eliminating drug task forces and the successful High Intensity Drug Trafficking Areas Program which has been so helpful in fighting the meth epidemic in Iowa and other places.

Next, the budget calls for some 2 million veterans to pay a new \$250 annual fee to receive health care, and it doubles the cost of their prescription drugs. Welcome home, Iraqi veterans, welcome home.

Rural America is singled out for deep cuts, cuts in programs to help family farmers and rural small businesses to survive, cuts in agricultural conservation programs, cuts in clean drinking water for our small towns and communities. The budget slashes funding for rural health programs by 80 percent. It cuts health profession training by 64 percent. It zeros out the block grants for preventive health care, the one thing we need to do to move from a sick care system to a health care system and have preventative health care block grants. It zeros them out.

Last, the budget calls for giving States more “flexibility” under Medicaid. But this is nothing more than a code word for cuts, cuts of billions of dollars in health care for the poorest, for the mentally ill, those with disabilities.

These are the wrong choices, the wrong priorities, and the wrong values. Why in the world are the President's tax cuts for the rich untouchable? We are no longer in a recession. The President says the economy is strong and creating jobs. During the Clinton years, we created 100 times more jobs per month, and we did it not by cutting taxes but by balancing budgets. That is what a budget is. It is to impose some self-discipline. But the budget President Bush sent up yesterday refuses to impose self-discipline except on the poorest and the neediest.

For 2006, the President is demanding a \$2.6 trillion Government, but he is refusing to raise any revenue to pay for it. In order to preserve the tax cuts, the President is saying: We are going to have to borrow at least \$390 billion, an amount equal to the entire Pentagon budget, and pass it on to our children and grandchildren.

This does not reflect the values of working Americans who sacrifice every day to balance their own budgets. I intend to challenge the President's priorities. I do not accept his idea that tax cuts for the very rich are untouchable while essential programs for our most vulnerable citizens are fair game for cuts or zeroing out. It is wrong to put virtually the entire burden of deficit reduction on the backs of our poorest citizens, yet this is what is being done with this budget.

I know many of my colleagues on both sides of the aisle share these concerns. The President's budget is deeply disappointing and disturbing. But the President's job is to propose a budget. We now know what President Bush's values are. We know how he wants America to look. That is what he is proposing. It is our job in Congress to write and pass a budget and to reflect the values and the choices that Americans want for their future. I appeal to my colleagues, let us join to write a budget that is fair, a budget that reflects the essential American values of fairness and shared sacrifice and compassion toward the most vulnerable in our American family.

In closing, I noticed last week an article in the newspaper that said “Bush prays for poor.” It said:

President Bush followed his State of the Union address with a prayer Thursday morning, saying that praying reminds the faithful to hear “the cry of the poor and the less fortunate.”

Well, I believe in the power of prayer. I always have. But maybe the President's prayer is a little misplaced. Maybe who we ought to be praying for is the rich. Maybe we ought to be praying that those who have a lot in our society, those who have the biggest homes and the nicest cars, who have the biggest and the fattest bank accounts, those who are able to pass on wealth to their children, maybe we ought to be praying for them in this way: That in their hearts they will understand and know that what we are doing here is wrong; what we are doing

to our American family is not in the best interests of fairness and decency and compassion.

Let us pray for those who have the most in our society, that they will get to this President and say: Mr. President, we have enough. We don't need any more. We need to pay our fair share. We don't need these two new tax cuts that are coming down next year. Take those off the table. Let's have shared sacrifice for all in our society.

And maybe those who the President listens to the most, the rich and the powerful, maybe if they could get to him with a change of heart, then maybe we can change our priorities. Maybe rather than praying for the poor, we ought to be praying for the rich to have that change of heart, to talk to this President, to talk to the leaders in Congress about fairness and equity and justice for the least in our society.

That is what a budget is about. It is not numbers. It is about who gets and who doesn't. It is about what kind of a structure our country will have. It is about hope. It is about giving hope to those who have the least—that they, too, can have a brighter future; that they, too, are members of our family; that they, too, are valuable. And while these poor kids in Head Start don't have a rich parent to get them into a private school, to get them tutoring, who do they rely on for their kids to get that Head Start? They rely upon us—the Government—because they don't have a rich parent or a rich uncle. So, yes, this Government can give hope to people—not just the wealthiest but to those on the bottom. That is what this budget is about and that is why I intend to challenge the President on this budget, to make sure we have our priorities right.

#### TURNING UP THE HEAT

Mr. HARKIN. Mr. President, I noticed a plethora of articles recently about the Republican National Committee turning up the heat on Minority Leader HARRY REID. I notice here that there is some other stuff coming out from the Republican National Committee saying they are going to "Daschleize" REID, making HARRY REID, our minority leader, the obstructionist.

Again, this is not what working together means. Look, we Democrats are in the minority. I believe we are the loyal opposition. We need to provide a different view for the American people. This last election was very close. There is no mandate for one side or the other to run roughshod over the other. This is a mandate for us to try to get together and work things out. It is not a mandate for the Republican National Committee to trash, demonize, and drag down the good name of Senator HARRY REID of Nevada. But that is what is happening. It has no part here. I was hoping maybe we would be beyond that. I would think we are beyond that.

I have known our minority leader for the last 30 years. He is a good, decent, kind human being. He is tough, but we expect him to be tough in making sure our rights are protected, and making sure the debate flows in the Senate, so we are able to come together and work things out, with having the President of the United States say this is the way it is going to be and you have to follow suit. That is not the way our country works; it is not the way the Senate works.

I am hopeful the RNC will look into their own hearts and see that this is not the right way to do things. It is going to make it tougher to get things done around here. It is going to make it much tougher if the Republican National Committee continues to try to drag down Senator HARRY REID, demonize him, call him an obstructionist, and to "Daschleize" him—whatever that means. I guess it means to make Senator REID the object of scorn for the Republican National Committee. I hope the Republicans in this body will tell the RNC to back off. This is not the way we do things around here.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### RETAINING CHAIRMANSHIP OF THE LABOR, HHS, AND EDUCATION SUBCOMMITTEE

Mr. SPECTER. Mr. President, in a few moments we are going to be moving to the class action bill. Senator DURBIN is due to arrive to offer an amendment. In the intervening time, I would like to take a few minutes to discuss my decision to retain the chairmanship of the Appropriations Subcommittee on Labor, Health and Human Services, and Education. The Appropriations Committee has been considering the formation of a new subcommittee on intelligence. Under my seniority position, I would have been in a position to take that subcommittee assignment. I have had a very keen interest in intelligence, chairing the Senate Intelligence Committee in the 104th Congress, being coauthor of the homeland security bill, and the fight against terrorism is obviously our No. 1 priority. So, I have been very strongly tempted to take on that chairmanship.

It now appears that the status of that subcommittee is in doubt because the decision has been made to not make a disclosure of the total funding for the intelligence community. With the announcement of the President's budget, which is austere, we are facing major problems with the deficit and the President has come in with a very re-

stricted budget, which impacts very heavily on the subcommittee that I have chaired now for many years.

The Department of Labor, for example, has cut some \$400 million; the Department of Health and Human Services has been cut by \$1.8 billion; the Department of Education cut by some \$500 million. So that the total impact on the subcommittee has been a reduction of \$2.4 billion, which is very difficult when you are talking about education and health and capital investments. Those are not expenditures, they are capital investments—as are programs related to worker safety.

The President has proposed some programs that are excellent. There is \$45 million for a new gang youth initiative, which has been sponsored and spoken about by First Lady Laura Bush. There is \$125 million for health care information technology, which is an increase of \$25 million. This is funding the subcommittee had started some time ago to enhance technology and information. We have had an increase in community health centers of about \$304 million. There is a new program for high school risk initiatives, for high school students who are at risk.

At the same time, there have been major eliminations. For example, the so-called GEAR UP program, which provides for the transition from the seventh grade on through high school, has been cut by more than \$306 million. The vocational and technical education programs have been cut by \$1.3 billion. Educational Technology State Grants have been cut by \$496 million, and correctional educational programs have been cut by \$26.8 million. There have also been major decreases in training; some \$333 million is cut from employment and training programs; \$29 million is cut from the Job Corps; \$35 million from a program for ex-offenders has been eliminated.

There has been a decrease in Healthy Start. The Centers for Disease Control has been cut by \$555 million, which is a little hard to understand at a time when we are calling on the CDC to undertake so many new actions. The program for low-income home energy assistance—a very vital program, especially for seniors who have to make decisions on limited compensation as to whether they will heat or eat—has been cut by some \$182 million. Graduate medical education has had a decrease of \$101 million. Perhaps of greatest concern—and it is hard to prioritize these cuts—has been the budget proposed by the administration for the National Institutes of Health, which has an increase of one-half of 1 percent, which will not maintain the research program of NIH.

I am joined on the floor by my distinguished colleague from Iowa, Senator HARKIN, who has been with me as chair of the subcommittee for more than a decade. Senator HARKIN and I have established what might be referred to as and others have called a model for bipartisan cooperation. We have had

changes in the gavel on the chairmanship and they have been seamless. Our efforts on many important items, which I will not detail at this time have, I think, been very important for the health and education and labor of Americans.

We have increased NIH funding from \$12 billion to \$28 billion, which has provided for enormous improvements. There has been a march toward cures in Parkinson's, diabetes, heart disease, cancer, and many other illnesses. In the context of what is happening with these programs, I have decided to stay and fight rather than switch.

I am delighted to yield to Senator HARKIN.

Mr. HARKIN. I thank my leader and chairman for yielding to me. Again, I want to thank him for his decision to stay as chairman of the Appropriations subcommittee that funds basically all of our health, education, labor, biomedical research programs, preventive health care programs, such as the CDC, which are all underneath this subcommittee.

Senator SPECTER and I have worked together, as he mentioned, going on I think almost 15 years. The gavel has moved back and forth. It has been seamless, as he said. I could not ask for a better partner and a better chairman to work with on this subcommittee. There are countless numbers of people in this country today—I think mostly of the kids—who are maybe coming down with Parkinson's or diabetes, who have illnesses facing them that a few years ago were hopeless. But now they have hope. Now they can see certain lights at the end of the tunnel, that they will be cured, that they will be well.

This is due in no small part to the great leadership of Senator ARLEN SPECTER of Pennsylvania, who has doggedly through the years fought to make sure we put the money into medical research, into finding the causes, preventions, and cures of these illnesses. It was through his great leadership that we were able to double the funding for the NIH.

There are also countless kids in America today who are getting good school programs, who are in Head Start Programs, as I mentioned earlier, and others, because of the leadership of Senator ARLEN SPECTER of Pennsylvania. So I thank him for that leadership and for his friendship and, as always, for his willingness to work across party lines to get things done.

Someone once mentioned that there are really two powerful committees on Appropriations: One is the Defense Appropriations Committee and the other is what is now called the Labor, Health and Human Services, and Education, which the Senator chairs and on which I am the ranking member.

Someone once said that the Defense Appropriations Subcommittee is the committee that defends America. The Appropriations Subcommittee on Labor, Health and Human Services,

and Education is the committee that defines America. I believe that really is true.

Thanks to the leadership of Senator ARLEN SPECTER of Pennsylvania, we have defined America well in terms of providing good education, health care programs, job training programs, dislocated worker programs—I am not going to go through the whole list—the Centers for Disease Control programs and the public health service they do across our country. Under the leadership of ARLEN SPECTER, we have defined well for America.

We have some tough choices, as he pointed out, in this budget, and we are going to have to work together to make it work. One thing I can say, having worked with Senator SPECTER all these years, one thing of which I am confident is that Senator SPECTER will be fair, compassionate, reasonable, and judicious in helping us work out this budget so that the poorest and the most needy in our society are not left behind.

I thank him for his leadership. I thank him for his willingness to stick with it and to stay as the chairman of this very vital subcommittee. I say to him here on the Senate floor and in public, I look forward to his leadership and his guidance and working with him to help continue to define America.

THE PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Iowa for those very complimentary comments. It has been very gratifying for me to work with Senator HARKIN for these many years as we have had the seamless exchange of the gavel.

I would not want my statement to suggest that there are not other areas of major concern as to the Administration's budget. The zeroing out of Amtrak is something which will have to be addressed by the Congress. There have been efforts made since Senator Baker, the then-majority leader, convened a meeting in his office with OMB Director David Stockman in 1981, and we maintained Amtrak's funding. Veterans will have to be reexamined, and many other items. I know we are going to move ahead on the class action bill.

Mr. President, I ask unanimous consent that a statement in further explanation of my decision be printed in the RECORD.

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

#### STATEMENT OF FURTHER EXPLANATION

Since January of 1989, I have had the privilege of serving as either the Chairman or the ranking member of the Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies Appropriations. Since that time, Senator Harkin and I have fought to dramatically increase funding for the NIH, replace deteriorating and outdated laboratory space at the Centers for Disease Control and Prevention, increase funds for elementary and secondary education and aid to disadvantaged college students, and provide for worker protection. These accom-

plishments have not come without challenges. The Subcommittee's allocation has limited our ability to increase programs as much as I would have liked, and dividing funding among many worthy programs has been a struggle. But I have enjoyed these challenges, the all night conferences with the House, and balancing the Congressional and Presidential priorities.

This year when the Senate passed a resolution to create an Appropriations Subcommittee on Intelligence it was at a time when the policy position of the Senate was to have an Intelligence budget that was unclassified. Subsequently, the decision was made to maintain the status quo and keep the budget classified. Since it would be difficult to create an Intelligence subcommittee with a classified budget, it may not be possible to do so at this time. However, discussions are still underway and if such a subcommittee were to be created, given my seniority on the Appropriations Committee, I would have the opportunity to chair that subcommittee. I have given serious consideration to taking that chairmanship. I believe that heading the Intelligence subcommittee at a time when this Nation's intelligence community is being restructured is very significant and is something in which I have great interest.

I am reluctant to give up the Subcommittee on Labor, Health, Human Services, and Education and the reasons for my reluctance are many.

#### NATIONAL INSTITUTES OF HEALTH

I have been on the Labor, HHS, Education Subcommittee since I first came to the Senate in 1981. At that time the funding for the NIH was something less than \$3.6 billion. As I begin my 25th year, the current budget is \$28.6 billion. Senator Tom Harkin and I have had a significant impact on this budget and as a result of our leadership and persistence we achieved our goal of doubling the medical research budget from FY'98 to FY'03.

But doubling the NIH budget is not enough. One of the most important reasons to continue my Labor-HHS Chairmanship is to continue to increase support for the NIH. Science has made great strides in extending life expectancy—in the early 1900s, 47 years was the average life span—today 77 years is the norm. Polio, smallpox, and other infectious diseases no longer kill or cause suffering to large numbers of people. Deaths due to heart disease have been cut by more than half since 1950. Cancer deaths in both men and women have decreased and some cancers like multiple myelomas have been reduced from a death sentence to a chronic condition as a result of new drugs developed through biomedical research. But there is still an enormous challenge. Heart disease continues to be the number one killer and cancer is now number two.

Last year, I lost two of my closest friends as a result of breast cancer—Carey Lackman Slease and Paula Kline. While the best medical teams worked on their cases—no cure could be found. Several times a week, I receive calls from friends and constituents asking me to contact the NIH to see if there is any cutting edge treatment for diseases that affect them or their families. And while there are some successes there are many losses—like Carey and Paula.

We also receive many requests from constituents and advocacy groups asking me to hold hearings to focus attention on their particular ailments in the hopes of receiving increased medical research for their disease. There is a long list of maladies that people suffer from where there could be cures: autism, Parkinson's, scleroderma, muscular dystrophy, osteoporosis, cervical cancer, lymphoma, prostate cancer, colon cancer,

brain cancer, pediatric renal disorders, glaucoma, sickle cell anemia, spinal cord injury, arthritis, a variety of mental health disorders, hepatitis, deafness, stroke, Alzheimer's, spinal muscular atrophy, amyotrophic lateral sclerosis—commonly known as Lou Gehrig's Disease—diabetes, breast cancer, ovarian cancer, multiple myeloma, pancreatic cancer, head and neck cancer, lung cancer, multiple sclerosis, macular degeneration, heart disease, infant sudden death syndrome, schizophrenia, polycystic kidney disease, Cooley's anemia, stroke, primary immune deficiency disorders.

The tragic aspect of these deadly diseases is that they could all be cured. I do believe, if we had sufficient funding. Continuing my Chairmanship will permit me to fight for increased dollars to find these cures.

#### STEM CELLS

In December of 1998, I held the first Congressional hearing on the issue of human embryonic stem cells. The Labor, HHS, Education Subcommittee provides funding for biomedical research at the NIH. At that time, no federal funds were going to this critical research. As Chairman, I have been able to focus attention on the promise of these stem cells to alleviate suffering and save lives. In 2004, NIH funded \$24.2 million in the area of human embryonic stem cell research. I continue to lead the effort to provide additional funding for stem cell research without arbitrary restrictions. To continue to focus attention and provide resources for the incredible potential of stem cell research to save lives, it is critical for me to remain as Chairman of the Labor, HHS, Education Subcommittee.

#### WOMEN'S HEALTH

I have long held a strong interest in issues related to the health of women. As Chairman, I supported the creation of an Office of Women's Health at the NIH to ensure adequate research into diseases and maladies affecting women; supported the funding of the first Healthy Start Demonstration sites to improve the health of pregnant women and their babies, now funded at \$104 million; supported increases in family planning programs, funded at \$288 million this year, that empower women to make healthy reproductive decisions; and supported increases in rape prevention and domestic violence prevention. These programs remain important to me. To continue to nurture these programs, it is important for me to remain as Chairman of the Labor, HHS, Education Subcommittee.

#### CENTERS FOR DISEASE CONTROL AND PREVENTION

In 2000, I visited the Centers for Disease Control & Prevention headquarters in Atlanta, GA. I was surprised by the dilapidated state of the buildings where you had eminent scientists working in deplorable conditions. Expensive scientific equipment was housed in hallways and under leaky roofs. At that time, funding for facilities at CDC was only \$17.8 million. The Labor, HHS, Education Subcommittee began to focus resources in 2001 to reconstruct the infrastructure of the CDC, whose critical public health mission is to protect the American people from outbreaks of disease. In 2001, we were able to provide \$175 million and we have provided over \$250 million in each of the last three years. This effort continues as several substandard facilities remain. To continue to provide the resources for critical infrastructure at the CDC, it is important for me to remain as Chairman of the Labor, HHS, Education Subcommittee.

#### WORKER PROTECTION

The Labor, HHS, Education Appropriations Subcommittee has jurisdiction over the prin-

cipal federal agencies responsible for protecting the American workforce. These "worker protection" agencies include: The Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the National Labor Relations Board. The jurisdiction also includes the Employment Standards Administration, which is charged with enforcing minimum wage and overtime laws, child labor protection, and administering workers' compensation benefits. In addition, the Employee Benefits Security Administration oversees private pension, health and welfare plans, and would administer proposed Association Health Plan legislation to assist small businesses in purchasing affordable health coverage. Under the leadership of Tom Harkin and myself, we provided \$1.5 billion for these agencies this year. Continuing my partnership with Senator Harkin will ensure sufficient dollars will be available to protect this nation's workers.

#### ASBESTOS

As Chairman of the Senate Judiciary Committee, I have a longstanding commitment to crafting a legislative solution on asbestos compensation, and once enacted, to ensuring that it is expeditiously implemented. As chairman of the Labor-HHS-Ed Subcommittee which oversees funding for the Department of Labor, I will be in the unique position to ensure that an administrative system is established promptly, and that claims are processed fairly.

#### EDUCATION

In the area of education, I know from personal experience the opportunities that are created through a high-quality education. As a Senator, I have sought to make the American dream a possibility for each and every American, whether it means great public schools for America's children, affordable alternatives at our Nation's outstanding colleges and universities, high-quality career and technical education programs, or investments in Head Start and other early care and development programs.

In my role as Ranking Member or Chairman of the Labor-HHS-Education Appropriations Subcommittee, I have helped increase the budget of the U.S. Department of Education from \$24.7 billion in FY95 to \$56.6 billion in FY05, an increase of 129 percent. This was made possible by the strong, bi-partisan working relationship I have with Senator Tom Harkin, my partner on the subcommittee.

#### NO CHILD LEFT BEHIND

Since 1995, the Subcommittee has increased Federal support for K-12 education by more than 100 percent, and most of the increases have been provided in programs that provide significant flexibility to States and local schools so they can direct funds to the areas that will best support improved student achievement and to eliminate the achievement gap in this country. Today under the No Child Left Behind funding is \$24.4 billion, up more than 40 percent or \$7 billion, since the Act was passed by Congress in December 2001. As Chairman of the Labor, HHS, Education Appropriations Subcommittee, I am proud to have played a part in the many positive developments in the area of education, but more work needs to be done.

I believe that the future of the United States will be shaped by the minds, skills and abilities of today's students, and it is my hope and intent to help make sure that they are prepared to make that future even brighter than it is today.

#### INDIVIDUALS WITH DISABILITIES EDUCATION ACT

We have made substantial progress in meeting our obligations under the Individ-

uals with Disabilities Education Act. When the law was enacted in 1975, the Federal Government promised to be a 40 percent partner in meeting the extra costs associated with improving educational opportunities for students with disabilities. For the first 20 years after the law was signed, the Federal contribution hovered around 8 to 9 percent. I am proud to report that over the past 10 years we have improved on that record by raising the Federal contribution from 8 percent to 19 percent almost halfway to the 40 percent goal. As Chairman, along with my partner Tom Harkin, we will continue to ensure that the Federal contribution continues to increase and that students with disabilities are assessed with suitable tests, provided the supports they need to achieve at the best of their ability, and supported in their transition to employment and further education.

#### PELL GRANTS

During the past decade, the Pell Grant program has helped millions of students with the cost of furthering their education. By raising the Pell Grant maximum award to \$4,050 in FY'05, up \$1,710 over the FY'95 award maximum, millions of low and middle income students have received more grant aid that assists them with the increasing price of a post-secondary education. Appropriated funds have more than doubled over the FY'95 level, and, as a result, more than 5.3 million students currently receive grant assistance to make post-secondary education more affordable. As Chairman, I will continue to make sure that every qualified student desiring to attend college can afford to do so and work in a profession of his or her choosing, without overbearing student loan payments.

#### CONCLUSION

Continuing my Chairmanship on the Labor, HHS, and Education Subcommittee will give me the opportunity to continue to target funds to programs and projects that are of great value to the State of Pennsylvania. These dollars have created jobs; increased the biomedical infrastructure of the State making it more competitive; provided health care facilities and supported seed monies for local programs related to abstinence, mental health, education and bioterrorism.

I have been contacted by 281 individuals or organizations requesting that I continue my Chairmanship. The reasons for their requests are many: labor groups are asking for my continued support on worker protection programs; biomedical research groups are asking me to once again champion increased medical research dollars; women's groups are requesting my continued support for women's health and family planning programs; education groups urge me to continue to increase Federal support for elementary, secondary and higher education.

The Chairman of the Labor, HHS, and Education Subcommittee will face many challenges in this Congress. The most difficult will be finding funding for the Congressional and Presidential priorities within the current fiscal environment and achieving the proper balance so that all priorities can be met.

Continuing my Chairmanship would afford me the opportunity to protect the programs and priorities that I have long championed.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair states to all Senators present, I was giving some leeway as the morning business continued. I will now close

morning business. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF  
2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 5, which the clerk will report.

The bill clerk read as follows:

A bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as the Presiding Officer has noted, we are continuing consideration of class action reform. Yesterday, we had opening statements, which I led off as chairman of the Judiciary Committee, and the ranking member, Senator LEAHY, made his opening statement. Senator HATCH spoke. We will be going to an amendment this morning by Senator DURBIN on mass actions.

The class action bill has as its central focus to prevent judge shopping to various States and even counties where courts and judges have a prejudicial predisposition on cases. The issue of diversity of citizenship has been created in the Federal courts to eliminate favoritism. When diversity jurisdiction was established, it was undertaken in the context of the claimant from one State, illustratively, Virginia coming to Pennsylvania, and the concern there was there might be some favoritism for the local resident in Pennsylvania. So the jurisdictional amount, when I was in the practice of law, was \$3,000. It is now \$75,000 which would put the case in the Federal court where there would be more objectivity. That is what they are trying to do here, to eliminate judge shopping.

If the cases which stay in the State court have two-thirds of the class from that State, it would go into the Federal court. If one-third or less is not from the State—in the one-third to two-third range—it would be the discretion of the judge.

As I said yesterday, there is, as far as I am concerned, a very important purpose here: to put cases in the Federal court to avoid forum shopping and judge shopping.

With respect to the substantive law, it is my view that the substantive law ought not to be altered. I commented briefly on the Bingham amendment yesterday where I think it is important that the Federal judges who have the cases would have the discretion to apply State law. But that will be taken up sometime when we debate the matter later.

I want to yield now to Senator MCCONNELL for leadership time or time as he may choose.

Mr. MCCONNELL. Mr. President, I thank the chairman of the Judiciary Committee.

I rise to speak about a case that I believe perfectly illustrates some of the problems with our current class action system. This case is, unfortunately, not at all unique. These outrageous decisions happen all too frequently. The bill currently under consideration will help fix some of these problems.

I have a chart. It is kind of hard to see. Basically, it is a letter that a member of my staff recently got. It included a check. The check is made payable to a member of my staff who received it in the mail. On the check's "Pay to the Order of" line, I have covered up the name of the staffer so she may remain anonymous.

I also obscured the name of the defendant in this case. Plaintiffs' lawyers have already soaked them once, and I do not want to give them the opportunity to do it again. I would hate to see others able to sue the company because they heard the company settled at least one class action lawsuit.

Along with this settlement check, my staffer received a letter which says in part:

You have been identified as a member of the class of . . . customers who are eligible for a refund under the terms of a settlement agreement reached in a class-action lawsuit . . . The enclosed check includes any refunds for which you were eligible.

Imagine her excitement. As you know, Senate staffers are certainly not the highest paid people in town. So this woman on my staff told me she was, indeed, thrilled to anticipate what she might be receiving. And then she looked at the enclosed check to see just how big her windfall was. It was a whopping 32 cents. That is right, she received a check made out to her in the amount of 32 cents. I guess it goes without saying that she was a little bit disappointed to find out her newfound riches had disappeared already.

Do not misunderstand me. I am not suggesting my staffer deserved a bigger settlement check. In fact, she told me she had no complaint against the defendant, and she never asked to be a part of the lawsuit. Apparently, she just happened to be a customer of the company that was sued, and it was determined that she theoretically could bring a claim against the defendant. So she became a member of "a class" who was due a settlement.

If this does not precisely illustrate the absurdity of the current class action epidemic in this country, I do not know what does. To demonstrate just how far out of whack the system is, let's start with the letter notifying my staffer that she was a member of a class action lawsuit and had been awarded a settlement.

This letter and check arrived via the U.S. mail. The last time I checked, it cost 37 cents to send an envelope through the U.S. mail. The settlement check is only for 32 cents. You can probably see where I am headed with this. It cost the defendant in a class action suit 37 cents to send a settlement check worth 32 cents. I don't have the

expertise in economics like my good friend and our former colleague Senator GRAMM of Texas, but I can tell you, forcing a defendant to spend 37 cents to send somebody a 32-cent check does not make much economic sense, and it certainly defies common sense.

Let me point out the most disturbing element about this lawsuit. My staffer researched this case, and it may be of interest to all of our colleagues to note that the unwitting plaintiff received 32 cents in compensation from this class action lawsuit, and her lawyers pocketed in excess of \$7 million—\$7 million. All in all, not a bad settlement if you happen to be a plaintiff's lawyer rather than a plaintiff.

And in case you think my staffer received an unusually low settlement in this litigation, let me quote from the letter accompanying the settlement check:

At the time of the settlement, we estimated that the average [refund] would be less than \$1—

The average refund would be less than a dollar—

for each eligible [plaintiff]. That estimate proved correct.

So you see, while the settlement was being arranged, it was clear each plaintiff on average would receive less than \$1. It was clear that each plaintiff would receive less than \$1. Yet the plaintiffs' lawyers still rake in more than \$7 million.

My colleagues may also be interested to know how much the defendant was forced to spend defending the lawsuit. Knowing the extent of the defense costs is instructive in demonstrating how unjust these abusive suits can be. So we asked the defendant how much it spent defending this suit that provided each plaintiff with pennies and the lawyers with millions. Perhaps not surprisingly, the defendant was not willing to discuss the matter. You see, the defendant told us that if it were readily known just how much they spent defending the suit, then that information would almost certainly be used against them in the future. The defendant feared that if their defense costs were known, then another opportunistic plaintiff's lawyer would file another one of these predatory suits, and then that lawyer would offer to settle for just slightly less than the millions he knew it would cost the defendant to defend the suit.

This case illustrates how plaintiffs' lawyers exploit and abuse defendants under the current system. Can there be any doubt that the current class action system is in need of repair? When the lawyers get more than \$7 million and the plaintiff gets a check for 32 cents, something is terribly wrong. When defendants fear to disclose how much they spend fighting these ridiculous suits because to do so would invite even more litigation, something is terribly wrong. Justice is supposed to be distributed fairly. This is clearly not a fair way to distribute justice.

By passing this legislation, we are not going to end every 32-cent award to

plaintiffs and multimillion dollar award to lawyers, but we certainly can curb a great deal of this nonsense.

I know some of my friends on the other side of the aisle will complain this bill will sound the death knell for class actions in State court. Nothing could be further from the truth. This is an important piece of legislation, but it is also a moderate and reasonable piece of legislation.

Frankly, I liked the original version, but we are where we are today, and I will talk more about that in a moment. The bill on the floor is the product of not one, not two, but three carefully crafted compromises. Not one, not two, but three carefully crafted compromises. These carefully crafted compromises have us to a point where we can enact meaningful reform that respects the ability of States to adjudicate local controversies as class actions while allowing Federal courts to decide truly national class actions.

The House, frankly, would prefer a stronger bill, and so would I. I like the original bill that stalled out at 59 votes last year. But the House also understands that the legislation on the floor is a good bill.

Therefore, the House is prepared to take this up and pass it without amendment, assuming that our carefully crafted compromise is itself not compromised on the Senate floor.

I had an opportunity to talk to Majority Leader TOM DELAY this morning and he reiterated the statement that he and Chairman JIM SENSENBRENNER made last Friday and it is this: If this bill is passed without amendment in the Senate, the House will take it up immediately, pass it, and send it to the President for signature. If it is altered in any way, the House will then follow the regular order and maybe sometime during this Congress we will get a class action bill.

Frankly, in my judgment, those who are skeptical of this bill would be better off with this compromise version than having the House go through the regular order, in which case they would probably pass a bill much different from this compromise. We would ultimately have a conference and in all likelihood, out of that conference might come a bill more like the one we had last year, which stalled out at 59 votes.

So I would say that for those who are not terribly enthusiastic about this compromise, it could get a lot worse from their point of view. This compromise is one that people who have worked on this bill for years are willing to take, and so our challenge is to keep it clean, to defeat the amendments that would slow down the process and prevent this important piece of tort reform legislation from getting to the President for an early signature. So that is where we are.

We have a marvelous opportunity to demonstrate at the beginning of this Congress that we are indeed going to be able to accomplish some important

things on a bipartisan basis. This compromise bill appears to have at least 62 Senators who are for it. Let us hold it together. Let us keep it as it is and demonstrate to the American public that we can work together on a bipartisan basis and pass important legislation for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the next Senator to seek recognition is Senator DODD. I am informed Senator LOTT will be coming to the floor shortly to speak, and that soon thereafter Senator DURBIN will offer his amendment. It is now 11:18. That should take the time for floor action until the hour of 12:30 when we are scheduled under a previous order to recess for the party caucuses. So I now yield to Senator DODD.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I begin by thanking our colleague from Pennsylvania for his leadership on this issue as the new chairman of the Senate Judiciary Committee, and also to commend our colleague from Vermont, Senator LEAHY, the ranking Democrat on the committee. Despite their differences on this legislation, we are debating this bill because the managers have gone through the committee process and have produced a product for the consideration of the full Senate. I am pleased this bill is finally before us once again. It has been a year and a half since we last considered this legislation.

I also commend the two leaders, Senators FRIST and Daschle, for working as early as the fall of 2003 to try and craft a compromise. Senator REID of Nevada has picked up on this and I want to particularly commend Senator REID. He has some strong reservations about this bill, as many of our colleagues do, but he has arranged, as the Democratic leader can, for this matter to come forward. Certainly all of my colleagues are fully aware that a determined minority can pretty much stop anything from happening, but the Senator from Nevada, despite his reservations about this legislation, has worked through the process with the distinguished majority leader.

The chairman of the committee, the ranking member, and those who are interested in this bill are trying to move this matter forward. So I would not want to begin my comments without commending the leaders, but particularly the Democratic leader, my leader, for putting in the time and effort to see to it that this matter dealing with class action be a part of the Senate debate.

The legislation has had a rather long and torturous history, going back a number of years. I am not going to recite at length that history. I will only note that several of our colleagues deserve to be acknowledged for their long and steady persistence in bringing the Senate to this point. Those Senators

include Senator GRASSLEY of Iowa, Senator KOHL of Wisconsin, Senator HATCH of Utah, and Senator FEINSTEIN of California. They have worked on the Judiciary Committee, in a very strong bipartisan fashion, to try and bring this matter up.

I also want to highlight and mention Senator CARPER of Delaware who has been tireless in his support for this effort. Senator MCCONNELL, as well has worked on this issue. Senator LANDRIEU, and Senator SCHUMER, I should mention as well, as a member of the Judiciary Committee, have also been a part of an effort to try and come up with a bill that could enjoy broad-based support.

I mentioned Senators SPECTER and LEAHY at the outset of my remarks as the chairman and ranking member who also worked well together to bring us to this point. I want to point out to my colleagues, of course, as someone who was very much involved in the negotiations back in the fall of 2003, that when the cloture motion failed, as pointed out by the Senator from Kentucky, within a few moments of that vote this Senator rose and offered to the majority at that point a willingness to sit down that day in fact to try and work out differences that would allow for this bill to go forward.

The distinguished majority leader accepted that offer and we immediately began a process to put this bill together. In fact, several of us sent a letter at that time to Senator FRIST. The letter was sent by myself, Senator LANDRIEU, Senator SCHUMER, and Senator BINGAMAN, outlining four areas that we thought if we could be accommodated in these areas the bill could go forward in a bipartisan fashion.

I ask unanimous consent that the letter dated November 14, 2003, from three of my colleagues and me to Senator FRIST be printed in the RECORD.

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

U.S. SENATE,  
Washington, DC, November 14, 2003.

Hon. BILL FRIST,  
Senate Majority Leader,  
U.S. Capitol, Washington, DC.

DEAR MAJORITY LEADER FRIST: We agree with the fundamental principle of the pending class action legislation that would permit removal of national class actions to federal court. Under current law, there have been a number of instances of unjustified forum-shopping and other abuses of the legal process. We are committed to helping to reform the law to ensure fair adjudication for all Americans. To that end, we are writing to outline the policies that need to be addressed in order to move the Senate toward a bill that can pass before Congress adjourns for the year.

While we support the general thrust of S. 1751, there are some instances where the legislation goes beyond the scope of what we believe must be addressed. It is our view that we are very close to having a bill that we can support and if we can satisfactorily address each of the following issues, we can move forward quickly with you to pass a reform bill.

Based upon our understanding of the issues that have been discussed by you and the

Democratic Leader, we believe that most of our concerns are readily solvable [while a narrow subset may require some further negotiation to resolve.]

We believe more consideration must be given to the formula for federal removal. We agree that many types of cases are best considered in federal court. At the same time, we would not want the Senate to fashion rules that permit the removal of cases that are truly single-state cases which are appropriately considered in state court. Additionally, we should permit federal court judges to consider a set of factors that includes both state and federal concerns when determining whether a case in the "middlethird" of the current formula should be removed.

Mass tort actions that are not brought as class actions should be removed from the bill. The bill passed by the Judiciary Committee did not contain this language. We understand that the peculiarities of state law in two states may need to be addressed. However, the current mass tort standard is much broader than necessary to address issues raised by two of the fifty states. We want to write a rule that is as precise as possible—in this case, by encompassing actions that are truly class actions, while at the same time excluding any cases that are not.

There are several places in the bill that pre-empt current law or allow for significant deviation from standard practice. This has the effect of encouraging manipulation or abuse by either side, and should not be allowed in reform legislation. The current version of the removal provision permits removal at any time, even during trial. This includes a potential "merry-go-round effect" of repeated removal and remand between state and federal courts. Additionally, the underlying bill does not specify when the court would measure the plaintiff class and it creates a new appellate review of remand orders.

In many cases, plaintiffs, who take the risk of coming forward, should be able to be compensated for that risk. The bill currently requires their recovery to be precisely the same as all other members of the class. Different risks and different damages in civil rights and other claims, should receive different compensation, upon approval of the trial judge.

Lastly, the underlying bill simply restates current law in requiring judges to review coupon settlements. Given the clear problems that have been raised with abusive coupon settlements, we believe it is imperative to include stronger provisions that the attorneys' fees to the actual coupons redeemed.

While time is short in this session, there is no reason why the Senate cannot consider this legislation in a bi-partisan spirit. If we indeed reach agreement, it is critical that the agreement be honored as the bill moves forward—both in and beyond the Senate. We are prepared to work with you toward that end and we look forward to hearing from you soon as possible as to how we can best move this legislation forward.

Sincerely,

MARY L. LANDRIEU.  
CHARLES SCHUMER.  
CHRISTOPHER J. DODD.  
JEFF BINGAMAN.

Mr. DODD. As a result of that letter, we went through several days of negotiations on this bill. The four areas that we sought changes in the bill are the following: Removal of formula including the definition of mass torts; the so-called merry-go-round problem in the bill; coupon settlements; and fair compensation for named plaintiffs. Those are the four areas we identified

in the November 14 letter. As a result of our negotiations, we came back with 12 improvements in this bill, agreed to by myself, Senators FRIST, GRASSLEY, HATCH, KOHL, LANDRIEU, and SCHUMER.

I ask unanimous consent that the list of the 12 changes that was a result of that negotiation be printed in the RECORD.

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

SUMMARY OF CHANGES TO S. 1751 AS AGREED TO BY SENATORS FRIST, GRASSLEY, HATCH, KOHL, CARPER, DODD, LANDRIEU, AND SCHUMER

THE COMPROMISE IMPROVES COUPON SETTLEMENT PROCEDURES

S. 1751 would have continued to allow coupon settlements even though only a small percentage of coupons are actually redeemed by class members in many cases.

The compromise proposal requires that attorneys fees be based either on (a) the proportionate value of coupons actually redeemed by class members or (b) the hours actually billed in prosecuting the class action. The compromise proposal also adds a provision permitting federal courts to require that settlement agreements provide for charitable distribution of unclaimed coupon values.

THE COMPROMISE ELIMINATES THE SO-CALLED BOUNTY PROHIBITION IN S. 1751

S. 1751 would have prevented civil rights and consumer plaintiffs from being compensated for the particular hardships they endure as a result of initiating and pursuing litigation.

The compromise deletes the so-called "bounty provision" in S. 1751, thereby allowing plaintiffs to receive special relief for enduring special hardships as class members.

THE COMPROMISE ELIMINATES THE POTENTIAL FOR NOTIFICATION BURDEN AND CONFUSION

S. 1751 would have created a complicated set of unnecessarily burdensome notice requirements for notice to potential class members. The compromise eliminates this unnecessary burden and preserves current federal law related to class notification.

THE COMPROMISE PROVIDES FOR GREATER JUDICIAL DISCRETION

S. 1751 included several factors to be considered by district courts in deciding whether to exercise jurisdiction over class action in which between one-third and two-thirds of the proposed class members and all primary defendants are citizens of the same state.

The compromise provides for broader discretion by authorizing federal courts to consider any "distinct" nexus between (a) the forum where the action was brought and (b) the class members, the alleged harm, or the defendants. The proposal also limits a court's authority to base federal jurisdiction on the existence of similar class actions filed in other states by disallowing consideration of other cases that are more than three years old.

THE COMPROMISE EXPANDS THE LOCAL CLASS ACTION EXCEPTION

S. 1751 established an exception to prevent removal of a class action to federal court when 2/3 of the plaintiffs are from the state where the action was brought and the "primary defendants" are also from that state (the Feinstein formula). The compromise retains the Feinstein formula and creates a second exception that allows cases to remain in state court if: (1) more than 2/3 of class members are citizens of the forum state; (2) there is at least one in-state defendant from

whom significant relief is sought and who contributed significantly to the alleged harm; (3) the principal injuries happened within the state where the action was filed; and (4) no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding three years.

THE COMPROMISE CREATES A BRIGHT LINE FOR DETERMINING CLASS COMPOSITION

S. 1751 was silent on when class composition could be measured and arguably would have allowed class composition to be challenged at any time during the life of the case. The compromise clarifies that citizenship of proposed class members is to be determined on the date plaintiffs filed the original complaint, or if there is no federal jurisdiction over the first complaint, when plaintiffs serve an amended complaint or other paper indicating the existence of federal jurisdiction.

THE COMPROMISE ELIMINATES THE "MERRY-GO-ROUND" PROBLEM

S. 1751 would have required federal courts to dismiss class actions if the court determined that the case did not meet Rule 23 requirements. The compromise eliminates the dismissal requirement, giving federal courts discretion to handle Rule 23-ineligible cases appropriately. Potentially meritorious suits will thus not be automatically dismissed simply because they fail to comply with the class certification requirements of Rule 23.

THE COMPROMISE IMPROVES TREATMENT OF MASS ACTIONS

S. 1751 would have treated all mass actions involving over 100 claimants as if they were class actions. The compromise makes several changes to treat mass actions more like individual cases than like class actions when appropriate.

The compromise changes the jurisdictional amount requirement. Federal jurisdiction shall only exist over those persons whose claims satisfy the normal diversity jurisdictional amount requirement for individual actions under current law (presently \$75,000).

The compromise expands the "single sudden accident" exception so that federal jurisdiction shall not exist over mass actions in which all claims arise from any "event or occurrence" that happened in the state where the action was filed and that allegedly resulted in injuries in that state or in a contiguous state. The proposal also added a provision clarifying that there is no federal jurisdiction under the mass action provision for claims that have been consolidated solely for pretrial purposes.

THE COMPROMISE ELIMINATES THE POTENTIAL FOR ABUSIVE PLAINTIFF CLASS REMOVALS

S. 1751 would have changed current law by allowing any plaintiff class member to remove a case to federal court even if all other class members wanted the case to remain in state court. The compromise retains current law—allowing individual plaintiffs to opt out of class actions, but not allowing them to force entire classes into federal court.

THE COMPROMISE ELIMINATES THE POTENTIAL FOR ABUSIVE APPEALS OF REMAND ORDERS

S. 1751 would have allowed defendants to seek unlimited appellate review of federal court orders remanding cases to state courts. If a defendant requested an appeal, the federal courts would have been required to hear the appeal and the appeals could have taken months or even years to complete.

The compromise makes two improvements: (1) grants the federal courts discretion to refuse to hear an appeal if the appeal is not in the interest of justice; (2) Establishes tight deadlines for completion of any appeals

so that no case can be delayed more than 77 days, unless all parties agree to a longer period.

THE COMPROMISE PRESERVES THE RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE

The compromise clarifies that nothing in the bill restricts the authority of the Judicial Conference and Supreme Court to implement new rules relating to class actions.

THE COMPROMISE IS NOT RETROACTIVE

Unlike the House bill, the compromise will not retroactively change the rules governing jurisdiction over class actions.

Mr. DODD. I will not go through and name each one of them. Some of them are rather arcane but nevertheless important provisions of this bill, the point being that we were prepared basically in the fall of 2003 to go forward.

We were notified at that point that the first item of business in January of 2004, more than a year ago, would be the class action reform bill. Well, here we are in February of 2005 finally getting to this matter. There was a prepared bipartisan bill over a year ago on class action and we are now dealing with exactly the same bill. As the Senator from Kentucky pointed out, he would have preferred the House bill, the bill that was not approved when the cloture motion was held, and reluctantly is supporting this bill.

There are those of us who could not have supported the House bill or the version that came up in the Senate earlier, but we have worked very hard to put this compromise together over a year ago. So we could have dealt with this a long time ago, but nonetheless we are here today and that is the good news.

I am heartened that the other body has agreed to accept this version if it goes unamended over the next day or so during the debate and consideration of this legislation. I am hopeful that will be the case.

Very briefly, I will go through what we have achieved. As I mentioned, following the vote Senator FRIST asked myself and others, including my good friend from Delaware who is on the floor today, to enter into discussions with him and other Members to explore whether there might be some ways of building greater support for this bill. Senators SCHUMER and LANDRIEU joined in writing a letter to the majority leader, which I have put into the RECORD already, in which we laid out the four areas of our concerns. We subsequently entered into those negotiations among our four offices. Senators GRASSLEY, KOHL, HATCH, and CARPER played very important roles in that consideration. Those negotiations were very productive. We reached significant agreement not on the four original areas of concern but on eight others as well. That point deserves special emphasis. We went into the negotiations seeking improvement on four issues. We emerged with significant changes on 12 issues.

The result is a bill that is now before this body. In my view, it is very fair

and balanced, rather modest legislation that addresses a number of well documented shortcomings in our Nation's class action system. It shows what we can accomplish in the Senate when we work together in a bipartisan fashion. As with all good compromises, this bill is entirely satisfactory to no one and in some respects unsatisfactory to everyone.

There are those who will say this bill does not go nearly far enough in rectifying the shortcomings of the class action system in our country. On the other hand, there are those who believe that the sky is falling, that the bill severely impairs the ability of people to gain access to our courts. In my judgment, claims of both sides are vastly overstated. One of the reasons why I believe this is so is that the people on both sides of the legislation, proponents and opponents alike, agree our compromise has made this bill better. It targets more precisely those problems in need of reform and addresses them in an appropriate and effective manner.

We will no doubt discuss those problems in more detail in the coming hours, but allow me to briefly mention two of them. Perhaps the central problem addressed by the compromise is the forum shopping issue. Article III of the Federal Constitution sets forth the circumstances under which cases may be heard in Federal court. Article 2 of Article III extends Federal jurisdiction to suits "between citizens of different States." These are known as diversity cases. The Framers had two separate but related reasons for allowing Federal courts to hear cases between citizens of different States.

Very simply, one was to prevent the possibility that the courts of one State would discriminate against the citizens of another State. The second reason was to prevent the possibility that the courts of one State would discriminate against interstate business and thereby impede interstate commerce. Over the years, however, class action rules have been interpreted in such a way that plaintiffs' lawyers have been able to keep class actions out of Federal court, even those that are precisely the kind of cases for which diversity jurisdiction was created, because of their interstate character. They do this by adding named plaintiffs or defendants solely based on their State of citizenship in order to defeat the diversity requirement.

Alternatively, they allege an amount in controversy that does not trigger the \$75,000 threshold for removing cases to Federal court. The result is frequently an absurd one. A slip-and-fall case in which a plaintiff alleges, say, \$76,000 in damages can end up in Federal court. At the same time, a case involving millions of plaintiffs from multiple States and billions of dollars in alleged damages is heard in State court, just because no plaintiff claims more than \$75,000 in damages or because at least one defendant is from the same State of at least one plaintiff.

Section four of the bill modifies these diversity rules to allow Federal courts to hear diversity cases that have a strong interstate character. In particular, it allows Federal jurisdiction if the amount in controversy alleged by all plaintiffs exceeds \$5 million and if any member of the plaintiff class is a citizen of a different State than any defendant. At the same time, the bill creates careful exceptions that allow cases to remain in State courts where those cases are primarily intrastate actions that lack national implications.

The legislation attempts to bring diversity rules more in line with the original purpose of Federal diversity jurisdiction. Cases that are interstate in nature because they involve citizens of multiple States and interstate commerce may be heard in Federal courts. Cases that are not interstate in nature remain in State courts.

A second problem the compromise addresses is the so-called coupon settlements. As our colleagues may know, a growing number of class action cases involves these type of settlements. In a typical coupon settlement, class members receive only a promotional coupon to reduce the cost of a defendant's products while the lawyers for the class action receive a rather large fee that is disproportionate to any client benefit.

For instance, in one case a soft drink company was sued for improperly adding sweeteners in apple juice. The company agreed to settle the case. The settlement required it to distribute to customers a 50-percent coupon off the purchase of apple juice. Meanwhile, class counsel received \$1.5 million in cash.

I have no problem with attorneys earning a fee for their services. In fact, the compromise bill places no caps at all on attorney fees, although there were those who wanted to do that.

But what is particularly disturbing about these coupon settlements is class members typically redeem only a small portion of the coupons awarded. In fact, over the years only 10 or 20 percent of coupons were actually redeemed. Yet the attorneys are paid regardless of how many coupons are cashed in.

In effect, there is a negative incentive for counsel for both plaintiffs and defendants to enter into such settlements. Counsel for the plaintiff is paid their fee regardless of the percentage of coupons redeemed. At the same time, counsel for the defendants know they are likely to pay in redeemed coupons only a fraction of what they would pay if they paid cash to settle a case. Meanwhile, the actual class members—the ones who have actually been aggrieved—receive a benefit of little or no value at all.

Our compromise takes several steps to remove this negative incentive to enter into coupon settlements. Most importantly, it states that an attorney's fee incurred to obtain a coupon

settlement can only be paid in proportion to the percentage of coupons actually redeemed. For example, if an attorney's fee for obtaining a coupon settlement is \$5 million but only one-fifth of the coupons are actually redeemed, the attorney can only recover one-fifth of his or her fee—roughly \$1 million.

In addition, the bill requires that a judge may not approve a coupon settlement until he or she conducts a hearing to determine whether settlement terms are fair, reasonable, and adequate for class members.

There are other provisions of the bill that are also important.

In the interest of time—I see my colleague from Mississippi also wants to speak before our colleague from Illinois offers the first amendment—I will defer discussing them in detail at this hour. However, to reinforce my central argument that this is a reasonable, modest piece of legislation, it is worth mentioning what the bill does not do.

First, it does not apply retroactively, despite those who wanted it to. A case filed before the date of enactment will be unaffected by any provision of this legislation.

Second, this legislation does not distinguish in any way or alter a pending case.

Third, it does not in any way alter substantive law or otherwise affect any individual's right to seek equitable and monetary relief.

Fourth, it does not in any way limit damages, including punitive damages.

Fifth, it does not cap attorney fees.

These are all matters that some people wanted to include in the bill.

And, it also does not impose more rigorous pleading requirements of evidentiary burdens of proof.

As some of our colleagues have said, this legislation is actually more court reform than tort reform. Candidly, I think they are more right than wrong about that. This is more court reform than tort reform. It stands in very sharp contrast to some of the other legislation considered by the Senate in the last Congress. That includes the Energy bill, which extinguished pending and future suits against makers of MTBE, a highly toxic substance that pollutes ground water.

It also includes legislation that shielded gunmakers and gun dealers from many types of lawsuits.

Incredibly, we were about to adopt legislation that would completely exclude an entire industry even when there was complete negligence on their behalf of being sued. I suggested when we were about to adopt those bills that Members think about talking about tort reform. Those matters cause this Senator deep concern, despite the fact I represent the largest gun producers in the United States. I cannot imagine my insurance companies getting a deal as the gun manufacturers were about to get. Nonetheless, those bills died, as they should have, in my opinion.

The legislation before the Senate today does not close the courthouse

door to a single citizen in this country. Maybe that citizen will end up in Federal court rather than State court, but no citizen will lose the sacred right in America to seek redress or grievance in a court of law.

When this compromise was written 15 months ago, it was said that it was critical that this bill be honored as the bill moves forward—both within and beyond the Senate. I continue to believe that to be the case.

In the words of the Senator from Kentucky earlier today, as well as statements made by Speaker HASTERT, this Member is assured that, in fact, the agreements will be kept. In fact, I had a conversation with the staff of Mr. SENSENBRENNER, chairman of the House Judiciary Committee, who reinforced the notion that if we adopt this bill as it presently reads, then there will no changes in the House and they will accept the Senate language. That is good news for those of us who have worked on this compromise.

Certainly, this is not a perfect bill. No bill is. We all know that, but I think it strikes a careful balance between remedying the shortcomings and retaining the strengths of current class action practice in this country.

Obviously, the bill is not yet through the Senate. But the consent agreement entered into by the two leaders is an auspicious beginning to preserving the balance.

Let me, once again, reiterate my thanks to Senator REID of Nevada, the distinguished Democratic leader, and for Senator FRIST entering into that agreement which allows us to have this debate, and for all relevant and germane amendments to be considered to this legislation. Certainly, that is the way it ought to be done.

Moreover, I note that the leadership of the other body has indicated its willingness to respect the balance that this bill strikes, as well. That, too, is a positive development.

I stand in strong support of this legislation. I think it is a good compromise. It is not a perfect one. I know my colleagues may offer some amendments that I might have been attracted to under different circumstances which I may support, but when you try to reach agreement here, it is not easy. And when you do, I think it is worthy of support, particularly when those agreements cover as much territory as we did during the compromise efforts 15 months ago.

As I mentioned at the outset, there were four proposals with which we ended the negotiations. Those four proposals were adopted, and eight others were added during that negotiation.

I commend again the leader. I commend Senators SPECTER and LEAHY for their efforts, and I look forward to this bill passing the Senate and being adopted by the House and going to the President for his signature.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I rise today in strong support of the Class Action Fairness Act of 2005.

Before he leaves the floor, I thank the Senator from Connecticut, Mr. DODD, for his comments and for his leadership in this area. He has been steadfast. He has been involved in the process of moving this bill forward. A process which involves some give and take and some compromise.

Surprise, surprise. That is the legislative process. This is not a perfect bill, as he noted. It is not one that I particularly like. I would like to make it a lot stronger, but it is a major step forward.

I thank Senator DODD, and other Senators. Senator CARPER has been involved in that process, and colleagues on this side of the aisle.

I am pleased that the first substantive bill of the year is one that truly has a chance to make a huge difference in this country, and it is a bipartisan effort. It is one that I predict, when we go through the amendment process and get to the end, will have a large vote in support. I will not be surprised if it gets 70 votes. I hope for that. That would be a positive step.

If we can hold the line on amendments that may be offered—some that I would be attracted to, some that Senators such as Senator DODD would be attracted to—but we worked out an agreement. We should brush back those amendments, discourage a whole raft of amendments being contemplated, and complete our work. The House has indicated they will accept this product—the compromise we came up with. When was the last time you heard of that even being possible?

But they have reaffirmed just in the last few days that, yes, if we can complete it the way it is presently structured, they will take it up, pass our bill, and send it to the President. That would be a good way to start this year.

I thank colleagues on both sides of the aisle for the work that has been done.

Senator HATCH is here managing the legislation. He has worked on this long and hard, including last year when we had an opportunity that slipped away from us for a variety of reasons. It was tough last year to get much of anything done with all of us preoccupied with the Presidential campaign and our Senate campaigns and the House races. There is no use going back and rehashing why we didn't get it completed. We didn't get the job done. But we can do it now.

I thank Senator HATCH for the work he has done on this bill over the years, and Senator SPECTER for getting it out of the Judiciary Committee in good order. I thank Senator GRASSLEY for his usual dogged determination to not give up on an issue, and he continues to press not only this but the bankruptcy reform issues.

I am thankful for the way we are starting off this year. I thank the leadership for working out an agreement to

bring this bill to the floor. We could very well have had a filibuster. But Senator FRIST, working with Senator REID, has indicated we are not going to get into that morass. We are going to step up to this issue, we are going to address it and debate it, and we are going to get results. I think that is good.

I believe the American people want us to complete action on this legislation and pass the bipartisan compromise this week, if at all possible.

There is no reason for this to be dragged out over a long period of time. We know there are a few amendments that are going to be offered. We will debate them. Let us vote and get to the conclusion of this process in the Senate, and send it to the House so they can take it up.

Why do we need this bill?

Some people would say we have the greatest judicial and jurisprudence system in the world. Things are working fine. Let us just leave it alone.

I don't believe things are exactly working just fine. Every system over a period of time needs some adjustment, and if abuses begin to occur, we must step up and stop them.

Over the past decade, we have seen a dramatic rise in the number of interstate class actions being filed in State courts, particularly in what are called magnet jurisdictions. I regret to say, and acknowledge, my State is one of the worst abusers. To the credit of our State legislature and our Governor, Haley Barbour, last year in Mississippi we passed tort reform legislation. We have gone from being the center of jackpot justice to being a State that has been praised by legal journals and the Wall Street Journal as having stepped up to the issue and dealt with it in a responsible way. They now describe my State in this way: Mississippi, open for business.

Prior to tort reform though, businesses, industry, manufacturers, drugstores, etc. would not come to Mississippi to do business. They were not coming to my State, one of the poorest States in the Nation, because of the abuses that have been occurring in the legal system.

But now, we have done our part in Mississippi. We still need to do more, but this is a Federal interstate problem and we in Congress are going to have to help address it.

Courts where the class action mechanism is routinely and egregiously abused have been proliferating. In many instances we know the plaintiffs get little or nothing, and the lawyers have gotten massive fees. I can cite example after example in my State where awards have been de minimus or nothing. Jefferson County, MS, in my State is one of the worst, most abused magnet jurisdictions in the country. Far too often innocent local business men and women are joined as defendants in controversies to which they were merely innocent bystanders, all because plaintiffs' lawyers wanted to file the

case in Jefferson County for the purpose of getting a bigger fee. Often, the cases have no other relationship to that county or to my State other than this is a good place to go. This is unconscionable. We have an obligation to our constituents to put a stop to it.

Before going any further, it is important we take note of the title of this legislation: Class Action Fairness Act. This is not just some random title that Senator GRASSLEY or others came up with. The whole point of the bill is to make the class action mechanism fair for all involved.

Some of my colleagues will argue today, I am sure, that the system is already fair. I ask, Is it fair for the plaintiffs in a class action suit to receive nothing, literally nothing, when the lawyers representing them receive \$19 million? The citation is Shields et al. v. Bridgestone/Firestone, Inc. et al.

That is an actual case. Is it fair for the claims of residents of Mississippi, Washington, or Maine to be decided according to Illinois State law? Of course not. These are just two of the many reasons we need class action fairness, and we need it now.

Our Nation's judicial system was designed to be the fairest in the world for all litigation, and we have gotten away from that. These abuses have called into question the very fairness of our whole system. It is imperative we act to close these loopholes that have allowed this process to fail in the way that it has.

Before I talk about the specifics of what this bill does, let me take a minute to emphasize a few things the bill does not do. We will hear these allegations over the next few days, I am sure. This bill is not a tort reform bill, it is a court reform bill. This bill does not alter in any way substantive law. There may be some here who would want to debate that. However, I made that point at a meeting earlier today and I have gone back and checked it with experts. That is an accurate statement.

Contrary to the scare tactics of the plaintiffs' lawyers, this bill does not affect an individual's right to seek redress or damages through the court, and it does not in any way limit damages, either punitive or compensatory.

What does it do? First, it expands the jurisdiction of Federal courts over large interstate class actions. Clearly, that is a Federal jurisdictional issue and one we have a right and a real need to get into.

Let's be clear. We are only talking about those cases in which the aggregate amount in controversy exceeds \$5 million, in which there are at least 100 plaintiffs, and in which any plaintiff is a citizen of a different State from any defendant. This makes basic sense. Where you have more than 100 class members and where parties to the litigation are from different States, the Federal courts should have jurisdiction. This provides fundamental fairness for all involved. The Framers of

our Constitution were concerned about ensuring fairness in cases like this, worried that State courts could be biased in favor of a home State party versus another party who was a resident of a different State. That is the very reason for a Federal diversity jurisdiction.

It only makes sense that we close the loopholes that a growing number are abusing and exploiting with the result of creating a system that is having a huge impact in terms of dollar amounts and business and economic development.

It is also important to note that this bill does not apply to every class action, only those meeting certain criteria. It is not going to result in our Federal courts being overwhelmed by a large number of class actions. We will hear that accusation this week. And it will not move all class actions to Federal court. In fact, it leaves in State courts a significant number of class actions. It reserves for State courts those cases in which all plaintiffs and defendants are residents of the same State. It reserves for State court those class actions with less than 100 plaintiffs. Likewise, class actions involving an amount in controversy of less than \$5 million would remain in the State court as would class actions in which a State government entity is the primary defendant.

As a part of the compromise worked out with Senator FEINSTEIN last year, class actions that are brought against a company in its home State and in which two-thirds or more of the class members are also residents of that State would remain in State court.

Finally, State courts would retain jurisdiction over class actions involving local controversies where at least two-thirds of the class members and one real defendant are residents of the State where the action is brought. This bill reserves these cases for State court because it is the right thing to do.

There are other provisions of importance in this bill, including a consumer class action bill of rights. As many know, part of this section represents a compromise worked out by Senators SCHUMER, DODD, and LANDRIEU last year. Notably, it places limitations on contingency awards for attorneys in coupon settlement cases. By basing these contingency fees on the value of the coupons that are actually redeemed, or the amount of time expended by the attorney, it provides for a far greater protection for plaintiff class members. This provision takes a big step toward addressing the grossly inequitable fee awards to attorneys when class members end up with a coupon.

Additionally, by requiring the judge to make a written finding that the benefits to class members substantially outweigh the monetary loss from a settlement, the bill provides an added layer of protection for class members who will suffer a net monetary loss as a result of payment of attorney's fees.

Do not get me wrong. I went to law school. I practiced law for a while. Yes, I was on the defense side of the ledger most of the time. But I have to admit reluctantly that my brother-in-law—I am really not related to him by blood; he married my wife's sister—is one of the, shall we say more famous lawyers in this country, Richard Scruggs. He has brought a lot of lawsuits I don't like. On occasion he actually makes a point with some of those lawsuits. I don't want to put him out of business, but I want some reasonable restraint on how these class action suits have been abused. He has not been one of the ones who actually wound up having abused lawsuits in the courts, as he winds up getting settlements most of the time.

I understand both sides of this equation. I certainly do not want to take away people's right to sue—individuals or even class actions, when they are really a class. That is not what has been happening. There has been an effort to dredge up clients, and it has led to the next area I will talk about, mass actions.

There is language in this bill dealing with mass actions. I understand there may be an effort later today or this week to change this section with an amendment that I understand may be offered. But it is vital that we retain the mass action section of the bill without an amendment so that we don't open the door for lawyers to make an end run around what we are trying to do with class actions in this bill.

The mass action section was specifically included to prevent plaintiffs' lawyers from making this end run. It will ensure that class action-like cases are covered by the bill's jurisdictional provisions even if the cases are not pleaded as class actions.

The amendment that we are hearing may be offered later today is a little sleight of hand. This is a case where you argue that you're only changing one word but, in reality, you fundamentally alter what happens with regard to these mass actions. There are a few States, such as my State—which do not provide a class action device. In those States, plaintiffs' lawyers often bring together hundreds, sometimes thousands of plaintiffs to try their claims jointly without having to meet the class action requirements, and often the claims of the multiple plaintiffs have little to do with each other. There was an instance in my State where you had more plaintiffs in one of these mass actions than you had people in the county, more than the residents in the county. Under the mass action provision, defendants will be able to remove these mass actions to Federal court under the same circumstances in which they will be able to remove class actions. However, a Federal court would only exercise jurisdiction over those claims meeting the \$75,000 minimum threshold. To be clear, in order for a Federal court to take jurisdiction

over a mass action, under this bill there must be more than 100 plaintiffs, minimal diversity must exist, and the total amount in controversy must exceed \$5 million. In other words, the same safeguards that apply to removal of class actions would apply to mass actions.

Mass actions cannot be removed to Federal court if they fall into one of four categories: One, if all the claims arise out of an event or occurrence that happened in the State where the action was filed and that resulted in injuries only in that State or contiguous States. That makes sense. The second exception would be, if it is the defendants who seek to have the claims joined for trial; third, if the claims are asserted on behalf of the general public pursuant to a State statute; and, lastly, if the claims have been consolidated or coordinated for pretrial purposes only.

Some of my colleagues will oppose this mass actions provision and will want to gut it by making an effort to confuse mass actions with mass torts. I realize we are kind of getting into a legalese discussion, but words make a difference when you are considering a bill such as this. I am very concerned that the real motive is to render this provision meaningless, thereby creating a loophole for the trial lawyers to basically get a class action by another name.

Mass torts and mass actions are not the same. The phrase "mass torts" refers to a situation in which many persons are injured by the same underlying cause, such as a single explosion, a series of events, or exposure to a particular product. In contrast, the phrase "mass action" refers to a specific type of lawsuit in which a large number of plaintiffs seek to have all their claims adjudicated in one combined trial. Mass actions are basically disguised class actions.

If we enact the amendment that we are hearing may be offered to alter the mass action section, if we do not keep the mass action section intact, we will be knowingly creating a loophole that would undermine our whole effort in getting some responsible reform.

I also understand there is another amendment that will be offered, and it has been referred to as the choice of law amendment. That has a good sound, choice of law. To me, that is another word for shopping around to find the best forum, once again, with no relation to where the incident occurred or where the plaintiffs live, or the defendants, or anything.

I have spoken to several of my colleagues about this amendment in the last week or two, and some of them have even said to me: Don't you think we should include this amendment? My answer is no. This is a bad amendment. In my opinion, it is a poison pill. If we accept this choice of law amendment, basically the plaintiffs' lawyers can go to Federal court and say: OK, it is in Federal court, but we want to look at

this State law, that State law, or another State law, depending on which one suits our particular cause the best. If this amendment is offered and passes, we would certainly have to go to conference then with the House. It would delay our efforts to get a final bill. And if we could not come up with a solution in conference that did not include this amendment, we would not get a bill.

So the phrase "choice of law" does sound nice, but the amendment actually would alter very fundamental legal principles. It would require Federal courts to apply one State's laws when adjudicating a nationwide class action. Here is what that means. If a nationwide class action is brought against a Mississippi company, the judge would be forced, under this amendment, to choose one State's law to apply to the whole country. The Mississippi company, which typically conducts business in Mississippi in compliance with Mississippi law and Federal law, would not necessarily have the protection of Mississippi law. Even though the Mississippi law, with which the company complied, differed from, for example, Nebraska law, the judge could potentially choose to apply Nebraska law.

So believe me, the proponents of this amendment know exactly what they are doing. If it were adopted, it would perpetuate the forum shopping that has been going on in recent years that has led to one of many areas of abuse.

Let me conclude because I know others want to speak. We want to get the process started. It is a compromise bill. It is not perfect. There will be different points of view. I have worked in this area for many years. I have heard all the arguments. I have heard those arguments on the floor of the Senate, in committee rooms, and at the family dinner table.

I want people to be able to get justice and redress. But I do not see how anybody can argue that there has not been abuse in the area of class actions and in mass actions. It has certainly been abusive in my own State. What disgusts me the most is the lawyers it has made superwealthy while the claimants got almost nothing. We can do better. This legislation will lead to a better solution.

I yield the floor, Mr. President.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Illinois.

Mr. DURBIN. Mr. President, I say to those of you who are following the Senate in action, welcome to our first substantive bill. That is right, this is the first substantive bill that we are considering. Some might conclude, if it is the first, it must be a very high priority.

Does it have to do with health care in America, the increasing costs of health care for families and businesses and individuals? No.

Does it have to do with education in America, how to improve our schools so we can compete in the 21st century? No.

It must be the Federal Transportation bill then. We know we need that. We are 2 years late in passing that bill, and we need the money spent in America to build our infrastructure. Is this the Federal Transportation bill? No.

No, it does not have anything to do with health care or education or transportation, despite the fact that every Senator in this Chamber, when they go back to their States and meet with their people, hears about those issues.

Senator, what are you going to do about the cost of health insurance? It is killing my business. Senator, what are you going to do about the President's No Child Left Behind, an unfunded Federal mandate? We are having trouble with our school districts back in Illinois and Utah and other places. What are you going to do about that? Senator, when are you going to pass the Federal Transportation bill? We need to improve our highways in Illinois.

Those are the comments we hear. But, no, when it comes to the very first bill, the highest priority of the Republican leadership in this Congress, we are going to deal with what they have characterized as a litigation crisis.

Richard Milhous Nixon, former President of the United States, wrote a famous book during his public career entitled: "My Six Crises." Well, if you pay close attention to the Bush administration, you will find that they are way beyond six crises. They have told us we had a national security crisis that required the invasion of Iraq; an economic crisis which required tax cuts for the wealthiest people in America; a vacancy crisis in the Federal courts, despite the fact that this Senate had approved 204 of the President's 214 judges he sent to us. We were told we had a moral crisis requiring constitutional amendments. And just last week, the President has told us we have a Social Security crisis.

It is hard to keep up with this White House and all their crises. And here today, we are told we have a litigation crisis and a sense of urgency to deal with this bill. Yet the facts do not back it up.

According to the Administrative Office of the U.S. Courts, which is a part of the Federal judiciary, tort actions in Federal district courts from 2002 to 2003 dropped by 28 percent.

Over the last 5 years, Federal civil filings have not only decreased by 8 percent, the percentage of civil filings that are personal injury cases has declined to a mere 18.2 percent of the total docket.

The same thing is happening at the State level. So the statistics tell us we are not seeing an onslaught of more and more cases. Just the opposite is true; that is, in cases filed by individuals.

The study also took a look to find out what American businesses were doing—American businesses suing other businesses. It turns out American businesses were 3 to 5 times more likely to file lawsuits than individuals.

For example, in Mississippi, the State of the Senator previously addressing the Chamber and one of the States often criticized by tort reform advocates, Public Citizen found that businesses were more than five times more likely to file suits than individuals. In that State, there were 45,891 business lawsuits filed compared to 7,959 lawsuits by individuals. You sure wouldn't know it listening to the comments on the floor about a litigation crisis.

Along comes the self-styled group called the American Tort Reform Association. I think if you lift the lid on the American Tort Reform Association, you will find a lot of the big business interests in America. They have come forward and decided that they are going to call certain areas of America judicial hellholes. For example, their 2004 report labeled the entire State of West Virginia as the No. 4 judicial hellhole in America. Why? The report states that in one county, Roane County, WV, which in its first 150 years never had a class action lawsuit, actually had two class action lawsuits filed in a year and a half—two in a year and a half, the No. 4 judicial hellhole in America.

Here is another exaggeration by the same group: the No. 6 judicial hellhole in America, Orleans Parish, LA. According to the report from the American Tort Reform Association, a strong proponent of this bill, this county earned the title because "plaintiffs attorneys are turning mold into gold" by representing a class of government attorneys working in buildings containing toxic mold which caused health problems. How many class action lawsuits were filed in Orleans Parish to make them a judicial hellhole? One.

The Senator from Mississippi spoke a few minutes earlier about abuses in his own State. Take a look at what happened in the State of Mississippi. In 2002 and 2003, this same American Tort Reform Association listed Mississippi, its 22nd judicial district, as a judicial hellhole. In 2004, it didn't make the list. Why? Because the State actually received five pages of praise from the same group for changing its State's laws to deal with class action lawsuits. This Mississippi judicial hellhole became an object of praise and admiration when they fixed their own problem at the State level.

I can't avoid the topic of judicial hellholes without speaking for a moment about Madison County, IL. The President was so upset about Madison County, IL, that he flew to Collinsville a couple weeks ago to criticize their court system. Let's take a look at Madison County in terms of real numbers.

In 2004, Madison County ranked No. 1 by the American Tort Reform Association as the worst judicial hellhole in America. So what do we find about the class action lawsuits that were filed in Madison County? Of the class action lawsuits filed in 2002, four were cer-

tified to go forward. All the rest of them languished and did not. Four cases in 2002 went forward. But surely if they are a judicial hellhole, it got worse. But it didn't. In 2003, only one class action lawsuit was certified. One. What happened in 2004? Not a single class action lawsuit has been certified. So when you hear these exaggerations on the floor about judicial hellholes and all of these class action lawsuits, it turns out that the No. 1 example of a judicial hellhole—Madison County, IL—had no class action lawsuits that were certified in 2004.

We know what this is all about. We should get down to the basics. Why is the U.S. Chamber of Commerce spending over \$1 billion to lobby us to pass this bill? This is the largest amount of money ever recorded for lobbying activities and the first time that lobbying spending has passed the \$1 billion mark. Why is it so important? According to Senator LOTT and others, it is just a simple thing. We are going to take class action lawsuits out of State courts and put them in Federal courts. What is the matter with that? Federal courts are supposed to represent the Nation. These class action lawsuits have plaintiffs from all over the country. It seems reasonable.

If that is all there is to it, why would these business interests spend such an inordinately large sum of money to lobby us to pass it? Because they know, as we know who have practiced law, that Federal courts are unfriendly to class actions. Federal courts are less likely, by their own rulings, to certify a class. In other words, a class of plaintiffs files a lawsuit in Federal court, it is less likely it will go forward. That is what this is all about. It isn't about class action fairness; this is the class action moratorium act.

Also, Federal law favors less liability in case after case. Federal law discourages Federal judges from providing remedies under State laws. So the business interests that want to move these cases from State court to Federal court understand what it is all about. Fewer cases will survive. Those that do will pay less. That is what their goal is. That is why they have spent this enormous amount of money lobbying Congress.

Listen to what the business interests say about the Class Action Fairness Act before us:

It would simply allow Federal courts to more easily hear large national class action lawsuits affecting consumers all over the country.

How harmless. Yet they spent \$1 billion lobbying to pass this bill as the first bill of this Congress—before health care, before education, before the Federal transportation bill. They know, as we do, that class action lawsuits in Federal court are much less likely to survive.

Let me give an example, because the problem with talking about class actions is most people listening say: What in the world is he talking about?

Is this a class in school or class of people? Who are you referring to? Let me give a concrete example.

Charles and Jenny Will live in Granite City, IL, which happens to be in Madison County. They are an older couple. They live in a small blue and white wood-frame house. Their main source of income is Social Security. They are nice people. I am proud to have them as my constituents. On their walls hang pictures of their kids and the Last Supper.

Mr. Will has 3 years of Active-Duty service in the U.S. Navy and a sign in his front yard that he proudly put there saying "support our troops." He is 71 years old. He is on oxygen, but he moves around pretty well. He has had some major heart problems, including triple bypass in 1989, and problems with his leg where the doctors had to remove a vein for surgery.

Mr. Will is taking nitro tablets and about 15 different medications daily, two of which are insulin. He was, unfortunately, diagnosed with diabetes 20 years ago, and he has very few complications—thank goodness—but it seems to have affected his vision, which is not very good.

Mr. Will was prescribed the drug Rezulin by his doctor. He remembers it because the drug was real expensive. He told the doctor he couldn't afford it, so his doctor gave Mr. Will a bunch of samples to take home. Rezulin, a drug prescribed for the treatment of type 2 diabetes, became available in the U.S. in 1997. Warner-Lambert marketed this drug as "safe as a placebo"—in other words, as safe as a sugar pill.

Three years after Rezulin came to market, the FDA asked Warner-Lambert to voluntarily remove the drug from the market as they started noting too high an incidence of liver failure and deadly side effects. Mr. Will was subsequently taken off Rezulin and prescribed a safer treatment.

A class action lawsuit was filed in Illinois to protect people living there like Mr. Will. The case alleged that Warner-Lambert violated the New Jersey consumer fraud statute by pricing the drug much more in excess of the price that the drug would have been but for Warner-Lambert's concealment of the drug's deadly side effects.

This theory is supported by the major insurance companies.

Last year, the case was certified by the State court as a class action. But it was turned down in Federal Court. That is the problem we are running into.

Mr. President, I have an amendment I am going to offer. I think I will wait until after lunch to do that. The Senator from Texas is here and wishes to speak. We have about 20 minutes remaining.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. I will speak generally about the issue of class action reform contained in S. 5, because I believe the

American civil justice system is, in many ways, at a crossroads. We have an opportunity to choose between taking a path toward greater freedom and responsibility, or heading down a path that encourages lawsuit abuse and cripples our ability to compete in a global economy. Now is the time, I believe—actually it is past time—to enact the reforms necessary to ensure America's competitiveness in the 21st century.

I am struck, as I listen to the critics of this bill, many of whom are the same people who complain about the fact that American jobs are being sent offshore to places like India, China, and elsewhere, when one of the very causes of the damage to America's global competitiveness is our civil justice system.

I think people of good faith and good will agree that the goal of our civil justice system ought to be getting people who are truly injured as a result of the fault of another fair compensation. But I think also, being objective about this issue and some of the examples of abuses that we have seen, we know too often that this goal is not being met in the current environment. We see lawsuit abuse particularly in the class action area and also in the asbestos area. This abuse is having a damaging impact on our economy. In the asbestos area, we see people who are sick are getting pennies on the dollar in compensation because people who are not sick are getting ahead of them in line, resulting in bankruptcies which have destroyed jobs and pensions for American workers.

So it is unthinkable to me that anyone could stand here on the Senate floor and claim there is nothing wrong. That seems to be a common theme these days, whether we are talking about Social Security or lawsuit reform, or a variety of subjects. But the truth is that the facts clearly indicate otherwise.

As the continued spread of democracy and capitalism take root in countries throughout the world, and as modern travel and information technology bring our world closer together, there is no question that the health of America's economy is influenced by the free flow of goods and services in international markets.

It is a simple fact of life: We live in a global marketplace, where we do not just compete with businesses across the street, but with ones on the other side of the world. Our economic strength and ability to compete now depends on our willingness to confront the burdens that prevent growth, discourage innovation, and ultimately cost Americans their jobs.

It is unthinkable to me that anyone can claim a system that compensates people who truly are injured as a result of the fault of another so poorly, but makes a handful of lawyers rich, doesn't need to be fixed. But the system—particularly in the class action area—is fraught with abuse. I will not

detail all of those abuses, since they have been addressed earlier. But one of the most classic cases is the coupon settlement. It reminds me of an old country and western song, where the lawyers get the goldmine and the consumers get the shaft.

We have all seen the numbers relating to the cost of our broken civil justice system. According to one estimate, the cost of the tort system in 2003 totaled more than \$245 billion, or 2.2 percent of the gross domestic product. That amounts to a tort tax on every American citizen of approximately \$845 a year.

The percentage of our economy that is devoted to tort law and resolution of claims through our tort system is far greater than any other industrialized country. In Britain, for example, the entire tort system—attorneys' fees, settlement costs, jury awards, and administrative costs—costs less as a percentage of GDP than America's plaintiffs' lawyers gross for themselves alone.

This level of stress on the economy and on our civil justice system itself is unacceptable. But it hasn't always been that way. Class actions, prior to significant rule changes in the 1960s and 1970s were not, as they are today, largely a sport for a handful of aggressive personal injury lawyers to pursue abusive litigation and junk lawsuits. Take, for example, the change in 1966, from a system where class members were required to "opt in" to a system, where now they are required to "opt out." By 1971, four times as many class actions were being filed than had been in 1966. In other words, from 1966 to 1971, we saw four times the number of class actions brought.

Since that time, recoveries have skyrocketed. This chart behind me reflects the growth I mentioned a moment ago. You can see that from 1973 to 1975 there were relatively few class action lawsuits and relatively modest recoveries. But they have obviously ballooned and appear to be getting bigger year by year.

The problems we increasingly experience with abusive class action lawsuits call for a significant overhaul of our civil justice system and particularly our rules providing for the resolution of mass tort litigation.

I must tell you that the bill we have before us today is clearly a modest reform. It amounts to an improvement over the status quo, but it doesn't begin to approach the comprehensive solution America needs.

As it stands, S. 5 provides two primary improvements: It allows removal of a greater number of class action lawsuits from State court to Federal court, and it requires judges to carefully review all coupon settlements and limit attorneys' fees paid in those settlements to the value actually received by class members.

These two reforms—as modest as they are—are important and will certainly offer fair but desperately needed

relief for State courts which are experiencing firsthand the explosion of class action litigation. It will also provide for greater fairness for defendants who are currently being dragged into "magnet jurisdictions," and it will provide greater fairness for class members who are oftentimes receiving pennies on the dollar, while class counsel get rich.

Yet, as much of an improvement as this bill is, it falls short of the ideal. To be effective and fair, I believe class actions and other mass tort litigation require three things: A level playing field; transparency, so consumers can have complete, fair, and accurate information; and a clear relationship between class members and their lawyers.

First, a level playing field depends on a fair class certification process. As the current occupant of the chair knows, almost all class actions settle if certified. The main event in class action lawsuits is the certification process because ultimately, once certified, most defendants feel as if they have no choice but to settle because even a small risk of an adverse judgment, given the large number of class members, can lead to a ruinous result. They are forced to try to settle the case on the best terms they can.

Where there is no right to an immediate interlocutory appeal of class certification and stay on discovery, class certification can cause settlements that far exceed the case's value on the merits because of the extortionate effect of the certification process and the threat it brings to the very livelihood, not to mention the financial life, of the defendant involved.

States, such as my home State of Texas, have also embraced limits on appeal bonds. Too often in large class action lawsuits, the judgment can be so large that the defendant cannot, in effect, buy an appeal bond with which to appeal the case and correct an erroneous ruling below. So the defendant is forced to settle because they cannot afford to appeal—again, not based on the merits, but based on the way class action lawsuits are structured, without a right to interlocutory appeal.

The second step toward an effective system, I believe, is information flow. Class actions require that adequate information be available both for the sake of the process itself and for policymakers, like us, to analyze. It is hard for us to do our job when it comes to class action reform or civil justice reform when some of the information—much of the information—is simply hidden from public view. Class members should be fully advised of all aspects of their case, and we should require that certain relevant information about all class action settlements be collected and published centrally for examination and review by analysts and policymakers.

Just as in Government, when it comes to class actions, people deserve to know what is going on, particularly if it is their case.

The final step, and the most important one to me, is maintaining the proper relationship between the class members and their attorney. As the occupant of the chair, the Presiding Officer, knows, this is a particularly tough issue when it comes to class counsel who may have one real client, the class representative, with whom they deal but, in reality, class counsel calls the shots and runs the case. Class members may not even know they are involved in a lawsuit until they receive a notice of settlement and perhaps, as we heard, a coupon worth pennies on the dollar. The opportunity for abuse of that important fiduciary relationship between the lawyer and the client is very important to address.

I believe one solution would be to allow members of the class to opt in instead of opting out because, indeed, in a country that says we do not promote litigation, although we certainly give fair access to courts, it just does not make much sense to me to say to the consumers: You can be a plaintiff in a lawsuit, you can actually be a party to a lawsuit and not even know about it until the lawsuit is over, which is what happens today.

Consumers should not have to learn that they are members of a class action lawsuit by receiving a check for \$2.38 in the mail and then find out in the morning paper that the lawyers who purported to represent them just collected \$5 million. The cases and examples go on and on.

It should also go without saying that the attorneys should be paid at a level commensurate with the work before them, not based on strictly a contingency fee which may, indeed, allow huge financial rewards for relatively modest work actually being done.

I hope those listening, if there are any listening to my comments, understand my concerns that this modest legislation does not go far enough to remove the scandal of litigation abuse that too often plagues our civil justice system and the American economy. I hope they understand my reservations do not indicate I am not for this bill because, indeed, I am. I believe S. 5 is an important first step in reform and an important step in the right direction.

In conclusion, because I know there are others who want to speak, there will be attempts to offer amendments to this bill. I know Senator DURBIN, but for the loss of his voice, would have been the first to offer his amendment. I am told Senator KENNEDY will be here shortly to do the same, but as everyone knows who has followed this bill—certainly Senator CARPER who has been an advocate for class action reform for some time, knows—the compromise reflected by S. 5 is a very fragile one, and it essentially depends on no amendments being made to the bill or agreed to the bill. If that happens, it is likely the bill will go promptly to the House where they will pass it, and it will go to the President's desk, and we will

have an early victory for the American people in this important area. But there are a number of amendments that will be offered which, in essence, are poison pills, that if agreed to will completely destroy any opportunity we have for this modest reform.

I have my own amendments that I filed, if others are offered and agreed to, which I believe are important to move the bill in the direction where I think it ought to go. But the truth is, I am refraining from urging those amendments at this time because I think this fragile compromise, as modest as it is, does represent real reform in moving the bill in the right direction.

Here again, as the Washington Post editorial on August 27, 2001, points out:

No portion of the American civil justice system is more of a mess than the world of class action. None is in more desperate need of policymakers' attention.

That was in 2001, and certainly the situation has not changed today.

I am baffled by those who want to whistle past the graveyard and act as if there is nothing wrong and that everything is just hunky-dory when it comes to class action reform. I believe the American people expect that the civil justice system will operate in their best interest, not in the best interest of a handful of lawyers.

I am confident the damage that is being done to American competitiveness is killing jobs that would be created in the United States but for the fact that people do not want to subject themselves to an out-of-control class action system. So, instead, jobs are being created in other countries across the world where they do not have those same concerns.

This is clearly an area that cries out for reform. It is one that is long past due.

I congratulate Senator CARPER and others on that side of the aisle who have worked so carefully to try to craft this fragile compromise. But I want my colleagues to understand—and I think they all do; I think we all do—that any amendments to this bill will doom it. So I urge all of my colleagues to vote against any and all amendments; indeed, even ones that I may like but which I know will have the ultimate effect of killing the bill. I think it is better to save those for another day and another time rather than have the prospect of this bill going down in flames.

Mr. President, I appreciate the time and yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. Mr. President, I understand that under the previous order, the Senate will stand in recess at 12:30 p.m. for our weekly caucus luncheons. I ask unanimous consent, notwithstanding that unanimous consent agreement, to proceed for 5 minutes.

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

Mr. CARPER. Mr. President, before Senator CORNYN leaves the floor, I

thank him for his kind words, and I am pleased that we are at the point where we are on this legislation this week. I look forward to both sides exercising constraint—we cannot let the perfect be the enemy of the good—and pass the good legislation that has been introduced and debated this week, with the understanding the House will accept it and the President will sign it into law.

We heard a fair amount already about the ills of class action lawsuits. Class action lawsuits, in and of themselves, are not a bad thing. Class action lawsuits give little people who are harmed, in some cases by companies, the opportunity—maybe not harmed in a way that the consumers, the little people, lose their eye, arm, leg, or life, but they suffer some kind of harm.

The idea behind class action lawsuits is to say when little people are harmed by big companies or others that those people can band together and present their grievances to an appropriate court, State or Federal, and for the people who are harmed to be made whole.

At the same time, it is important that when the plaintiffs are bringing a class action lawsuit against a defendant from another State, that the case be heard in a court where both sides can get a fair shake, the plaintiffs as well as the defendant.

If we go back over a couple hundred centuries in this country, we ended up with a law that the Congress passed that said if we have a defendant from one State and plaintiffs from another State, it is not fair to the defendant to have the case necessarily heard in the home of the plaintiffs. Someone may have dragged the defendant in across the State lines and put them in a courthouse or courtroom where there is a bias toward the local plaintiffs who brought the case against the defendant from another State, and in an effort to try to make sure that we are fair to both parties, those who are bringing the accusations and those who are defending against them, we have the Federal courts which were established in many cases to resolve those kinds of issues.

Unfortunately, we have seen an abuse of some class action lawsuits in recent years which led the Congress to begin debating this issue and considering legislation to address these abuses starting in, I want to say 1997, 7 years ago. The original problem that was discovered or was pointed out is this: There seems to be a growing prevalence of plaintiffs' attorneys who are forum shopping in State or local courts where the plaintiff class may have an inordinate advantage against the defendant. I will not go into the examples today, but there are any number of instances where one can see forum shopping has gone on, a State or a county courthouse has certified a class, agreed to hear a case, and it sets up a situation where the defendant company or the defendant knows they are going to have a hard time getting a fair shake

in that courthouse. As a result, the defendant will agree to a settlement with the plaintiffs' attorneys. The settlement may richly reward the plaintiffs' attorneys for bringing the case, the defendant may cut their losses, but the folks on whose behalf the litigation was brought in the first place, those who allegedly are harmed, in many instances get little or nothing for their harm. That is not a fair situation. It is not fair to the little people on whose behalf the case has been brought. It is arguably not fair to the defendant because they are in a courtroom where they do not have a fair chance to defend themselves. It can be fixed, and it ought to be fixed.

The legislation before us today will not end the practice of class action lawsuits being litigated and decided in State courts. I believe the majority of class action lawsuits, even if this legislation is passed, which I am encouraged that it will, will still continue to be held in State courts, and they should be. We will have the opportunity to explain why that is true later on.

Before my 5 minutes expires, I conclude with this: There are any number of people on both sides of the aisle who would like to offer amendments to this bill. We have been working for 7 years to try to pass something that the House, the Senate, and the President will agree to. The time has come. To the extent that we make a change, whether it is in a Republican amendment or a Democratic amendment that might be offered, if we make a change, we invite the other side to retaliate and to offer their amendments and perhaps to adopt their amendments. For those of us who want to see this bill passed, I believe this legislation is about the fairest balance we are going to get, and I would encourage us to support it. We should consider and debate the amendments but in the end turn those amendments down.

I look forward to debating each of those amendments, and I hope in the end we can accomplish three things with this legislation: No. 1, make sure that where small people are harmed in a modest way, they have the opportunity to be made whole; No. 2, make sure that the defendants who are pulled into court on these class action lawsuits have a reasonable chance of getting a fair shake; and lastly, I am not interested in overburdening Federal judges. I think most of this litigation should remain in State court. I believe the compromise we have struck will do that. Those are our three goals, and I look forward to the debate that is going to follow.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:34 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

#### CLASS ACTION FAIRNESS ACT OF 2005—Resumed

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it had been announced earlier that the Senator from Illinois, Mr. DURBIN, would be offering an amendment on class action, so we will await his arrival. In the interim, I will yield to my distinguished colleague from Utah, Senator HATCH, who has some comments and who will be managing the bill this afternoon.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what is the parliamentary state of affairs?

The PRESIDING OFFICER. S. 5 is before the Senate.

Mr. HATCH. Have no amendments been presented?

The PRESIDING OFFICER. Not yet.

Mr. HATCH. I ask the distinguished Senator from Massachusetts if he is prepared to submit an amendment. If he is, I would be happy to yield to him instead of making my comments.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I am going to send an amendment to the desk.

Mr. President, it is wrong to include civil rights in wage-and-hour cases in this bill. Families across the country are struggling to make ends meet. They work hard, play by the rules, and expect fair treatment in return, but they often don't get it.

Unfair discrimination can lead to the loss of a job or the denial of a job. It can keep them from having health insurance or obtaining decent housing. It can deprive their children of a good education. We can't turn a blind eye to that enormous problem. Those who engage in illegal discrimination must be held accountable.

That is why I am offering this amendment—to protect working families and victims of discrimination. Hard-working Americans deserve a fair day in court. Class actions protect us all by preventing systematic discrimination.

Attorneys general from 15 States—California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, and West Virginia—oppose the inclusion of civil rights in wage-and-hour cases in the bill. The problems that supporters of the bill say they want to fix don't even rise in civil rights and labor cases. No one has cited any civil rights or labor cases as an example of abuses in class action cases under the current law.

During the discussion of this bill in the Judiciary Committee and on the floor last year and during the committee's discussion last week, no one identified any need to fix civil rights or labor class actions. "If it ain't broke, Congress shouldn't try to fix it."

There is no good reason to include these cases in this bill, but there is an

excellent reason not to include them. This bill will harm victims of civil rights and labor law abuses by delaying their cases and making it much more difficult and much more expensive for them to obtain the justice they deserve. It may even discourage many from seeking any relief at all.

That is not what this bill was meant to do. We were told this bill was about cases in which individuals from across the country receive relief in State courts for relatively minor violations—sometimes getting just a coupon or a few dollars in a case they didn't even know about while a few elite attorneys receive more megadollar fees. Civil rights and wage-and-hour class action suits are not about minor violations. They are about serious, sometimes devastating harm to people who have been treated unfairly and are seeking their day in court; people such as Mary Singleton, a long-term employee at a scientific laboratory in California who joined a gender discrimination class action after her employer refused to give her and other female employees equal pay for equal work. Ms. Singleton and her coworkers filed their case in State court because State law provided greater protection against gender discrimination and retaliation and because the Federal court rules would have placed additional limits on discovery.

This bill would also harm people such as Georgie Hartwig who spent 6 years working at a national discount retailer in Colville, WA. For years, Ms. Hartwig and her fellow workers were forced to work off the clock, skipping breaks and lunch, but not being paid for their time. Now she is fighting, along with 40,000 coworkers, to get the wages they have earned. This bill was not supposed to make it harder for people such as Ms. Hartwig to get justice.

We were also told this bill would not shift cases to Federal courts unless they truly involve national issues, while State cases would remain in State court. The bill's actual effects are quite different. It does not just affect cases where the events affect people in multiple States; under this bill, a corporate defendant with headquarters outside the State can move State class action cases, including civil rights cases and worker right cases, into Federal court, even if all the underlying facts in the case happened in a single State. Think about that. If 100 workers in Alabama sue their employer under Alabama law for job discrimination that occurred in Alabama, this bill says the employer can drag their case into Federal court if the employer happens to be incorporated in Delaware. That makes no sense.

The bill would also apply to cases that seek justice for other strictly local events such as environmental damage. That is not what this amendment is about. This problem, which is affecting us now in Massachusetts, illustrates the fact that this bill is not just about truly national cases, as supporters keep insisting.

A case now pending in a Massachusetts State court illustrates how the bill deprives local citizens of access to their own State courts when they become innocent victims of widespread pollution occurring in their hometowns.

In April 2003 an oil barge ran aground on Buzzard's Bay off the coast of New Bedford, MA, spilling 98,000 gallons of oil into the bay and polluting almost 90 miles of beaches and sensitive tidal marshes in the area. Homeowners filed a class action suit in State court asking for compensation for the damage to their property. One of the defendants, Bouchard Transportation Company, has already been convicted of criminal negligence in causing the spill. The defendant companies are from out of State. Even though the case occurred entirely under Massachusetts laws, if the current bill, the proposed bill, had been in effect when the case was filed, this case could be removed to Federal court even though all the victims are full-time Massachusetts residents and seeking relief in Massachusetts courts under Massachusetts laws.

Because this bill is not retroactive, the case will not be affected by this bill, but with the passage of this act, similar future cases, properly brought in the courts of the State where the harm occurs, can be removed to the Federal courts. As a result, the victims will often be confronted by class action certification procedures more onerous than those in their State courts. They will face delays from congested Federal dockets. They will have to travel greater distances from their homes to the courthouse. The procedural changes in this bill seem abstract, but they will have a devastating consequence for real people.

First and foremost, it reduces each State's power to protect its own citizens and enforce its own laws. Moving these cases to Federal court will often end them for all practical purposes. Federal courts may decide they do not meet the Federal rules for class certification. Even if the cases are not dismissed, plaintiffs forced into Federal court on State law claims have the decks stacked against them in Federal court because Federal courts take the narrowest possible view in interpreting State laws. The First and Seventh Circuits ruled in interpreting State laws Federal courts must take the view that narrows liability. State judges should be the ones who interpret State laws, not Federal "big brother."

Often State laws have greater protections than Federal laws. That is the genius of our Federal system. Many States have stronger minimum wage laws and greater overtime protections than Federal law. Fourteen States and the District of Columbia have a higher minimum wage than the Federal standard. Twenty states have overtime laws that give workers greater protection than the Federal Fair Labor Standards Act. Over 20 States have child labor laws that are more protective than Federal child labor laws.

At a time when the administration is bent on undermining overtime at the Federal level, State law protections are more important than ever.

States are also pioneers in protecting civil rights. Many States, such as California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia, have greater protections for persons with disabilities than the Federal Americans With Disabilities Act. States are also in the forefront of protecting against discrimination based on family status or citizenship.

A majority of States prohibits genetic discrimination in the workplace, a new and troubling form of discrimination where the Federal Government has been too slow to respond. Our proposal, to prohibit genetic discrimination under Federal law, passed 95-0 in the Senate, but it stalled in the House. When States act ahead of the Federal Government to provide greater rights for their citizens, State courts should be allowed to interpret their own laws. State courts, not Federal courts, have the expertise in exerting the will of the State legislature and they should have the right to do so.

We all know what is going on. We should call this bill the "Class Action Hypocrisy Act of 2005." Our colleagues love to proclaim States rights when Congress tries to expand the rights of law in all 50 States, but they do not hesitate to override States rights to help their business friends. This bill is a windfall for guilty corporate offenders. It even allows repeat offenders to drag State cases into Federal court and allows them to spend months litigating whether the case belongs there. If the Federal court decides that the case does not fit the narrow rules set by the bill and should be sent back to State court, that will cause another delay because the employer can appeal the decision. Delay is a serious problem today in many Federal trial courts across the country.

Paul Jones, an employee of Goodyear Tire Company in Ohio, found that out the hard way. He and other workers in their fifties filed an age discrimination case in the State court in Akron. All they wanted was to be judged by their ability, not their age. His attorney said, We file our class action lawsuits in the Ohio State court system because it is our experience these cases move much more rapidly in the State court than they would if filed in the Federal court system. The difference in the amount of time it takes to adjudicate a State court age discrimination case compared to a Federal court case may be as much as 2 years. No wonder the corporate defendants are salivating over this opportunity to escape the liability for their wrongs.

Paul Jones had a State law claim in State court, but his employer tried to have it dismissed based on Federal court rulings that certain types of arguments in age discriminations were invalid. The State court rejected that argument. It held that Mr. Jones could

proceed with his claim based on the disparate impact analysis, something Ohio's Federal courts did not allow. But a Federal court would have been much more likely to go along with the idea because Federal courts read the State law narrowly.

The delay from moving State cases to Federal court would be particularly harmful for low-wage workers who have no resources to fall back on when litigation expenses start to mount.

A letter by David Luna, Flora Gonzales, and dozens of coworkers who were housekeepers, cooks, and waiters at two luxury hotels in Los Angeles, makes the point. Their heavy workloads forced them to work through their meals and breaks.

They write:

[A]s cooks we . . . struggle to meet the hotel's 30 minute room service guarantee, yet we work through our own 30 minute meal breaks on an almost daily basis.

These workers are working to recover wages they own, but the corporate defendants have been trying to slow down the case by removing it to Federal court. The harm of such delays is very real to these workers, as they so poignantly described:

For some, delays in getting your day in court may be only an inconvenience. But we are modestly paid workers with physically demanding jobs. For us, delays mean that we must continue to work without breaks, our work days are harder than they should be, and we must wait longer to be paid the extra wages we have earned.

If this bill passes, big corporations will have free rein to use procedural maneuvers to delay these cases and deny these workers their day in court. Why should we make it harder for those workers to get their claims decided?

Abuses by large companies are widespread. Right now, class action cases are proceeding in State courts in Massachusetts, Minnesota, and California for hundreds of thousands of low-wage workers who were required by Wal-Mart to work extra hours "off the clock" without being paid for their extra time. It is wrong for Congress to side with the big guy.

These men and women deserve to recover their lost wages to pay their rent, pay their medical bills, and put food on the table. The longer they wait for justice, the heavier the burden on these workers and their families. And the Senate is about to tell them to take a hike? It is outrageous.

Supporters of the bill talk a lot about fairness. We hear that word again and again. It has even been put into the title of the class action bill. Labeling it "fair" does not make it fair.

Fair does not mean punishing those who are mistreated on the job. Fairness does not mean making it harder for honest working men and women to obtain justice when they have been cheated out of their wages. It does not mean denying victims of discrimination their day in court under the laws of their State.

It is wrong for Congress to side with corporate abusers and tell the victims of discrimination and unfair practices they cannot count on their own State courts to give them the justice they deserve. But that is what this bill is all about. At the very least, we should exclude civil rights and labor cases from its harsh provisions. I urge my colleagues on both sides of the aisle to support this amendment to protect these basic civil rights of hard-working Americans in communities across the country.

Mr. President, I received many letters from working Americans and victims of discrimination who support this amendment. I ask unanimous consent to have some of these letters printed in the RECORD.

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

HON. DIANNE FEINSTEIN,  
U.S. Senate, Washington, DC  
HON. EDWARD M. KENNEDY,  
U.S. Senate, Washington, DC

DEAR SENATORS: We are writing to share our concerns about the Class Action Fairness Act, which would force workers with claims under state wage and hour laws to bring their suits in federal courts. Based on our own experience in trying to enforce state law labor protections in a class action lawsuit, we urge you to work to exclude wage and hour class action cases from this bill.

We work at the Century Plaza and the St. Regis Hotels, two luxury hotels in Los Angeles, California. We are housekeepers, cooks, room service waiters, bartenders, servers, mini bar restockers, valets, or work at other hourly jobs. We are employed by Starwood Hotels & Resorts Worldwide, Inc., which manages and operates these hotels.

Under California law, employees must be allowed two paid ten minute rest breaks and one half-hour unpaid meal break every shift. If employees cannot take their break, they are supposed to be paid an extra hour's wages.

At the Century Plaza and the St. Regis, workers are routinely unable to take meal and rest breaks either because no one is scheduled to relieve us or because our workload is so heavy that we cannot take the time off. We believe that Starwood has sought to boost profits by increasing our workloads and by reducing staff, which means we cannot stop working long enough to take our breaks.

For example, cooks in the Century Plaza room service department struggle to meet the hotel's 30 minute room service guarantee, yet we work through our own 30 minute meal breaks on an almost daily basis. Housekeepers at both hotels face quotas of up to 15 luxury rooms per day. Each room must be spotlessly cleaned and restocked, with towels and linens changed, carpeting vacuumed, and bathrooms left sparkling. We spend our entire shifts rushing to meet the hotel's high standards and often cannot rest until the end of our shifts. A Los Angeles Times article concerning the inability of housekeepers to take their breaks is attached for your reference.

Last fall, we filed a class action in California superior court seeking to enforce the state's laws regarding meal and rest breaks. By now, we expected to have completed initial hearings and be well on our way to preparing for our trial. But because our employer has moved our case to federal court and is trying to have it dismissed, we have been forced to endure delays.

For some, delays in getting your day in court may only be an inconvenience. But we are modestly paid workers with physically demanding jobs. For us, delays mean that we must continue to work without breaks, our work days are harder than they should be, and we must wait longer to be paid the extra wages we have earned. As our situation shows, delays are a significant burden to those seeking basic rights and a fair day's wage for a fair day of work. We urge you to work to keep state wage and hour class action cases in state court, where they belong.

Sincerely,

(SIGNED BY 85 EMPLOYEES)

MARY F. SINGLETON,

Truchas, New Mexico, February 2, 2005.

Attn: Judiciary Committee

Re Federal Class Action Legislation

Hon. EDWARD M. KENNEDY,

U.S. Senate, Russell Senate Office Building,  
Washington, DC

DEAR SENATOR KENNEDY: I am writing because I understand that Congress is considering legislation which might place certain limitations on class action lawsuits and require that many class actions be filed in federal court. As a woman who was the lead plaintiff and class representative in a gender discrimination lawsuit against a major employer in state court, I am concerned that such legislation will limit the ability of victims of discrimination and civil rights violations to adequately redress their grievances. I urge you to do what you can to preserve the rights of state citizens to pursue class action cases in their own state.

As a long term career employee of a large scientific research laboratory in California, I tried for many years to convince management to evaluate its compensation and promotional practices and take steps to correct long-standing and widespread disparities in salaries and promotions between men and women at the institution. When these efforts ultimately proved to be unsuccessful, five colleagues and I reluctantly decided that the only way that the civil rights of women at the organization would ever be addressed was through litigation. We retained counsel and filed a class action in state court, alleging violations of anti-discrimination law on behalf of ourselves and approximately 3,000 female co-workers.

My understanding from our attorneys was that we could have filed our case in federal or state court, since both have laws against employment discrimination. After considering the options, we decided to file in state court because we felt that it would provide a better opportunity to fairly and fully present our case. Among other things, because of the size and nature of the organization, we knew our employer would try to make the case very complicated, and that a considerable amount of "discovery" would be necessary, including a number of depositions. Our understanding was that the state court procedures would offer more flexibility in this regard, allowing our attorneys a fair opportunity to obtain the information necessary to present our case on behalf of the class.

In addition, we wanted to include claims based upon state laws because, in some respects, they provide stronger protection against discrimination and retaliation. Although we knew that we could include state law claims in a federal court lawsuit, our understanding is that federal courts may not be as familiar with state laws and may not be willing to interpret state law as opposed to rigidly apply past interpretations.

Yours very truly,

MARY F. SINGLETON

LAW OFFICE OF JOHN C. DAVIS,  
Tallahassee, Florida, January 14, 2005.

Re: Proposed Legislation Federalizing Class  
Actions

Hon. EDWARD M. KENNEDY,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR KENNEDY: I am a lawyer working in the Florida panhandle doing employment and civil rights cases. I am class counsel along with Wes Pittman of Panama City in a certified class action against the Florida Department of Corrections brought by a class of hard working women who are health care providers and non-security personnel in the corrections systems. They daily serve the citizens of Florida by providing health care and other essential services to inmates. As a condition of their employment they have been subjected to unrelenting sexual harassment by certain male inmates. The Department has known of this for years and can stop the harassment, but has ignored and belittled their plight.

The Circuit Court in Washington County, Florida, certified this case as a class action and the Florida First District Court of Appeal affirmed that certification because they saw the injustice suffered daily by these courageous women. The case is reported at *Rudolph v. Department of Corrections*, 2002 WL 32182165, *aff'd*, 855 So.2d 59 (Fla. 1st DCA 2003). The lower court's opinion, which is published on Westlaw, describes in detail the facts of the case.

This case cried out for class action treatment because that is the only way to effect the kinds of change that will get the attention of the Department of Corrections. Individual cases rarely if ever effect change beyond the circumstances of the individual bringing the case. They are usually settled confidentially.

We filed this case in state court, however, because it would have had little chance in the federal court. The federal courts in Florida would not certify the case because of what can only be viewed as a profound hostility to these kinds of cases by the Eleventh Circuit Court of Appeals. Thus, absent a state court class action, there is simply no way that all of the individuals affected by the Department's practices would ever get relief.

Permitting employers to remove class actions like this to the federal courts will effectively deny any opportunity for the kind of systemic relief that results in real change. The irony that the interests driving this ill-conceived legislation are usually states' rights proponents shouldn't be lost on anyone. State courts are as well suited, if not better suited, to adjudicate these controversies.

This legislation will not promote justice and will upset the federal-state balance. If the legislation cannot be defeated in its entirety at the very least an exception to it should be made for civil rights and employment litigation. I strongly urge you to do all you can to defeat the legislation and continue to fight for the rights of working Americans.

Please do not hesitate to call me if I can do anything to help.

Sincerely,

JOHN C. DAVIS.

STATE OF NEW YORK,  
OFFICE OF THE ATTORNEY GENERAL,  
Albany, New York, February 7, 2005

Hon. BILL FRIST,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

Hon. HARRY REID, Minority Leader,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR MR. MAJORITY LEADER and MR. MINORITY LEADER: On behalf of the Attorneys

General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, and West Virginia, we are writing in opposition to S. 5, the so-called "Class Action Fairness Act," which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important "private attorney general" supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted effort to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL-CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

#### 1. Class Actions Should Not Be "Federalized"

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a "citizen" of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

#### 2. Clarification Is Needed That S. 5 Does Not Apply to State Attorney General Actions

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's *parens patriae* authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the At-

torneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator Pryor will be offering an amendment on this issue, and we urge that it be adopted.

#### 3. Many Multi-State Class Actions Cannot Be Brought in Federal Court

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one State's law with sufficient ties to the underlying claims in the case, or by ensuring that a Federal judge does not deny certification on the sole ground that the laws of more than one State would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

#### 4. Civil Rights and Labor Cases Should Be Exempted

Proponents of S. 5 point to allegedly "collusive" consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received "coupons" towards the purchase of other goods sold by defendants. Accordingly, this "reform" should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

#### 5. The Notification Provisions Are Misguided

S. 5 requires that Federal and State regulators, and in many cases State Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against "collusive" settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-State defendants over whom subpoena authority may in some circumstances

be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other Federal and State regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our Nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our Federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York.

Bill Lockyer, Attorney General of the State of California.

Tom Miller, Attorney General of the State of Iowa.

G. Steven Rowe, Attorney General of the State of Maine.

Tom Reilly, Attorney General of the State of Massachusetts.

Patricia A. Madrid, Attorney General of the State of New Mexico.

W.A. Drew Edmondson, Attorney General of the State of Oklahoma.

Lisa Madigan, Attorney General of the State of Illinois.

Gregory D. Stumbo, Attorney General of the State of Kentucky.

J. Joseph Curran, Jr., Attorney General of the State of Maryland.

Mike Hatch, Attorney General of the State of Minnesota.

Hardy Myers, Attorney General of the State of Oregon.

William H. Sorrell, Attorney General of the State of Vermont.

Darrell McGraw, Attorney General of the State of West Virginia.

Mr. KENNEDY. Mr. President, I would like to anticipate some of the arguments that may be made by those who question whether cases based on truly local events would really be affected by the class action bill. Some have claimed that the bill will bring only national multi-State cases into Federal court, where they belong. They say it doesn't affect purely State cases, because it keeps class actions in State court if plaintiffs live in the same State as the defendant.

But in reality, the bill will move many State law cases to Federal court even if the people bringing the suit all live in the same State, and were hurt by a company doing business in that State. This is because the bill lets a case stay in State court only if the defendant is a "citizen" of the same State as the plaintiffs who brought the case, and companies are citizens of the State where they were incorporated, regardless of where they do business. As a result, plaintiffs who live in one State who file a case against a company with many offices in that State, would not be able to keep their case in State court if the company is incorporated somewhere else.

To show the scale of this problem, let's look at the figures. More than 308,000 companies are incorporated in Delaware, including 60 percent of Fortune 500 firms and 50 percent of the corporations listed on the New York Stock Exchange. Most of these companies also do business in many other States. But plaintiffs in those other States will not be able to file State cases against these companies without being dragged into Federal court. That violates the principle of simple fairness.

The bill lets corporations stay in State court when it's to their advantage. Businesses will still have their day in State court. But corporate employees whose civil or labor rights have been violated will be denied the same access.

Some have suggested that my amendment is not necessary because Federal courts have traditionally been protectors of civil rights.

It is true that our Federal courts perform the important job of protecting rights under Federal law and the U.S. Constitution. And my amendment will still allow those claims to be heard in Federal court. But in cases involving State civil rights or wage and hour laws, State courts should make these decisions. When States step ahead of the Federal government to give their citizens greater protection than Federal law—as several States have done in the area of genetic discrimination of discrimination based on marital status—State, not Federal courts, should interpret those laws. That is what my amendment would ensure.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened carefully to my friend and colleague from Massachusetts, and I do think he has a few things wrong. For instance, if the vast majority of the people bringing the suit are Massachusetts citizens, under this bill they have a right to bring it in State court, if they want to, although most civil rights cases are brought in Federal court because these are 14th amendment cases.

I remember years ago arguing on this floor on these issues, and, of course, the distinguished Senator from Massachusetts and others wanted these cases brought to the Federal courts because they were so afraid some of the State courts would not do justice in civil rights cases. They were right. They wanted them in Federal court. I do not blame them.

The Federal courts are made up of judges who are nominated and confirmed for life. Because of that, they should not have any political forces that would take them away from doing justice. In all honesty, nothing in this bill would stop Massachusetts classes made up wholly of Massachusetts citizens or even a majority of Massachusetts citizens from bringing these cases in State court, if they want.

One reason the Federal courts are so clogged is because of a wide variety of

cases that are now being brought in Federal court, partly caused by people on both sides of the aisle. But there is no question Federal courts are not only good courts, by and large they are basically fair courts. And by and large they are basically very sophisticated courts. And by and large they apply, in these particular cases, the laws of the States in which the suits are brought—I might add, unless there are reasons from the Federal standpoint in applying otherwise.

Now, there is nothing in this bill that stops legitimate cases from proceeding. There is nothing in this bill that takes consumer rights away. There is nothing in this bill that will not give consumers or those who are injured a day in court. There is a lot in this bill to prevent some of the phony approaches that are taken by some in the legal profession who should be ashamed of themselves. This bill corrects those kinds of injustices, those kinds of excesses, those kinds of problems.

I urge my colleagues to vote against this carve-out amendment offered by my distinguished friend from Massachusetts, Senator KENNEDY.

This amendment excludes from the bill's existing jurisdictional provisions those class actions involving civil rights violations and class actions involving wage-hour disputes. But before I address the imprudence of carving out these types of cases, I would like to make it perfectly clear, as I think I have up to now, that S. 5 in no way impairs the substantive rights of litigants to bring, among other claims, civil rights and wage-hour claims. Some opponents of this bill seem ready to conveniently gloss over this critical fact in their efforts to pass bad information about what this bill does.

S. 5 is procedural in nature and simply moves larger interstate class actions to the appropriate forum where they belong in the first place: in Federal court. These class actions often involve the most money, parties from different States, and issues that transcend State lines. Yet by the same token, the bill preserves States rights to adjudicate truly local disputes on behalf of their citizens.

Now, those are facts. This bill does not take any rights away from anybody. But what we are trying to do is stop the forum shopping; in other words, finding jurisdictions that will render outrageous verdicts that basically benefit the attorneys, the lawyers, not the people for whom they are suing.

Well, let me say, first, an affirmative exclusion of civil rights cases from Federal jurisdiction runs counter to the bedrock principles of encouraging our Federal courts to adjudicate civil rights disputes. I remember, in days gone by, there was a demand that these cases be in Federal court because they are courts of primary jurisdiction under the Constitution and because, as a general rule, more justice was done.

I think this principle speaks for itself when you look at the plethora of Federal civil rights statutes extending protections against employment, housing, race, and gender discrimination. That is just to name a few. Indeed, the Federal courts' involvement with civil rights is so pervasive that Federal courts routinely hear claims brought under State civil rights laws. This is not unusual.

The Federal judiciary's extensive involvement in civil rights matters has also led to favorable results for civil rights litigants. Honest litigants are not going to lose in Federal court. It is just that simple. And they are probably more greatly protected because there is naturally less politics in Federal court.

Federal courts have a long record of certifying discrimination class actions and approving generous settlements in most of these cases.

Take, for instance, the recent Home Depot gender discrimination settlement which paid class members somewhere in the neighborhood of \$65 million or the \$192 million Coca-Cola race discrimination settlement in which each class member was guaranteed a recovery of at least \$38,000 in cold hard cash. And, of course, there is the recent Federal court certification of the largest civil rights class action in U.S. history involving 1.6 million former and current female employees of Wal-Mart.

These are successful, proven results that belie any claim that Federal courts are somehow hostile to civil rights actions. In fact, it is laughable to now say that we have to have these in State courts when all these years we have been working hard to get these cases to Federal court so they would be adjudicated more fairly.

Some of those who support a civil rights carve-out also contend the Federal courts are overworked and incapable of handling such matters, that the State courts are better equipped. Give me a break. We have heard this concern raised repeatedly from opponents of this bill who apparently believe that if they say it enough times, the proposition may somehow turn out to be true and, at the very least, to minimize the significant deficiencies in our State courts. These critics claim that it takes 5 years to get a class action to trial in Federal courts. But do they have the raw data to back these claims? Of course, they don't.

In reality, the median time for final disposition of a civil claim filed in Federal court is 9.3 months, and the median time to trial in a civil matter in Federal court is 22.5 months. Moreover, what some of the critics hide is the fact that the State courts have experienced a much more rapid growth in civil filings than have the Federal courts. Civil filings in State trial courts of general jurisdiction have increased 21 percent since 1984, and there are delays in many State courts on civil actions that are longer than they are in Federal court.

As for filings in some of the more notable magnet State court jurisdictions,

let's look at some of the figures. Just look at this chart. The number of class actions filed in State courts have skyrocketed in State courts under current law. Take Palm Beach County, FL. It has gone up 35 percent between 1998 and 2000. In Jefferson County, TX, a notorious jackpot jurisdiction, it has gone up 82 percent. In Madison County, IL, another notorious jackpot jurisdiction—in other words, a jurisdiction where defendants don't have a chance because of politics and moneys donated to judges from the trial lawyers in that particular jurisdiction, primarily—over 5,000 percent between 1998 and 2003. Why? Because it is a county that is out of whack. If the plaintiffs' attorneys can get cases in Madison County, they are going to get big verdicts, outrageous verdicts for people who aren't even sick, people who don't even have problems in some cases.

The overall increase in State courts is 1,315 percent. So don't use that argument. If you add the fact that State courts are almost always courts of general jurisdiction where they hear matters ranging from traffic violations to domestic disputes, I think you get a pretty clear picture of what our State courts are faced with in terms of workload.

As a final point, I would like to note that the Judiciary Committee soundly defeated this very amendment of the distinguished Senator from Massachusetts during markup last Congress. We reported the bill in a bipartisan 13-to-5 vote in this Congress. The committee voted against the civil rights carve-out on a solid bipartisan basis and understood the inherent problems with this amendment. This amendment lost footing in committee and should not gain traction here.

The second carve-out excludes wage and hour or timesharing claims from the bill. These are actions brought by employees against their employers for violating wage and hour restrictions imposed under applicable labor laws. While these actions are certainly important for working Americans, there is no principled basis to exclude them from this bill, not one principled reason.

Again, let me be clear about S. 5. This bill in no way affects the substantive rights of these workers to seek redress for these wage and hour claims. In other words, employees who bring wage and hour claims against their employers will still have the exact same rights they do now if this bill is enacted. The only way the bill could possibly affect these cases is by moving them to Federal court. But what the proponents of this amendment overlook is that if a wage and hour case meets the interstate criteria of the bill, then there is absolutely no reason to exclude them from Federal court. It makes no difference if the case involves a defective product, a false advertising claim, or a breach of warranty. If the class action lawsuit involves parties from different States

and involves a large amount in controversy, regardless of whether the claims are predicated on State law, then the case should be heard in Federal court. This is why we have diversity jurisdiction in the first place, and it is certainly what the Founding Fathers had in mind when they drafted our Constitution.

I urge my colleagues to vote against this amendment. It establishes bad policy and is nothing more than yet another attempt to weaken the bill. This amendment, including all other carve-outs, for that matter, also flies in the face of the bipartisan compromise that is now embodied in S. 5. I intend to honor this compromise and encourage my colleagues to do the same.

Let me just say, it is unseemly to claim that the Federal courts are not as good as the State courts. And it is even worse to claim that the Federal courts should not have jurisdiction in these matters. The fact is, we have provided through the Feinstein amendment language that permits certain cases to be in State courts. But when they get to the size of the 100 or more in a class and over \$5 million, these cases have to be brought in Federal court. And the reason is because of these jackpot jurisdictions that I have been pointing out that really do not do justice and are not fair.

Earlier, the distinguished Senator from Illinois was talking about how few cases are filed in Madison County, IL. What he doesn't tell you is that the minute the lawyers start talking about a class action and they send a demand letter, the companies know they are dead if the case is brought in Madison County, IL. No matter how right they may be, they are dead because the judges in that particular jurisdiction are in the pockets of the local lawyers with whom the out-of-State lawyers who have these class actions align themselves in order to go in there and get these outrageous verdicts that would not be obtained in any fair court of law.

So what do the companies do? They have no choice. They will settle for what they estimate the defense costs to be because why should they take a chance on jackpot justice? And it then becomes, in the eyes of many, a broken system of extortion, extortion by attorneys, extortion by the judges over companies that probably have little or nothing to do with Madison County, IL, but because of the current system, wind up there, either getting staggered with unjust judgments or doing what prudence tells them they have to do, and that is paying whatever they estimate the defense costs to be to get rid of the lawyers. It comes as close to legal extortion as anything I have seen.

That is what we are trying to solve here. It doesn't take away anybody's rights. It just means they will have to prove their case in Federal courts. And Federal courts are very competent courts. Judges are appointed for life. They are less political, although every

once in a while you see some politicization of Federal court, but nothing like these jackpot justice jurisdictions that are constantly used by some of these unscrupulous lawyers to get outrageous verdicts so they can collect great big fees.

Yesterday, we talked about coupon settlements—the lawyers get huge fees and the person winds up with a \$5 coupon that is meaningless. That doesn't mean that some of these cases are not valid, but they could just as easily be won in Federal court, if they are valid, as they can in State courts, but not as easily as in these jackpot justice jurisdictions where justice is denied. We can throw around big corporations all we want, but businesses in this country are not all big and, even if they are, they deserve to be treated justly.

That is what our court system should be doing. It should not discriminate against them because they are large corporations. If they are fair and right, they should be treated just as fairly and rightly as anybody else.

We have come close on this bill now a number of times, very close. In November of 2003, we struck a deal that gave the Class Action Fairness Act the requisite number of votes to pass even if the bill was filibustered. We got the votes, guaranteed up to 62. It was a bipartisan compromise that allowed us to reach this commonsense agreement. Believe me, this compromise does not satisfy everybody or, for that matter, doesn't satisfy anybody.

The fact is, it is what it is—a bipartisan compromise. If I would be permitted to write the bill the way I think it should be done, I think it would be perfect, and others in this body would feel the same way. But we have worked out this bipartisan compromise and we need to stick with it.

Senator CORNYN explained this morning why he believes the bill should go further in correcting abuses in the current system, and he explained how he would fix some of these problems legally. He is not wrong, by the way. He also said he would not advance these amendments at this time because he understands the complex dynamics in arriving at the compromise bill. We have been at this for the last 6 years. That is how long we have tried to get this bill through. This bill is not perfect, by any stretch of the imagination. No bill is around here, because we have to work with 535 Members of Congress. Depending on your perspective, this bill either gave away too much or not enough.

The fact is, this bill is just about right and it is time to get it done. We know we should get it done. A supermajority of those in this body should get it done. But nearly a year and a half after we struck a deal to get it done, a series of amendments are still being offered that would scuttle this bill and, unfortunately, the amendment by the Senator from Massachusetts happens to be one of them. Let us get down to the brass tacks. It is rug-

cutting time. If any amendments upset the essential compromises that have been negotiated over a long period of time, this bill will not become law. The purpose of these amendments is not to improve the bill but to destroy it. The House of Representatives will not agree—they have made it super clear—to a bill that includes amendments that gut this bill's modest and reasonable reforms. I have to say I don't blame them. They have seen this process for the last 6 years. The American people have waited for this reform for far too long. I should remind my colleagues that if we fail our constituents at this time, the memory of the American people is a long one.

I will speak today about a number of amendments that will likely be offered. In my opinion, and in the opinion of those most familiar with the bill, these amendments are poison pills, and everybody knows it. These amendments were not part of our discussions with Senators SCHUMER, DODD, and LANDRIEU that resulted in the current bipartisan legislation. I don't mean to limit it to them. There were a whole raft of Senators on both sides of the aisle.

I will repeat that for emphasis. We had a deal. None of these amendments were part of this deal. What happened to the days when a deal was a deal? These amendments are quite literally being offered at the eleventh hour and I think for a purpose other than to improve the bill.

Let's be honest about it. Consumers, plaintiffs, and others who have rights are not going to be foreclosed from vindicating their right in a court of law. It is just that they are not going to be able to take these cases—and certainly outrageous cases—to these jackpot justice jurisdictions where justice is denied any longer—except under some loophole exceptions in this bill. But the vast majority of the problems should be solved by this bill. There are a lot of people out there who have been very badly mistreated because of the current broken tort process, who are praying we will be able to get this bill through.

Let me make this clear. If we add one of these amendments, I think the bill is dead again, even though it has had 62 prime sponsors—people who will automatically vote for this bill and who understand the game here is to get a bill out that will do some justice in this country and stop some of the jackpot justice that has been going on.

I don't mean to denigrate anybody's amendment, but let's be fair and make it clear that this bill does not take away rights. This bill enhances rights for both sides, and not just for plaintiffs but also for defendants. So fairness in the tort system will be brought back to the forefront. In the case of civil rights and wage-and-hour disputes, look, for years we have argued they should be in Federal court. Now, all of a sudden, they don't want them in Federal court. All you can do is sur-

mise: why is that? I think everybody knows why.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, it is always a pleasure for me to hear Senator HATCH discuss legal issues. He has had great experience with them over the years, in the long time he has served on the Judiciary Committee and as a lawyer in his own right. I think he summed up the situation we are in and I thank him for doing so.

Actually, I believe that those who are seeking class action reform have been very generous in reaching out to people who had some doubts to try to gain their votes in support, to make sure no one is hurt in any unfair way through the passing of this legislation. We are now at a point where the time has come for us to pass class action reform.

I do not believe, and have never believed, we should be in the business of eliminating class actions. They are not a bad thing in themselves. Class actions, in fact, serve an important purpose. In many instances, they are the only viable form of relief, where an individual has claims that are so small it would not be economically feasible for an attorney to take an individual's case; but maybe thousands of people have been unfairly treated in the same manner and an attorney can bring one case and everybody can be compensated and the system can work very effectively. That is the whole theory behind class actions. It has always been a good process under certain circumstances, but we have always known it could also be abused. For the most part, I think Federal courts have done a good job handling those cases. Many State courts have done a good job of handling those cases, but is now a pattern by which some attorneys have learned to pick and choose States, even counties, where there may be only one judge, and they know how that judge thinks about these cases, and they file the class action lawsuit there. The fact is that most nationwide class actions can be filed anyplace in America—it makes sense that lawyers, therefore, chose to find the most favorable forum they can find in the entire United States. That is selective choice of forum. There are other problems that arise with class actions, problems which have been around for a long time. We have come to understand them and we need to do something about it. We can do something about it. It is the right thing to do. It will improve our system of justice.

The Class Action Fairness Act does not close doors to class action plaintiffs; rather it opens doors to fairness in this entire process. I agree with those who have said that the bill does not go far enough. I think there are going to be many opportunities for clever attorneys to draft complaints and conduct their litigation in a way that would avoid being covered by this

act, when in fact they ought to be covered by this act. Senator CORNYN has made a number of those suggestions, and I have made some of those suggestions. But the perfect, as they say, can be the enemy of the good.

An agreement has been reached that people feel comfortable with. I have been prepared not to offer a lot of amendments so we can get this bill to final passage and quick approval and end the years and years and years of debate on this matter that we know we ought to deal with.

As you look about and review what you hear and see who is making comments on it, some of the things you read on the issue appeal to you. Let me tell you about a Washington Post editorial I read a few years ago that summed it up the class action issue quite well. Politically, the Washington Post is a Democratic paper, a liberal newspaper. But their editorial writers made some very important points that I agree with. They said this:

Congress' first priority in the world of civil lawsuits should be to change the rules of class actions.

In other words, of all of the problems we have in litigation, the one this Congress ought to deal with first is class action lawsuits.

When working properly, class actions are an important component of the American legal system, one that allows efficient court consideration of numerous identical claims against the same defendant.

In practice, no component of the legal system is more prone to abuse.

Their analysis is that there is no component of the American legal system more prone to abuse than class actions.

For unlike normal lawyers who are retained by people who actually feel wronged, class counsel, having alleged that a product deficiency caused some small monetary damage to some discernible group of people, largely appoint themselves.

In other words, a lot of people have difficulties, and the class action lawyer may discover what he thinks is a wrong. Then he appoints himself to be the righter of that wrong. Then he goes out and identifies a class. He does not talk to the individual clients, as lawyers do in a normal situation; he appoints himself to take on these cases.

The clients may not even be dissatisfied with the goods and services they bought.

They may not be unhappy at all.

But unless they opt out of a class whose existence they may be unaware, they become plaintiffs anyway.

I heard a Senator recently say he was involved in a class action, and the person who was being sued was a friend, and he did not even know he was involved.

Continuing to quote:

Class actions present almost infinite venue shopping.

Infinite venue shopping, that is what I was saying. We have had lawsuits filed in Alabama. We have seen identical lawsuits filed in Mississippi. We have seen them filed in Madison Coun-

ty, IL. Why? Because a plaintiff in a large action that involves people throughout the United States under current law can choose their place to file the lawsuit. When they get an appeal, it goes to the State of Illinois, Mississippi, or Alabama's appellate courts, their supreme court, for final review. That is a legitimate concern and a matter that impacts people throughout the United States.

National class actions can be filed just about anywhere, and they are disproportionately brought in a handful of State courts whose judges get elected with lawyers' money.

This is the Washington Post I am quoting. It is the same thing Senator HATCH indicated earlier. It is the reality, unfortunately.

These judges effectively become regulators of the products and services produced elsewhere—

Not even in their county or State—and sold throughout the Nation. And when cases are settled, the clients get token payments while the lawyers get enormous fees.

I am continuing to quote from the Washington Post:

This is not justice. It is an extortion racket that only Congress can fix.

That is, unfortunately, the sad truth too often.

Some years later now, Senator FRIST has made this Class Action Fairness Act his first civil lawsuit priority. I know there are some who see this bill as a moving train and they would like to add this or that provision as a caboose to that train, but I hope we will exercise restraint and pass a clean bill without amendments.

I know some have legitimate concerns and others want to put on poison pills. They want to adopt amendments that will cause so much controversy that it can end up killing the entire bill. In my view, anything that does not make this bill stronger is a poison pill. We do not need to, and must not, weaken this bill in any way. I have seen very few amendments that are being offered that will make it stronger.

I believe in America's legal system. The Senator from Florida, the Presiding Officer, believes in our legal system. He believes in the right of people to sue in court and have redress for all and has given a lot of his professional life to that cause. But for the most part, we do have outstanding judges on Federal and State benches. They manage their dockets well and rule justly. There are some problems, however, that Congress must resolve. The class action problem is certainly one of them.

To the extent possible, I believe that the courts have reached a limit on what they can do through judicial interpretations to resolve the issue. There was a time when "drive-by" class action certifications were par for the course, and class actions were certified without notice being given to the defendant even. Those times, have been eliminated for the most part by judi-

cial ruling, in part, I believe, because of the Supreme Court decision in the Amchem case where the Court made clear that even in conditional certifications, rigorous analysis is required to certify a class and must be conducted.

This ruling had far-reaching implications and limited the ability of plaintiff lawyers and the defendant companies to engage in collusion to the detriment of whom? The class. Don't you think in these odd cases where the lawyer does not even know the members of the class he represents that ethical concerns are implicated? The situation simply is this: You sue a big company, you allege lots of problems, you talk with their lawyers, and a wink and a nod occurs and you say: We will give coupons to the people I am alleging to be victims, but you have to compensate me as a lawyer for all this time I have spent in it; how about \$10 million?

The defendants go back and say: If we pay the lawyer \$10 million and we pay the coupons to these people—most of them will never use them—this will get us out of the lawsuit. Yes, it is too much money to pay the lawyer, but we will get it over with. Let's do it.

Who is looking out for the class members, the people in whose name the lawsuit was brought? The answer is no one.

These problems, unfortunately, are not currently subject to being settled by the courts or handled by the courts. I believe this legislation will take a strong step toward fixing that kind of problem.

There are some who will argue that reform is not needed and this legislation is even unfair. Let me ask this: Is it fair to be a member of a lawsuit of which you are unaware and do not even know you are a party to it? Is it fair to receive a coupon settlement that basically requires you to do business with a company that presumably cheated you in the first place? Is it fair to lose money even though you prevail in the underlying lawsuit? And there have been instances—cases such as the infamous Bank of Boston case—where plaintiffs, not even knowing they are a member of the lawsuit, have had their bank accounts debited to pay for their portion of the attorney's fees—sometimes their portion of the attorney's fees is much more than the small coupon or monetary amount they received as part of the settlement. That is simply not right.

These questions of fairness represent the current status of many class action lawsuits. In my view, there is nothing fair about the answers we just mentioned. When we approved modifications to rule 23 not too long ago, one of the primary goals was to "assure adequate representation of class members who have not participated in shaping the settlement." After all, if the settlement is going to bind the class member, it would seem they should not only be adequately represented, but they

would be aware of the terms of that settlement and the compromises that were involved in making the settlement. We can achieve fairness and several other logical goals such as that with this Class Action Fairness Act.

That class actions are beneficial is not in doubt. They serve to the benefit of America by limiting the number of times you have to try the same issues in separate places, in different courts with different judges.

They serve the interests of consistency and finality by avoiding inconsistent outcomes in separate trials where the cases revolve around identical claims. They are to serve the interests of the class members, however, but that is, in fact, not the outcome of too many of these cases and therefore we need to reform this system.

So what we would strive to do with this legislation is to make the plaintiffs the real beneficiaries of such a lawsuit. It will provide protections to class members, such as limiting the ability to award coupon settlements and preventing class members from being harmed twice, once by the defendant company, and the second time by class action settlement.

I believe we can make some great progress with this legislation if we keep it clean. I hope we can exercise restraint and that we can do just that.

Some have said Federal Government has no business with these lawsuits. As a person who does believe that States have constitutional rights and they have presumptions that cause us in Congress to be reluctant to violate either explicit constitutional requirements or to violate maybe presumptions or indications or contemplations of the Constitution, I am extremely cautious about expanding federal jurisdiction in Constitutionally questionable ways. But I do not believe this bill expands federal jurisdiction in any way that is Constitutionally questionable. I would like to read what the Constitution says about diversity and where a case of this kind should be tried. Article III, section 2 of the Constitution, talks about the power of Federal courts and what their jurisdiction is. This is the power given to Federal courts by the U.S. Constitution at the beginning of our Republic. It states: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution"—disputes of the Constitution—"the Laws of the United States . . ."—involving laws that we passed explicitly in Congress to Controversies to which the United States shall be a party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States . . ."

So our Founding Fathers thought seriously about this and stated in the Constitution that if there is a lawsuit filed between people from different States, there needs to be a neutral forum in which to try the case. If there is a person from Alabama and a person from Massachusetts suing one another,

the person from Massachusetts might not feel comfortable being tried in Alabama, and the person from Alabama might not feel comfortable being tried in Massachusetts. That is what they put it in there for.

The home State plaintiff would always want to choose a more favorable forum. Perhaps he would choose his own State, would he not? That is what our Founding Fathers were concerned about.

In football, we call it "home cooking." The Founders sought to prevent "home cooking" of lawsuits by putting Federal jurisdictional rules into the Constitution for these kinds of cases. Cases involving citizens of different States were intended from the beginning to be tried in Federal court where judges are not elected but serve lifetime appointments and are answerable to the U.S. Supreme Court, not to any one State court. That is the theory and it is important.

There are counties in Alabama where I personally know all the judges. I go to church with some of them. So if I am going to sue somebody, I am likely to choose a place where I would have the man who is in my church supper club try my case. Well, maybe they will strike him for cause, but what about his brother, who could also be a judge? My friend who is a judge might say to his brother: Jeff is a good boy, make sure you give him a fair trial. Whether we like it or not, these kinds of things are reality, and that is what the Founders had in mind when they wrote the Constitution. That is why when there is a group of plaintiffs being represented by a lawyer that may not even know their names, this lawyer is going to look around and try to file the case where he thinks he can have the best chance of success.

As a matter of fact, I do not even dispute him or her making that choice. That is what lawyers are paid to do, to find the best place to file the lawsuit.

That is taught in law school. They ask, well, where do you want to file a lawsuit?

Well, I think it would be better to file in Federal court.

Then one is taught to study the case and justify filing it in Federal court. Or maybe a lawyer thinks it is better for his client to file it in State court. Lawyers are taught they should file the case where it is best for their client. I do not blame the lawyers. They are using the law as we have now configured it.

I say it is our responsibility to look at the judicial system. If we love it and care about it, respect it, and want it to be better, we will continue to look at the legal system, and if the legal system has a problem, it is our duty to examine how to fix it.

We have spent years now determining how to fix class action problems. We have a bipartisan coalition in this Senate that has come together and is prepared to support this legislation. I say let us do it. Let us observe how the sys-

tem is working. From that observation, we can realize that it can be made better. Let us step up to the plate and fix it.

I thank the Chair and the Senator from Utah. It is a pleasure to work with him, Senator GRASSLEY, and Senator SPECTER, who have all worked so hard on this legislation.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I notice the distinguished Senator from Wisconsin is in the Chamber, but I would like to make a few more remarks if he does not feel too badly about it.

I support this bill. I have been working on it for 6 years. It is a grand compromise. We have Democrats and Republicans. It is bipartisan. It is not perfect, but it is as good as we can do and it will do an awful lot of good.

The evidence is clear and undeniable; the well-documented abuse of the class action litigation device too often ends up victimizing plaintiffs, the very people that class actions are supposed to benefit.

These abuses cheat millions of consumers who unwittingly have their legal rights adjudicated in local courts thousands of miles away. They deny the due process rights of defendants who are relentlessly hauled into a handful of small county courts where the playing field is unfairly tilted in favor of the personal injury bar, the plaintiffs' bar.

If that were not enough, class action abuses are eroding public confidence in our civil justice system. When abuses do occur in the class action system, the public can ultimately pay dearly through spiraling prices, lost jobs, and even bankrupt companies.

I have been listening to arguments from the other side, but to give the class action problem some perspective, I want to consider just the effect of this litigation in one locale, Madison County, IL. There we find a case study in rampant misconduct within the class action system, its corrupting effect on the courts, and the desperate need for reform.

This small county in the southwestern part of that State provides all the evidence necessary to convince anyone that the legal system is currently being exploited by shameless and self-seeking plaintiffs' lawyers. Madison County, IL is a rural county. I imagine it is the type of county where maybe Abraham Lincoln first got his start as a young lawyer and an advocate for justice.

In some notes perhaps taken in preparation for a law lecture around 1850, Lincoln set the ideal for his profession, a profession practiced by many in this Chamber, including myself.

No. 1, "Discourage litigation . . . Point out how . . . the nominal winner is often a real loser—in fees, expenses, and waste of time."

No. 2, "Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more

nearly a fiend than he who habitually overhauls the register of deeds in search of defective titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it."

And No. 3, "An exorbitant fee should never be claimed."

These words were uttered during a time when being a lawyer automatically carried with it a title of honor, integrity, and trust.

Unfortunately, Lincoln's words no longer carry much meaning for some of the lawyers who have descended on Madison County. In the land of Lincoln, the rule of law has too often been corrupted almost beyond recognition by self-interested plaintiffs' lawyers and seemingly pliant public officials. Some unscrupulous personal injury attorneys go forum shopping to find friendly jurisdictions. Certainly Madison County, IL is one of them.

Then some judges in those jurisdictions, some of whom are compromised by campaign contributions from the very same law firms arguing in their courtrooms, sometimes certify these cases with the proverbial rubber stamp, even though they are not worthy of being certified.

Finally, sympathetic local juries trying out-of-State corporations have sometimes bestowed unjustified and sometimes outrageous awards. This pattern of behavior is not only an affront to the due process rights of defendants, but it breeds disrespect for the rule of law itself.

I have heard colleagues on the other side of the aisle say, 'Well, these are big corporations.' First, they aren't all big corporations, and second, even if they were, they still deserve fair treatment, due process, and an impartial justice system.

And make no mistake about it. These suits are not free. We all pay for them. The American consumer pays for the costs of these class actions.

The courthouse in Madison County, IL is what scholars now describe as a magnet court. Always on the lookout to find suitable venues for enriching themselves, entrepreneurial plaintiffs' attorneys—many of whom practice in the field of personal injury—are sucked into its orbit. The numbers alone tell the story. Over the last 5 years the number of class actions filed in the county has increased by 5,000 percent.

Let me repeat that so that astronomical figure can sink in. A 5,000-percent increase. It almost defies logic that so many national class actions are being brought in this small rural county.

In 1998, there were only two class actions filed in this county. In 2000, that number rose to 39. In 2001, there were 43 new class actions. One year later, the bridges leading to the riches of Madison County were clogged with carpet-bagging lawyers as word hit the street that the local court there was giving away money as though it was Christmas morning. Enterprising plaintiffs'

lawyers looking to make a quick buck knew Madison County was the place for business.

In 2004, 77 class action suits were filed. In 2003, there were another 106. Between 1998 and 2003, the number of class actions in the county rose from 2 to 106 per year. In the last 4 years, the lawyers who flocked to Madison County succeeded in having the following cases certified.

All Sprint customers in the entire Nation who have ever been disconnected on a cell phone call. That is a class action in Madison County.

Every Roto-Rooter customer in the country whose drains might have been repaired by a nonlicensed plumber.

All consumers who purchased limited edition Barbie dolls that were later allegedly offered for a lower price elsewhere.

These are just three examples of the abuses that are going on.

I know my friend from Illinois, the minority whip, Senator DURBIN, is understandably protective about the state of affairs in Madison County. He points out that while many class actions are filed in Madison County, few are certified. It does not take a lot of cases like the ones I talked about to create an environment that encourages cases that are marginal at best. Through their increased filings, class action attorneys tell us a great deal of what we need to know about Madison County. That many of these cases are settled upon filing or even before they are filed tells us a lot. A demand letter from a class action attorney with a Madison County address is a dreaded piece of correspondence for any company or any defendant. If these types of cases were not such a drain on our economy, it would almost be easy to laugh at some of these cases.

We question the efficiency and fairness of a small county courthouse in Illinois adjudicating cases against national companies involving various State and Federal regulations and involving millions, if not billions, of dollars in settlements where neither the majority of plaintiffs nor the defendants are typically residents of the county. These locally elected judges, with the close assistance of interested plaintiffs' attorneys, in effect set policy for the entire Nation, defying the principles of self-government on which our Federal system is based.

This situation is a colossal mess, and a few plaintiffs' lawyers are exploiting it to the hilt, and giving all of us who love the practice of law a bad name.

The same five firms appeared as counsel in 45 of all cases filed between 1999 and 2000. Of the 66 firms appearing in these cases, 56 of them—85 percent—had office addresses outside of Madison County.

In this small county, with a population of only 259,000, there are somehow more mesothelioma claims from asbestos exposure than in all of New York City with its population of better than 8 million. One nine-member firm

with an office in Madison County claims to handle more mesothelioma cases than any firm in the country.

Who benefits from all of this litigation? One Madison County judge approved a \$350 million settlement against AT&T and Lucent for allegedly billing customers who leased telephones at an unfair rate. What did the lawyers get? Forty-four lawyers from four firms will split \$80 million for legal fees and \$4 million for expenses. And the customers? They actually lost money. After their legal fees, the average class member got hit for \$6.49.

Think about that.

Lincoln's principles are a distant memory in Madison County. The Washington Post succinctly described the situation. "Having invented a client, the lawyers also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country."

And those lawyers often pick Madison County. They are picking it because it is what some call a magic jurisdiction.

Let me refer to this chart, called "Magic Jurisdictions." This is Dickie Scruggs, one of the best plaintiffs' lawyers in the country, a man I have great respect for. But in a luncheon talk on the asbestos situation at a panel discussion at the Prudential Securities Financial Research and Regulatory Conference on May 9, 2002, he had this to say. This is Dickie Scruggs. You can believe him. This man understands the litigation field. He is a billionaire from practicing law. He said:

What I call the "Magic Jurisdictions" is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected. They are State court judges. They are populists. They have large populations of voters who are in on the deal. They are getting their piece, in many cases. And so it's a political force in their jurisdiction and it's almost impossible to get a fair trial if you are a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money. The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is.

That is one of the leading plaintiffs' lawyers in the country. He was honest enough to call it the way it is in Madison County. Madison County is not the only jackpot jurisdiction, but I am concentrating on it since the distinguished Senator from Illinois has focused his remarks on our criticism of this jurisdiction.

Dickie Scruggs is a fine lawyer. I have said that. I worked with him on the tobacco settlement. He and Mississippi Attorney General Mike Moore did a good job for their clients and the American public. I am very familiar with what they did. I am familiar with the Castano Group as well, which

risked millions of dollars to bring the tobacco suits. They had an entire multifloor building filled with documents they accumulated at the cost of millions of dollars to make their case in the tobacco suits.

Dickie Scruggs is a fine lawyer. So is Mike Moore. So are the Castano Group lawyers.

Having said that, there is a reason the Super Bowl is held at a neutral site. It is clear that Madison County is not a neutral site. When it comes to class action defendants trying a class action case in Madison County, it is like shooting fish in a barrel.

Dickie Scruggs is simply too good of a lawyer to need any unfair advantage and that goes for the vast majority of plaintiffs' attorneys in our country. But there are a minority of lawyers who are causing the vast majority of our problems.

What makes for a magical jurisdiction? In a magic jurisdiction, the supposedly objective judges and jury, all stand to gain from a settlement. Madison County, as the Chicago Tribune notes, is a jackpot jurisdiction where local newspapers "sport advertisements looking for the local plaintiff that can provide a convenient excuse to file."

Some have concluded that this choice of venue might have something to do with the fact that in recent years the elected judges of the circuit court of Madison County have received at least three-quarters of their campaign funding from the lawyers who appear before them in these class action suits. In a simpler time, the State court would only certify a class if there was a substantial local connection. Some of the judges in Madison County have created an environment where a lifelong resident of Washington State, who worked in Washington, was allegedly exposed to asbestos in Washington, never received medical treatment in Illinois, and had no witnesses in Illinois to testify in his behalf, actually thought it was worth a shot to bring suit in a strange town halfway across the country. What was his connection to Madison County? He vacationed in Illinois for 10 days with his family nearly 50 years ago.

In this case, the court did the right thing and refused to certify this man's claim. But that a lawyer would even consider bringing it shows how far gone Madison County is. So far, the Illinois Supreme Court has taken the extraordinary step of rebuking it. As legal ethics professor Susan Koniak of Boston University School of Law explains:

Madison County judges are infamous for approving anything put before them, however unfair to the class or suggestive of collusion that is.

This is not justice. This is a travesty. The St. Louis Post-Dispatch, one of this Nation's great newspapers, has followed this epidemic of litigation closely. They describe the run on the Madison County courthouse as resembling "gleeful shoppers mobbing a going out of business sale."

Due process itself is corrupted by this circus. What is going on in Madison County too closely resembles legalized extortion in the eyes of many observers. The deck is stacked against these companies hauled to Illinois to answer these charges. The cases are sometimes heard on an expedited basis. Under these pressures they are typically given an offer they cannot refuse. Once the class is certified, they feel compelled to settle, regardless of the merits of the case. The risk of loss is simply too high. They do not even have to wait until the class is certified. They know that in most cases the class will be certified by the judges of Madison County. A simple demand causes many companies to say, 'let's buy out of this for the lowest price we can, even though we do not owe them a dime. We will just settle for the attorney's fees.' These settlements are to the detriment of legitimate claims.

The class never has to be certified. No self-respecting lawyer will want to try a case in a county where the deck is totally stacked against his client. And so they settle.

Let us be clear, these are not truly local disputes.

S. 5 does nothing to remove local disputes from local courts. The suits we are talking about in Madison County and other jackpot jurisdictions are on behalf of nationwide classes of clients against corporations that do business in every State. Madison County is not chosen as the venue because of its quaint scenery. It is chosen because defendants in these class actions often do not get a fair shake in Madison County.

This is not a triumph of federalism and local decisionmaking. It is the evisceration of federalism and fairness. A bedrock principle of our federal system is that states are largely free to regulate their own particular affairs. To allow one State, in effect, to legislate for another is to violate an important principle of self-government that this country is built upon. Madison County has been flooded with class action claims and now the Nation is drowning in them. This is a classic case for Federal intervention. In fact, this is a case study for the type of intervention in Federal affairs the Constitution was meant to allow.

What happens in Madison County affects the whole country. The overwhelming majority of class actions filed in Madison County are nationwide lawsuits in which 99 percent of the class members live outside the county. As a result, decisions reached in Madison County courts affect consumers all over the country and the county's elected judges effectively set national policies on important commercial issues.

There is a place for personal injury law in the American justice system. I understand that. I am an attorney. I have tried many cases. I know that there is a legitimate and honest place for personal injury suits in our civil

justice system. Americans have a sacred right to take their case to court when they are harmed by a person or product. Yet this right is seriously undermined by a seriously compromised class action regime. To help rescue it, we need to enact this reform. Today's lawyers do not take cases that come to them. They invent cases. They behave more like entrepreneurs than counsel, trying to find an issue and income stream before they find a plaintiff. They act like businessmen—the CEOs of Trial Lawyers, Incorporated.

The problem is that their business plan makes hash out of our system of impartial justice. It simply defies belief that county courts are the proper venue for multijurisdictional litigation. Some of the plaintiffs' bar have put a "pay the lawyer first" business model in motion in Madison County. First, find sympathetic judges. Then bankroll their campaigns. And to seal the deal, move the case through the system so fast that the defendants do not always get a fair opportunity to fully investigate the claim. Justice does demand fairness, but our system of decentralized class action litigation is fundamentally unfair to defendants, plaintiffs, and the average American who ends up footing the bill for the unjustified billion-dollar settlements.

If this were a board game, it would be "Class Action Monopoly." Start at 'Go', and come up with an idea for a lawsuit. Find a named plaintiff to pay off. Make allegations, no proof needed. Get out of rule 23, the Federal rule 23, free. Convince your magnet State court judge to certify the "class." File copycat lawsuits in State courts all over the country. Sue as many companies in as many States possible even if they have no connection to the State.

Who gets the money? In the Columbia House case, \$5 million for lawyers, discount coupons for plaintiffs. In the Blockbuster case, \$9.25 million for lawyers, free movie coupons for plaintiffs. In the Bank of Boston case, \$8.5 million for lawyers; some claimants even had to pay themselves.

But "What happens to me?" Your employer takes a hit, maybe lays you off. Your health and car insurance premiums go up. And we are all familiar with that. The lawyers win, you lose. This game gets pretty old, pretty quick. But this is this jackpot monopoly system we have in Madison County, and a whole bunch of jackpot jurisdictions in this country.

Now, the Class Action Fairness Act is an important but modest reform. It does not deprive substantive legal rights to any American. All it does is make it easier to put these national cases where they belong, and that is in our Federal courts.

According to one study, 98 of the 113 class actions filed in Madison County from 1998 to early 2002 could have been moved to Federal court under this legislation. Justice demands that we act. We cannot play around with this any more. Those who are injured will get

their day in court, but it will be Federal court, with sophisticated judges who are appointed for life, who have no reason to be unfair. By voting for S. 5, we will help make sure they get it in a court where justice can be dispensed.

I yield the floor to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I thank the Senator from Utah.

Mr. President, I oppose the Class Action Fairness Act, S. 5. Notwithstanding its title, I do not think this bill is fair. I do not think it is fair to citizens who are injured by corporate wrongdoers and are entitled to prompt and fair resolution of their claims in a court of law. I do not think it is fair to our State courts, which are treated by this bill as if they cannot be trusted to issue fair judgments in cases brought before them. And I do not think it is fair to State legislatures, which are entitled to have the laws that they pass to protect their citizens interpreted and applied by their own courts. This bill is not only misnamed, it is bad policy, and I do think it should be defeated.

Make no mistake, by loosening the requirements for Federal diversity jurisdiction over class actions, S. 5 will result in nearly all class actions being removed to Federal court. This is a radical change in our Federal system of justice. We have 50 States in this country, each with its own laws and courts. State courts are an integral part of our system of justice. They have worked well for our entire history. It is hard to imagine why this Senate, which includes many professed defenders of federalism and the prerogatives of State courts and State lawmakers, would support such a wholesale stripping of jurisdiction from the States over class actions. By removing these actions from State court, Congress would shift adjudication away from State lawmakers and State judges towards Federal judges, who are often not as familiar with the nuances of State law. In my opinion, the need for such a radical step has not been demonstrated.

Actually, the leaders of the Federal and State judiciary agree. I don't know if it has taken a position on this particular bill, but the Judicial Conference of the United States has opposed legislation like S. 5 that would remove most class actions from State to Federal court. Federal judges don't particularly like diversity jurisdiction cases. They certainly are not in favor of legislation that would bring many more large, complicated civil cases brought under State law to their courts. And the Board of Directors of the Conference of State Chief Court Justices expresses quite well the concerns of State judges about this bill. Its letter states:

Absent hard evidence of the inability of the state judicial systems to hear and fairly decide class actions brought in state courts, we do not believe such a procedure [transfer

of class actions to federal court] is warranted. . . . Our position is not new and it is consistent with the position of our counterparts in the federal judicial system.

Class actions are an extremely important tool in our system of justice. They allow plaintiffs with very small claims to band together to seek redress. Lawsuits are expensive. Without the opportunity to pursue a class action, an individual plaintiff often simply cannot afford his or her day in court. But through a class action, justice can be done and compensation for real injuries can be obtained.

Yes, I do agree, there are abuses in some class action suits. Some of the most disturbing have to do with class action settlements that offer only discount coupons to the members of the class and a big payoff to the plaintiffs' lawyers. I am pleased that the issue of discount coupons is addressed in the bill, because the bill we considered in October 2003 did nothing about that problem. The bill now requires that contingency fees in coupon settlements will be based on coupons redeemed, not coupons issued. Attorney's fees will also be determined by reasonable time spent on a case and will be subject to court approval. The bill also allows a court to require that a portion of unclaimed coupons be given to one or more charitable organizations agreed to by the parties. I do agree, these are all good changes, but they do not change my view that the bill, as a whole, unfairly interferes with the States' administration of justice.

I appreciate that the supporters of S. 5 modified the new diversity jurisdiction rules for class actions in an effort to allow plaintiffs in State class actions more opportunities to remain in State court. Under the new bill, a district court must decline jurisdiction if two-thirds of the plaintiffs and the primary defendants are from the State where the action was filed, and there is at least one defendant who is a citizen of that State from whom significant relief is sought and whose alleged conduct forms a significant basis for the claims asserted by the proposed class. In addition, the principal injuries resulting from the alleged conduct of each defendant must have occurred in the State in which the action was originally filed.

These criteria are an improvement on the underlying bill. But the jurisdictional requirements for class actions to remain in State courts are still too burdensome. Under the new language, for example, a class action brought by Wisconsin citizens against a Delaware-based company for selling a bad insurance policy would probably be removed to Federal court even if Wisconsin-based agents were involved in selling the policies.

In addition, the new bill provides that district courts can only decline jurisdiction if during the 3-year period preceding the filing of the action no other similar class action has been filed against any of the defendants

even if the case is filed on behalf of other plaintiffs. Thus, the filing of a class action in one State court may lead to the successful removal of a similar case filed in another State on behalf of plaintiffs in that State. If a defendant is engaging in conduct in number of different States that violates the separate laws of those States, why shouldn't that defendant be held accountable in different State courts under different state laws? Do we really need the Federal courts to get involved in these State law cases?

The bottom line is that this bill still sends the majority of class actions to Federal court. The proponents of this bill have chosen a remedy that goes far beyond the alleged problem.

Furthermore, under S. 5, many cases that are not class actions at all are included in the definition of "mass action," a new term coined by this bill. S. 5 simply requires that the plaintiffs be seeking damages of more than \$75,000 for the case to be considered a mass action and, therefore, removable to Federal court. This provision unfairly limits State court authority to manage its docket and to consolidate claims in order to more efficiently dispense justice.

A particularly troubling result of this bill will be an increase in the workload of the Federal courts. We all know these courts are already overloaded. In the 2004 Year End Report on the Federal Judiciary, for example, Chief Justice Rehnquist reported that the current budget crisis in the Federal judiciary has forced courts to impose hiring freezes, furloughs, and reductions in force. He noted that there is a dire need for additional federal judgeships to deal with the Federal courts' ever-increasing caseload. The Congress has led the way in bringing more and more litigation to the Federal courts, particularly criminal cases. Criminal cases, of course, take precedence in the Federal courts because of the Speedy Trial Act. So if you look at this bill in the context, the net result of removing virtually all class actions, civil cases, of course, to Federal court will be to delay those cases.

There is an old saying with which everyone is familiar: "justice delayed is justice denied." I hope my colleagues will think about that aphorism before voting for this bill. Let's think about the real world of Federal court litigation and the very real possibility that long procedural delays in overloaded Federal courts will mean that legitimate claims may never be heard. My colleagues who support this bill tend to dismiss these arguments. They say that the Federal courts will offer adequate redress for legitimate claims, that they will faithfully apply State laws. I certainly hope they are right because this bill seems to be headed for enactment. But if they are wrong, citizens and consumers will be the ones who suffer.

One little-noticed aspect of this bill illustrates the possibilities for delay

that the bill provides, even to defendants who are not entitled to have a case removed to Federal court under the bill's relaxed diversity jurisdiction standards.

Under current law, if a Federal court decides that a removed case should be remanded, or returned, to State court, that decision is generally not appealable. It would be different under this bill, if it becomes law. This bill allows defendants to immediately appeal a decision by a Federal district court that a case does not qualify for removal to Federal court and should be remanded to State court.

Fortunately, the revised bill now requires such appeals to be decided promptly. It does not, however, do anything about the fact that the lower court may take months or even years to make a decision on the motion to remand. That means that a plaintiff class that is entitled, even under this bill, to have a case heard by a State court may still have to endure years of delay while its remand motion is pending in the Federal district court. Where is the "fairness" in that? I plan to offer an amendment to address that problem, and I certainly hope the bill's sponsors and supporters will give it serious consideration.

When I offered this amendment in the Judiciary Committee, I learned that a number of the supporters of the bill recognize the importance of the issue that my amendment raises. The chairman of the Judiciary Committee indicated that he would take a serious look at it and see if there is an accommodation that can be reached. So I did not seek a vote in committee on the amendment. I stand ready to negotiate on this issue and I hope there will be a serious effort here to reach agreement.

We have heard a lot of talk on this floor about the need to pass this bill without amendment—without any amendment at all—to protect some kind of "delicate balance" with the House and with the corporate supporters of the bill like the Chamber of Commerce. I ask my colleagues who support this bill, why would you not support a reasonable amendment that will make this bill fairer to plaintiffs who bring cases that under the bill's own terms should remain in State court? Please don't let this so-called delicate balance override your duty as legislators to do what is right.

It is important to remember that this debate is not about resolving questions of Federal law in the Federal courts. Federal question of jurisdiction already exists for that. Any case involving a Federal statute can be removed to Federal court under current law. This bill takes cases that are brought in State court solely under State laws passed by State legislatures and throws them into Federal court. This bill is about making it more time-consuming and more costly for citizens of a State to get the redress that their elected representatives have decided they are entitled to if the laws of their State are violated.

Diversity jurisdiction in cases between citizens of different States has been with us for our entire history as a nation. Article III, section 2 of the Constitution provides: "The judicial Power shall extend . . . to Controversies between Citizens of different States." This is the constitutional basis for giving the Federal courts diversity jurisdiction over cases that involved only questions of State law.

The very first Judiciary Act, passed in 1789, gave the Federal courts jurisdiction over civil suits between citizens of different States where over \$500 was at issue. In 1806, in the case of *Strawbridge v. Curtiss*, the Supreme Court held that this act required complete diversity between the parties. In all other instances, the Court said, a case based on State law should be heard by the State courts. So this bill before us changes a nearly 200-year-old practice in this country of preserving the Federal courts for cases involving Federal law or where no defendant is from the State of any plaintiff in a case involving only State law.

Why is such a drastic step necessary? Why do we need to prevent State courts from interpreting and applying their own State laws in cases of any size or significance? One frequent argument is that businesses cannot get a fair day in court because of renegade State court judges. Yet, there really is no evidence to back up these claims. Of the 3,141 counties, parishes, and boroughs in the State court systems of the United States, the so-called American Tort Reform Association could only identify nine jurisdictions that they consider "unfair" to defendants. Four other jurisdictions were declared as "dishonorable mentions." But, the association only provided data on two of these jurisdictions—Madison County, IL, which the Senator from Utah was talking about, and St. Clair County, IL. The Senator from Utah cited statistics of increases in class action filings up through 2003. Yet in Madison County, the villain in the story told by the Senator from Utah, the number of class action filings has decreased by 30 percent between 2003 and 2004. So defendants have decided that State judges are unfair in two jurisdictions out of 3,000, but how does this constitute a crisis? The answer is simple there isn't one.

Another argument we hear is that the trial lawyers are extracting huge and unjustified settlements in State courts, which has become a drag on the economy. We also hear that plaintiffs' lawyers are taking the lion's share of judgments or settlements to the detriment of consumers. But a recent empirical study contradicts these arguments. Theodore Eisenberg of Cornell Law School and Geoffrey Miller of NYU Law School recently published the first empirical study of class action settlements. Their conclusions, which are based on data from 1993–2002, may surprise some of the supporters of this bill.

First, the study found that attorneys' fees in class action settlements

are significantly below the standard 33 percent contingency fee charged in personal injury cases. The average class action attorney's fee is actually 21.9 percent. In addition, the attorneys' fees awarded in class action settlements in Federal court are actually higher than in State court settlements. Attorney fees as a percent of class recovery were found to be between 1 and 6 percentage points higher in Federal court class actions than in State court class actions.

A final finding of the study is that there has been no appreciable increase in either the amount of settlements or the amount of attorneys' fees awarded in class actions over the past 10 years. The study, therefore, indicates that there is no crisis here, no explosion of huge judgments, no huge fleecing of consumers by their lawyers. This bill is a solution in search of a problem. It is a great piece of legislation for wrongdoers who would like to put off their day of reckoning by moving cases to courts that are less convenient, slower, and more expensive for those who have been wronged. It is a bad bill for consumers, for State legislatures, and for State courts.

This bill seems not to be about class action abuses, but about getting cases into Federal court where it takes longer and is more expensive for plaintiffs to get a judgment. The cumulative effect of this bill is to severely limit State court authority and ultimately limit victims' access to prompt justice. Despite improvements made since the last time the Senate considered this bill, the bill will still place significant barriers for consumers who want to have their cases heard in State court. Remand orders are still appealable, and the mass tort definition does not protect State courts' authority to consolidate cases and manage their dockets more efficiently. All the elements outlined in the bill before us will result in the erosion of State court authority and the delay of justice for our citizens. Therefore, I cannot support this unfair "Class Action Fairness Act" bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise today in support of the Class Action Fairness Act of 2005. This legislation addresses the continuing problems in class action litigation, particularly unfair and abusive settlements that shortchange consumers across America.

The time for this bill has come. We have worked very closely on a bipartisan basis with Senator GRASSLEY, Senator CARPER, and Senator HATCH for several Congresses and, more recently with Senators FEINSTEIN, DODD, SCHUMER, and LANDRIEU. Without this close cooperation and tremendous effort, we would not be on the verge of passing class action reform. Finally, Senators FRIST and REID deserve praise for crafting a fair process for the consideration of this legislation.

Class action cases are an important part of our justice system because they enable people who have been harmed in similar ways to pursue claims collectively that would otherwise be too expensive to bring individually. When these cases proceed as intended, injured parties are able to successfully pursue lawsuits in cases involving defective products or employment discrimination, or other wrongs, and recover fair damages.

Unfortunately, the system does not always work as it should. In fact, consumers are frequently getting the short end of the stick in class action cases, recovering only coupons or pocket change while their lawyers reap millions. Too often, the class action system is being taken advantage of to the detriment of consumers and others who have been harmed. The Washington Post put it clearly:

No portion of the American civil justice system is more of a mess than the world of class actions.

Our bill addresses the problem in a few straightforward ways. First, the bill helps consumers by guaranteeing that they receive a better understanding of their rights and responsibilities in a class action lawsuit. Our bill includes a class action consumer bill of rights to limit coupon cases and other unfair settlements.

Second, this bill provides that state attorneys general are notified of proposed class action settlements. This encourages a neutral third party to weigh in on whether a settlement is fair for the plaintiffs and to alert the court if they do not believe that it is.

Finally, we allow some class action lawsuits to be removed to Federal court. As we all know, some are concerned about this provision. Yet, moving some class action cases to Federal court is only common sense. When a problem affects people in many States or involves a national problem, it is only fitting that the case be heard in Federal court.

We took special care during the course of our negotiations to ensure that the appropriate courts heard the right cases. This bill has never been an effort to either stop class action cases or send them all to the Federal courts. Rather, those cases that primarily involve people from only one State will remain in that State's court. These changes will ensure that class action cases are handled efficiently and in the appropriate venues and that no case that has merit will be turned away.

Stories of nightmare class action settlements that affect consumers around the country are all too frequent. For example, a suit against Blockbuster video in Texas yielded dollar off coupons for future video rentals for the plaintiffs while their attorneys collected \$9.25 million. In California State court, a class of 40 million consumers received \$13 rebates on their next purchase of a computer or monitor—in other words they had to purchase hundreds of dollars more of the defendants'

product to redeem the coupons. In essence, the plaintiffs received nothing, while their attorneys took almost \$6 million in legal fees. We could list many more examples of abuses in State court, but let me discuss just one more case that is almost too strange to believe.

I am speaking about the notorious Bank of Boston class action suit and the outrageous case of Martha Preston from Baraboo, WI. She was an unnamed class member of a lawsuit in Alabama State court against her mortgage company that ended in a settlement. The settlement was a bad joke. She received \$4 and change in the lawsuit, while her attorneys pocketed \$8 million.

Yet the huge sums that her attorneys received were not the worst of the story. Soon after receiving her \$4, Ms. Preston discovered that her lawyers took \$80, twenty times her recovery, from her escrow account to help pay their fees. Naturally shocked, she and the other plaintiffs sued the lawyers who quickly turned around and sued her in Alabama, a State she had never visited, for \$25 million. Not only was she \$75 poorer for her class action experience, but she also had to defend herself against a \$25 million suit by the very people who took advantage of her in the first place.

The class action process is clearly in serious need of reform. Comprehensive studies support this position. For example, a study on the class action problem by the Manhattan Institute finds that class action cases are being brought disproportionately in a few State courts so that the plaintiffs' lawyers may take advantage of those specific courts that have relaxed class action rules.

A RAND study offered three primary explanations for why national class action cases should be in Federal court. "First, Federal judges scrutinize class action allegations more strictly than State judges . . . Second, State judges may not have adequate resources to oversee and manage class actions with a national scope. Finally, if a single judge is to be charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in Federal court than in State court.

Our bill attempts to follow these recommendations and ensure that cases with a national scope are heard in Federal court. All the while, cases that are primarily of a single state interest remain in State court under our bill. Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not deny reasonable fees for class lawyers. We do not cause undue delays for these cases. And we do not mandate that every class action be brought in Federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

Right now, people across the country can be dragged into lawsuits unaware

of their rights and unarmed on the legal battlefield. What our bill does is give back to regular people their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that unsuspecting people like Martha Preston don't get ripped off.

Mr. President, we believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. The bill represents a finely crafted compromise. We believe it will make a difference. We urge its passage.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Mr. President, I was on the floor of the Senate earlier preparing to offer an amendment, and I lost my voice. There was cheering in the galleries, but I have decided to soldier on and try to present this amendment again. I will try to abbreviate any remarks to spare the audience from what may be a painful process for them.

We are considering the Class Action Fairness Act of 2005. I have listened to some of the speeches on the Senate floor. Senator LOTT of Mississippi said: Do not be confused. This is not tort reform, this is court reform. I thought that was an interesting comment because there has been some concern over whether this class action change would affect a body of lawsuits known as mass torts—in other words, the types of class actions that relate to physical injuries that are common to mass tort cases.

Section 4(a) of S. 5 talks about "mass actions," a different term altogether. It requires mass actions be treated the same as class actions under the bill. The big question is whether that kind of lawsuit will be taken out of a State court and put into a Federal court. As I mentioned in my earlier remarks, Federal courts are not friendly to class actions. They are very strict in those that they would consider, and then they are very limited in their scope of liabilities. The business interests that are pushing for this change in the law know that if they can get these lawsuits into a Federal court, they are less likely to be found liable. That is what this whole debate is all about.

I have tried to take a close look at the mass actions section of this class action bill and ask how it would apply to a mass tort situation. Mass torts are large-scale personal injury cases resulting from accidents, environmental disasters, or dangerous drugs that are widely sold. The asbestos exposure situation we will be considering this year is another example of a mass tort.

These personal injury claims are usually based on State laws, and almost

every State has established rules of procedure allowing their State courts to customize the needs of their litigants in these complex cases. I am afraid if S. 5 becomes law, the so-called mass action provision will preempt all of these State procedures and take them out of State courts.

The supporters of the bill claim that mass actions are not the same as mass torts and that they have no desire to affect mass tort cases. I know that is their position, but it is not what their bill says. If the goal is to federalize all State personal injury cases, supporters should be open about it and say it publicly.

I am sure the U.S. Chamber of Commerce, the American Tort Reform Association, all the business and insurance groups that support this bill would like to see all cases sent to Federal court. I knew from my years in practice in downstate Illinois, that Federal courts were more conservative than State courts.

But even these groups do not believe they can be that lucky with this bill. Instead, they came to us and said: No, our bill is very narrow, it only deals with class actions and not all cases. When I take a look at section 4, though, I am concerned about it. It sounds an awful lot like mass torts. Here is how they describe it. Section 4(A) defines it:

... any civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact . . .

I am sure for anyone who has been patient enough to follow this debate this is a little confusing, so let me try by an example to give an idea of what is at stake in changing this law.

Everybody in America knows that in late September 2004, Merck & Co., a pharmaceutical giant, pulled its blockbuster pain medication Vioxx off the market. The largest prescription drug recall in history occurred as a result of a new study that showed that Vioxx doubled the risk of heart attack and stroke in some patients. With annual sales of \$2.5 billion, Vioxx was one of the most successful new drugs ever. It was one of a new class of drugs called COX-2 inhibitors.

Some 20 million Americans took Vioxx in the 5½ years it was sold, but we don't know how many thousands had heart attacks and strokes that could have been attributed to this drug.

Since the discovery of the dangers of Vioxx, hundreds of cases from all over the country have been filed against Merck, and we can anticipate thousands more.

I would say as a former trial lawyer who served as both defense counsel in some cases and plaintiff's counsel in others, this is a pretty serious situation for Merck, and they know it. They have conceded the fact that the drug was dangerous. They took it off the market. Having taken it off the mar-

ket, it is understandable that some who were injured are going to seek just compensation.

Let us look at a few cases. Let us take the case of Janet Huggins, which is just one of hundreds of similar cases working their way through the court system today.

Mrs. Huggins of Tennessee was a 39-year-old woman who died of a sudden heart attack after taking Vioxx. She was the mother of a 9-year-old son. When she was diagnosed with the early onset of rheumatoid arthritis, Vioxx was prescribed. She had no former cardiac problems or family history. According to her medical records, Mrs. Huggins was in, otherwise, excellent health.

But on September 25, 2004, she died of a sudden heart attack—less than a month after she started taking Vioxx. She was buried on the very day in September that Merck took Vioxx off the market.

On October 28, 2004, her husband Monty filed a claim against Merck in the Superior Court of New Jersey, Atlantic City Division. Why New Jersey? This couple is from Tennessee. Because that is the State where Merck is headquartered.

In an interview on "60 Minutes," Mr. Huggins said: "I believe my wife would be here" if Merck had decided to take Vioxx off the market just 1 month earlier.

Then there was Richard "Dickie" Irvin of Florida, who was a 53-year-old former football coach, and president of the athletic booster association.

He had received his college football scholarship and was inducted into the school's football hall of fame. He went on to play in the Canadian League Football until suffering a career-ending injury.

In addition to coaching, he worked at a family-owned seafood shop where he was constantly moving crates of seafood. He rarely went to see a doctor and had no major medical problems.

In April 2001, Mr. Irvin was prescribed Vioxx for his football knee injury from years ago. Approximately 23 days after he began taking Vioxx, Mr. Irvin died from a sudden, unexpected heart attack. An autopsy revealed that his heart attack was caused by a sudden blood clot. This is the exact type of injury that has been associated with Vioxx use.

Mr. Irvin and his wife of 31 years had four children and three grandchildren.

John Newton of Texas, father of two, took Vioxx for osteoarthritis. On April 1, 2003, without warning, he began coughing violently and within minutes was coughing up blood. Before emergency medical services could be called, he collapsed in the arms of his 17-year-old son and died.

It was later determined that Mr. Newton died of a blood clot in his lung. He had no prior history of blood clots, or pulmonary disease. The cases go on and on in State after State.

Some of these cases such as the one brought by Mrs. Huggins' family have

already been filed against Merck. Others are in the works.

But if the victims of Vioxx file suit in New Jersey, because that is where Merck is headquartered, their cases are automatically sent to the State's special mass torts court.

New Jersey is one of those States where the legislature established specialized courts to handle certain types of cases. The courts in New Jersey have the authority to combine cases. They can consolidate cases. That seems reasonable, when you consider all of the people who will be suing Merck in New Jersey, where they are headquartered, from all over the United States with similar situations as the ones I just described.

What is so outrageous about having a lot of State-based personal injury claims filed separately which are then consolidated as the New Jersey courts can do by their own motion?

But under the mass action language of S. 5, their case and all other similar Vioxx cases will be taken out of the New Jersey special court and removed to a Federal court to be treated like a class action.

Why? If you take a look at the language in S. 5, the fact pattern fits nicely under the definition of a "mass action" to remove the case to Federal court, while at the same time none of the exemptions apply to keep Vioxx cases in State court.

So understand, for those who are arguing that this law we are considering is simply a case of changing jurisdictions in courts and stopping righteous lawyers from filing class action lawsuits, that it is much more.

For Merck, this law is the answer to a prayer. They will take their case out of the State court into a Federal court as a class action, which is less likely to certify the class even though the series of mass tort cases were not even filed as a class action.

That is why I am offering this amendment. My amendment would make two small, narrow, and common sense changes.

First, it would allow State courts to continue to consolidate these individual personal injury cases on their own motion without losing jurisdiction to a federal court under S. 5.

Second, it would also allow courts that consolidate cases not just for pre-trial but all the way through trial or settlement to retain their jurisdiction and not lose it to a Federal court.

My amendment provides parity in the litigation process because one of the exceptions to the mass action definition in S. 5 already provides for defendants to consolidate cases without losing jurisdiction to a Federal court. I think it is important for the court—in addition to the defendant—to have this right as well.

I also think it is important for courts to be able to schedule their own calendar of cases without having to worry whether they would lose jurisdiction over their consolidated cases at certain

phases of litigation. They should not be limited "solely" to the pretrial proceedings.

These two small changes will ensure that mass tort cases involving personal injury claims that are not intended to be affected by S. 5 can continue to remain in State courts throughout the duration of the proceeding. The supporters of this bill claim that is their intent, and I want to make sure the language in S. 5 reflects this purpose.

## AMENDMENT NO. 3

(Purpose: To preserve State court procedures for handling mass actions)

Mr. DURBIN. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 3.

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

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

The amendment is as follows:

On page 20, before the semicolon at the end of line 23, insert "or by the court sua sponte".

On page 21, line 5, strike "solely".

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

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

(The remarks of Mr. ALEXANDER pertaining to the submission of S. Res. 44 are printed in today's RECORD under "Submitted Resolutions.")

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this afternoon the Senate is debating a class action lawsuit bill. This afternoon in Detroit, President Bush said:

Congress needs to pass meaningful class action and asbestos legal reform this year.

My response is, before we pass something, we better understand how it will affect the rights and the lives of everyday, average Americans.

Unfortunately, the bill before the Senate will unfairly tip the scales of justice against average citizens. It will give big businesses even more power to avoid responsibility for their actions and it will delay justice for many victims who deserve justice.

We do not have to look very far to see why average citizens need access to courts. Look at this morning's newspaper from Seattle, WA. It reports that the Federal Government indicted the W.R. Grace Company for knowingly sickening workers and residents of Libby, MT, where hundreds of people have died from asbestos exposure. The indictment charges that the company officials knew of the dangers to workers in the community and created a conspiracy to hide those dangers.

I hope these indictments will bring a small measure of justice to the thousands of people who have suffered in Libby and around the country. These

people worked hard. They provided for their families. But the company they worked for knowingly poisoned them and then covered it up.

The Federal Government is finally going after the company and the executives who made the decisions that put workers and the entire community at risk.

Here is the story from today's Seattle P-I:

Grace indicted in asbestos deaths. Mine Company and seven executives face criminal charges.

Mr. President, I ask unanimous consent that the entire article be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mrs. MURRAY. Mr. President, the story of what happened in Libby, MT, is heartbreaking.

Years ago, when I first heard what happened there, I began a campaign to ban asbestos and to protect its victims. In June of 2002, I testified at a hearing about Libby before the Senate Subcommittee on Superfund, Toxics, Risk, and Waste Management. The people of Libby, MT, have been waiting for this day for a very long time.

This indictment tells companies that they are responsible for their decisions and that human lives are more important than profits. The indictment sends a message that if you are putting workers and consumers at risk, if you try to hide the dangers, you will be prosecuted because at the end of the day, this is not about profits, it is about people.

It is about people such as Gayla Benefield, whom I met last summer. Gayla's father worked at W.R. Grace's vermiculite mine and mill in Libby, MT, from 1954 to 1973. Her father died of asbestosis in 1974. Gayla's mother never worked in that mine, but she was exposed to asbestos fibers on her husband's work clothes. Gayla's mother died of asbestosis in 1996. Gayla herself was exposed to asbestos fibers. Why? Because she hugged her dad when he came home from work. And then, in December of 2001, Gayla and her husband David both were diagnosed with lung abnormalities.

In all, about 37 people in Gayla's family have signs of asbestos disease, and only three ever worked in that mine.

Now, as my colleagues know, for the past 4 years, I have been speaking about the dangers of asbestos and the need to ban it in this country. I have stood up for victims and their families. I have introduced legislation to protect workers, educate the public, and improve research and treatment.

Last year, when Congress considered an inadequate trust fund bill, I stood up for the asbestos victims and voted against it. We still have a lot of work to do to take care of the current victims and to prevent future deaths. That is one of the reasons I am so personally concerned about the class action bill that is now before the Senate.

The bill allows companies to move class action lawsuits from State jurisdiction to Federal jurisdiction. That could delay justice for years. In many cases, victims have already been waiting a long time for their day in court. If their cases are moved to Federal court, they will essentially have to start all over at the bottom of the pile. That is because Federal courts already have a massive backlog of cases. It is one of the reasons the Federal bench opposes this bill.

If class action lawsuits are dumped on to our Federal courts, they will fall to the bottom of the list of priorities. Even if they work their way up to the top of the docket after many years, they will not be resolved quickly because they are such complicated cases.

The bill that is before the Senate now could add years to the amount of time it takes to resolve a case. Unfortunately, asbestos victims do not have time on their side. Once a person is diagnosed with mesothelioma, they usually have only about 6 to 18 months to live. So if companies know, they can just play legal games, they can just wait it out, just move the case and hold things up until the victim dies. If that happens, there is no justice.

For someone with the death sentence of an asbestos disease, justice delayed is justice denied. That is why Congress should reject this class action bill.

There are other ways this bill could deny justice. Companies could just wait until a victim's medical bills or lost wages are so high that the victim is forced into an unfair settlement. Once again, that is because this bill tips the scales of justice against average Americans.

I have focused on asbestos victims, but this class action bill would affect many more types of victims. Anyone with a class action lawsuit could find themselves pushed into Federal court at the bottom of the list. Congress should not delay and deny justice for victims.

As for asbestos victims, we still have a lot of work to do. Each year in this country 10,000 Americans die from asbestos disease—10,000 Americans. The first thing we need to do is ban the production and importation of asbestos in the United States. Do you know that each year in this country we put asbestos into 3,000 consumer products, products that you buy at the store regularly? Hair dryers, floor tile, and automobile brakes—we put asbestos in them in this country today. If we know this is deadly, we should stop putting it in consumer products in America.

Again, later this year, I am going to reintroduce my Ban Asbestos in America Act. The first year I introduced it, we only had four cosponsors. Last session, we had 14. We also made progress, including my ban in the asbestos liability legislation that was considered by the Judiciary Committee. My ban is also included in Senator SPECTER's most recent version of that bill.

But we also need to help victims by investing in mesothelioma research

and treatment. And we need to boost awareness of how consumers—that is all of us—and workers can protect themselves.

Today, up to 35 million homes, businesses, and schools have the deadly Zonolite insulation in their attics. People need to know about the danger so they can protect themselves, so they do not go up in their attic and do their work unknowingly exposing themselves to asbestos.

Many employees are still in danger—from construction workers to auto mechanics. And let's not forget that many asbestos victims were exposed to asbestos when they served our country in the military. About 32 percent of asbestos victims happen to be Navy veterans. Many of them worked in the Bremerton Shipyard in my home State of Washington.

The dangers of asbestos are not just limited to Libby, MT, or to military communities; they are everywhere. This Congress needs to address them the right way. Congress should make sure asbestos victims can get the justice they deserve. That is why I will vote against this class action bill. And that is why I am going to continue to fight to ban asbestos and to help the victims in this country.

Mr. President, I yield the floor.

#### EXHIBIT 1

[From the Seattle Post-Intelligencer, Feb. 8, 2005]

#### W.R. GRACE INDICTED IN LIBBY ASBESTOS DEATHS

#### MINE COMPANY AND SEVEN EXECUTIVES FACE CRIMINAL CHARGES

(By Andrew Schneider)

MISSOULA, MONT.—W.R. Grace & Co. and seven of its current or former executives have been indicted on federal charges that they knowingly put their workers and the public in danger through exposure to vermiculite ore contaminated with asbestos from the company's mine in from Libby, Mont.

Hundreds of miners, their family members and townsfolk have died and at least 1,200 have been sickened from exposure to the asbestos-containing ore. The health effects also threaten workers, their families and residents everywhere the ore was shipped, including Seattle, and people living in millions of homes nationwide where it was used as insulation.

Yesterday, on the steps of the county courthouse here, U.S. Attorney Bill Mercer announced the 10-count indictment, alleging conspiracy, knowing endangerment, obstruction of justice and wire fraud.

"A human and environmental tragedy has occurred," he said. "This prosecution seeks to hold Grace and its executives responsible."

"This is one of the most significant criminal indictments for environmental crime in our history," said Lori Hanson, special agent in charge of the Environmental Protection Agency's environmental crime section in Denver.

In a statement released for Grace by a public-relations firm, the company "categorically denies any criminal wrongdoing."

Grace criticized the government for releasing the indictment before providing a copy to the company. "We are surprised by the government's methods and disappointed by its determination to bring these allegations.

. . . We look forward to setting the record straight."

Federal environmental officials began examining the hazards in Libby after Nov. 19, 1999, when the Seattle Post-Intelligencer began publishing a series of stories about what the government has called "the nation's biggest environmental disaster." Within three days of the P-I's first report, an EPA emergency team arrived in the tiny northwestern Montana town.

Present at the announcement yesterday were Libby victims Lester and Norita Skramstad and Gayla Benefield.

Lester Skramstad has asbestosis, as does his wife, Norita, and two of their children. He spoke softly but forcefully, struggling for breath to launch his words into the wind on a blustery winter afternoon. "I've waited a long time for this," he said. "It's a great day to be alive."

If found guilty, the individual defendants face from five to 15 years in prison on each count, which for some of the executives could be as much as 70 years.

Grace could be fined up to twice the profits from its alleged criminal acts or twice the losses suffered by victims. According to the indictments, Grace made more than \$140 million in after-tax profits from the Libby mine, which would mean a fine of up to \$280 million. Alternatively, the court could fine the company twice what it computes the loss to be from more than a thousand Libby victims. In addition, the court could order restitution for the victims.

"This criminal indictment is intended to send a clear message: We will pursue corporations and senior managers who knowingly disregard environmental laws and jeopardize the health and welfare of workers and the public," said Thomas Skinner, EPA's acting assistant administrator for enforcement, yesterday.

The executives charged are Alan Stringer, formerly general manager of the Libby mine and Grace's representative during the government's Superfund cleanup; Henry Eschenbach, formerly director of health, safety and toxicology in Grace's industrial chemical group; Jack Wolter, formerly Grace vice president and general manager of its construction products division; Bill McCaig, also formerly general manager of the mine; Robert Bettacchi, formerly president of the construction products division and senior vice president of Grace; O. Mario Favorito, former Grace general counsel; and Robert Walsh, formerly a Grace senior vice president.

The 49-page indictment accuses Grace of knowingly releasing asbestos into the air, placing miners, their families and townspeople at risk, and of defrauding the government by obstructing the efforts of various agencies including the EPA, increasing profits and avoiding liability for damages by doing so.

#### P-I'S INVESTIGATION

Tens of thousands of pages of internal Grace documents and court papers were the basis of scores of stories in the P-I on Libby and the deadly ore that Grace shipped throughout the world. Those documents show years of extensive communication among Grace's top health, marketing and legal managers and mine officials in Libby about concealing the danger of asbestos in the ore and consumer products that were made from it.

They discussed methods to keep federal investigators from studying the health of the miners, the potential harm to Grace sales if asbestos warnings were posted on its products, and the effort to mask the hazard of working with the contaminated ore.

"The prosecution cannot eliminate the death and disease in Libby," said John

Heberling, a lawyer with McGarvey, Heberling, Sullivan and McGarvey. "But there is comfort in the hope that criminal convictions will say to corporate America . . . managers will be held criminally accountable if they lie and deny and watch workers die."

For years, the Kalispell, Mont., firm has been fighting for damages from Grace on behalf of the families of the dead and the dying from Libby.

#### MINE'S HUGE PRODUCTION

Opened in 1913, the mine is six miles from Libby. Grace bought it in 1963 and closed it in 1990. In its heyday, the mine produced 80 percent of the world's vermiculite. The company still operates smaller vermiculite mines in South Carolina.

Vermiculite, a mineral similar to mica, expands when heated into featherweight pieces that have been used commercially for decades in attic and wall insulation, wallboard, fireproofing, and plant nursery and forestry products. It was also used in scores of consumer products, such as lawn and garden supplies and cat litter.

Exposure to the tremolite asbestos fibers, which contaminate the vermiculite ore, has caused hundreds of cases of asbestosis, lung cancer and mesothelioma in Libby and an untold number at hundreds of other sites across North America where the ore was processed.

Criminal investigators and lawyers from the EPA, the Internal Revenue Service and the U.S. Attorney's offices in Montana often put in 12- to 15-hour days while preparing the case.

Investigators and lawyers from the Justice Department and the EPA's headquarters also assisted. The haste was required because prosecutors were up against a five-year statute of limitation, based on the arrival of the first federal team in Libby after the P-I stories. They gained a three-month extension of that limitation.

#### A TROUBLED PAST

The EPA said that over the years it had filed several complaints against Grace over the company's environmental practices. The only previous criminal charge against the Columbia, Md.-based corporation was in the mid-'80s. Grace was indicted on two counts of lying to the agency about the quantity of hazardous material used in its packaging plant in Woburn, Mass. In 1988, the company pleaded guilty to one count and was fined \$10,000, the maximum at that time. The charges were brought after Grace and another company were sued after being accused of illegally dumping toxic chemicals, contaminating two wells and, some believe, resulting in the deaths of five children from leukemia. Grace paid the families \$8 million to settle the suits. The book and movie "A Civil Action" were based on the Woburn case.

Grace, which produces construction materials, building materials and packaging, filed for Chapter 11 bankruptcy protection in 2001 because of the "sharply increasing number of asbestos claims," Paul Norris, Grace's chairman and CEO, said at the time.

May 2002, the Justice Department intervened in Grace's bankruptcy, the first time it had entered such a case, alleging that before Grace filed for Chapter 11, it concealed money in new companies it bought. Justice Department lawyers said Grace's action was a "fraudulent transfer" of money to protect itself from civil suits.

In November of that year, just before the trial was to begin, the St. Louis Post-Dispatch reported that the companies returned almost \$1 billion to the bankruptcy judges holding Grace's assets. Grace is far from out of business. Norris said the company has annual sales of about \$2 billion, more than 6,000

employees and operations in nearly 40 countries.

Mercer refused comment on whether there would be more indictments from other locations where Grace had operations. Hanson said she had been discussing the investigation with her counterparts in EPA regions throughout the country.

Libby victim Benefield said yesterday that as she watched the announcement of the indictments, her thoughts were with her parents, Perley and Margaret Vatland, both of whom died of asbestosis. She wore on her coat a costume-jewelry pin her mother, who sold Avon products, bought from Avon for herself.

"Somewhere today they're smiling," she said, fingering the pin. "I just know it."

#### ONLINE

Read *Uncivil Action*, the P-O's award-winning coverage of the deadly legacy of asbestos mining, beginning with a November 1999 story about hundreds dead or dying in Libby, Mont.

Mrs. MURRAY. 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. GRASSLEY. 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. GRASSLEY. Mr. President, we are in our second day of debate on the important Class Action Fairness Act of 2005. Because of my responsibilities as chairman of the Senate Finance Committee, I have not had a chance to participate in the debate of a bill that I have been the sponsor of going back to the 105th Congress. It is a pleasure for me to participate and anticipate the passage of this legislation.

It is about time that the Senate gets this bill done and gets it to the President. Of course, I am very pleased that Majority Leader FRIST sees this as an important enough issue to move so early in the 109th Congress. I also thank Chairman SPECTER, as new chairman of the Senate Judiciary Committee, for getting this class action bill through committee so very quickly. I hope we can move expeditiously with few or no amendments, pass this bill, and have the President sign it, which we are sure he will.

My colleagues will recall that in the 108th Congress, Senator FRIST brought the class action fairness bill to the floor in October 2003, but we were not able to proceed to the bill. We lost the vote on cloture on the motion to proceed by just a one-vote margin; in other words, 50 votes as opposed to the 60-vote supermajority that cloture takes.

After that vote, I worked with Senator HATCH, who was then chairman of the Judiciary Committee, and our lead Democratic cosponsors, Senators KOHL and CARPER, to modify the bill to address concerns that were raised by three Senators and maybe others, but I remember specifically Senators DODD, LANDRIEU, and SCHUMER. Then we reintroduced the Class Action Fairness

Act in February 2004 as a new bill with a new number, S. 2062. It contained the compromise language that we worked out with Senators DODD, LANDRIEU, and SCHUMER. Senator FRIST then attempted to bring up the bill last July. Unfortunately, we were once again denied the ability to close debate on the bill, and we lost, again, a cloture vote. This was because Senators wanted to offer nongermane amendments—amendments, as you know, Mr. President, that have absolutely nothing to do with the subject matter of the underlying bill. This was particularly disappointing to me after all of the hard work we had done to reach an acceptable compromise with several Democrats. We could have passed the bill in the 108th Congress, but raw politics got in the way.

Now is the time to get this bill done. We have reintroduced the language contained in last year's bill, a compromise worked out with Senators DODD, LANDRIEU, and SCHUMER. That is what is now before us in S. 5, the very same bill. We made no changes to last year's bipartisan compromise. So I hope we can stop having politics interfere with this bill and pass what is a relatively modest bill that will help reform a class action regime that has gotten to be very bad, which ends up most of the time serving no one except the lawyers who bring these class action suits.

I would like to give some background on the need for this very important legislation. Everyone has heard about the abuses going on with the current class action system. These problems undermine the rights of both plaintiffs and defendants. Class members often do not understand what their rights are in a class action suit, while the class action lawyers drive the lawsuits and the settlements. Class members cannot understand what the court and the settlement notices say because they are in very small type and written in hard-to-understand legalese. So class members often do not understand their rights and they don't understand the consequences of their actions with respect to the class action lawsuit in which they are invited to participate.

Moreover, many class action settlements only benefit the lawyers, with little or nothing going to the class members. We are all familiar with the class action settlements where the plaintiffs got coupons of little value, or maybe no value, and the lawyers got all of the money available in the settlement agreement. So what is the point of bringing a lawsuit? I thought it was to find redress for the plaintiffs and not to benefit the lawyers who bring the case. But that is what happens many times now in these class action lawsuits. The lawyers drive those cases, not the individuals who allegedly have been injured. The lawyers are the ones who get the millions and millions of dollars in fees while the people who allegedly have been injured get worthless coupons.

In addition, the current class action rules are such that the majority of large nationwide class actions are allowed to proceed to State court when they are clearly the kinds of cases that should be decided in Federal Court. The U.S. Constitution provides that cases involving citizens of two different States and an amount of controversy of \$75,000 can be heard in Federal Court. However, the law has been interpreted in such a way that class action lawsuits; that is, cases involving large sums of money, citizens of many different States, and issues of national concern, have been restricted to State courts even though they have national consequences. Crafty lawyers game the system. Crafty lawyers file these large class actions in certain courts. They are shopping for magnet State courts, and they are able to keep them there.

For example, in Madison County, IL, the most notorious class action magnet State court, which has been called a "judicial hellhole," class action filings have jumped from 77 in 2002 to 106 in 2003. I understand that Madison County has had an increase of over 5,000 percent in the number of class action filings since 1998. That surely says something. Clearly, the judges there are playing somewhat fast and loose with the class action rules when they are deciding whether to certify a class action lawsuit. So unscrupulous lawyers are gaming the present rules to steer their class action cases to these certain preferred State courts, such as Madison County, IL, where judges are quick to certify classes, quick to approve settlements, with little regard to the class members' interests or the parties' due process rights. Of course, that is the reason for this legislation. We need to do something about this kind of abuse of the judicial process.

Class action lawsuits at least should have the opportunity to be heard in Federal court because usually they are the cases that involve the most amount of money, citizens from all across the country, and issues of nationwide concern. Why should a State court be deciding these kinds of class action cases that impact people all across the country? Of course, that just doesn't make sense to me; hence, the authorship of this legislation. I hope it doesn't make sense to at least a majority of my colleagues.

Both the House and Senate held numerous hearings on this legislation and on other kinds of class action abuse. We heard about class lawyers manipulating case pleadings to avoid removal of a class action lawsuit to Federal court, where it should be, claiming that their clients suffered under \$75,000 in damages in order to avoid the Federal jurisdictional amount threshold.

We heard about class lawyers crafting lawsuits in such a way to defeat the complete diversity requirement by ensuring that at least one named class member was from the same State as one of the defendants even if every other class member was from one of the other 49 States.

We heard about attorneys who filed the same class action lawsuit in dozens of State courts all across the country in a race to see which judge would certify the fastest and the broadest of class.

We heard about class action lawyers entering into collusive settlements with defendant attorneys which were not in the best interest of class members.

These are only a few of the gamesmanship tactics lawyers like to utilize to bring down the entire class action legal system. The bottom line is that many of these class actions are just plain frivolous lawsuits that are cooked up by the lawyers to make a quick buck, with little or no benefit to the class members who the lawyers are supposed to be representing.

Out-of-control frivolous filings are a real drag on the economy. Many a good business is being hurt by this frivolous litigation cost. Unfortunately, the current class action rules are contributing to the cost of business all across America, and it particularly hits small business because it is the small business that gets caught up in the class action web without the resources to fight.

Too many frivolous lawsuits are being filed. Too many good companies and consumers are having to pay for this lawyer greed. Make no mistake about it, there is a real impact on the bottom line for many of these companies and, to some extent, on the economy as a whole. They have to eat this increased litigation cost or else it is farmed out to consumers, such as you and me, and this is all in the form of higher prices for goods and services we buy.

This is unacceptable, and we need to do something about this. We need to restore some commonsense reform to our legal system. We need to restore common sense to the class action system. We should pass this bill.

I now wish to say something about class action lawsuits. They can be a very good tool for many plaintiffs with the same claims to band together to seek redress from a company that has wronged them. I am not against the use of class action lawsuits, and neither are other supporters of this bill. We are not here to put a stop to the class action tool.

I certainly know my friend and original cosponsor of this bill, Senator KOHL, feels the same as I do. People who have been injured should be able to sue companies that do not follow the law. Our problem is many class actions are not proceeding in the way they were originally intended.

Our problem is many of these lawsuits are not fair and violate the due process rights of both plaintiffs as well as defendants.

Our problem is many times these lawsuits are not helping the class members at all. They are an effective tool for lawyers to make a big, easy buck.

Our problem is these kinds of suits should have an opportunity to be heard

in Federal court, not stuck in a magnet court in a county that has no connection whatsoever to the case. That is why Senator KOHL and I joined forces several Congresses ago—this is the fifth Congress this bill has been around for us to try to do something about this situation. That is a period of 8 years past and 10 years including this Congress—to do something about the problems we were seeing and about the runaway abuses.

The Class Action Fairness Act will address some of the more egregious problems with the class action system while preserving class action lawsuits as a very important tool which brings representation to the unrepresented.

Let me underscore for my colleagues that S. 5 is a very delicate compromise. As my colleagues already know, this bill has gone through many changes to accommodate Democratic Senators, much to the frustration of some of my Republican colleagues who think we have gone too far.

I worked in good faith with these colleagues on the other side of the aisle to bring people together and to address valid concerns to increase support for this bill, most importantly to, hopefully, have 60 votes on board, the supermajority it takes to bring a halt to debate, to get to finality, to get this bill passed, to get it to the House where we are told it will pass if we do not change it, and go to the President very quickly.

I did not think then that we needed to make any changes to the class action bill that was originally introduced several Congresses ago, but as compromise is often necessary in this process if I wanted to move the class action bill forward, I did my best to listen to the issues raised and to make modifications to the bill where there was room for that compromise.

Nevertheless, with all the compromises we cut, S. 5 still retains the goal we set out to achieve: to fix some of the most egregious problems we are seeing in the class action system and to provide a more legitimate forum for nationwide class action lawsuits.

The deal that was struck is a very carefully crafted compromise that does not need to be modified any further. So I am asking my colleagues to withhold the offering of amendments to avoid disrupting the balance we have achieved.

My colleagues should not be fooled. The amendments that are going to be offered are an attempt to weaken or gut the bill. Some amendments may sound reasonable, but they pose a problem in the other body. Other amendments may sound good, but they do not have anything to do with class action reform. Other amendments are, plain and simple, poison pills.

We have worked far too long and we have worked far too hard to have this bill come down because folks are misled into supporting an amendment that in reality perpetuates the problem and preserves the status quo.

We have worked far too long and too hard to have this bill delayed and complicated with amendments that the House will never accept.

We have also worked far too long and far too hard to have this bill bogged down by amendments that are not critical to the core purpose of the legislation.

So then let's get this bill past the finish line, not create more hurdles and obstacles. I ask my colleagues to vote against the amendments and keep the bill clean. How often do we in this body, the Senate of the United States, have the respect the House is giving us by saying if this bill is not changed any more, they will buy it the way it is? That happens once in a decade. We ought to take advantage of it.

I would like to highlight, before I sit down, some of the changes we made to the bill to increase support for this bill since Senator KOHL and I introduced the first Class Action Fairness Act in the 105th Congress, now 8 years ago.

The bill, as was originally introduced, did several things. It required that notice of proposed settlements in all class actions, as well as all class notices, be in clear, easily understood English and include all material settlements, including amounts and sources of attorney's fees. Since plaintiffs give up their right to sue, they need to understand the ramifications of their actions and should not have to hire another attorney to find out what these notices mean.

Then our bill required that State attorneys general or other responsible State government officials be notified of any proposed class settlement that would affect the residents of their States. We included this provision to help protect class members because such notice would provide State officials with an opportunity to object if the settlement terms are unfair to their citizens.

Our bill also required that courts closely scrutinize class action settlements where the plaintiffs only receive coupons or noncash awards while the lawyers get the bulk of the money.

It required the Judicial Conference to report back to the Congress on the best practices in class action cases and how to best ensure fairness of these class action settlements.

Finally, the bill allowed more class action lawsuits to be removed from State court to Federal court. The bill eliminated the complete diversity rule for class action cases but left in State courts those class actions with fewer than 100 plaintiffs, class actions that involve less than \$5 million, and class actions in which a State government entity is the primary defendant.

Our bill still does many of these things, but we have made a number of modifications to get this bipartisan support.

In the Judiciary Committee in the 108th Congress, we incorporated Senator FEINSTEIN's amendment which would leave in State court class action

cases brought against a company in its home State where at least two-thirds or more of the class members are also residents of that State.

We also incorporated changes to address issues raised by Senator SPECTER relative to how mass actions would be treated under this bill. In our negotiations and outside the committee with Senators SCHUMER, DODD, and LANDRIEU, we made numerous changes, so I will only mention a few of the more important compromises we reached.

For example, we made changes to the coupon settlement provisions in the bill providing that attorney's fees must be based either on the value of the coupons actually redeemed by class members or the hours actually billed in prosecuting the case. We deleted for these Senators the bounties provision because of a concern that it would harm civil rights plaintiffs.

We deleted provisions in the bill that dealt with specific notice requirements because the Judicial Conference had already approved similar notice arrangements to the Federal Rules of Civil Procedure.

To address questions about the merry-go-round issue, we eliminated a provision dealing with the dismissal of cases that fail to meet rule 23 requirements so that existing law applies.

We deleted a provision allowing plaintiff class action members to remove class actions to Federal court because of gaming concerns. We placed reasonable time limits on the appellate review of remand orders in the bill. We clarified that citizenship of proposed class members is to be determined on the date the plaintiff filed the original complaint or when plaintiffs amend the complaint.

We made further modifications to the FEINSTEIN compromise already referred to and to the mass action language Senator SPECTER was concerned about. We clarified that nothing in the bill restricts the authority of the Judicial Conference to promulgate rules with respect to class actions.

Finally, we drafted a new what is called local class action exception, which would allow class members to remain in State court if, one, more than two-thirds of the class members are citizens of this forum State; two, there is at least one in-State defendant from whom significant relief is sought by members of the class and whose conduct forms a significant basis for the plaintiffs' claims; three, the principal injuries resulting from the alleged conduct or related conduct of each defendant were incurred in the State where the action was originally filed; and, four and lastly, no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding 3 years.

We did all of this to ensure that truly local class action cases, such as a plant explosion or some other localized event, would be able to stay in State

court. So we have made significant concessions to get our Democratic colleagues on board this Class Action Fairness Act. Of course, some of my Republican colleagues feel we have made too many compromises. But these folks on the other side of the aisle have been telling us that they are ready to support the bill and get it passed, so the time has come that hopefully no more politics are played, that we get down to business and we get this bill done. It is time to make real progress on a class of lawsuits that has become burdensome for business, not beneficial to the plaintiffs, and enriching of attorneys.

If we do that—and we do that when we pass this bill—again I want to remind my colleagues that we have crafted a carefully balanced bill that consists of a number of compromises and some would say too many compromises. I think we have done a pretty good job of addressing legitimate concerns with the bill and I am hopeful we will not see a lot of amendments to disrupt this compromise. I am hopeful my colleagues will join me and vote against all killer amendments that gut or weaken the bill. I am hopeful my colleagues will join me and vote against poison-pill amendments that the House will never accept.

All of these amendments need to be defeated because we should send a clean bill to the House. All of our hard work on forging a bipartisan compromise bill should not go down the drain.

The bottom line is this class action reform is badly needed. Both plaintiffs and defendants alike are calling for change. The Class Action Fairness Act will help curb the many problems that have plagued the class action system. S. 5 will increase class members' protection and ensure the approval of fair settlements. It will allow nationwide class actions to be heard in a proper forum, the Federal courts, but keep primarily State class actions where they belong, in State court. It will preserve the process but put a stop to the more egregious abuses. It will also put a stop to the frivolous lawsuits that are a drag on the economy.

Now that we have worked together on a very delicate compromise, we should be able to get this bipartisan bill done without changes.

I see another person who has worked very hard on this bill has come to the Chamber and that is Senator CARPER of Delaware. There is no person who has been more determined to get this bill passed and get it passed in a bipartisan way, and I appreciate very much the cooperation he has given us over the last year but, more importantly, in a time when I have been involved with a lot of issues other than class action, he has kept me focused on this bill that I want to get passed, and he has helped me get the job done. I thank Senator CARPER as well as other Democrats who have helped in this process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, before Senator GRASSLEY leaves the floor, I simply want to say how much I have enjoyed and appreciated the opportunity to work with him on this issue. If we go back 7 years when this idea first took legislative form and look at the changes that have occurred over each of the last three or four Congresses, they have been dramatic.

My goal, and I believe it is a goal many of us share who support the legislation, is to make sure that when what I term little people are harmed by the actions of big companies or small companies, those little people have a chance to aggregate together and be made whole. I think we agree on that principle.

We want to make sure the companies that do something that is wrong or that are contemplating an action or behavior that is inappropriate or wrong, that they know if they get caught, they will pay a price, and class actions can help catch them at that and make sure they are put on notice. I think that is a principle on which we all agree.

A third principle is to make sure the defendant companies, if they are called on the carpet, can go to a court where they have a fair chance of defending themselves and presenting their case.

The last one is to try to do all of this in the context of not needlessly overburdening the Federal judiciary.

It is tough to balance all of those different principles, but I think on the legislation the Senator has authored and that some of us have been privileged to work with the Senator to help shape, we have come close to realizing those principles.

I wanted to say a special thanks to the Senator for his willingness to work with people on both sides of the aisle, to hear us out, to hear our ideas, and be willing to accept a number of the ideas we have put forward. My hope is at the end of this week we will have passed that legislation. It is a delicate compromise and balance and, God willing, our friends in the House of Representatives will accept that and the President will sign it into law.

I thank the Senator.

Mr. GRASSLEY. I thank my colleague from Delaware, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DORGAN. Mr. President, I ask unanimous consent that I be able to speak for as much time as I consume in morning business.

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

## THE TAX CODE

Mr. DORGAN. Mr. President, something is happening in our Tax Code that very few people understand, and I wanted to call it to their attention.

There is something going on called repatriation, which is a \$2 word that probably people won't understand. But I want to explain it.

Repatriation is a process by which U.S. companies that have moved some operations overseas, begun to manufacture and sell products overseas and made income overseas, are able to bring their profits back into this country.

When an American corporation makes a profit as a result of selling overseas, or producing overseas—we have something in this country called deferral in our tax law. It says you can defer paying taxes on your foreign profits as long as you don't bring them back into this country. But when you bring them back—which is called repatriation—then you must pay taxes like everybody else does.

Let's take Huffy bicycle company, for example. The Huffy bicycle company made bicycles for almost 100 years in this country. They sold them in Wal-Mart, Sears, and Kmart. Huffy then shut down their plants in the United States, and got rid of their workers. Today Huffy bicycles are still sold in the United States but they are made in China for roughly 30 cents or 40 cents an hour labor by people who work 7 days a week, 10 to 12 hours a day. The company decided they should actually manufacture their bicycles in China and presumably make more money.

What happens to that income? We have a perverse and insidious provision in our tax law that says, shut your manufacturing plant, move those jobs overseas, and we will give you a deal. You don't have to pay taxes on the profits that you once made in the United States when you made that bicycle or the Radio Flyer little red wagon, which is now made in China, or the Newton cookies, but now earn on the same products made overseas until you bring those profits back to the United States. Only then do you have to pay taxes. That is the deal.

Whenever companies defer their tax obligation, they understand that when they repatriate the income to the U.S., they are going to have to pay taxes. But they got a special deal, as is always the case, it seems.

Last year a bill was passed with a tiny, little provision which was very controversial. I opposed the provision, but it got passed. The special deal is that the repatriation of income back into this country now by companies that earned that income overseas—in some cases by moving their American jobs overseas—now get to pay taxes at the 5¼ percent tax rate.

What prompts me to come to the floor to talk about this, despite the fact I opposed this last year, was a New York Times article that says, "Hitting the Tax Break Jackpot."

Let me quote a part of it.

When Congress passed a one-time tax break on foreign profits last fall, lawmakers said their main purpose was to encourage American companies to build new operations and hire more workers here at home. But as corporations are gearing up to bring tens of billions of dollars back to the United States this year, adding jobs is far from their highest priority. Indeed, some companies say they might end up cutting their workforces here in the U.S.

Hewlett-Packard, which has accumulated \$14 billion in profits and lobbied intensely for the tax break, announced January 10 that it would continue to reduce its workforce this year. That would come on top of more than 25,000 jobs eliminated during the previous 3 years.

We have a provision in tax law now that says to these companies that have earned this money overseas, you deferred taxes on them previously, now you are going to bring them back. We encouraged them to bring them back. And, by the way, while all the other American people are working and paying income taxes—and, yes, those at the bottom of the ladder who pay income taxes pay the lowest rate of 10 percent but it is 10 percent, 15 percent, up to 35 percent, despite the fact everybody else is going to pay a higher rate of taxes—you repatriate those profits, and we will allow you to pay an income tax rate of 5¼ percent.

There was a Governor of Texas named Ma Ferguson. Ma Ferguson became Governor of Texas, I believe, when her husband died. As Governor of Texas, Ma Ferguson got involved in a very controversial issue dealing with some sort of initiative in Texas about English only. She held a press conference. She held up a Bible. She said: If English is good enough for Jesus, it is good enough for Texas.

She didn't quite understand, I guess. But the good enough concept is something we all talk about here. If the 5¼ percent income tax rate is good enough for the biggest corporations in this country that have moved jobs overseas, and now bring profits back and get to pay 5¼ percent, why is it not good enough for the Olsens, Johnsons, and the Larsens? Those are names from my hometown. Why is it not good enough for the people living down the street, or up the block, or on the farm who may pay multiples of this tax rate?

Let me show a chart. These companies aren't doing anything wrong. These companies are simply going to benefit handsomely from what this Congress did for them—to say to them: By the way, we will give you a very special deal. This is Exxon Mobil, IBM, Hewlett-Packard, Pepsi-Cola, and so on—unpatriated foreign earnings totaling tens of billions of dollars. And they get to pay income taxes at 5¼ percent. That sounds like a sales tax, doesn't it? That sounds like a sales tax and not an income tax. But do average folks get to pay an income tax at 5¼? No. Nobody else does.

It kind of reminds me Tom Paxton's old song. He seemed to be able to say it in kind of a simple way. He got all ex-

cited—this folksinger—when the Congress gave a big, old loan to Chrysler Corporation. So he wrote a song saying, "I'm Changing My Name to Chrysler."

Oh the price of gold is rising out of sight, and the dollar is in sorry shape tonight, what a dollar used to get us now won't get a head of lettuce. No the economic forecast isn't bright.

He says:

I'm changing my name to Chrysler. I am going down to Washington, DC, I will tell some power broker, "What you did for Iacocca would be perfectly acceptable to me."

Maybe he would want to write a couple more verses. Maybe he would like to pay income taxes at 5¼ percent. Maybe every citizen of my home State of North Dakota would like to be able to pay a 5¼ percent income tax rate.

If it is good enough for Exxon Mobil, why isn't it good enough for my citizens, or good enough for all the citizens of this country?

This was done last year with very little debate; just stuck in a big old bill and says it is going to create jobs. Let us give a special deal to some big old economic interests. Nobody will care and nobody will know.

Now we see the result—hitting the tax break jackpot. Those who are going to get the biggest benefits as a result of the generosity which I think has probably not ever been given before. All of these companies expected that the profits they earned overseas would be taxed at the regular tax rate when they brought the profits back. That is what they were told. That is what the deal was. That is what the deferral was in the Tax Code.

Guess what. They got a big old fat tax break unlike any that is given to any other American citizen. They get to pay 5.25 percent.

By the way, they boast that they would be creating jobs and that now appears not to be true. Some of the same companies that moved their American jobs overseas to boost foreign profits now get a special deal back home to pay lower taxes than virtually any other American citizen.

Congress ought to hang its head and maybe Tom Paxton ought to write another song: If it is good enough for Hewlett-Packard and good enough for Exxon Mobil, it ought to be good enough for constituents who live up the block and down the street and on the farm in this country.

Enough about that. These things happen behind closed doors with little debate and great complexity and people do not understand. Somehow at the end of the day it is always kind of the cake and crumbs approach to public policy: The big interests get the cake; the little folks get the crumbs and hope everyone is happy and nobody debates too much about it.

## SOCIAL SECURITY

There is a lot of this influence in the Social Security debate. I will talk for a moment about that. I also will talk about the budget that was offered yesterday. The Social Security debate is

an example of this strange approach to public policy.

Social Security was created in 1935. The first monthly benefit was paid in 1940. Social Security has lifted tens of millions of senior citizens out of poverty. Fifty percent of America's elderly were living in poverty when Social Security was enacted. Today it is less than 10 percent.

The fact is, Social Security works. It has been a Godsend for a lot of people who reach retirement age. Social Security is the one dependable source of income they know will be there. It is the social insurance that they have paid for over all the years when they worked. Social Security includes not only old-age retirement benefits but also provides disability and survivor benefits. It is the one piece of that social insurance that workers knew would be there, and it has always been there.

Now, in 1983, a commission said, when the baby boomers retire, they will hit the retirement rolls like a tidal wave.

After the Second World War, the soldiers came home. We have all seen the pictures. We beat back the oppression of Hitler and Nazism. What a wonderful time. There was a great outpouring of romance and affection when the soldiers got home. We had the biggest baby crop in the history of the world. We had a lot of babies. Those GIs came home; they had families; they raised families; they built schools; they created jobs; they went to college on the GI bill. They built this country.

There comes a time, then, when the baby boomers will retire and we have a strain on the Social Security system. So we decided to save for that. This year, for example, we collected Social Security taxes from worker paychecks—\$151 billion more than needed to pay out current Social Security benefits. We are doing that every year. This will help grow Social Security trust assets to over \$5 trillion by 2018.

The President said the other night something that is not right or not accurate. He said, in the year 2018, the Social Security system will be paying out more than it takes in. That is just flat wrong. Our colleague, Daniel Patrick Moynihan, once said everyone is entitled to their own opinion but not everyone is entitled to their own set of facts.

In the year 2018, the Social Security system will be taking in taxes from paychecks as well as a substantial amount of interest that will exist on the Treasury bonds that have been accruing over these many years in the Social Security trust. This interest, along with the tax collected from paychecks, will far exceed that which is necessary to be paid out. It is the year 2042 or 2052, according to either the Social Security actuaries or the Congressional Budget Office, where we hit the point we can no longer pay full benefits. It is not bankrupt at that point, but unless we make some adjustment, we cannot pay full benefits.

The President's proposal for private accounts, however, anticipates a level of investment return on private accounts that, if realized, means the economic growth in the country would put Social Security in a position where it would not have a problem at all for the long term. With that kind of economic growth as projected by the President, there will be no problem in Social Security. It will meet its obligations over the long term.

But we have a circumstance now where the President and Administration official say Social Security is in crisis, it is bankrupt, it is flat bust, depending on whom you listen to. The purpose of using that language is to convince people there is a very serious problem here. There may need to be some adjustments because people are living longer, better, and healthier lives. But there is not a crisis that justifies taking the Social Security system apart, which is what the President proposes to do.

He proposes several things, none of which he talks about but all of which are part of his plan: First, borrow a great deal of money, from \$1 to \$3 trillion. Second, change the indexing in Social Security and cut benefits. Under his plan, you are borrowing money, cutting benefits, investing the borrowed money in the stock market, and hoping in the end it comes out all right.

All the indications I have seen, whether from the Congressional Budget Office or the Brookings Institution or others, say that workers will come out further behind, not ahead, as a result of this plan.

The question, What should we do, is answered, we preserve, protect, and strengthen Social Security. This program works. It is probably true that almost none of those who are proposing these changes—borrowing money and putting it in private accounts and taking the Social Security system apart—will ever have to worry about Social Security. Almost all of them will have sufficient assets to not be too worried about Social Security for themselves. But there are a lot of people in this country who do worry about Social Security. It has always been there and can always be there as part of the social insurance that represents the foundation of retirement security.

Retirement security has two parts. One part is the guaranteed insurance on which we pay premiums in the form of taxes every month from our paychecks. That is always there. The second part in retirement security is private investments, 401(k)s, IRAs, and others. I support that. I believe we ought to do even more to incentivize private investments. But we should do that without taking apart the Social Security Program.

#### THE BUDGET

Now, finally, I mention the budget. The budget offered yesterday is a budget that has a great many controversial issues. All Members would agree we

have the largest deficits in the history of this country. This country is way off track in fiscal policy. It needs to be put on track. It is not just fiscal policy. Fiscal and trade policy, between them, contributed somewhere between \$1 to \$1.2 trillion in debt just in the last year. That is unsustainable. You cannot continue to do that.

The trade deficit we will know on Thursday of this week, but the trade deficit is somewhere around \$600 to \$700 billion—just in the past year. The fiscal policy budget deficit is somewhere around \$560 billion. This country cannot continue to do this. It is off track.

We have to put it on track.

The budget that was offered yesterday claims that we will have a budget deficit this year of roughly \$427 billion. The fact is that figure takes the Social Security tax money we are supposed to be putting into Social Security and uses it to make the deficit look smaller. The real budget deficit for the current year is expected to be about \$587 billion, and although that is the real deficit, that does not include the costs of Iraq, Afghanistan, and prosecuting the war because the President does not include that in the budget. Why? Because he says we do not know what it will cost despite the fact we have known for a long while it is costing at least \$5 billion a month. He is now saying, I want you to approve an extra \$80 billion in emergency funding. So we have roughly a \$580 billion out-of-balance budget that does not even include the extra money that is necessary that the President knows he will ask Congress to spend on Iraq and Afghanistan and the military budget.

You could get a much better grip on what all this costs by taking a look at the numbers in his proposed budget dealing with gross debt. He is proposing about a \$677 billion increase in gross federal debt next year versus this year. So that is the real measure of how much we are spending that we do not have—a \$677 billion increase in gross debt.

Now, we know we have to tighten our belt. There are some things in the budget I agree with, some I do not. I do not agree that, for example, we ought to shut down Amtrak except for the east coast. That is what the President wants to do. I do not support that. I think rail passenger service strengthens this country and it is good for this country.

I do not agree that we should cut back on Indian tribal colleges. It is the one step up and out of poverty and toward hope and opportunity that has been remarkably successful. I could go through a list of things where I might disagree.

On the spending side, I do not agree with the President that we ought to begin building earth-penetrating, bunker-busting, designer nuclear weapons. What on Earth is that about? Spending money to build more nuclear weapons? Bunker busters? I do not understand that. Not only is it the wrong

message for the world, it is spending money we do not have on things we do not need.

Let me give you an example of a little program in this budget that we have spent almost \$200 million on over the years. It is Television Marti. It is this country deciding to send television signals to the Cuban people to tell them how good things are outside of Cuba. Well, I visited Cuba. The Cuban people know how good things are outside of Cuba. That is why they try to escape Cuba.

It is interesting, we spend all this money on Television Marti to broadcast into Cuba. We do it through Aerostat balloons, and now we do it with a sophisticated C-130 airplane, which is very expensive. And guess what. No Cubans see the television broadcasts. Oh, we broadcast. We have expensive studios and expensive people, and we have balloons, and we have airplanes, and we broadcast these television signals to the Cuban people. And the President wants to double the money for it, despite the fact that all those signals are jammed and the people do not see the broadcasts. I do not understand that.

What on Earth could they be thinking about? They are going to double funding for the broadcasting signals into Cuba that are jammed and that the Cuban people cannot see. In fact, one of the reasons he wants to double funding is he wants to buy another airplane for this program. So you talk about waste, it is unbelievable.

I think the most important point to make about the budget, however, is it is time for Republicans and Democrats, for the President and the Congress, to level with the American people. We have a fiscal policy that is reckless, is way out of control and is completely unsustainable. You cannot spend \$677 billion that you do not have—not next year, not last year, not the year after next. You cannot have a trade deficit that is wildly out of balance. And you cannot have a Tax Code that incentivizes shutting down American factories and sending American jobs overseas. You cannot keep doing these things.

There are some who take a look at this place, and they see a bunch of windbags in blue suits, I suppose. They think we just talk, and occasionally, when the lights go out, we pass something like a 5.25 percent special tax break for the biggest economic interests.

The American people deserve for us to be serious about fiscal policy, about trade policy and about tax policy, and for us to begin to put together a plan to put this country back on track. It is not all the fault of one side or the other. But if both sides do not pull in the right direction, this country cannot provide economic health and opportunity and growth in the future.

What is happening in this country no one on this floor recognizes because no one in the Senate has lost a job because of outsourcing; no one here has

lost a job because their plant was closed.

Let me again say, as I conclude, the people who worked for Huffy Bicycles know what that is like. The people who worked for Schwinn Bicycles know what that is like. The people who worked for Fig Newton know what that is like. The people who worked for Levi Strauss know what that is like. The people who made T-shirts and shorts for Fruit of the Loom know exactly what that is like. They all lost their jobs because they cannot compete with people who are willing to work for 30 cents an hour overseas. The employers have found a billion people on this Earth who are willing to do it. And they will not only work for 30 cents an hour, you can put them in factories and dump sewage and dump chemicals into the air and water. You can work them 7 days a week, and if they decide to create a union, you can fire all of them, just like that.

If this country does not get serious about stemming the outmigration of jobs and about stemming the hemorrhaging of red ink in international trade in our trade deficit and dealing with our fiscal policy and budget deficit, our economic future is not going to be a bright future.

We have far too much promise as a country to let this happen to us. We need leadership, yes, from the White House, and from Congress, to deal with serious things in a serious way. I hope that happens soon. I want to be a part of a group that is bipartisan that says let's put this country back on track. But I see precious little evidence of bipartisanship these days. The minute you stand and talk about the facts, all of a sudden you are being excessively partisan, and the White House comes after you; to wit, the story yesterday about the RNC and what they have decided to do with respect to Senator REID.

Well, there is a lot at stake in this Congress and this President getting it right for a change: on budgets, on trade, on taxes. And I, for one, hope we can begin a serious discussion about serious issues in the days ahead and give people some hope that their future will be a brighter and better future.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to speak about the Class Action Fairness Act. It is the pending business before the body today. I want to spend a few minutes talking about this bill and talking about it in the context of some of the issues that the prior speaker has spoken about, the Senator from North Dakota, whom I have worked with on a number of issues over time. We agree on some issues; we disagree on some. We hopefully are going to be able to work together on a number of these issues.

I view this bill as a chance for us to grow the economy, as a chance for us to do something to create jobs and op-

portunities. We may disagree on what are the various issues and what we need to do to create those jobs, to address issues for people who have lost work in a certain area, and to create them in another area. But what we are dealing with in this class action reform bill, this Class Action Fairness Act—I serve on the Judiciary Committee; we passed this bill out on a bipartisan vote in the Judiciary Committee—is to try to deal with the legal system that is putting too much burden on business so that it cannot create jobs here, and so then those jobs and economic opportunities go somewhere else.

It was a bipartisan vote coming through the Judiciary Committee. If you look at the membership on that committee, you can see these are dedicated people from both sides of the aisle. But they look at this issue, and they say, here is a chance for us to reform a system, create growth and opportunity, create fairness within the country, within the system.

That is the overall way we ought to be going. That is what we ought to be doing. That is why this is one of the lead substantive bills coming from the Senate right now. That is why we are hopeful of keeping it amendment free, so we can get it through the House, passed, and on to the President, so the American people can see some product, and they can see us dealing with a problem that they believe is there: too much litigation, litigation where it is not fair, litigation in ways that tend to help lawyers more than helping people—lawyers are people, but tending to help the lawyers who are bringing the case more than the people who are supposed to be attracted and dealt with in the case and in the class.

The prior speaker spoke about a number of different problems we have. The budget deficit, clearly that is an issue. Clearly that is a problem for the country. Clearly, that is something the President puts down a mark to try to correct. I think the President is right on moving to cut the deficit in half in 5 years. I think we need to go further and balance in 7 years.

Now, you say, well, wait a minute, how are you going to do that? We have done it before. We do it the same way the next time that we did it the last time; that is, you get the economy growing and sustain that growth in the economy. It kicks off a lot of receipts that way. Right now the economy is growing. It has started to move again. We have had some lethargic times, but it is growing, it is moving, it is creating jobs, and that creates receipts at the Government level—Federal, State, and local. That is starting to happen.

The second piece of that equation is you have to restrain your growth of Federal spending. As your receipts go up, you cannot spend it at the same rate. You have to spend it at a slower rate. That is what the President is trying to do with this budget. He is saying, OK, if we can get this type of growth, we will have a slower rate of

growth in the spending areas. You have to spend it in more prioritized areas.

Clearly, the war on terrorism, homeland defense, key areas, and several others the President has identified, that is how we are going to get at the deficit. I don't agree with the whole budget document put forward. I do agree with the structure of the plan, that we get the deficit cut in half in five and, as I say, I believe we need to get it balanced in seven, so we can hand it over to the next generation in a balanced situation.

One plug I want to put in is, a number of us put forward a bill previously to create an overall commission within the Federal Government to identify programs that maybe have accomplished their purposes and we need to go on and do something differently and zero out programs and to identify those that have accomplished their mission or are wasteful Government spending and propose to the Congress to zero them out, and then the commission give the Congress one vote on a whole package of bills. Maybe it is 53 total programs that need to be, maybe it is 253 that need to be eliminated. Give the Congress one vote to eliminate all of them, keep them all, unamendable, and by that means then us starting to cut at some of the wasteful spending, which we do, which takes place.

We used this sort of structured program to get at our military bases where we had too many bases around the country, and we used this to get fewer bases and to get those bases the needed resources to serve our troops. I want to use the same model throughout the Federal Government. That is the way we can get at the budget.

The previous speaker also spoke about Social Security. One of the problems he identified and that has been spoken about is that we run a surplus in Social Security and then that is spent in Government and then you borrow against the Federal Government for that. One of the beauties of creating personal accounts in Social Security is the Government can't spend that money. That is then the money of the individual, and there is actually something there, instead of this Government borrowing on one hand off of the Social Security account and on another hand. So that when we get to about 2013, we are no longer running a surplus in Social Security, we are running a deficit. And then the Government has to borrow in other places to pay Social Security.

That is not a good situation. That is an untenable situation. That is not the sort of country or structure we want to turn over to our kids. That is why this need to look at personal accounts, so that the money is not spent, the money is safe. We get a higher rate of return. We get a rate of return on these funds.

But our business at hand today is on the Class Action Fairness Act. This bill needs to pass. I believe it will pass. I believe it will pass with a substantial bipartisan vote. And the reason it will

pass is we need this to reform this portion of our legal system.

Class action lawsuits allow plaintiffs whose injuries might not be worth enough to justify bringing individual suits to combine their claims into one lawsuit against a common defendant. That is the nature of a class action. It is to try to create a more efficient and equitable distribution. Class actions are a valuable part of the legal system. However, some trial lawyers have found a weakness in the current system and developed a class action practice devoted to finding opportunities to, in some cases, extract payments from American businesses.

Currently in diversity cases, where plaintiffs reside in different States, trial lawyers can forum shop. That means they can go to a place where they think they will get a better jury, they think they will get better treatment rather than fair treatment, or a setting where the parties actually reside. Once a class action is certified, they can force businesses into paying expensive settlements, so it becomes an extractive process that way.

Due to this abuse in the system, injured plaintiffs are not getting the recourse they are supposed to get through class actions. It is documented that the legal system returns less than 50 cents on the dollar to the people it is established to help and only 22 cents to compensate for economic losses. Although injured plaintiffs are receiving little of value in class action settlements, unfortunately, we are seeing in too many cases trial lawyers obtaining large windfalls.

I will give a couple of examples. One well-known example is the 2001 case against Blockbuster. Customers alleged they were charged excessive late fees for video rentals and received \$1 coupons for the next trip to the video store, while their attorneys received over \$9 million. That is a lot of videos.

Similarly, in *Shields v. Bridgestone/Firestone*, a 2003 suit was filed for customers who had Firestone tires that were among those the Government investigated or recalled but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, they rejected certifying that this was a class, both sides negotiated a settlement which has received preliminary approval of a Texas State court. Under the agreement, the company is to redesign certain tires, a move already under way, irrespective of the lawsuit, and to develop a 3-year consumer education and awareness campaign. But the members of the class, the actual members of the class, the plaintiffs, received nothing. However, if the court gives final approval, the lawyers will get \$19 million.

Over the past decade, class action lawsuits have grown by over 1,000 percent nationwide, spurring a mass of these kinds of hasty, unjust settlements. This is because even if the class certification ruling is unmerited or

even unconstitutional, it often cannot be appealed until after an expensive trial on the merits of the case. Facing the cost of litigation often forces defendants to settle out of court with sizable payments, even when the defendant will likely prevail under the law. These settlements have come to be known as a form of traditional blackmail and are problematic to all Americans because they make trial lawyers rich while imposing increased costs on the economy, causing lower wages and higher prices for consumers. They also create an environment of unpredictable litigation costs and serve to chill the investment, entrepreneurship, and the capital needed for job creation. In short, class action abuse shortchanges true victims while severely damaging the economic engines in this country.

That is not to say all class actions are wrong, and this bill doesn't impact legitimate class actions. It basically deals with the issue of forum shopping. Class actions are still going to be brought. They still will be brought. They still need to be brought in this country. But you take away this issue, particularly this issue on forum shopping.

In response to the growing crisis in class actions, Senator GRASSLEY has authored the Class Action Fairness Act. It is a moderate, bipartisan approach that addresses the most serious of the class action abuses by allowing more large interstate class actions to be heard in Federal courts and by implementing a consumer class action bill of rights that protects consumers from some of the most egregious abuses in class action practice today.

The bill is the result of a bipartisan compromise reached with Senators DODD, LANDRIEU, and SCHUMER in the last session of Congress that narrowed the group of cases that would be removable to Federal court and added a Democratic provision put forward by the Democratic Members to build attorney's fees in coupon settlement cases. It is important to remember that this bill is merely court procedure reform that will go a long way to end abusive forum shopping.

S. 5 does not alter substantive law at all or otherwise affect any injured individual's right to seek redress or to obtain damages. It does not limit damages, including punitive damages. It does not limit those. It does not impose stricter pleading requirements. Rather, the Federal courts will continue to apply the appropriate State or States' laws in adjudicating a class action suit.

Some of the critics of this legislation have stated that S. 5 will move all class actions to the Federal courts, which will become clogged, resulting in a windfall for corporate defendants. The facts do not support this allegation.

First, while S. 5 does expand Federal court jurisdiction over class action, the bill is drafted to ensure that truly local disputes will continue to be litigated in State court. Most notably, the bill will

leave in State court class actions in which the plaintiffs and defendants are all residents of the same State, class actions with fewer than 100 plaintiffs, class actions that involve less than \$5 million, shareholder class actions alleging breaches of fiduciary duty, any class action in which a State government entity is a primary defendant, and any class actions brought against a company in its home State in which two-thirds or more of the class members are also residents of that State.

Secondly, the average State court judge is assigned three times as many cases as his or her Federal counterparts. State court judges are assigned, on average, about 1,500 new cases each year. For example, in California, the average judge was assigned 1,501 cases in 2001. In Florida, the average was 2,210. In New Jersey, the average was 2,620. In Texas, it was a little over 1,600 cases. In contrast, each Federal court judge was assigned an average of 518 new cases during the 12-month period ending September 30, 2002.

The exponential growth of State court class action filings over the last decade has added to the workload problem of State court judges who, in many cases, unlike their Federal counterparts, do not have a number of law clerks, magistrate judges, or special masters to help with particularly time-consuming tasks involving supervising complex cases. Since many State courts or tribunals of general jurisdiction hear all sorts of cases, from traffic violations, to divorces, to felonies, judges who are distracted by class actions do not have enough time to focus on providing basic legal services for the community that they serve.

Finally, recent surveys have shown that the majority of class actions in many jurisdictions would remain in State court under this bill. As far as those cases that could be heard in Federal court under S. 5, many of them involve copycat class actions filed in different jurisdictions, which Federal judges can consolidate under one judge. Therefore, moving more class actions to Federal court would actually reduce the burden for everyone.

Ultimately, this bill will allow claims with merit to go forward while preventing judicial blackmail. That has become, unfortunately, something involved in our judiciary today.

I urge my colleagues to vote a clean class action bill out of the Senate, to vote against any amendments that would dilute the bill and stop us from moving this reform forward, and that would help in job creation in the United States. This is a small measure. I think we should do more, but it is an appropriate measure. It moves us in the right direction. It helps in the creation of jobs in the United States and in litigation reform, which we desperately need in this country.

These sort of bipartisan, modest steps, while they won't have perhaps as big a positive impact as we would like them to have, will have a positive im-

pact on the judicial system and in helping us to reform that. That is something we need to do. We need to move forward on the budget deficit, we need to move forward to make sure we have a true trust fund in Social Security, and we need to move forward in litigation reform. All these are positive steps for our future. I hope we can continue, as with this bill, to work it forward on a bipartisan basis.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### AMENDMENT NO. 3, AS MODIFIED

Mr. DURBIN. Mr. President, earlier I offered an amendment at the desk which needs to be modified. I ask that the amendment, under the rules, be modified accordingly to reflect the pages and lines of the bill.

The PRESIDING OFFICER. The amendment is so modified.

The modification is as follows:

On page 21, before the semicolon at the end of line 2, insert "or by the court sua sponte".  
On page 21, line 9, strike "solely".

Mr. DURBIN. Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWNBACK. 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. BROWNBACK. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

#### IRAQ VOTES FOR FREEDOM

Mr. ENSIGN. Mr. President, I rise to speak about the recent historic elections in Iraq—elections that had been anticipated by an anxious global community for some time.

This election is the story of true patriots who knew the odds and decided to beat them. This is the story of the millions of Iraqis who defied the threats and the intimidation of "terrorists" to cast their votes for a brighter future in Iraq.

News reports are flush with firsthand accounts from observers. The reports paint a picture of a people acting on their innate desire to be free.

One such account details the determination of Samir Hassan, who at 32

lost his leg in a car bomb blast last October. Hassan said, "I would have crawled here if I had to. I don't want terrorists to kill other Iraqis like they tried to kill me. Today I am voting for peace."

The act of voting by ordinary Iraqis in the face of extreme danger confirms President Bush's belief that people around the globe, when given a chance, will choose liberty and democracy over enslavement and tyranny. Human beings crave freedom at their core.

Early estimates by Iraq's Independent Electoral Commission show that about 8 million of the nearly 14 million registered voters cast their ballot on Sunday—a turnout almost equal to the number of Americans who voted last November without the threat of snipers or suicide bombers.

In the words of Arkan Mahmoud Jawad, who came to vote with his mother and younger brother, "This is the salvation for the Iraqis. I hate the terrorists, and now, I am fighting them by my vote."

These are people who were beaten down by the brutal regime of Saddam Hussein. That is exactly why they want to reclaim their country through these elections. They know what the cost of failure would be.

And they know all too well that tyranny breeds isolation. Any dissent from Saddam Hussein's regime could result in torture or death. Neighbors couldn't trust neighbors. Families were torn apart. All this leaves scars on a nation that may take generations to heal.

I believe that voting is the first act of building a community as well as building a country. With the election we saw a peaceful majority reclaiming their birthright. We saw people gaining courage from realizing that they were not alone—that their friends and neighbors and relatives were going to vote—and that they could vote too. Together they are building their future.

Here is one description of how voting progressed:

The first Iraqis on the streets seemed tense as well, not smiling and not waving back. But as the day unfolded, and more and more voters took to the streets, a momentum seemed to gather, and by mid-morning Karada's main street was jammed with people who had voted and people on their way to vote. Some Iraqis, walking out of the polling places, used their cellphones to call friends and urge them to come. Some banged on their neighbors' doors and dragged them out of bed. Old men rolled up in wheelchairs. Women came in groups, lining up in their long, black, head-to-toe abayas. The outpouring, which filled Karada's streets with Shiites, Christians and even some Sunnis, surprised the Iraqis themselves. When Ehab Al Bahir, a captain in the Iraqi Army, arrived at Marjayoon Primary School, he braced himself for insurgent attacks. The mortar shells arrived, as he anticipated, but so did the Iraqi voters, which he did not.

Voting was an act of defiance against the terrorists and an affirmation that Iraqis control their own destiny through self-government. The people of Iraq realize that a stable, successful,

democratic Iraq can only come about if average Iraqis are willing to sacrifice to build it.

On Sunday, they rose to the occasion. Some lost their lives, but their lives were not lost in vain. I am convinced that a country by the Iraqi people and for the Iraqi people will be built on the foundation laid down by the voters on Sunday. And having sacrificed to gain a democratic Iraq, they won't let it go easily.

Baghdad's mayor was overwhelmed by the turnout of voters at city hall where thousands were celebrating and holding up their purple ink-stained fingers with pride. The mayor said, "I cannot describe what I am seeing. It is incredible. This is a vote for the future, for the children, for the rule of law, for humanity, for love." It is truly a new beginning for Iraq.

The election in Iraq clearly demonstrates that Iraqi people are like people everywhere. They desire to create a future in an environment that is safe and allows them to reach their full potential as human beings, whatever that potential may be. The election did not occur in a vacuum. It is the latest and most dramatic example of Iraqis taking control of their country's destiny.

In less than a year, the Iraqi Regular Army and Intervention Forces have grown from one operational battalion to 21 battalions, with six more scheduled to become operational over the next month.

Last month, the Iraqi National Guard was incorporated into the Army, making a total of 68 Iraqi battalions conducting operations.

Today, the Iraqi Police Service has over 55,000 trained and equipped police officers, more than double the amount of just 6 months ago. More than 38,000 additional police are on duty and scheduled for training.

As of last month, more than 108,000 local Iraqis had been hired to work on U.S.-funded reconstruction projects, using as many local subcontractors as possible.

Yes, things are, indeed looking up for Iraq and the Iraqi people. But there is still hard work ahead. It is a difficult process to transform a society that has never known democracy. One hopeful sign occurred earlier this week when influential figures from the Sunni community signaled their willingness to engage the new Iraqi government and play a role in drafting the constitution. Thirteen parties, including a representative of the powerful Association of Muslim Scholars and other parties that boycotted the vote, agreed Thursday to take part in the drafting of the constitution, which will be the transitional parliament's main task. The leading Shiite candidate to be Iraq's new Prime Minister welcomed these overtures and said he was willing to "offer the maximum" to involve Sunni Arabs in the new government.

Yes, change takes time, and only time will tell if the Iraqi election will

go down as one of the most important dates in modern history. I'm inclined to believe it will. But between now and when the history books are written it was enough, for me, to stand in awe of the courage of a free people half a world away.

#### LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On September 24, 2004, a young man was attacked outside of a club in Davis, CA. The attack on the victim was apparently due to a case of mistaken identity. The victim in the case resembled a gay man known by the assailant, and the attack was motivated by the attacker's belief that the victim was gay. During the attack, the victim suffered a broken nose and was knocked unconscious by his assailant. The attacker repeatedly yelled slurs regarding the victim's sexual orientation during the assault.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### DEAN MEINEN

Mr. JOHNSON. Mr. President, I rise today to publicly recognize Dean Meinen of my D.C. staff on his contributions and accomplishments to my office and the State of South Dakota. For years, Dean Meinen has served as my economic development director. He is leaving my office to go work with Strategic Marketing Innovations, which represents science and technology firms throughout the country.

I know first hand that Dean has done a great deal to enhance opportunity and prosperity all across South Dakota. He is an extraordinarily talented person with a great deal of energy and ambition. Dean is not only a great friend, but a well-respected staffer throughout the U.S. Senate. He has earned the respect and admiration of all those who have had the opportunity to work with him. His passion and love for his work have improved the lives of countless South Dakotans. Dean's friendly demeanor and wealth of knowledge have helped him develop close relationships with his colleagues and with community leaders throughout our State. His tireless effort to dig

for details and explore all sides of particular issues reflects both his skill and his dedication to his work.

I first met Dean when he was a fresh-faced young man that I hired for an entry-level mail processing job. I was impressed by his enthusiasm, his belief in the good people of South Dakota, and his political abilities that were developed well beyond his years. A few years later, I asked him to run my 1994 reelection campaign. After the campaign was over, I hired him back to do legislative work in my congressional office. For the past several years, he has served as my economic development director and has worked very hard to advance South Dakota's prosperity and to diversify our economy.

Dean's departure is a huge loss to South Dakota, and I personally know that he struggled with the decision to leave my office. His kind of leadership and character is exactly what the economic development community needs to evolve and succeed in the future. I wish but the best for him on all his exciting new challenges and opportunities. It is with great honor that I share his impressive accomplishments with my colleagues.

#### BLACK HISTORY MONTH

Mr. SMITH. Mr. President, each Congress I rise to honor February as Black History Month. Each February since 1926, our Nation has recognized the contributions of Black Americans to the history of our Nation.

This is no accident; February is a significant month in Black American history. Abolitionist Frederick Douglass, President Abraham Lincoln, and scholar and civil rights leader W.E.B. DuBois were born in the month of February. The 15th Amendment to the Constitution was ratified 132 years ago this month, preventing race discrimination in the right to vote. The National Association for the Advancement of Colored People was founded in February in New York City. Last Tuesday, February 1, was the 45th anniversary of the Greensboro Four's historic sit-in. And on February 25, 1870, this body welcomed its first Black Senator, Hiram R. Revels of Mississippi.

In this important month I want to celebrate some of the contributions made by Black Americans in my home State of Oregon. Since Marcus Lopez, who sailed with Captain Robert Gray in 1788, became the first person of African descent known to set foot in Oregon, a great many Black Americans have helped shape the history of my State. Throughout this month, I will come to the floor to highlight some of their stories.

Beatrice Cannady moved to Oregon in 1910. Soon thereafter she married E.D. Cannady, who was the founder of the Advocate, Portland's only African-American newspaper at the time. Beatrice Cannady quickly became one of the most important civil rights activists in Oregon. Just 4 years after her

arrival, she helped found Portland's chapter of the National Association for the Advancement of Colored People, NAACP. She eventually became the chief editor of the Advocate, and often used the newspaper as a pulpit from which to protest the State's discriminatory policies.

In 1922, Beatrice Cannady became the first African-American woman to be admitted to the Oregon Bar. She helped craft Oregon's first civil-rights legislation providing full access to public accommodations regardless of race or color. Although this legislation was ultimately defeated, she was successful in leading a drive to repeal the "Black Laws" of Oregon which excluded African-Americans from residing in the State.

Through the NAACP, Beatrice Cannady was instrumental in ending school segregation in Vernonia, OR and Longview, WA. She traveled throughout Oregon to give lectures in schools about African-American history, and hosted parties in an attempt to alleviate tensions between white and black members of communities. In 1932, she launched a campaign to represent Oregon's 5th Congressional District in Congress.

Although Beatrice Cannady moved away from Oregon in 1934, she will be remembered as one of Oregon's most influential civil rights pioneers.

She is only one example of the black men and women who changed the course of history in Oregon and in the United States. During the remainder of Black History Month, I will return to the floor to celebrate more Oregonians like Beatrice Cannady, whose contributions, while great, have not yet received the attention they deserve.

#### REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT OF 2000

Mr. BURNS. Mr. President, today I rise in support of S. 267, to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000. I cosponsored the original 2000 act because it stabilized payments to Montana's timber producing counties.

In 1905, the establishment of the national forests removed over 150 million acres in the Western States, including 16 million acres in Montana, from future private property ownership. To compensate the States and counties for this loss of property tax revenue, Congress passed the Twenty-Five Percent Fund Act of 1908. The act provided that 25 percent of receipts from each national forest would be paid to the State and county where the national forest is located for the benefit of public schools and public roads. Until the decline of the timber harvest program, the 1908 act provided enough funding to the States and counties.

However, beginning in the 1990s both nationally and in Montana, the timber harvest program declined over 85 percent and Federal payments to State

and county governments declined just as significantly. The reasons for the declining timber harvest are many; appeals and litigation by special interest groups, wildfires destroying valuable timber, internal Forest Service red-tape, and each of those issues needs to be addressed to ensure the Forest Service is meeting its obligation to restore healthy forests and the communities that depend on them. This act is important because it doesn't punish schools and counties when timber harvests are uncertain.

In 2000, just like in 1908, Congress recognized these States and counties needed stability in the 25-percent payments in order to plan year to year and provide valuable services. Without the Secure Rural Schools Act, in 2004, Montana counties would have received only \$6 million, rather than the \$11.7 million provided under the 2000 act. The education of nearly 100,000 Montana schoolchildren in 170 school districts in 34 counties is affected by these payments.

Another benefit of the act is the "full payment" option. Under this option, counties can reserve 15 to 20 percent of the payment for title II, Public Land Projects. These project funds are allocated by a 15-person Resource Advisory Committee, RAC, comprised of tribal members, local elected officials, and Federal land user organizations.

Let me give you some examples of title II projects funded in Lincoln County, where the RAC allocated \$1.6 million in project work that included improving soil and water quality at a ski area; restoration of a mile of bull trout and west slope cutthroat stream habitat; and road maintenance projects to improve water quality.

I have talked with county commissioners and other Montanans who are RAC members. The RACs have fostered a spirit of cooperation and focus on what everyone has in common and encourage stewardship of our national forests.

I can't think of anything better to celebrate the 100-year anniversary of our national forests than the reauthorization of the Secure Rural Schools and Community Self-Determination Act.

#### TRIBUTE TO LARRY JANEZICH

Mr. WARNER. Mr. President, I seek recognition today to pay tribute to an able and valued member of the Senate family, Larry Janezich, who retires this month after nearly four decades of service to this institution.

As a former chairman of the Senate Rules Committee, it was my pleasure to work closely with Larry and his staff as they managed coverage for Senate hearings, news conferences, and other media events during my time as head of that panel.

As chairman of the Joint Congressional Committee on the Presidential Inauguration in 1997, I had the opportunity to observe firsthand Larry's great skill in balancing the demands of

the press who covered that historic event with the security concerns required by the Secret Service.

During that time, and for more than a quarter century, Larry served the news correspondents of the Senate and House with distinction. I ask unanimous consent to print in the RECORD the following thoughtful tribute to Larry from his colleague, Mike Viqueira, chairman of the Executive Committee of Correspondents of the Congressional Radio-TV Galleries.

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

#### FAREWELL TRIBUTE TO LARRY JANEZICH

(By Mike Viqueira, written with the assistance of Dean Norland of ABC News)

Larry came here when the Senate gallery was little more than a broom closet and has ended up devoting most of his life to the place. There were very few producers or "off-airs" in those days, just reporters who worked on typewriters and used dial telephones. The wire machines clacked and ticked . . . someone had to rip them and post them, and change the ribbon. You could smoke a cigar in the gallery studio and there was a leather couch in case someone wanted to take a nap.

There were no live shots. If it were a really big event and you wanted to go live, then you had to get the phone company out here to install a cable about as thick as your thumb, and only 3 or 4 film crews showed up for news conferences in the tiny studio.

Larry has seen and been a part of a lot of history during his tenure . . . from Watergate hearings . . . debates over wars from Vietnam to Iraq . . . the Clarence Thomas hearings . . . Inaugurations of presidents and the impeachment trial of one of them. He was here when terrorists set off explosions on the Senate side. Those are just the most notable events.

But what we don't often consider is all the little, day-to-day, year-to-year jobs that the gallery director handles for our membership . . . from stewardship of the TASC funds to the compilation of the minutes of these very meetings, Larry has done it all with conscientious professionalism. He has worked too many late nights to even remember and assuredly had to change many vacation plans, tailoring his life to the whims and caprice of the U.S. Senate.

Larry is both a loyal Senate employee and a student of the institution, and there can be no doubt that he cares very passionately about what happens here. He has always tried to strike a fair balance between the government and the press; to negotiate fairly the no-man's-land that describes the relationship between the two.

His job is an interesting one. No doubt it is sometimes enjoyable, and sometimes difficult. Larry is not only a very good cook (his polenta is said to be top notch) but an ardent Dylan fan. So, now as you put the Capitol in the rear view, it's time to go out and enjoy life. So Larry, remember that even though it's all over now, Baby Blue\*, don't think twice, it's alright.\*\*

\*"It's All Over Now, Baby Blue" by Bob Dylan, Copyright© 1965; renewed 1993 Special Rider Music

\*\*"Don't Think Twice, It's Alright" by Bob Dylan, Copyright© 1963; renewed 1991 Special Rider Music

Mr. WARNER. Mr. President, I think it is fair to say that each of us in the Senate joins Larry's colleagues in offering this tribute and we wish him best of luck in his retirement.

## ADDITIONAL STATEMENTS

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 TRIBUTE TO SOUTHWEST  
 MISSOURI STATE UNIVERSITY

• Mr. BOND. Mr. President, I wish to recognize the 100th anniversary of Southwest Missouri State University. The university was founded March 17, 1905, in Springfield as Missouri State Normal School, Fourth District, and has "Dared to Excel" for the past 100 years.

The Southwest Missouri State University System, including its campuses in West Plains and Mountain Grove, are celebrating their centennial year from July 1, 2004, through June 30, 2005.

The "Dare to Excel" theme is most appropriate for this university that has never rested on its laurels. To quote SMS President John H. Kaiser, "Over the first 100 years of its existence, the institution has changed dramatically. But one thing has remained the same: SMS has opened the door of opportunity for young people from Springfield, the region, the state, the nation and now, world. The Centennial year will be one of celebration, but it also will be one of reflection and re-dedication to that noble purpose. The result will be the new long-range plan, Daring to Excel, which will take the institution from 2005 to 2010."

Southwest Missouri State University has "opened the door of opportunity" for students the past century. Its faculty, staff, and students have distinguished themselves in academics, in research, in public service, and in cocurricular activities. Offering more than 150 undergraduate and 43 graduate academic programs, SMS is committed to helping students succeed in their own lives and as active citizens.

During its 100 years, the university has had four names—Missouri State Normal School, Fourth District; Southwest Missouri State Teachers College; Southwest Missouri State College; and Southwest Missouri State University—changed each time to more accurately reflect what the institution has become.

There have been significant changes at the institution over the past 100 years. Since its founding, it has seen its student population grow from 173 to over 20,000. The full-time faculty has increased from 8 to 718, and the academic programs have grown from one to nearly 200. In 1906 there was one building, but now there are 61.

Since 1995, Southwest Missouri State University has been further distinguished by its statewide public affairs mission and has had a profound effect on Springfield, southwest Missouri, the entire State, the Nation, and the world. It has contributed to the economic development of the region and the State, impacting the area economy by nearly \$2 million per day.

It is fitting that March 17, 2005, be proclaimed "Southwest Missouri State University Founders Day," with sincere appreciation and appropriate cele-

bration of the significant contributions the institution has made to the citizens of Missouri and the nation over the past 100 years.

Southwest Missouri State University was founded March 17, 1905, in Springfield as Missouri State Normal School, Fourth District, and has "Dared to Excel" for the past 100 years. The Southwest Missouri State University System, including its campuses in West Plains and Mountain Grove, are celebrating the centennial year from July 1, 2004, through June 30, 2005; and

During its 100 years, the institution has successfully operated under four names: Missouri State Normal School, Fourth District; Southwest Missouri State Teachers College; Southwest Missouri State College; and Southwest Missouri State University.

The institution has "opened the door of opportunity" for students for the past century; and its faculty, staff, and students have distinguished themselves in academics, in research, in public service, and in cocurricular activities.

Since 1995, SMS has been further distinguished by its statewide public affairs mission and has had a profound effect on Springfield, southwest Missouri, the entire State, the Nation, and the world. It has contributed to the economic development of the region and the State, impacting the area economy by nearly \$2 million per day.

Southwest Missouri State University has improved the quality of life for citizens in Springfield, the region, and the State and the future is bright for the 21st century.

I am proud to request that Thursday, March 17, 2005, be proclaimed "Southwest Missouri State University Founders Day," with sincere appreciation and appropriate celebration of the significant contributions the institution has made to the citizens of Missouri and the nation over the past 100 years.●

—  
 TRIBUTE TO BILL SINCLAIR

• Mr. ALLARD. Mr. President, today I pay tribute to William "Bill" Sinclair. Bill is a cum laude alumnus of St. Martins College in Olympia, WA and he has done graduate work in Finance and Administration at Emory University in Atlanta. Bill is currently self-employed as a consultant in fundraising for churches and other nonprofit corporations in the western United States. Throughout his life, Bill has given his time generously to worthy causes, dedicated to the betterment of our community and nation.

Bill has been heavily involved in the Colorado Springs community. He is the past president of Downtown Rotary Club. He is a 1982 graduate of Citizens' Goals for Colorado Springs Leadership Training. He served on the Board of Directors of CHINS-UP from 1983 to 1987. In 1987 the El Paso County Commissioners appointed him to the Board of Directors of the Pikes Peak Center, where he served until 1993 and was chairman of the board. He is past presi-

dent of the board of directors of the Pioneers Museum Foundation and past president of the Pikes Peak Chapter of the Retired Officers Association.

Bill has been active in the political arena since retiring from the military. He is a graduate of the Republican Leadership Program, class of 1990. Bill is also a member of the El Paso County Republican Men's Club, and is a graduate of the Colorado Republican Campaign School. He was elected to the Colorado House of Representatives in 1996, 1998, 2000 and 2002. Term limits is the reason he isn't running again however, he isn't about to sit still and do nothing. The governor recently appointed him to the State Board of Veterans Affairs. As a member of Veterans Affairs his goal is to create a veterans cemetery in El Paso County.

Mr. Sinclair has lived in Colorado Springs, CO, for 30 years. He and his family moved there upon retiring from the United States Air Force as a colonel. He is a command pilot and a combat veteran of three wars—World War II, Korea and Vietnam. Bill and his wife, Barbara have two children where they attended Colorado Springs schools and Colorado universities. Bill and Barbara have five wonderful grandchildren and spend as much time with them as they possibly can.

It is not often that we are able to pay adequate tribute to our Nation's community leaders. I truly believe that Bill Sinclair is an exemplary citizen and worthy of our thanks.●

—  
 RETIREMENT OF HAROLD J.  
 HOWRIGAN OF FAIRFIELD, VT

• Mr. LEAHY. Mr. President, I am pleased to take this opportunity to commend a longtime friend and adviser who has spent his career in service to Vermont and American agriculture, Harold J. Howrigan of Fairfield, VT.

Harold has served the dairy industry long and well, bringing his farmer's ingenuity, common sense and perseverance to his efforts. He has served on the St. Albans Co-operative Board of Directors since 1981 and at the upcoming 2005 Annual Meeting he will be stepping down to enjoy time with his family on their home farm in Fairfield.

Harold, his wife Anne and their sons operate two farms comprised of over 500 head of cattle, some 1,800 acres of cropland and forest, including a significant maple sugaring operation. Harold and Anne have opened their home and the farm to many dairy industry leaders, international dignitaries, government officials, co-op customers and, I daresay, even a campaign commercial or two along the way. Anyone who has had the good fortune to visit the Howrigans enjoys the beautiful views and witnesses the hard work and pride that Harold and his family take in the stewardship of their farming operations.

As much as he loves that line of Fairfield hills, Harold has spent considerable time away from his farming operation serving his community and

Vermont agriculture. Locally, Harold is active in the St. Patrick's Church and the Franklin County Maple Producers Co-op. On the State level, he has served as president of the Green Mountain Dairy Farmers Federation of Cooperatives and as a director with both the Vermont Maple Sugar Makers Association and the Vermont Dairy Promotion Council.

Regionally, Harold was the chairperson of the Vermont Northeast Interstate Dairy Compact Commission. In fact, Harold's tireless efforts were a key force in the establishment and successful implementation of the Northeast Interstate Dairy Compact. The long-standing relationship between Harold and the Cooperative with the Vermont Congressional Delegation was critical in the passage of the Northeast Interstate Dairy Compact at the national level which provided stability to dairy farmer income without adverse effects on consumers. He has also served as Chair of the Council of Northeast Farmer Cooperatives.

In addition to championing the Compact, Harold has been active in other national dairy industry organizations serving the interests of dairy farmers beyond Vermont on the U.S. Dairy Export Council, and the National Milk Producers Federation. As Chair of the National Dairy Promotion and Research Board, he was awarded the Richard E. Ling Award for the distinguished service in January of 2001.

The St. Albans Cooperative Creamery was most fortunate to benefit from Harold's leadership over his years as Director beginning in 1981, and as board president since 1988. In his 24 years with the Cooperative, Harold has seen the Cooperative increase in yearly milk volume to over a billion pounds, build a partnership with Ben & Jerry's ice cream, expand its territory into New York State, acquire the Independent Dairymen's Association and develop a strategic relationship with Dairy Farmers of America and Dairy Marketing Services.

Throughout his distinguished career, Harold has remained among my most trusted advisers on farm policy. I know that I can always count on him to provide the unvarnished truth, based on experience forged on a Vermont dairy farm with its tradition of hard work, common sense, simplicity, love of family and service to community, state and country. I join countless Vermonters and Americans as we all thank Harold for his years of service and consider myself fortunate to call him my friend.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages

from the President of the United States submitting nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-606. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual surplus property report for fiscal year 2004; to the Committee on Health, Education, Labor, and Pensions.

EC-607. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on infertility and the prevention of sexually transmitted diseases from 2000 to 2003; to the Committee on Health, Education, Labor, and Pensions.

EC-608. A communication from the Human Resource Specialist, Department of Labor, transmitting, pursuant to law, the report of a vacancy and designation of acting officer in the position of Assistant Secretary for Occupational Safety and Health Administration, received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-609. A communication from the Secretary of Education, transmitting, pursuant to law, a report concerning surplus Federal real property disposed of to educational institutions; to the Committee on Health, Education, Labor, and Pensions.

EC-610. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of a vacancy in the position of Commissioner of Education and Statistics, received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-611. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary, Special Education and Rehabilitative Services, received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-612. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of the nomination confirmed for the position of Under Secretary, received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-613. A communication from the White House Liaison, Department of Education, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Secretary, on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-614. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Cardiovascular and Neurological Devices; Reclassification of Two Embolization Devices" (Doc. No. 20003N-0567) received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-615. A communication from the Director, Regulations Policy and Management

Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medical Devices; Obstetrical and Gynecological Devices; Classification of the Assisted Reproduction Laser System" (Doc. No. 2004N-0530) received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-616. A communication from Assistant General Counsel for Regulatory Services, Office of Innovation and Improvement, Department of Education, transmitting, pursuant to law, the report of a rule entitled "Scientific Based Evaluation Methods—Notice of Final Priority" (RIN1890-ZA00) received on February 7, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-617. A communication from Regulations Coordinator, Centers for Disease Control, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Establishment of Vaccination Clinics; User Fees for Investigational New Drug (IND) Influenza Vaccine Services and Vaccines" (RIN0920-AA11) received on January 25, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC-618. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, the six month periodic report on the national emergency with respect to terrorists who threaten to disrupt the Middle East peace process that was declared in Executive Order 12947 of January 23, 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC-619. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, the six-month periodic report on the national emergency with respect to Liberia that was declared in Executive Order 13348 of July 22, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-620. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, a report on the Commission's management controls for fiscal year 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-621. A communication from the Regulatory Specialist, Office of the Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "OCC Guidelines Establishing Standards for National Banks' Residential Mortgage Lending Practices" (RIN1557-AC93) received on February 7, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-622. A communication from the Secretary of Commerce, transmitting, pursuant to law, the 2005 Report on Foreign Policy Controls; to the Committee on Banking, Housing, and Urban Affairs.

EC-623. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "List of Communities Eligible for the Sale of Flood Insurance" (Doc. No. FEMA-7774 (44 FR 64)) received on February 7, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-624. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations" (44 CFR 67) received on February 7, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-625. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" (Doc. No. FEMA-D-7565 (44

CFR 67)) received on February 7, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-626. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" (Doc. No. FEMA-7859 (44 CFR 64)) received on February 7, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-627. A communication from Assistant Secretary, Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Certain Broker-Dealers Deemed Not To Be Investment Advisors" (RIN 3235-A78) received on January 25, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-628. A communication from the General Council, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Credit Union Ownership of Fixed Assets" received on February 1, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-629. A communication from the Administrator, Rural Housing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Procedure Notice on Surety" (RIN 0575-AC60) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-630. A communication from the Administrator, Rural Housing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Direct Single Family Housing Loans and Grants" (RIN0575-AC54) received on February 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-631. A communication from Acting Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Raisins Produced from Grapes Grown in California; Increased Assessment Rate" (Doc. No. FV05-989-1FR) received on February 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-632. A communication from Acting Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Olives Grown in California: Redistricting and Reappointment of Producer Membership on the California Olive Committee" (Doc. No. FV04-932-2FR) received on February 7, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-633. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Exemption of Organic Handlers from Assessments for Market Promotion Activities under Marketing Order Programs" (Doc. No. FV03-900-1 FR) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-634. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Exempting Organic Handlers from Assessment by Research and Promotion Programs" (RIN0581-AC15) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-635. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Onions Grown in South Texas; Decreased Assessment Rate" (Doc. No. FV05-959-1 IFR) received on January 25, 2005; to the Com-

mittee on Agriculture, Nutrition, and Forestry.

EC-636. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Lamb Promotion and Research Program: Procedures for the Conduct of a Referendum" (Doc. No. LS-04-06) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-637. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Milk in the Appalachian, Florida, and Southeast Marketing Areas—Final Rule" (AO-388-A16, AO-356-A38, and AO-366-A45; DA-04-07) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-638. A communication from the Executive Director, Commodity Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled "Adjustment of Civil Monetary Penalties for Inflation" (RIN3038-AC13) received on January 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-639. A communication from the General Counsel, Executive Office for Immigration Review, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals" (RIN1125-AA44) received on February 7, 2005; to the Committee on the Judiciary.

EC-640. A communication from the Assistant Chief, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Production of Dried Fruit and Honey Wines" (RIN1513-AC21) received on February 7, 2005; to the Committee on the Judiciary.

EC-641. A communication from the Director, Regulatory Management Division, Immigration and Customs Enforcement, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Execution of Removal Orders: Countries to Which Aliens May Be Removed" (RIN1653-AA41) received on January 25, 2005; to the Committee on the Judiciary.

EC-642. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "West Virginia Regulatory Program" (WV-102-FOR) received on February 7, 2005; to the Committee on Energy and Natural Resources.

EC-643. A communication from the Secretary of Energy, transmitting, pursuant to law, the Fiscal Year 2004 Competitive Sourcing Activity Report; to the Committee on Energy and Natural Resources.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 308. A bill to require that Homeland Security grants related to terrorism preparedness and prevention be awarded based strictly on an assessment of risk, threat, and vulnerabilities; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DEMINT (for himself, Mr. SALAZAR, and Mr. ENSIGN):

S. 309. A bill to amend the Internal Revenue Code of 1986 to provide for the disposi-

tion of unused health benefits in cafeteria plans and flexible spending arrangements; to the Committee on Finance.

By Mr. ENSIGN (for himself and Mr. REID):

S. 310. A bill to direct the Secretary of the Interior to convey the Newlands Project Headquarters and Maintenance Yard Facility to the Truckee-Carson Irrigation District in the State of Nevada; to the Committee on Energy and Natural Resources.

By Mr. SMITH (for himself, Mrs. CLINTON, Ms. COLLINS, Mr. BINGAMAN, Ms. CANTWELL, Mr. COLEMAN, Mr. CORZINE, Ms. SNOWE, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. MURRAY, Mr. DEWINE, Mr. BAYH, Mr. REED, Mr. KERRY, Mr. SCHUMER, Mr. DAYTON, Mr. WYDEN, Mrs. LINCOLN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. NELSON of Florida, Ms. STABENOW, Mr. JOHNSON, Mr. LEAHY, Mr. KENNEDY, Mr. FEINGOLD, and Mr. SARBANES):

S. 311. A bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV; to the Committee on Finance.

By Mr. MCCAIN (for himself, Ms. CANTWELL, and Mr. LEAHY):

S. 312. A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service; to the Committee on Commerce, Science, and Transportation.

By Mr. LUGAR (for himself, Mr. DOMENICI, Mr. HAGEL, Mr. REED, Mr. BIDEN, Mr. LEVIN, Ms. COLLINS, Mr. MCCAIN, and Mr. OBAMA):

S. 313. A bill to improve authorities to address urgent nonproliferation crises and United States nonproliferation operations; to the Committee on Armed Services.

By Mr. CORNYN:

S. 314. A bill to protect consumers, creditors, workers, pensioners, shareholders, and small businesses, by reforming the rules governing venue in bankruptcy cases to combat forum shopping by corporate debtors; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 315. A bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes; to the Committee on Finance.

By Mr. FEINGOLD:

S. 316. A bill to limit authority to delay notice of search warrants; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself, Mr. AKAKA, Mr. BINGAMAN, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, Mr. JEFFORDS, Mr. KENNEDY, and Mr. WYDEN):

S. 317. A bill to protect privacy by limiting the access of the Government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 318. A bill to clarify conditions for the interceptions of computer trespass communications under the USA-PATRIOT Act; to the Committee on the Judiciary.

By Mr. DOMENICI (for himself and Mr. KENNEDY):

S. 319. A bill to amend the Public Health Service Act to revise the amount of minimum allotments under the Projects for Assistance in Transition from Homelessness program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ALLARD:

S. 320. A bill to require the Secretary of the Army to carry out a pilot project on compatible use buffers on real property bordering Fort Carson, Colorado, and for other purposes; to the Committee on Armed Services.

By Ms. SNOWE (for herself, Mr. KOHL, Mr. ROCKEFELLER, and Ms. LANDRIEU):

S. 321. A bill to provide more child support money to families leaving welfare, to simplify the rules governing the assignment and distribution of child support collected by States on behalf of children, to improve the collection of child support, and for other purposes; to the Committee on Finance.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mrs. CLINTON, and Mr. SCHUMER):

S. 322. A bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. TALENT:

S. 323. A bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the French Colonial Heritage Area in the State of Missouri as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. REID:

S. Res. 43. A resolution designating the first day of April 2005 as "National Asbestos Awareness Day"; to the Committee on the Judiciary.

By Mr. ALEXANDER (for himself and Mr. COLEMAN):

S. Res. 44. A resolution celebrating Black History Month; to the Committee on the Judiciary.

By Mr. ALLEN (for himself, Mr. WARNER, and Mr. SCHUMER):

S. Res. 45. A resolution commending the James Madison University Dukes football team for winning the 2004 NCAA Division I-AA National Football Championship; considered and agreed to.

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. HAGEL, and Mr. REID):

S. Res. 46. A resolution commemorating the life of the late Zurab Zhvania, former Prime Minister of the Republic of Georgia; considered and agreed to.

By Mr. DEWINE (for himself and Mr. BIDEN):

S. Con. Res. 10. A concurrent resolution raising awareness and encouraging prevention of stalking by establishing January 2006 as "National Stalking Awareness Month"; to the Committee on the Judiciary.

By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Con. Res. 11. A concurrent resolution honoring the Tuskegee Airmen for their bravery in fighting for our freedom in World War II, and for their contribution in creating an integrated United States Air Force; to the Committee on Armed Services.

#### ADDITIONAL COSPONSORS

S. 20

At the request of Mr. REID, the names of the Senator from Minnesota (Mr. DAYTON) and the Senator from Il-

linois (Mr. OBAMA) were added as cosponsors of S. 20, a bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care.

S. 50

At the request of Mr. INOUE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 50, a bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes.

S. 77

At the request of Mr. SESSIONS, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 77, a bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes.

S. 119

At the request of Mrs. FEINSTEIN, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 119, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 177

At the request of Mr. DOMENICI, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 177, a bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment and demonstration program to control salt cedar and Russian olive, and for other purposes.

S. 187

At the request of Mr. CORZINE, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 187, a bill to limit the applicability of the annual updates to the allowance for States and other taxes in the tables used in the Federal Needs Analysis Methodology for the award year 2005-2006, published in the Federal Register on December 23, 2004.

S. 233

At the request of Mr. ROBERTS, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 233, a bill to increase the supply of quality child care.

S. 236

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 236, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the Medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 239

At the request of Mr. WYDEN, the name of the Senator from Colorado

(Mr. SALAZAR) was added as a cosponsor of S. 239, a bill to reduce the costs of prescription drugs for Medicare beneficiaries, and for other purposes.

S. 265

At the request of Mr. FRIST, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 265, a bill to amend the Public Health Service Act to add requirements regarding trauma care, and for other purposes.

S. 266

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Hawaii (Mr. INOUE) were added as cosponsors of S. 266, a bill to stop taxpayer funded Government propaganda.

S. 285

At the request of Mr. BOND, the names of the Senator from Missouri (Mr. TALENT) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 286

At the request of Mr. DODD, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 286, a bill to amend section 401(b)(2) of the Higher Education Act of 1965 regarding the Federal Pell Grant maximum amount.

S. 288

At the request of Mr. GREGG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 288, a bill to extend Federal funding for operation of State high risk health insurance pools.

S. 290

At the request of Mr. BOND, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 290, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain hazard mitigation assistance.

S. 302

At the request of Mr. KENNEDY, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 302, a bill to make improvements in the Foundation for the National Institutes of Health.

S. 304

At the request of Mrs. FEINSTEIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 304, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 304, supra.

S. 306

At the request of Ms. SNOWE, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 306, a bill to prohibit discrimination on the basis of genetic information with

respect to health insurance and employment.

STATEMENTS ON INTRODUCED  
BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 308. A bill to require that Homeland Security grants related to terrorism preparedness and prevention be awarded based strictly on an assessment of risk, threat, and vulnerabilities; to the Committee on Homeland Security and Governmental Affairs.

Mr. LAUTENBERG. Mr. President, I rise today to speak on a matter of great significance to our State and to many States across the country: protecting our homeland from another terrorist attack.

Everyone is aware of how difficult the fight is against terrorism, wherever it takes place in the world, and the number of casualties we have experienced in Iraq, that manifests itself in Afghanistan and different countries. But one place we ought to be looking at in terms of protecting ourselves from terror is in the United States. We should not be skimping on the costs or resources available for Homeland Security. My colleague Senator CORZINE and I today are introducing a bill to ensure that Federal Homeland Security funds get sent where they are needed most.

On September 11, 2001, 700 of the people who lost their lives were from New Jersey. On that terrible day, people of north Jersey could see the smoke rising from the World Trade Center. From my own home, I look directly at the World Trade Center. In my pre-Senate day, I was commissioner of the Port Authority of New York and New Jersey and had offices in the Trade Center and know what the hustle and bustle of life was there. Thousands and thousands of people were working in those two buildings, destroyed by a terrorist that went beyond the wildest imagination.

The New York-New Jersey region bore the brunt of those attacks on September 11. It continues to be the most at-risk area. We are not the only ones at risk. States such as Virginia, with their military installation, their ports, are also to be included, and a place of some threat, New Mexico, with Los Alamos, and Florida with its ports, and Texas with their ports. All of these States have to be on the alert all the time and need funds with which to protect themselves. So I hope we can all agree that homeland security funding ought to be targeted to those parts of the country most at risk of another terrorist attack.

Now, the 9/11 Commission agrees with this approach. They said:

Homeland security assistance should be based strictly—

“Strictly”—

on an assessment of risks and vulnerabilities.

They further say:

[F]ederal homeland security assistance should not remain a program for general revenue sharing.

I think we are all agreed they did a splendid job. This was a focal point for them. The 9/11 Commission reported homeland security money is too important to be caught up in porkbarrel politics. Unfortunately, our current homeland security funding is not based on risks and threats.

Under current law, 40 percent of all State homeland security grants, over \$1 billion each year, are given out as revenue sharing. The system results in preposterous funding allocations.

For example, this year, New Jersey's homeland security grant was cut, reduced by 34 percent. I remind those who are listening, New Jersey lost 700 of its citizens. Our funding was cut despite the fact that we in New Jersey were under a code orange alert from August 1 to just after the election because of unspecified threats against the Prudential Building in Newark. The Prudential Building is a center of major financial activity and was highlighted as one of five locations that ought to be especially guarded. Yet the city of Newark saw its funding cut by 17 percent. Another high-risk urban area, Jersey City—which is directly across from where the Trade Centers were in New York, and where so much of the rescue activity was directed, with police from that area, emergency response people—Jersey City saw its funding cut 60 percent. That does not make sense.

The FBI has identified a 2-mile strip between the Port of Newark and Newark-Liberty International Airport as the most at-risk area in the entire country for a terrorist attack—a 2-mile stretch, highly visible. If you fly into Newark-Liberty Airport, you see the bustling port that we have there and the activity that goes on. It is an area, certainly, that would represent, in the FBI's view, one of the most appealing targets for terror. Yet the area's homeland security funding was cut. It defies sense.

The system is broken. That is why my colleague, Senator CORZINE, and I are introducing the Risk-Based Homeland Security Funding Act, to require that homeland security grants are allocated solely based on risk and threat to the area.

Our bill would take the 9/11 Commission's recommendations and turn them into law.

President Bush understands that risk and vulnerability must be the principal yardsticks for distributing homeland security funds. In the fiscal year 2006 budget just released, President Bush stated that homeland security funds need to be allocated on risks, threats, and vulnerabilities.

So I hope our colleagues will support the bill Senator CORZINE and I are introducing today. Our bill will set the gold standard for determining whether homeland security grants are being properly allocated. I ask my colleagues

to think of this as a national interest, to make sure that none of the areas of high vulnerability are open to attack any more than we can possibly do to prevent it because any attack in these areas will have a ripple effect throughout the country. Again, these places are an invitation to the terrorists. As much as we hate them, we know these people are not fools. We know they plan these things. We know they look for the most vulnerable targets. And we should not permit those targets to go without the protection they fully deserve.

So I hope our colleagues will support this bill. It would turn the 9/11 Commission's recommendations into law.

I ask unanimous consent that the text of our bill be printed in the RECORD.

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

S. 308

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Risk-Based Homeland Security Funding Act”.

**SEC. 2. FINDINGS.**

Congress agrees with the recommendation on page 396 of the Final Report of the National Commission on Terrorist Attacks Upon the United States (commonly known as the “9/11 Report”), which includes the following:

“Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. . . . [F]ederal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerabilities that merit additional support. Congress should not use this money as a pork barrel.”

**SEC. 3. RISK-BASED HOMELAND SECURITY GRANT FUNDING.**

(a) CRITERIA FOR AWARDING HOMELAND SECURITY GRANTS.—Except for grants awarded under any of the programs listed under section 4(b), all homeland security grants related to terrorism prevention and terrorism preparedness shall be awarded based strictly on an assessment of risk, threat, and vulnerabilities, as determined by the Secretary of Homeland Security.

(b) LIMITATION.—Except for grants awarded under any of the programs listed under section 4(b), none of the funds appropriated for Homeland Security grants may be used for general revenue sharing.

(c) CONFORMING AMENDMENT.—Section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3714(c)(3)) is repealed.

**SEC. 4. PRESERVATION OF PRE-9/11 GRANT PROGRAMS FOR TRADITION FIRST RESPONDER MISSIONS.**

(a) SAVINGS PROVISION.—This Act shall not be construed to affect any authority to award grants under a Federal grant program listed under subsection (b), which existed on September 10, 2001, to enhance traditional missions of State and local law enforcement, firefighters, ports, emergency medical services, or public health missions.

(b) PROGRAMS EXCLUDED.—The programs referred to in subsection (a) are the following:

(1) The Firefighter Assistance Program authorized under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229).

(2) The Emergency Management Performance Grant Program and the Urban Search and Rescue Grant Program authorized under—

(A) title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.);

(B) the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106-74; 113 Stat. 1047 et seq.); and

(C) the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

(3) The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs authorized under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(4) The Public Safety and Community Policing (COPS ON THE BEAT) Grant Program authorized under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(5) Grant programs under the Public Health Service Act (42 U.S.C. 201 et seq.) regarding preparedness for bioterrorism and other public health emergencies;

(6) The Emergency Response Assistance Program authorized under section 1412 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2312).

(7) Grant programs under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.).

Mr. CORZINE. Mr. President, I rise today to join my colleague, Senator LAUTENBERG, in both support and the introduction of the Risk-Based Homeland Security Funding Act. I think this is simply urgent. It is fundamental to the recommendations of the 9/11 Commission, as Senator LAUTENBERG mentioned.

Quoting language that was in that Commission report:

Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities.

Quoting further:

[F]ederal homeland security assistance should not remain a program for general revenue sharing.

In fact, I believe we should relabel the bill. I had a little argument with my colleague from New Jersey. I think we ought to call it the Common Sense Homeland Security Act. It is only common sense. I think there is a consensus among all those who seriously contemplate this issue that we need to be smart and strategic about how we allocate our limited homeland security resources.

This is not a local issue, although people will often argue that we are trying to speak only from parochial interests. I think you have to think about this as protecting America where we are most vulnerable. It is a national issue.

Our economic assets are at stake. In New Jersey, that 2-mile stretch Senator LAUTENBERG spoke about in his comments has the Port of Newark, which is really what is often labeled the Port of New York. Mr. President, 80 percent of all of the incoming cargo containers that come into that east coast port are in Newark and Elizabeth. So you hear about the Port of

New York and New Jersey. It is really the Port of New Jersey and Elizabeth. And that is in that 2-mile stretch.

Then on the other end of that 2-mile stretch is Liberty International or Newark Airport, which is, depending on which year and the number of flight landings, the third or fourth busiest airport in America—the busiest airport in the metropolitan region of New York and New Jersey.

In between, there are rail lines, chemical plants, oil refineries, all the economic assets that are important to the economic distribution of assets across the east coast.

It is incredible, as Senator LAUTENBERG talked about, that this particular area is seeing these cuts. Newark is getting cut 17 percent from 2004 to 2005, and, unbelievably, Jersey City is getting cut 64 percent, from \$17 million down to about \$6 million in homeland security, State, and local grants. It is very hard to justify. You look at your constituents and say we are talking about the threat-based allocation of risk, and we see these kinds of cuts given the kind of serious concerns that we have.

It is a national issue, it is not just a New Jersey issue because if that airport and that port come down, it has a major long-term impact on the economy of the Nation. It is important. I note, as Senator LAUTENBERG did, the Senator from Virginia has ports that have a major impact on more than just Virginia's economic well-being. The airports have more than just an economic impact on the individual State. We have to think about what the ripple impact is as we go forward. So we have to prioritize.

I am pleased the President cited almost the same language in his budget yesterday. Concentrating Federal funds for State and local homeland security assistance programs on the highest threats and vulnerabilities and needs is the Presidential goal. We need to translate that into specific legislative authority so we do not come up with formulas that are revenue sharing based.

Forty percent of the funds currently allocated are based on just equal allocation to the States. Nice idea, but we ought to do that in other areas, not with regard to homeland security where we ought to deal with the national economy, the national strategic interests of the country. So I hope we can take this act, this commonsensical approach, and implement it.

By the way, I also wonder why we are cutting 30 percent to our State and local communities. The first responders are the first line of defense in protecting the American people and in responding to these attacks. We certainly saw that in the 9/11 case.

I hope we can have a strong debate in Congress about how we are allocating within the expenditures we have with regard to homeland security. In my view, there is too much ignoring of the reality of the need to fund our local re-

sponders, making sure their communications equipment can talk to each other, making sure they have the kinds of equipment that would be able to respond, as was so heroically done by the people who responded to the 9/11 tragedy.

All this has to be put in the context of real-life experiences, though. And Senator LAUTENBERG talked about that. Seven hundred people in our community died. This is a hot issue in the State of New Jersey because it impacted families, and it still is very much a live part of their community. People want to see action. They want to see changes as we go forward. And they want to see us be particularly focused on those places where there are risks.

It is hard for New Jerseyans to understand when you put the city of Newark on the highest alert, singled out, along with New York City and Washington, DC, one day, and then get your homeland security funds cut by 20 percent or so 6 months later when the allocation comes out according to a formula, as apposed to thinking about where risks are. It is hard for the people not only in Newark, but we have Hamilton, NJ, which had a post office that was the site where all the anthrax letters were sent out. We had to shut it down. We spent \$60 million cleaning up that post office, just like we had to clean up the Hart Building here in Washington.

And people say, I do not really understand why we are not concerned about what is going on with regard to risk in New Jersey when we have these kinds of practical realities: 700 of our citizens, orange alerts for Newark, Hamilton post office, and I could go on and on. There are a number of instances—Atlantic City, where the way the formula works is, if you are not a town of 225,000 people, you do not get considered for these grants. We have about 40,000 people in Atlantic City, but that does not take into account the people who come and visit there, which is about 100,000 on average a day; and then all the people who work there, which is about another 40,000. So you are getting up toward those numbers. And on peak days it can be 300,000 people. It is the second highest concentration of casinos in the country.

I think we need to bring common sense to where we are focusing homeland security dollars. I think that is what this act is about. I am thrilled that we have Michael Chertoff who is stepping in as the Secretary of the Department of Homeland Security. I do not think there is a smarter guy, a more objective, intellectually honest individual. I think he will push forward with commonsense approaches to allocation and recommendations.

Finally, this bill does not cover other programs. It does not include the COPS Program, fire grants, other things where you need to be reflective of the needs of general revenue sharing approaches. This is dealing with homeland security the same way we deal

with national security. There we identify what we think the threats are and apply the resources to match those needs.

We need to bring common sense to this. I hope my colleagues will support this legislation. It is very straightforward and a simple reflection of the 9/11 Commission Report, a reflection of the words the President put in his budget report. I think it is appropriate as to how we should move forward with regard to funding for homeland security allocations.

By Mr. DEMINT (for himself, Mr. SALAZAR, and Mr. ENSIGN):

S. 309. A bill to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements; to the Committee on Finance.

Mr. DEMINT. Mr. President, I rise today to offer a bill that would update flexible spending arrangements, known as FSAs, to allow up to \$500 of unused health benefits to be carried forward to next year's FSA or transferred to a health savings account.

Flexible spending arrangements allow employees to set aside money in an employer-established benefit plan that can be used on a tax-free basis to meet their out-of-pocket health care expenses during the year. However, under current law, any money remaining in the FSA at the end of the year must be returned to the employer.

Nearly 37 million private sector employees have access to an FSA. However, only 18 percent of eligible employees take advantage of the pretax health care spending provided by flexible spending arrangements. Many employees cite the fear of forfeiting unused funds as the primary reason why they elect not to participate in an FSA.

This use-it-or-lose-it rule does more, though, than discourage widespread participation. It can also lead to perverse incentives such as encouraging people to spend money on health care products and services that they do not necessarily need. In other words, at the end of the year, if there is money left in the account, the employee's incentive is to go out and get an extra pair of sunglasses or whatever it is and spend that money, and that in turn drives up demand and the price of health care for everybody.

The bill I am introducing today provides greater flexibility and consumer choice. The bill would allow up to \$500 of unused funds at the end of the year to be carried forward in that flexible spending arrangement for use in the next year, or that employee could begin a new HSA, a health savings account, and put up to \$500 into that health savings account.

I believe this bill will encourage greater participation in flexible spending arrangements and, to a lesser extent, participation in health savings account benefit plans. The Joint Com-

mittee on Taxation estimates that approximately 76 percent of current FSA participants will take advantage of the rollover option each year.

Through this legislation, we can expand access to health care for millions of Americans by making it easier for them to save for their health care costs. This bill would also reduce end-of-the-year excess spending and overuse of health care services, allowing FSA participants to benefit from the prudent use of their health care resources.

I am grateful to Senators SALAZAR and ENSIGN who have joined me as original cosponsors of this bill. They understand that reducing health costs and increasing access to health care are worthy goals that we should all support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

#### S. 309

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (j) and (k), respectively, and by inserting after subsection (g) the following:

#### “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

“(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be—

“(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

“(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

“(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

“(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term ‘unused health benefits’ means the excess of—

“(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

“(B) the actual amount of reimbursement for such year under such arrangement.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

By Mr. SMITH (for himself, Mrs. CLINTON, Ms. COLLINS, Mr. BINGAMAN, Ms. CANTWELL, Mr.

COLEMAN, Mr. CORZINE, Ms. SNOWE, Mrs. FEINSTEIN, Ms. LANDRIEU, Mrs. MURRAY, Mr. DEWINE, Mr. BAYH, Mr. REED, Mr. KERRY, Mr. SCHUMER, Mr. DAYTON, Mr. WYDEN, Mrs. LINCOLN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. NELSON of Florida, Ms. STABENOW, Mr. JOHNSON, Mr. LEAHY, Mr. KENNEDY, Mr. FEINGOLD, and Mr. SARBANES):

S. 311. A bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce the Early Treatment for HIV Act, ETHA, of 2005. Senator CLINTON joins me in introducing this bill, and I want to thank her for her steadfast support for people living with HIV. HIV knows no party affiliation, and I am pleased to say that ETHA cosponsors sit on both sides of the aisle.

Simply stated, ETHA gives States the opportunity to extend Medicaid coverage to low-income, HIV-positive individuals before they develop full-blown AIDS. Today, the unfortunate reality is that most patients must become disabled before they can qualify for Medicaid coverage. Nearly 50 percent of people living with AIDS who know their status lack ongoing access to treatment. In my home State of Oregon, there are approximately 4,500 persons living with HIV/AIDS. It is estimated that approximately 40 percent of these Oregonians are not receiving care for their HIV disease. Not being in care puts these people's own health at risk, and also makes them more infectious. We can do better, and we should do everything possible to ensure that all people living with HIV can get early, effective medical care.

Oregon's Ryan White funded AIDS Drug Assistance Program is nearing maximum enrollment and may need to wait list eligible clients in the near future. The fact of the matter is that safety net programs all over the country are running out of money, and are generally unable to cover all of the people who need assistance paying for their medical care. As other programs are failing, ETHA gives States another way to reach out to low-income, HIV-positive individuals.

With approximately 150 newly detected HIV infections in Oregon annually, my state desperately needs to provide early treatment to these individuals. It has been shown that current HIV treatments are very successful in delaying the progression from HIV infection to AIDS, and help improve the health and quality of life for millions of people living with the disease.

Studies conducted by Pricewaterhouse Cooper have found that providing early intervention care significantly delays the progression of HIV and is highly cost-effective. ETHA reduces by 60 percent the death rate of

persons living with HIV who received coverage under Medicaid. Disease progression is significantly slowed and health outcomes improved. Medicaid offsets alone reduce gross Medicaid costs by approximately 70 percent due to the prevention of avoidable high cost medical interventions. Research determined that over 5 years the true cost of ETHA is \$55.2 million. Over 10 years, ETHA saves \$31.7 million. It shows that preventing the health of people living with HIV, preventing opportunistic infections, and slowing the progression to AIDS, will save taxpayers dollars. Ultimately, it's clear that in implementing ETHA, the United States will take an important step toward ensuring that all Americans living with HIV can get the medical care they need to stay healthy and productive for as long as possible.

Importantly, ETHA also offers States an enhanced Federal Medicaid match, which means more money for States that invest in treatments for HIV. This provision models the successful Breast and Cervical Cancer Treatment and Prevention Act of 2000, which allows States to provide early Medicaid intervention to women with breast and cervical cancer. Even in these difficult times, 45 States are now offering early Medicaid coverage to women with breast and cervical cancer. We can build upon this success by passing ETHA and extending similar early intervention treatments to people with HIV.

HIV/AIDS touches the lives of millions of people living in every State in the Union. Some get the proper medications, but too many do not. This is literally a life and death issue, and ETHA can help many more Americans enjoy long, healthy lives.

I want to thank Senators CLINTON, COLLINS, BINGAMAN, COLEMAN, CANTWELL, SNOWE, CORZINE, FEINSTEIN, MURRAY, WYDEN, DEWINE, BAYH, REED, KERRY, DAYTON, SCHUMER, LINCOLN, LIEBERMAN, MIKULSKI, NELSON, STABENOW, JOHNSON, SARBANES, LEAHY, KENNEDY, FEINGOLD and LAUTENBERG for joining us as cosponsors of ETHA. I also wish to thank all of the organizations around the country that have expressed support for this bill. I have received numerous support letters from those organizations, and I ask unanimous consent that those letters be printed in the RECORD. In particular, I want to thank the Human Rights Campaign, The AIDS Institute, ADAP Working Group and the Treatment Access Expansion Project, for helping bring so much attention to ETHA. I hope all of my colleagues will join us in supporting this critical, life-saving legislation.

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

AIDS ACTION,

Washington, DC, February 2, 2005.

Hon. GORDON SMITH,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR SMITH: On behalf of the AIDS Action Council board of directors and

our diverse, nationwide membership of community-based service providers and public health departments working with people living with or affected by HIV, I would like to thank you for introducing the Early Treatment for HIV Act (ETHA) with Senator Clinton and offer my strong support for this important piece of legislation.

As you know, ETHA is a means to eliminate barriers to early drug therapy and comprehensive care for people living with HIV. This important legislation would give States the option of allowing HIV positive people with low incomes to qualify for Medicaid coverage earlier in the course of their infection, permitting them to receive greater benefits from anti-retroviral therapy.

Access to pharmaceuticals and quality health services is vital for people living with HIV. Advancements in treatment and the development of anti-retroviral (ARV) therapy have enabled HIV positive individuals to lead longer and healthier lives. However, ARV therapy is often prohibitively expensive, costing approximately \$10,000 to \$12,000 annually, making it virtually impossible for low-income people, who are often uninsured or underinsured, to access these life-prolonging medications.

Current Federal treatment guidelines recommend the initiation of ARV therapy early in the course of HIV infection. With early initiation, the efficacy of ARV therapy increases, boosting the effectiveness of other available HIV drugs and staving off disability. Initiated early on, ARV therapy ultimately saves costs associated with delayed medical treatment. Unfortunately, many uninsured and underinsured people living with HIV cannot afford ARV therapy on their own. Further, Americans living with HIV do not qualify for Medicaid until they have received an AIDS diagnosis and are sick enough to meet Medicaid's categorical requirements for disability—a point at which it is too late for ARV treatment to be optimally effective. These barriers to early treatment must be eliminated so that low income people living with HIV can access the health care they need.

During this time of shrinking Federal budgets and economic downsizing, savings in Federal HIV programs, whether in mandatory or discretionary spending, are beneficial to all parties involved. By allowing HIV positive individuals to qualify for Medicaid earlier in the course of HIV infection, ETHA will create significant savings for the Federal Government in overall health care funding.

AIDS Action looks forward to working with you on passage of this bill. Together we can ensure that people living with HIV have access to the treatments and health services they need to stay healthy.

Sincerely,

MARSHA A. MARTIN,  
Executive Director.

THE AIDS INSTITUTE,  
Washington, DC, February 2, 2005.

Re the early treatment for HIV Act (ETHA).

Senator GORDON SMITH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR SMITH: The AIDS Institute applauds you for your continued leadership and commitment to those people living with HIV/AIDS in our country who are in need of lifesaving healthcare and treatment. While the HIV/AIDS epidemic in sub-Saharan Africa and other parts of the world often overshadow the epidemic in the United States, we must not forget about the approximately 900,000 people living in the U.S. who have HIV or AIDS.

Those infected with HIV are more likely to be low-income, and it disproportionately im-

pacts certain populations, particularly minorities. In fact, the AIDS case rate per 100,000 population for African Americans was 9.5 times that of whites in 2003.

According to a recent Institute of Medicine report titled, "Public Financing and Delivery of HIV/AIDS Care: Securing the Legacy of the Ryan White CARE Act", 233,000 of the 463,070 people living with HIV in the U.S. who need antiretroviral treatment do not have ongoing access to this treatment. This does not include an additional 82,000 people who are infected but unaware of their HIV status and are in need of antiretroviral medications.

One reason why there are so many people lacking treatment is that under current law, Medicaid, which is the single largest public payer of HIV/AIDS care in the U.S., only covers those with full blown AIDS, not those with HIV.

The Early Treatment for HIV Act (ETHA), being re-introduced in this Congress under your leadership and Sen. Hillary Clinton, would correct an archaic mindset in the delivery of public health care. No longer would a Medicaid eligible person with HIV have to become disabled with AIDS to receive access to Medicaid provided care and treatment. Providing coverage to those with HIV can prevent them from developing AIDS, and allow them to live a productive life with their family and be a healthy contributing member of society.

ETHA would provide States the option of amending their Medicaid eligibility requirements to include uninsured and underinsured, pre-disabled poor and low-income people living with HIV. No State has to participate if they choose not to.

As all States have participated in the Breast and Cervical Cancer Prevention and Treatment Act, on which ETHA is modeled, we believe all States will opt to choose this approach in treating those with HIV. States will opt into this benefit not only because it is the medically and ethically right thing to do, but it is cost effective, as well.

A recent study prepared by PricewaterhouseCoopers found that if ETHA was enacted, over 10 years:

—the death rate for persons living with HIV on Medicaid would be reduced by 50 percent;

—there would be 35,000 more individuals having CD4 levels above 500 under ETHA versus the existing Medicaid system; and

—result in a savings of \$31.7 million.

The AIDS Institute thanks you for your bipartisan leadership by introducing "The Early Treatment for HIV Act of 2006". It is the type of Medicaid reform that is critically needed to update the program to keep current with the Federal Government's guidelines for treating people with HIV.

We look forward to working with you and your colleagues as it moves to enactment.

Sincerely,

DR. A. GENE COPELLO,  
Executive Director.

FEBRUARY 2, 2005.

Hon. GORDON SMITH,  
404 Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR SMITH: The American Academy of HIV Medicine is an independent organization of HIV Specialists and others dedicated to promoting excellence in HIV/AIDS care. As the largest independent organization of HIV frontline providers, our 2,000 members provide direct care to more than 340,000 HIV patients—more than two thirds of the patients in active treatment for HIV disease.

The Academy, particularly those HIV Specialists in the state of Oregon, would like to thank and commend you for co-sponsoring the Early Treatment for HIV Act (ETHA).

ETHA addresses a cruel irony in the current Medicaid system—that under current Medicaid rules people must become disabled by AIDS before they can receive access to Medicaid provided care and treatment that could have prevented them from becoming so ill in the first place. ETHA would bring Medicaid eligibility rules in line with the clinical standard of care for treating HIV disease. ETHA helps address the fact that increasingly, in many parts of the country, there are growing waiting lists for access to life-saving medications and limited to no access to comprehensive health care. Particularly in Oregon, we have been witness to difficulties in access to care for some of our patients, having endured a severe strain on our AIDS Drug Assistance Program (ADAP) for quite some time.

The Academy believes this legislation would allow HIV positive individuals access to the medical care that we recognize as vital towards postponing or avoiding the onset of AIDS and towards enormously increase the quality of life for people living with HIV disease.

As a provider at a public health clinic (the Multnomah County Health Department HIV clinic), I see patients from a 6 county area, with a growing number of uninsured. The difficulties in obtaining medication coverage have been growing monthly, and have become a major part of the 'medical care' we provide. A more equitable system of coverage and medication access would help tremendously, and allow us to focus on what we are trained to do. Thank you for your efforts in this area.

Sincerely,

MICHAEL S. MACVEIGH.  
JAMES E. McDONALD.  
JOAN REEDER.  
MARIA KOSMETATOS.

CASCADE AIDS PROJECT,  
Portland, OR, February 1, 2005.

Senator GORDON SMITH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR SMITH: As you know, Cascade AIDS Project is the largest AIDS service organization in Oregon. For two decades we have served and advocated for people living with and at risk for HIV/AIDS. We strongly urge you to support the Early Treatment of HIV Act.

The Early Treatment for HIV Act will allow low-income individuals living with HIV to qualify for Medicaid coverage earlier in the course of their disease instead of waiting until they are disabled by full-blown AIDS.

Healthcare advocates have long been arguing that to treat an individual's illness at its earlier stages costs less than waiting until the individual is significantly disabled by further progression of the illness.

There are many Americans—those in the low income bracket and in underserved communities—who do not have access to drug treatment regimens because they have not progressed to full-blown AIDS. The ACT would make access to those drugs possible.

Medicaid is a lifeline to HIV care for roughly half of those living with AIDS, and 90% of all children living with AIDS. All Medicaid programs cover some prescription drugs, but with the improved drug therapy of today, it is crucial that individuals infected with HIV receive access to these drugs as soon as their conditions call for it.

Passage of the Early Treatment for HIV Act will save countless lives and must be viewed as a priority. We know that passage of the Act is the right thing to do.

Sincerely,

THOMAS BRUNER,  
Executive Director.

TII-CANN,

Washington, DC, February 2, 2005.

Hon. GORDON SMITH,  
U.S. Senate,

Washington, DC.

Subject: ETHA (The Early Treatment for HIV Act)

DEAR SENATOR SMITH: I wanted to express our appreciation and support for your introduction of ETHA in the 109th U.S. Congress together with Senator Clinton and the other original co-sponsors.

Having been working since day one on the ETHA process and having closely studied the potentially lifesaving—and cost savings—potentials of this bill we feel it's particularly crucial that this important legislation be passed into law as soon as possible.

The across the board potential cost savings inherent in providing early access to HIV treatment over 10 years are a compelling fiscally responsible story and of course treating sick Americans as soon as possible is simply the correct moral and ethical course of action for the world's most powerful country. The value of increasing life span and quality of life to tens of thousands of affected individuals, and their families, has a tremendous value to society at large, as well.

Once again we extend our thanks to you and Senator Clinton for your leadership and we look forward to helping this important private and Public health legislation to work its way through our congressional process.

Sincerely,

WILLIAM E. ARNOLD,  
CEO.

PROJECT INFORM,

San Francisco, CA, February 2, 2005.

Hon. GORDON SMITH,  
U.S. Senate,

Washington, DC.

DEAR SENATOR SMITH: I am writing to thank you and Senator Clinton for introducing the Early Treatment for HIV Act. Project Inform, a national HIV/AIDS treatment information and advocacy organization serving 80,000 people nationwide, strongly supports this legislation.

This bill would allow, states to extend Medicaid coverage to pre-disabled people living with IV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

Project Inform is acutely aware of the need for early access to lifesaving medications and healthcare for people living with HIV/AIDS. Discretionary programs such as the AIDS Drug Assistance Program (ADAP) are simply unable to meet the growing need. If ETHA is passed and implemented by the states, a great burden will be lifted off these safety net programs and people living with the disease will be able to get the care and treatment needed to live longer, more productive lives.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know

how Project Inform can help make it become law.

Sincerely,

RYAN CLARY,  
Senior Policy Advocate.

PARTNERSHIP PROJECT,  
Portland, OR, February 1, 2005.

Hon. GORDON SMITH,  
U.S. Senate,

Washington, DC.

DEAR SENATOR SMITH: I am writing to thank you for introducing the Early Treatment for HIV Act with Senator Clinton, and to offer my strong support for this legislation.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

The more people who are on Medicaid the more the pressure will be relieved on ADAP, CareAssist, and other programs that serve Oregon residents.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

RICK STOLLER,  
Clinical Manager.

NASTAD,

Washington, DC, February 2, 2005.

Hon. GORDON SMITH,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR SMITH: On behalf of the National Alliance of State and Territorial AIDS Directors (NASTAD), I am writing to offer our support for the "Early Treatment for HIV Act." NASTAD represents the nation's chief state and territorial health agency staff who are responsible for HIV/AIDS prevention, care and treatment programs funded by state and federal governments. This legislation would give states an important option in providing care and treatment services to low-income Americans living with HIV.

The Early Treatment for HIV Act (ETHA) would allow states to expand their Medicaid programs to cover HIV positive individuals, before they become disabled, without having to receive a waiver. NASTAD believes this legislation would allow HIV positive individuals to access the medical care that is widely recommended, can postpone or avoid the onset of AIDS, and can enormously increase the quality of life for people living with HIV.

State AIDS directors continue to develop innovative and cost-effective HIV/AIDS programs in the face of devastating state budget cuts and federal contributions that fail to keep up with need. ETHA provides a solution to states by increasing health care access for those living with HIV/AIDS. ETHA will also save states money in the long-run by treating HIV positive individuals earlier in the disease's progression and providing states with a federal match for the millions of dollars they are presently spending on HIV/AIDS care.

Thank you very much for your continued commitment to persons living with HIV/AIDS. I look forward to working with you to gain support for this important piece of legislation.

Sincerely,

JULIE M. SCOFIELD,  
*Executive Director.*

AIDS FOUNDATION OF CHICAGO,  
*Chicago, IL, February 2, 2005.*

Hon. GORDON SMITH,  
*U.S. Senate,*  
*Washington DC.*

DEAR SENATOR SMITH: I am writing to thank you for introducing the Early Treatment for HIV Act with Senator Clinton, and to offer the AIDS Foundation of Chicago's (AFC) strong support for this legislation.

Founded in 1985, the mission of AFC is to lead the fight against HIV/AIDS and improve the lives of people affected by the epidemic. In order to accomplish this, AFC collaborates with community organizations to develop and improve HIV/AIDS services; funds and coordinates prevention, care, and advocacy projects; and champion's effective, compassionate HIV/AIDS policy. AFC is the sole AIDS advocacy organization monitoring and responding to AIDS-related state legislation and public policy in Illinois.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

JIM PICKETT,  
*Director of Public Policy.*

AIDS ACTION BALTIMORE, INC.,  
*Baltimore, MD, February 3, 2005.*

Hon. GORDON SMITH,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR SMITH: On behalf of AIDS Action Baltimore, Inc. (AAB) I am writing to thank you for introducing the Early Treatment for HIV Act with Senator CLINTON, and to offer my strong support for this legislation.

This bill would allow states to extend Medicaid coverage to pre-disabled people living with HIV. It represents a breakthrough in assuring early access to care for thousands of low-income people living with HIV. Current HIV treatments are successfully delaying the progression from HIV infection to AIDS, thus improving the health and quality of life for many people living with the disease. However, without access to early intervention health care and treatment, these advances remain out of reach for many non-disabled, low-income people with HIV.

AAB has been engaged in research advocacy and providing valuable medical, financial and emotional support to thousands of people with HIV infection since 1987. Access to care and treatment is of the utmost im-

portance to someone living with HIV disease. Medicaid will not only help improve the quality of life for an individual with HIV disease by will also help to relieve pressure on the AIDS Drug Assistance Programs in all of our states.

A recent report by PricewaterhouseCoopers found that if ETHA is passed and implemented by the states, the death rate of people living with HIV on Medicaid would be cut in half over a ten-year period. It also revealed that over a ten-year period, ETHA would save money in the Medicaid program. It is a humane and cost-effective bill and I thank you again for your leadership in introducing it. Please let me know how I can help make it become law.

Sincerely,

LYNDA DEE,  
*Executive Director.*

AIDS ACTION,  
*February 2, 2005.*

Hon. GORDON SMITH,  
*Russell Senate Office Building,*  
*Washington, DC.*

DEAR SENATOR SMITH: On behalf of the AIDS Action Council board of directors and our diverse, nationwide membership of community-based service providers and public health departments working with people living with or affected by HIV, I would like to thank you for introducing the Early Treatment for HIV Act (ETHA) with Senator Clinton and offer my strong support for this important piece of legislation.

As you know, ETHA is a means to eliminate barriers to early drug therapy and comprehensive care for people living with HIV. This important legislation would give states the option of allowing HIV positive people with low incomes to qualify for Medicaid coverage earlier in the course of their infection, permitting them to receive greater benefits from anti-retroviral therapy.

Access to pharmaceuticals and quality health services is vital for people living with HIV. Advancements in treatment and the development of anti-retroviral (ARV) therapy have enabled HIV positive individuals to lead longer and healthier lives. However, ARV therapy is often prohibitively expensive, costing approximately \$10,000 to \$12,000 annually, making it virtually impossible for low-income people, who are often uninsured or underinsured, to access these life-prolonging medications.

Current federal treatment guidelines recommend the initiation of ARV therapy early in the course of HIV infection. With early initiation, the efficacy of ARV therapy increases, boosting the effectiveness of other available HIV drugs and staving off disability. Initiated early on, ARV therapy ultimately saves costs associated with delayed medical treatment. Unfortunately, many uninsured and underinsured people living with HIV cannot afford ARV therapy on their own. Further, Americans living with HIV do not qualify for Medicaid until they have received an AIDS diagnosis and are sick enough to meet Medicaid's categorical requirements for disability—a point at which it is too late for ARV treatment to be optimally effective. These barriers to early treatment must be eliminated so that low income people living with HIV can access the health care they need.

During this time of shrinking federal budgets and economic downsizing, savings in federal HIV programs, whether in mandatory or discretionary spending, are beneficial to all parties involved. By allowing HIV positive individuals to qualify for Medicaid earlier in the course of HIV infection, ETHA will create significant savings for the federal government in overall health care funding.

AIDS Action looks forward to working with you on passage of this bill. Together we

can ensure that people living with HIV have access to the treatments and health services they need to stay healthy.

Sincerely,

MARSHA A. MARTIN, DSW,  
*Executive Director.*

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 311

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Early Treatment for HIV Act of 2005".

**SEC. 2. OPTIONAL MEDICAID COVERAGE OF LOW-INCOME HIV-INFECTED INDIVIDUALS.**

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)(A)(ii)—

(A) by striking "or" at the end of subclause (XVII);

(B) by adding "or" at the end of subclause (XVIII); and

(C) by adding at the end the following: "(XIX) who are described in subsection (cc) (relating to HIV-infected individuals);"; and

(2) by adding at the end the following:

"(cc) HIV-infected individuals described in this subsection are individuals not described in subsection (a)(10)(A)(i)—

"(1) who have HIV infection;

"(2) whose income (as determined under the State plan under this title with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

"(3) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.".

(b) ENHANCED MATCH.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by striking "section 1902(a)(10)(A)(ii)(XVIII)" and inserting "subclause (XVIII) or (XIX) of section 1902(a)(10)(A)(ii)".

(c) CONFORMING AMENDMENTS.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(1) by striking "or" at the end of clause (xii);

(2) by adding "or" at the end of clause (xiii); and

(3) by inserting after clause (xiii) the following:

"(xiv) individuals described in section 1902(cc);";

(d) EXEMPTION FROM FUNDING LIMITATION FOR TERRITORIES.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended by adding at the end the following:

"(3) DISREGARDING MEDICAL ASSISTANCE FOR OPTIONAL LOW-INCOME HIV-INFECTED INDIVIDUALS.—The limitations under subsection (f) and the previous provisions of this subsection shall not apply to amounts expended for medical assistance for individuals described in section 1902(cc) who are only eligible for such assistance on the basis of section 1902(a)(10)(A)(ii)(XIX)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after the date of

the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

By Mr. McCAIN (for himself, Ms. CANTWELL, and Mr. LEAHY):

S. 312. A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, I rise today to introduce The Local Community Radio Act of 2005. This bill would allow the Federal Communications Commission (FCC) to license Low Power FM stations on third adjacent channels to full power stations without limitations and eliminate the requirement that the FCC perform further testing on the economic impact of Low Power FM radio. Additionally, the bill seeks to protect stations that provide radio reading services, which some have suggested are more susceptible to interference than other stations because they are carried on a subcarrier frequency. I am pleased to be joined in this effort by Senators LEAHY and CANTWELL who are co-sponsors of the bill. I thank them for their support. A similar bill was introduced in the 108th Congress and passed out of the Senate Committee on Commerce, Science, and Transportation.

In January 2000, the FCC launched Low Power FM radio service to “enhance locally focused community-oriented radio broadcasting.” Low Power FM stations are just that—low power radio stations on the FM band that generally reach an audience within a 3.5 mile radius of the station’s transmitter. In rural areas, this signal may not reach many people, but it provides rural citizens with another media outlet—another voice in the market. In urban areas, this signal may reach hundreds of thousands of people and provide not just local content, but very specific neighborhood news and information.

Localism is increasingly important in today’s changing media landscape. Rampant ownership consolidation has taken place in the radio industry since passage of the Telecommunications Act of 1996. Since that time, many Americans have complained that the large media conglomerates fail to serve local communities’ interests and seem to use their local station license as a conduit to air national programming. Low Power FM was introduced, in part, to respond to such complaints.

Between May 1999 and May 2000, the Commission received over 3,400 applications for Low Power FM stations from non-commercial educational entities and community organizations. However, before the Commission could act on many of the applications for this new community service, broadcasters frightened legislators into halting the full implementation of Low Power FM. Broadcasters masqueraded their true concerns about competition from a real

local radio broadcaster in thinly veiled claims of interference.

Due to the broadcasters’ subterfuge, Congress added language to a 2000 appropriations bill requiring the FCC to hire an independent engineering firm to further study broadcasters’ claims of interference. I am not happy to report that after spending almost two years and over 2 million dollars, the independent study revealed what the FCC and community groups had said all along: LPFM will do no harm to other broadcasters. Perhaps, we should send a bill to the National Association of Broadcasters.

That brings us to the future of Low Power FM. The FCC, as required by the appropriations language, reported the study’s findings to Congress last February and recommended full implementation of Low Power FM. This bill simply follows the FCC’s recommendation: begin licensing Low Power FM stations on third adjacent channels to full power stations without limitations. Additionally, the bill seeks to protect full power stations that provide radio reading services. It is estimated that about 1.1 million people in the U.S. are blind, and it is important to ensure this helpful radio reading service remains interference free.

The enactment of this bill will immediately make available a number of Low Power FM frequencies. By some estimates, Congress’ legislation delaying the full implementation, which mostly affected metropolitan areas, led to the elimination of half the Low Power FM applications filed during 2000.

For example, Congress’ action eliminated the LPFM slot in Fresno applied for by El Comite de los Pobres. The group had hoped to address the dearth of local programming for the Latino community by airing bilingual coverage of local issues. New Orleans’ Music Business Institute’s application was eliminated as well. The Music Business Institute teaches young people how to get into the music business. The Institute had planned to use the station to help start the musical careers of local artists, and to educate listeners about the city’s jazz and blues musical heritage.

There are some wonderful LPFM stations that are up and running. A recent article published in *The Nation* called these stations, “beacons of grassroots democracy.” The article discussed WRFR in Rockland, Maine: “Shunning the canned programming approach of Rockland’s two Clear Channel stations, WRFR offers an array of local talent, tastes and interests, and was recently named Maine station of the year by a state music association. Although country music, a Maine favorite, is heavily represented, hardly any WRFR deejay restricts himself to a single era, genre or Top-40 play list.”

In 2000, the Southern Development Foundation established a Low Power FM station in Opelousas, Louisiana, which sponsors agriculture programs,

leases land to farmers, raises money for scholarships for needy kids and helps citizens learn to read. The station director told a local community newsletter: “You’ve got local radio stations that are owned by larger companies. There should be some programming concerning the music that is from here, and the people from here. But there’s not.”

I ask the broadcasters to come clean and join us in promoting LPFM. More good radio brings about more radio listening—and that’s good for all broadcasters. Therefore, in the interests of would-be new broadcasters, existing broadcasters, but most of all, the listening public, I urge the enactment of the Local Community Radio Act of 2005.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 312

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Local Community Radio Act of 2005”.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The passage of the Telecommunications Act of 1996 led to increased ownership consolidation in the radio industry.

(2) At a hearing before the Senate Committee on Commerce, Science, and Transportation, on June 4, 2003, all 5 members of the Federal Communications Commission testified that there has been, in at least some local radio markets, too much consolidation.

(3) A commitment to localism—local operations, local research, local management, locally-originated programming, local artists, and local news and events—would bolster radio listening.

(4) Local communities have sought to launch radio stations to meet their local needs. However, due to the scarce amount of spectrum available and the high cost of buying and running a large station, many local communities are unable to establish a radio station.

(5) In 2003, the average cost to acquire a commercial radio station was more than \$2,500,000.

(6) In January, 2000, the Federal Communications Commission authorized a new, affordable community radio service called “low-power FM” or “LPFM” to “enhance locally focused community-oriented radio broadcasting”.

(7) Through the creation of LPFM, the Commission sought to “create opportunities for new voices on the air waves and to allow local groups, including schools, churches, and other community-based organizations, to provide programming responsive to local community needs and interests”.

(8) The Commission made clear that the creation of LPFM would not compromise the integrity of the FM radio band by stating, “We are committed to creating a low-power FM radio service only if it does not cause unacceptable interference to existing radio service.”

(9) Currently, FM translator stations can operate on the second and third-adjacent channels to full power radio stations, up to an effective radiated power of 250 watts, pursuant to part 74 of title 47, Code of Federal

Regulations, using the very same transmitters that LPFM stations will use. The FCC based its LPFM rules on the actual performance of these translators that already operate without undue interference to FM stations. The actual interference record of these translators is far more useful than any results that further testing could yield.

(10) Small rural broadcasters were particularly concerned about a lengthy and costly interference complaint process. Therefore, in September, 2000, the Commission created a simple process to address interference complaints regarding LPFM stations on an expedited basis.

(11) In December, 2000, Congress delayed the full implementation of LPFM until an independent engineering study was completed and reviewed. This delay was due to some broadcasters' concerns that LPFM service would cause interference in the FM band.

(12) The delay prevented millions of Americans from having a locally operated, community based radio station in their neighborhood.

(13) Approximately 300 LPFM stations were allowed to proceed despite the congressional action. These stations are currently on the air and are run by local government agencies, groups promoting arts and education to immigrant and indigenous peoples, artists, schools, religious organizations, environmental groups, organizations promoting literacy, and many other civically-oriented organizations.

(14) After 2 years and the expenditure of \$2,193,343 in taxpayer dollars to conduct this study, the broadcasters' concerns were demonstrated to be unsubstantiated.

#### **SEC. 3. REPEAL OF PRIOR LAW.**

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (Public Law 106-553; 114 Stat. 2762A-111), is repealed.

#### **SEC. 4. MINIMUM DISTANCE SEPARATION REQUIREMENTS.**

The Federal Communications Commission shall modify its rules to eliminate third-adjacent minimum distance separation requirements between—

- (1) low-power FM stations; and
- (2) full-service FM stations, FM translator stations, and FM booster stations.

#### **SEC. 5. PROTECTION OF RADIO READING SERVICES.**

The Federal Communications Commission shall retain its rules that provide third-adjacent channel protection for full-power non-commercial FM stations that broadcast radio reading services via a subcarrier frequency from potential low-power FM station interference.

#### **SEC. 6. ENSURING AVAILABILITY OF SPECTRUM FOR LPFM STATIONS.**

The Federal Communications Commission when licensing FM translator stations shall ensure—

- (1) licenses are available to both FM translator stations and low-power FM stations; and
- (2) that such decisions are made based on the needs of the local community.

Ms. CANTWELL. Mr. President, today, I am pleased to be joining with the Senator from Arizona, Mr. MCCAIN, and the Senator from Vermont, Mr. LEAHY, as a cosponsor of the Local Community Radio Act of 2005. This legislation is similar to the version of S. 2505, the Low Power Radio Act of 2004 that was introduced last Congress.

This bill removes once and for all the barriers keeping low power FM service

from flourishing in communities of all sizes across the country, while protecting important radio reading services. Under the existing law, my State has only a handful of low power FM stations. If this bill becomes law, the Federal Communication Commission will be able to move forward and license additional low power FM stations to serve communities all across the State of Washington such as Bainbridge Island, Vashon Island and Auburn.

Let me review the history of this issue for the Senate. The Telecommunications Act of 1996 removed completely the ownership caps restricting the number of stations that any one company can own nationwide. The Act has led to an unprecedented level of consolidation and mergers in the U.S. radio industry. Additionally, within a local market, the rules allow ownership of up to eight radio stations, on a sliding scale, depending on total number of stations in the market.

Five years ago, the FCC adopted rules creating a new, low power FM radio service in response to public concerns that the increased consolidation of radio ownership weakened the local character of radio.

Low power FM stations serve the public interest by providing significantly greater opportunities for citizen involvement in broadcasting in communities across the country. Eligible licensees are non-profit, government or educational institutions, public safety or transportation services. No existing broadcasting licensee or media entity can have an ownership interest or any program or operating agreement with any low power FM stations.

In many media markets, the number of independent local voices has dropped significantly, replaced by giant corporations replicating formats and programming from across the country. Voice-tracking, a practice in which a DJ either pre-records part of a program for a local station or for a station out of the immediate market, is not a substitute for true localism.

With fewer independent outlets available for artists to get airplay for a given genre of music, particularly for newer acts, there is a perception in some quarters of the music industry that you need to resort to the reprehensible practices such as payola in order to be heard by the public.

During its proceeding on low power FM, the FCC conducted tests on the effects of these low power stations on full power FM broadcasts for various types of radio receivers. The FCC engineering reports concluded that low power FM signals would not cause interference with the signals to full power FM stations within their service areas. Based on the results of interference testing, LPFM stations were not required to protect stations three channels away from inference as is required for full power stations. These rules allowed radio frequencies for LPFM stations to become available in

larger media markets where under the old rules of third adjacent channel separation, there was no space available for them on the crowded radio dial.

While the public reaction to low power FM was positive, the reaction of FM broadcasters, both commercial and non-commercial, was negative. Congress was convinced to add a rider to the 2001 Commerce, Justice, State appropriations law that effectively undid the provisions in the FCC rules, and once again required third adjacent channel separation. Congress also required the FCC to perform a study examining the impact on interference on the third adjacent channel.

Over two million dollars later, the results of the study validated the FCC's original analysis. Last year, I joined the Senator from Arizona, Mr. MCCAIN, and the Senator from Vermont, Mr. LEAHY, in sponsoring a bill that would have accepted the results of this latest engineering study to undo the 2001 appropriations rider. It also addressed specific concerns about protecting stations providing reading services over the radio frequencies to assist the blind. Under the Senator from Arizona's (Mr. MCCAIN) leadership, the Commerce Committee reported the low power FM bill out favorably with an amendment, but it did not come to a vote on the floor.

The time has come to move ahead with this proposal. The U.S. radio industry has experienced an unprecedented wave of consolidation and mergers since passage of the 1996 Telecommunications Act. The consolidation trend has raised barriers of both size and cost for new broadcasters. The legislation we introduce today allows new entrants into broadcasting activities and new voices on our public airwaves. I hope the Commerce Committee will again act quickly on this legislation.

Mr. LEAHY. Mr. President, I am pleased today to join Senators MCCAIN and CANTWELL in introducing important legislation to increase the number of frequencies available for low power radio stations in America. Low power stations serve their communities with broadcasting that reflects local needs and local preferences. In this way, low power FM offers a valuable counterpoint to nationwide media consolidation. As National Public Radio reported this morning, low power FM has a large following of listeners tired of hearing the same programming across the country. For this reason, I have been a strong supporter of low power FM for many years now. In fact, I recently urged FCC Chairman Powell to expedite licensing for new low power stations.

Unfortunately, for many years now the number of low power FM stations the FCC could license has been limited by unrealistic and unnecessary rules requiring these small stations to find available frequencies far from any full power broadcaster. Interference must be avoided if we are to make use of the

airwaves. The current rules, however, go beyond what is necessary to protect full power stations from interference and, instead, protect them from competition. This bill will reduce the unnecessary restrictions on low power FM stations.

Of course, the need for low power FM radio must be balanced against other important uses of nearby frequencies. I have worked hard to protect reading services for the blind, and this bill protects those services by retaining the third-adjacent rule where such services would be affected. In addition, this bill protects commercial broadcasters of all sizes from actual interference by leaving intact the FCC's expedited interference claim review procedures.

I look forward to working with all the parties involved to strengthen local broadcasting.

By Mr. LUGAR (for himself, Mr. DOMENICI, Mr. HAGEL, Mr. REED, Mr. BIDEN, Mr. LEVIN, Ms. COLLINS, Mr. MCCAIN, and Mr. OBAMA):

S. 313. A bill to improve authorities to address urgent nonproliferation crises and United States nonproliferation operations; to the Committee on Armed Services.

Mr. LUGAR. Mr. President, I rise to again introduce a bill that will strengthen U.S. nonproliferation efforts. It is supported by the Administration and several of my colleagues. This bill represents the fourth installment of Nunn-Lugar legislation that I have offered since 1991.

In that year, Sam Nunn and I authored the Nunn-Lugar Act, which established the Cooperative Threat Reduction Program. That program has provided U.S. funding and expertise to help the former Soviet Union safeguard and dismantle their enormous stockpiles of nuclear, chemical and biological weapons, means of delivery and related materials. In 1997, Senator Nunn and I were joined by Senator DOMENICI in introducing the Defense Against Weapons of Mass Destruction Act, which expanded Nunn-Lugar authorities in the former Soviet Union and provided WMD expertise to first responders in American cities. In 2003, Congress adopted the Nunn-Lugar Expansion Act, which authorized the Nunn-Lugar program to operate outside the former Soviet Union to address proliferation threats. The bill that I am introducing today would strengthen the Nunn-Lugar program and provide it with greater flexibility to address emerging threats.

To date, the Nunn-Lugar program has deactivated or destroyed: 6,564 nuclear warheads; 568 ICBMs; 477 ICBM silos; 17 ICBM mobile missile launchers; 142 bombers; 761 nuclear air-to-surface missiles; 420 submarine missile launchers; 543 submarine launched missiles; 28 nuclear submarines; and 194 nuclear test tunnels.

The Nunn-Lugar program also facilitated the removal of all nuclear weap-

ons from Ukraine, Belarus and Kazakhstan. After the fall of the Soviet Union, these three nations emerged as the third, fourth, and eighth largest nuclear powers in the world. Today, all three are nuclear weapons free as a result of cooperative efforts under the Nunn-Lugar program. In addition, Nunn-Lugar is the primary tool through which the United States is working with Russian authorities to identify, safeguard and destroy Russia's massive chemical and biological warfare capacity.

These successes were never a foregone conclusion. Today, even after more than 12 years, creativity and constant vigilance are required to ensure that the Nunn-Lugar program is not encumbered by bureaucratic obstacles or undercut by political disagreements.

During Secretary Rice's confirmation hearing with the Senate Foreign Relations Committee on January 18, 2005, I asked Dr. Rice if she and the Administration supported this legislation, to which she responded "Yes we do." Secretary Rice and President Bush have long argued that there needs to be maximum flexibility granted to the Administration to execute a global, focused and timely effort to fight proliferation. In view of the Administration's strong support for this bill, I look forward to working with the Armed Services Committee to enact it.

I have devoted much time and effort to overseeing and accelerating the Nunn-Lugar program. Uncounted individuals of great dedication serving on the ground in the former Soviet Union and in our government have made this program work. Nevertheless, from the beginning, we have encountered resistance to the Nunn-Lugar concept in both the United States and Russia. In our own country, opposition often has been motivated by false perceptions that Nunn-Lugar money is foreign assistance or by beliefs that Defense Department funds should only be spent on troops, weapons, or other war-fighting capabilities. Until recently, we also faced a general disinterest in nonproliferation that made gaining support for Nunn-Lugar funding and activities an annual struggle.

The attacks of September 11 changed the political discourse on this subject. We have turned a corner—the public, the media, and political candidates are paying more attention now. In a remarkable moment in the first presidential debate last year, both President Bush and his opponent agreed that the number one national security threat facing the United States was the prospect that weapons of mass destruction would fall into the hands of terrorists.

While the Administration has noted its support for this bill, the 9/11 Commission also weighed in last year with another important endorsement of the Nunn-Lugar program, saying that "Preventing the proliferation of [weapons of mass destruction] warrants a maximum effort—by strengthening

counter-proliferation efforts, expanding the Proliferation Security Initiative, and supporting the Cooperative Threat Reduction Program." The Report went on to say that "Nunn-Lugar . . . is now in need of expansion, improvement and resources."

My bill would underscore the bipartisan consensus on Nunn-Lugar by streamlining and accelerating Nunn-Lugar implementation. It would grant more flexibility to the President and the Secretary of Defense to undertake proliferation projects outside the former Soviet Union. It also would eliminate Congressionally-imposed conditions on Nunn-Lugar assistance that in the past have forced the suspension of time-sensitive nonproliferation projects. The purpose of the bill is to reduce bureaucratic red tape and friction within our government that hinder effective responses to nonproliferation opportunities and emergencies.

For example, recently Albania appealed for help in destroying 16 tons of chemical agent left over from the Cold War. Last August, I visited this remote storage facility. Nunn-Lugar officials are working closely with Albanian leaders to destroy this dangerous stockpile. But this experience also is illustrative of the need to reduce bureaucratic delays. The package of documents related to the mission took some 11 weeks to be finalized and readied for President Bush. From beginning to end, the bureaucratic process to authorize dismantlement of chemical weapons in Albania took more than three months. Fortunately, the situation in Albania was not a crisis, but we may not be able to afford these timelines in future nonproliferation emergencies.

As I said when I introduced this legislation during our November session last year, I wanted to have the benefit of the Administration's views and my colleagues' input. Since then, I am pleased that Senators DOMENICI, HAGEL, REED, BIDEN, LEVIN, COLLINS, MCCAIN and OBAMA have all signed on as co-sponsors. The Administration has now stated that they support this bill. I look forward to working in Congress to enact it.

By Mr. CORNYN:

S. 314. A bill to protect consumers, creditors, workers, pensioners, shareholders, and small businesses, by reforming the rules governing venue in bankruptcy cases to combat forum shopping by corporate debtors; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, I rise today to introduce the Fairness in Bankruptcy Litigation Act of 2005.

This legislation will provide much-needed protection—for consumers, creditors, workers, pensioners, shareholders, and small businesses—by reforming the rules governing venue in bankruptcy cases to combat forum shopping.

Quite simply, my bill will prevent corporate debtors from moving their

bankruptcy cases thousands of miles away from the communities and their workers who have the most at stake. And it will prevent bankrupt corporations from effectively selecting the judge in their own cases—because picking the judge isn't far off from picking the verdict.

This Act is a positive step for fairness, responsibility, and justice. It implements a major recommendation from the October 1997 National Bankruptcy Review Commission report, and earned the support of prominent bankruptcy law professors and practitioners nationwide. The bill is also supported by Texas Attorney General Greg Abbott (R) and former Massachusetts Attorney General Scott Harshbarger (D); Brady C. Williamson, who served as chairman of the National Bankruptcy Review Commission; and major national bankruptcy organizations like the National Association of Credit Management and the Commercial Law League of America.

With the introduction of this Act, this body will now have an opportunity to consider this growing crisis, which affects so many consumers and workers, just as we are about to examine the issue of comprehensive bankruptcy reform.

Sadly, our current bankruptcy venue law has become a target for enormous abuse. It's a problem that is well documented by academics, most recently in a comprehensive book published just last week by UCLA Law Professor Lynn M. LoPucki, as well as by Harvard Law Professor Elizabeth Warren, who served as the reporter for the National Bankruptcy Review Commission, and Professor Jay L. Westbrook of the University of Texas Law School.

I have personal experience with the worst kind of forum shopping. During my service to the State of Texas as Attorney General, I argued that the Enron Federal bankruptcy court proceedings should be litigated in Houston. That seemed like the common sense argument, of course—after all, Houston was where the majority of employees and others who were victimized by that corporate scandal called home.

Yet that's not where the case ended up. Instead, Enron was able to exploit a key loophole in bankruptcy law to maneuver their proceedings as far away from Houston as possible. They ended up in their desired forum in New York. See *In re Enron Corp.*, 274 B.R. 327 (S.D.N.Y. Bankr. 2002).

Enron used the place of incorporation of one of its small subsidiaries in order to file a bankruptcy claim in New York, and then used that smaller claim as the basis for shifting all of its much larger bankruptcy proceedings into that same court. The company had 7,500 employees in the Houston headquarters, but they filed for bankruptcy in New York, where Enron had only 57 employees.

This kind of blatant forum shopping makes a mockery of our laws. The common-sense legislation that I've in-

roduced today will combat such egregious forum shopping by requiring that corporate debtors file where their principal place of business or principal assets are located, rather than their state of incorporation, and forbidding parent companies from manipulating the venue by filing first through a subsidiary.

Bankruptcy venue abuse is not just bad for our legal system; it hurts America's consumers, creditors, workers, pensioners, shareholders, and small businesses. Under current law, corporate debtors effectively get to pick the court in which they will file for bankruptcy. As a result, creditors can be forced to litigate far away from the real-world location, where costs and inconveniences associated with travel are prohibitive.

This troubling loophole also serves to unfairly enable corporate debtors to evade their financial commitments. It badly disables consumers, creditors, workers, pensioners, shareholders, and small businesses from pursuing and receiving reasonable compensation from bankruptcy proceedings.

Current law allows debtors to forum shop and thereby to pick jurisdictions likely to rule in their favor. If debtors get to pick the jurisdiction, then bankruptcy judges have a disturbing incentive to compete with other bankruptcy courts for major bankruptcy cases, by tilting their rulings in favor of corporate debtors and their attorneys.

The examples are numerous. Here are three of the most prominent incidents: Polaroid. In October 2001, Boston-based Polaroid filed for bankruptcy in Delaware, listing assets at \$1.9 billion. Polaroid's top executives claimed that the company was a "melting ice cube," and arranged a hasty sale for \$465 million to a single bidder. The court refused to hear testimony as to the true value of the company and closed the sale in only 70 days. The top executives went to work for the new buyer and received millions of dollars in stock. Meanwhile, disabled employees had their health-care coverage canceled. The so-called "melting ice cube" became profitable the day after the sale became final.

K-Mart. In January 2002, failed top executives delivered Michigan-based K-Mart to the bankruptcy court in Chicago, which reportedly had been actively soliciting large corporate debtors to file there. With a workforce of 225,000, K-Mart had more employees than any company that had ever filed bankrupt nationwide. The Chicago judge let the failed executives take tens of millions of dollars in bonuses, perks, and loan forgiveness. Bankruptcy lawyers also profited, pocketing nearly \$140 million in legal fees. But some 43,000 creditors received only about ten cents on the dollar.

Worldcom. Worldcom perpetrated one of the biggest accounting frauds in history, inflating its income by \$9 billion. Although based in Mississippi, Worldcom followed Enron into the New

York bankruptcy court, where its managers received the same lenient treatment. No trustee was appointed; indeed, five months after the case was filed, the directors in office when the fraud occurred still constituted a majority of the board. They chose their own successors. A Top Worldcom executive used money taken from the company to build an exempt Texas home- stead, and Worldcom took no action. That executive then used the home- stead to buy his way out of his problems with the SEC. Meanwhile, creditors—mostly bondholders—lost \$20 billion.

This is not the first time we have addressed this important issue. The House Judiciary Subcommittee on Commercial and Administrative Law held a hearing on July 21, 2004, entitled "Administration of Large Business Bankruptcy Reorganizations: Has Competition for Big Cases Corrupted the Bankruptcy System?," and Congressman BRAD SHERMAN (D-CA) has previously led efforts to champion bankruptcy venue reform in the House. During the 107th Congress, Senator DURBIN introduced S. 2798, the Employee Abuse Prevention Act of 2002, joined by Senators KENNEDY, KERRY, LEAHY, and ROCKEFELLER, while Congressman WILLIAM D. DELAHUNT (D-MA) introduced the same bill in the House; section 205 of that legislation would have reformed bankruptcy venue law.

I believe we must take steps to respond to this important problem. The American people deserve better from our legal system. All bankruptcy cases deserve to be handled fairly and justly, and no corporate debtor should be allowed to escape responsibility by fleeing to another venue. It is high time that we take up this much-needed reform.

I ask unanimous consent that letters of support be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

ATTORNEY GENERAL OF TEXAS,  
*Austin, TX, February 2, 2005.*

Re Fairness in Bankruptcy Litigation Act of 2005.

Hon. JOHN CORNYN,  
*U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR CORNYN: I support your important initiative to prohibit opportunistic forum shopping by corporate debtors.

As you know firsthand from your tenure as Attorney General of Texas during the State's involvement in the Enron bankruptcy proceedings, such unsavory court-shopping truly harms innumerable parties—large and small alike. Far too often, corporate debtors file for bankruptcy in a far-flung district solely because of their incorporation in the state where that district is located.

Your proposal to amend 28 U.S.C. §1408—the aptly named Fairness in Bankruptcy Litigation Act—would prevent this unseemly practice. As you know, bankruptcy forum shopping can adversely impact not just states and state agencies, but countless consumers, creditors, employees, pensioners, stockholders, and small businesses that are regularly thwarted from protecting their interests simply because the debtor filed in a distant forum.

The venue stratagems used by large law firms to maximize their professional fees, render far-away courts inaccessible to scores of unsecured creditors, and select compliant, debtor-friendly judges undermine the credibility of our nation's bankruptcy system. Indeed, after two years of public hearings, the National Bankruptcy Review Commission recommended that Congress overhaul the law to prevent forum shopping by large Chapter 11 debtors and their affiliates. I strongly support their recommendation and applaud you for bringing this urgent matter to the attention of the United States Senate.

Abusive forum shopping by corporate debtors harms Americans from all walks of life. It is time for this gamesmanship to stop. I commend your efforts to strengthen our bankruptcy system and safeguard the interests of ordinary Americans.

Sincerely,

GREG ABBOTT.

MURPHY, HESSE, TOOMEY  
& LEHANE, LLP, ATTORNEYS AT LAW,  
Boston, MA, February 8, 2005.

Re Bankruptcy Venue Reform.

Senator JOHN CORNYN,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR: I commend efforts, either through an amendment to the bankruptcy bill before Congress or through the separate vehicle being introduced by Senator Cornyn, to close a major jurisdictional loophole in the bankruptcy statutes which directly affects every investor, business competitor, creditor, consumer, union, and state Attorney General in this country. While forum shopping and court competition are having a direct, adverse effect on the governance and reorganization of large, public companies, investors are feeling that effect in their returns; employees and unions in the abrogation of collectively bargained contracts and economic security; competitors in the loss of a level playing field; consumers and creditors in the loss of basic rights; and Attorneys General in the loss of power to be heard and to protect the rights of constituents and state public policy.

For the past decade, most bankrupt large public companies have "forum shopped" their cases to the bankruptcy courts in Wilmington, Delaware and New York City. For a time, that was generally thought to be advantageous. But events in Enron and other cases have shown otherwise. The shopping benefited bankruptcy professionals who worked in those cases by enabling them to charge higher fees and by freeing them from some restrictions on conflicts of interest. The shopping also benefited executives of some of those companies by allowing them to hang onto their jobs longer and in some cases even be paid large "retention bonuses."

But the effect of forum shopping on the companies—and hence on the shareholders and bondholders who invested in them—has been decidedly negative. According to major studies and the empirical research of experts like Professor Lynn LoPucki of UCLA law school, companies reorganized in the Delaware and New York courts in the early and mid-1990s failed at a rate more than double the rate for companies reorganized in other courts. As other courts copied Delaware in an effort to staunch their outflow of cases, the failure rates for those courts' reorganizations skyrocketed to match Delaware's rates. To confirm a plan, the Bankruptcy Code requires that the court find that "confirmation . . . is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor." But of the 43 largest public companies reorganized in U.S. Bankruptcy Courts from 1997 through 2000—the most recent period for which failure rates can be calculated—21 (49%) were back in bankruptcy within five years. His-

torically, the failure rates for big reorganization in non-competing courts have been below 10%.

Legislative action can address this problem in a common sense, fair, simple and direct way, by requiring bankrupt companies file in their local bankruptcy courts. By local courts, I mean the courts in the cities where the companies have their headquarters or their principal operations. This will free judges from the pressures to compete with other courts for cases, and enable them to return to the crucial function for which they were appointed: to protect shareholders, creditors, employees, suppliers, customers and the companies themselves during the brief but often frantic period between the failure of one corporate regime and its replacement with another. It will also ensure that these judges and courts hear from everyone affected and entitled to be heard—not only those who can afford to travel or appear in "foreign" courts, especially the public's lawyers, the Attorneys General. It is not a panacea for economic insecurity, and it changes no legal rights or duties or law. But it will cure a major inequity and a loophole utilized primarily to "game" the system. Enactment of this bill, or a similar legislative amendment, will enable us to say: "We had a problem, and now we have fixed it."

SCOTT HARSHBARGER.

COMMERCIAL LAW LEAGUE  
OF AMERICA®,  
Chicago, IL, February 7, 2005.

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

DEAR SENATOR CORNYN: The Commercial Law League of America ("CLLA"), founded in 1895, is the Nation's oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership exceeds 3,500 individuals. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of bankruptcy cases for all parties in interest.

The Bankruptcy Section of the CLLA is made up of approximately 1,100 bankruptcy lawyers and bankruptcy judges from virtually every State in the United States. Its members include practitioners with both small and large practices, who represent divergent interests in bankruptcy cases. The CLLA has testified on numerous occasions before Congress as experts in the bankruptcy and reorganization fields.

A principal concern of the CLLA is the need for an amendment requiring that the domicile and residence for venue of corporate debtors be conclusively presumed to be the location of the debtor's principal place of business without regard to the debtor's state of incorporation. Such a change would benefit creditors and prevent an unacceptable degree of forum shopping by debtors who are in search of a venue that will be friendly to their needs. More important, however, requiring that a corporate bankruptcy take place locally ensures that the distinct needs of the community are not overlooked.

Allowing the practice of forum shopping by debtors undermines the bankruptcy process and creates unwarranted competition among the courts. Before filing, the debtor is able to determine which courts have taken friendly views of the debtor's particular needs and select such a court with the intent of creating a disadvantage for creditors. Indeed, some corporate debtors have even commenced bankruptcy cases in preferred venues by strategically creating or using otherwise healthy subsidiaries to create a basis for filing in the intended court. Current law as written fosters these abuses.

The CLLA strongly supports passage of the Fairness in Bankruptcy Litigation Act of 2005 (the "Act") since the proposed legislation addresses these abuses. The Act will help to eliminate the forum shopping that skews the bankruptcy process and will foster greater local control over important business and community decisions. Although the Act may require some technical modifications to achieve and address the legislation's purported goals, its overall provisions and goals are well grounded and supported by the abuses taking place within the bankruptcy system.

Much has been said among members of Congress that bankruptcy reform is necessary to prevent what it perceives as abuse of the bankruptcy process. A venue provision that requires corporate bankruptcies to be filed at the principal place of business furthers that goal and for all these reasons we encourage the passage of the Act at the earliest opportunity.

Respectfully submitted,

MARY K. WHITMER,  
President.

JAY L. WELFORD,  
Co-Chair, National  
Governmental Affairs  
Committee.

PETER C. CALIFANO,  
Chair, Legislative  
Committee, Bankruptcy  
Section.

ALAN I. NAHMIAS,  
Chair, Bankruptcy  
Section.

JUDITH GREENSTONE  
MILLER,  
Co-Chair, National  
Governmental Affairs  
Committee.

HARVARD LAW SCHOOL,  
January 31, 2005.

Senator JOHN CORNYN,  
617 Senate Hart Office Building,  
Washington, DC.

DEAR SENATOR CORNYN: Since its inception, the central promise of the Federal bankruptcy system is that all creditors—large and small—have equal access to participate in the judicially-supervised liquidation or reorganization of the debtor. No bankruptcy will be run to benefit one group of creditors over another, or to permit the debtor to escape from close scrutiny after its financial collapse.

Unfortunately, that promise has been significantly eroded. Mega-companies and their counsel shop for courts that will render decisions that may favor the debtor, the attorneys or a small group of powerful creditors. These parties often file the bankruptcy petitions in locations far distant from most of the company's business and from most of its creditors, including its workers, retirees and local trade creditors who have made their own investments in the company.

Forum shopping creates an advantage for the insiders, while making it virtually impossible for small creditors to participate in the bankruptcy process. Employees, pensioners, trade creditors and others have claims that are important to them, but that are not large enough to justify millions of dollars in lawyers' fees or trips to distant locations. As a result, many of these smaller parties are shut out of the system. They literally cannot get to the courthouse.

Bankruptcy courts around the country are capable of handling the cases that come their way—large or small. The judges are smart and thoughtful, and the court personnel are dedicated and hard-working. No

single court in this country, regardless of its experience, should have an exclusive lock on dealing with big cases. No court has special powers or unique skills to deal with the questions of claims, property of the estate, financing, fraud, attorneys' fees and so on—issues that can arise in any case, regardless of size.

The current system of court shopping harms too many parties. Closing a loophole in the bankruptcy laws that permits this unseemly practice and forcing companies in trouble to subject themselves to the scrutiny of their local courts and local creditors is an important step toward strengthening the credibility of the bankruptcy system. The reform embodied in your proposal is real reform. If a company prospers in part because it draws on the strength of the community where it operates, that same community should be able to participate fully in its financial reorganization.

Very truly yours,

ELIZABETH WARREN,  
*Leo Gottlieb Professor of Law.*

SCHOOL OF LAW,

THE UNIVERSITY OF TEXAS AT AUSTIN,  
*Austin, Texas, February 6, 2005.*

Senator JOHN CORNYN,  
*Senate Hart Office Building,  
Washington, DC.*

DEAR SENATOR CORNYN: There is no single reform of our Chapter 11 system that is as important as ensuring an end to the forum shopping that has so distorted that system in recent years. The present venue rules are so loosely constructed that they permit any large public company to file a Chapter 11 pretty much wherever it likes. Naturally, the management of companies in financial trouble and the professionals that advise them take advantage of those rules to choose the forum that will best serve their interests. Often that means a Chapter 11 filing in a courthouse far away from the company's home.

These rules permit the company's management to escape the close scrutiny of intensely interested local media and to avoid attendance at court hearings by employees, local suppliers, and others vitally interested in the case and knowledgeable about the company. They force smaller creditors to file claims from afar, claims that are often the subject of an arbitrary objection by the debtor that the distant creditor cannot afford to litigate. Conversely, creditors who received some payment before bankruptcy may be the subject of long-distance preference attacks that they cannot properly defend in a remote courthouse, especially if the amounts involved, although substantial, are not enough to justify the expense of a defense. Compounding the problem of expense is the creditor's lack of knowledge of lawyers in the distant forum and the risk, especially in Delaware, that in a big case most experienced local lawyers will already be committed to other clients. On top of these direct injuries to creditors, in cases where a trustee in bankruptcy is appointed, the administration of assets hundreds or thousands of miles removed from the trustee's home cannot be done efficiently and rarely can be done well.

These and other effects of forum shopping are inefficient and prejudicial. In addition, the present system imposes subtle pressures on bankruptcy judges and district judges, who cannot be unaware that their decisions as to venue will determine whether the community and the local bar will be greatly enriched by the administration of large bankruptcy cases. Despite the high degree of professionalism on our federal bench, it is not reasonable to expect that these pressures will have no effect.

Although I am expressing my own opinions and not speaking for the University or the Law School, I write as someone who has practiced, studied, taught, and written about bankruptcy law for over thirty years. Please let me know if I can provide further information that would be helpful to your work.

Respectfully,

JAY L. WESTBROOK,  
BENNO C. SCHMIDT,  
*Chair of Business Law*

UNIVERSITY OF CALIFORNIA,  
LOS ANGELES, SCHOOL OF LAW,  
*Los Angeles, CA, January 31, 2005.*

Senator JOHN CORNYN,  
*Hart Senate Office Bldg.,  
Washington, DC.*

DEAR SENATOR CORNYN: I write to thank you for your courage in proposing the Fairness in Bankruptcy Litigation Act of 2005. This legislation will not only provide protection for all parties to large, public company bankruptcies, it will also protect honest bankruptcy judges from the pressures arising from the necessity to compete for cases. My research suggests that by ending the necessity for the courts to compete for cases, this legislation will result in better reorganizations, the preservation of jobs, and higher returns to creditors and shareholders.

This is a difficult issue to present to the public, because it is both obscure and complex. Please be assured that I and many others appalled by the competition will do whatever we can to assist you.

Yours truly,

LYAN M. LOPUCKI

DEAR SENATOR CORNYN: I am writing to you to support your effort to pass a bill that would prevent corporations from shopping for the most favorable venue. The current practice has resulted in a "race to the bottom" as bankruptcy courts work hard to lure corporate bankruptcies to their courts.

I was a professor at the University of Missouri-Kansas City School of Law for almost 20 years. My own worst example is the case of Birch Telecom, a Kansas City-based company that filed in Delaware in 2002. After laying off a quarter of their employees—citizens of Missouri, Kansas, and Texas—Birch went into bankruptcy with a prepared plan (known as a "pre-pack") that included significant compensation for the very officers who had led the company into bankruptcy.

A bankruptcy judge from Texas, sitting by designation (because of the volume of cases being filed in Delaware) had the audacity to suggest that he might not approve the plan because of the compensation package. Before his words were out of his mouth, Birch Telecom's attorneys had appealed the reference of the case to that judge. The case was withdrawn, and a Delaware judge, who understood that the game is appeasing the corporate debtors, approved the plan 13 days later.

What possible chance do employees and local creditors have when a distant bankruptcy judge will rubber-stamp the company's every request, in a court too far away for them even to appear?

Congress says that it is trying to stop bankruptcy abuse. Venue shopping is the very worst example of bankruptcy abuse, and it affects the lives of thousands of ordinary Americans—employees and small businesses—every single day.

I wish you good luck in the passage of this important piece of legislation.

Sincerely,

CORINNE COOPER,  
*Professor Emerita of Law.*

CREEL & MOORE, L.L.P.,  
ATTORNEYS AND COUNSELORS,  
*Dallas, TX, February 4, 2005.*

Re proposed bankruptcy legislation/venue.

Senator JOHN CORNYN,  
*Hart Senate Building, Washington, DC.*

DEAR SENATOR CORNYN: One of the issues being discussed in connection with proposed bankruptcy legislation is in what venue or venues is it most appropriate for business debtors to initiate voluntary bankruptcy cases, where they conduct their daily business or where they were incorporated.

Because a corporation (or any other type of business organization) seeking bankruptcy relief should do so in a forum that is convenient for itself, its management, its employees and its creditors, Section 1408 of Title 28 of the U.S. Code should be amended to prohibit the right of a debtor corporation to file in the state of its incorporation unless it either has its principal place of business or its principal assets in that state.

The reason for requiring a debtor to seek relief in a bankruptcy court nearest to its actual place of operation is that, otherwise, the rights of the other parties are significantly and adversely affected because of the distance, delay and costs of dealing with a faraway court.

The practice that has developed over the years is that corporations, for example those created under the laws of Delaware, file in Delaware, far from their actual places of business, Texas for example, thus causing their management, employees and creditors to have the burden and expense of travel, to hire distant counsel with whom they have had no prior experience, or both, in order to protect their interests. Many times, at least from a creditor/employee perspective, the inconvenience and expense, when balanced against the probability of an insignificant recovery on a claim, is such that creditors/employees simply abandon their claims, a result which is contrary to the spirit and intent of the Bankruptcy Code.

As a bankruptcy practitioner for over 40 years and one who is active in various bankruptcy organizations, I urge you and your staff to consider the thoughts expressed in their letter.

As the grandfather of Richie Anderson who served as an intern on your staff last summer, I know, from his experience, that you will listen to the opinions of your constituents.

Yours very truly,

L. E. CREEL, III.

WINSTEAD,  
*February 4, 2005.*

Re Bankruptcy Venue Reform  
Hon. JOHN CORNYN,  
*U.S. Senate, Hart Senate Office Bldg.,  
Washington, DC.*

DEAR SENATOR CORNYN: I write in support of reform of the Bankruptcy Code's current venue provisions.

I am twenty-three year bankruptcy practitioner and head of the bankruptcy practice for our law firm, I additionally serve as Vice President (Business Bankruptcy) of the Bankruptcy Section of the State Bar of Texas and am national co-chair of the Unsecured Trade Creditors' Committee of the American Bankruptcy Institute. My practice, while focused in Texas, brings me before courts throughout the country—particularly those in Delaware and New York.

Practicing in Texas, I have personal experience with the unfortunate practice of companies and their counsel shopping for forums. Whether to escape the watchful eye of employees, creditors or the press, numerous companies from around the country have filed bankruptcy cases in the District of

Delaware or the Southern District of New York to obtain what they believed would be either favorable treatment or a venue for their bankruptcy cases which would in large measure frustrate the rights and interests of their creditors and employees. It is for these reasons, among others, that I strongly support a modification of the Bankruptcy Venue Statute and urge prompt action.

If I can be of any assistance to you, please do not hesitate to call upon me. Best regards.

Very truly yours,

BERRY D. SPEARS.

MUNSCH HARDT KOPF & HARR PC,  
ATTORNEYS & COUNSELORS,

February 7, 2005.

Re Amendment to Section 1408 of Title 28,  
United States Code

Hon. JOHN CORNYN,

U.S. Senate, Hart Senate Office Bldg.,  
Washington, DC.

DEAR SENATOR CORNYN: As a bankruptcy practitioner for some 25 years, I am writing to voice my support for an amendment to the venue provisions of Section 1408 of Title 28, United States Code. As has been well documented, the concept of "forum shopping" by significant Chapter 11 Debtors throughout the country has become an art form over the last few years. Certain jurisdictions now actively campaign to attract large, high-profile bankruptcy cases to their venue. It goes without saying that bankruptcy judges must become "Debtor friendly" in order to maintain the attractiveness of these venue options. Accordingly, decisions relating to the allowance of professional fees, conflicts and other critical bankruptcy issues have become disparate throughout the country.

An amendment to Section 1408, which limits the use of the state of incorporation to those instances where the Debtors' principal place of business or principal assets reside, will promote uniformity as well as removing some of the perceived inequities in the system. The public's perception of a fair and uniform bankruptcy system is paramount.

Thank you for your interest in this legislation.

Very truly yours,

RUSSELL L. MUNSCH.

FULBRIGHT & JAWORSKI, L.L.P.,

Houston, Texas, February 7, 2005.

Re bankruptcy venue reform.

Senator JOHN CORNYN,

Senate Hart Office Building, Washington, DC.

DEAR SENATOR CORNYN: I write you to express my strong support for bankruptcy venue reform. By way of introduction, I have been a partner in the bankruptcy section of Fulbright & Jaworski since June 1, 2004. Prior to that, I served as a United States Bankruptcy Judge in Houston for almost 17 years, resigning as Chief Judge a day before I joined Fulbright.

Over the many years of my judicial career, I watched as many cases which should have been filed in Texas instead found their way to the dockets of courts in Delaware, New York, or some other distant jurisdiction. This migration of large cases is not unique to Texas and it represents a fundamental flaw in the perceived and actual fairness of the bankruptcy system. The "little people" (small creditors, former employees, etc.) in a large bankruptcy case are at once the most vulnerable economically and the parties least capable of participating in a distant forum.

I firmly feel the integrity of today's bankruptcy system requires that the rights of all involved be protected and that fair access to court be ensured. Bankruptcy venue reform would be a tremendous step toward rectifying these problems.

The opinions expressed in this letter are my own and not those of Fulbright & Jaworski or its clients. I appreciate your consideration of my concerns. If you should have any questions or need additional information or assistance from me, please do not hesitate to contact me.

Sincerely,

WILLIAM GREENDYKE.

JANUARY 31, 2005.

Senator JOHN CORNYN,  
Senate Hart Office Building,  
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the National Association of Credit Management (NACM), I am writing to express the support of NACM National Board of Directors and the NACM membership for the Venue in Bankruptcy Cases bill scheduled to be introduced by Senator Cornyn. This important legislation would provide enormous relief to the thousands of business creditors, and most importantly to small business creditors whose interests are routinely impaired by a bankruptcy process that is long-overdue for change.

NACM is a 22,000-member trade association, representing the interests of corporate (commercial) credit executives. NACM was founded in 1896 and represents both American business credit professionals in all 50 states as well as business credit executives in more than 30 countries worldwide. NACM's mission is to ensure the constant improvement and enhancement of the business trade credit profession and process.

NACM's membership comprises all types of businesses: manufacturers, wholesalers, service industries, and financial institutions. NACM's members range in size from small businesses to a majority of the Fortune 500. NACM members make the daily decisions to extend unsecured, business and trade credit from one company to another. NACM members—the business credit executive—approve and provide billions of dollars each day in business and trade credit, which fuels this country's business economy.

This bill would provide much needed relief to businesses and—perhaps even more importantly—to small businesses. This bill would provide relief to the current practice of requesting a transfer of venue, which is both expensive and time consuming to both the debtor's estate and to creditors. Additionally, this bill would address any abuse that currently exists in the Code that encourages "shopping" cases into a "friendly forum".

Our membership stands ready to provide whatever level of support is needed to advance this important legislation. As the national organization representing the decision makers within the American economic model who drive commerce, we hope you will ensure that Congressional leadership will take action on this bill as expeditiously as possible.

We must provide immediate relief to the small business that simply cannot afford to wait any longer for bankruptcy reform from Congress.

Thank you for your consideration of our comments and please let us know what we can do to assist you in advancing this legislation.

Sincerely yours,

ROBIN SCHAUSELL, CAE,  
President.

By Mr. FEINGOLD:

S. 315. A bill to amend the Internal Revenue Code of 1986 to provide that reimbursements for costs of using passenger automobiles for charitable and other organizations are excluded from gross income, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I am pleased to reintroduce legislation today that would increase the mileage reimbursement rate for volunteers.

Under current law, when volunteers use their cars for charitable purposes, the volunteers may be reimbursed up to 14 cents per mile for their donated services without triggering a tax consequence for either the organization or the volunteers. If the charitable organization reimburses any more than that, they are required to file an information return indicating the amount, and the volunteers must include the amount over 14 cents per mile in their taxable income. By contrast, the mileage reimbursement level currently permitted for businesses is 40.5 cents per mile.

We are asking volunteers and volunteer organizations to bear a greater burden of delivering essential services. But the 14 cents per mile limit is posing a very real hardship for charitable organizations and other nonprofit groups. I have heard from a number of people in Wisconsin on the need to increase this reimbursement limit.

A representative of one organization, the Portage County Department on Aging, explained just how important volunteer drivers are to their ability to provide services to seniors in that county. The Department on Aging reported that dozens of volunteer drivers delivered meals to homes and transported people to medical appointments, meal sites, and other essential services.

As many of my colleagues know, the senior meals program is one of the most vital services provided under the Older Americans Act, and ensuring that meals can be delivered to seniors or that seniors can be taken to meal sites is an essential part of that program. Unfortunately, Federal support for the senior nutrition programs has stagnated in recent years. This has increased pressure on local programs to leverage more volunteer services to make up for lagging Federal support. The 14 cents per mile reimbursement limit, though, increasingly poses a barrier to obtaining those contributions. Portage County reports that many of their volunteers cannot afford to offer their services under such a restriction. And if volunteers cannot be found, their services will have to be replaced by contracting with a provider, greatly increasing costs to the Department, costs that come directly out of the pot of funds available to pay for meals and other services.

And the same is true for thousands of other non-profit and charitable organizations that provide essential services to communities across our Nation.

By contrast, businesses do not face this restrictive mileage reimbursement limit. The comparable mileage rate for someone who works for a business is currently 40.5 cents per mile. This disparity means that a business hired to deliver the same meals delivered by

volunteers for Portage County may reimburse their employees over double the amount permitted the volunteer without a tax consequence.

This doesn't make sense. The 14 cents per mile volunteer reimbursement limit is badly outdated. According to the Congressional Research Service, Congress first set a reimbursement rate of 12 cents per mile as part of the Deficit Reduction Act of 1984, and did not increase it until 1997, when the level was raised slightly, to 14 cents per mile, as part of the Taxpayer Relief Act of 1997.

The bill I am introducing today is identical to a measure I introduced in the 107th Congress and the 108th Congress in nearly every respect. It raises the limit on volunteer mileage reimbursement to the level permitted to businesses. It is essentially the same provision passed by the Senate as part of a tax bill in 1999, and it is essentially the same provision that passed the Senate as part of the CARE Act.

At the time of the 1999 tax bill, the Joint Committee on Taxation (JCT) estimated that the mileage reimbursement provision would result in the loss of \$1 million over the five-year fiscal period from 1999 to 2004. The revenue loss was so small that the JCT did not make the estimate on a year by year basis.

Though the revenue loss is small, it is vital that we do everything we can to move toward a balanced budget, and to that end I have included a provision to fully offset the cost of the measure and make it deficit neutral. That provision increases the criminal monetary penalties for individuals and corporations convicted of tax fraud. The provision passed the Senate in the 108th Congress as part of the JOBS bill, but was later dropped in conference and was not included in the final version of that bill.

I urge my colleagues to support this measure. It will help ensure charitable organizations can continue to attract the volunteers that play such a critical role in helping to deliver services and it will simplify the tax code both for nonprofit groups and the volunteers themselves.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 315

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139A the following new section:

**“SEC. 139B. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS.**

“(a) IN GENERAL.—Gross income of an individual does not include amounts received, from an organization described in section 170(c), as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organiza-

tion. The preceding sentence shall apply only to the extent that such reimbursement would be deductible under this chapter if section 274(d) were applied—

“(1) by using the standard business mileage rate established under such section, and

“(2) as if the individual were an employee of an organization not described in section 170(c).

“(b) NO DOUBLE BENEFIT.—Subsection (a) shall not apply with respect to any expenses if the individual claims a deduction or credit for such expenses under any other provision of this title.

“(c) EXEMPTION FROM REPORTING REQUIREMENTS.—Section 6041 shall not apply with respect to reimbursements excluded from income under subsection (a).”

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 139A and inserting the following new item:

“Sec. 139B. Reimbursement for use of passenger automobile for charity.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 2. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.**

(a) IN GENERAL.—Section 7206 of the Internal Revenue Code of 1986 (relating to fraud and false statements) is amended—

(1) by striking “Any person who—” and inserting “(a) IN GENERAL.—Any person who—”, and

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

“(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.”

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 of the Internal Revenue Code of 1986 is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “5 years” and inserting “10 years”.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 of such Code is amended—

(A) in the first sentence—

(i) by striking “misdemeanor” and inserting “felony”, and

(ii) by striking “1 year” and inserting “10 years”, and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) of such Code (as redesignated by subsection (a)) is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “3 years” and inserting “5 years”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

S. 316. A bill to limit authority to delay notice of search warrants; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I will reintroduce in the Senate the Reasonable Notice and Search Act. This bill is nearly identical to a bill I introduced in the 108th Congress, S. 1701. It addresses Section 213 of the USA-PATRIOT Act, the provision of that important statute passed in the wake of the 9/11 attacks that has caused perhaps the most concern among Members of Congress and the public. Section 213, sometimes referred to as the “delayed notice search provision” or the “sneak and peek provision,” authorizes the government in limited circumstances to conduct a search without immediately serving a search warrant on the owner or occupant of the premises that have been searched.

Prior to the PATRIOT Act, secret searches for physical evidence were performed in some jurisdictions under the authority of Court of Appeals decisions, but the Supreme Court never definitively ruled whether they were constitutional. Section 213 of the PATRIOT Act authorized delayed notice warrants in any case in which an “adverse result” would occur if the warrant were served before the search was executed. Adverse result was defined as including: 1. endangering the life or physical safety of an individual; 2. flight from prosecution; 3. destruction of or tampering with evidence; 4. intimidation of potential witnesses; or 5. otherwise seriously jeopardizing an investigation or unduly delaying a trial. This last catch-all category could apply in virtually any criminal case. In addition, while some courts had required the service of the warrant within a specified period of time, the PATRIOT Act simply required that the warrant specify that it would be served within a “reasonable” period of time after the search.

It is interesting to note that this provision of the PATRIOT Act was not limited to terrorism cases. In fact, before the PATRIOT Act passed, the FBI already had the authority to conduct secret searches of foreign terrorists and spies with no notice at all under the Foreign Intelligence Surveillance Act. Furthermore, the PATRIOT Act “sneak and peek” authority was not made subject to the sunset provision that will cause many of the new surveillance provisions of the act to expire at the end of this year unless Congress reenacts them. So Section 213 was pretty clearly a provision that the Department of Justice wanted regardless of the terrorism threat after 9/11.

Perhaps that is why this provision has caused such controversy since it was passed. In 2003, by a wide bipartisan margin, the House passed an amendment to the Commerce-Justice-

By Mr. FEINGOLD:

State appropriations bill offered by Representative Otter from Idaho, a Republican, to stop funding for delayed notice searches authorized under section 213. The size of the vote took the Department by surprise, and it immediately set out to defend the provision aggressively. Clearly, this is a power that the Department does not want to lose.

I raised concerns about the sneak and peek provision when it was included in the PATRIOT Act. I did not, and still do not, believe there had been adequate study and analysis of the justifications for these searches and the potential safeguards that might be included. I did not argue then, however, and I am not arguing now that there should be no delayed notice searches at all and that the provision should be repealed. I simply believe that this provision should be modified to protect against abuse. My bill will do four things to accomplish this.

First, my bill would narrow the circumstances in which a delayed notice warrant can be granted to the following: potential loss of life, flight from prosecution, destruction or tampering with evidence, or intimidation of potential witnesses. The "catch-all provision" in section 213, allowing a secret search when serving the warrant would "seriously jeopardize an investigation or unduly delay a trial" can too easily be turned into permission to do these searches whenever the government wants.

Second, I believe that any delayed notice warrant should provide for a specific and limited time period within which notice must be given—7 days. This is consistent with some of the pre-PATRIOT Act court decisions and will help to bring this provision in closer accord with the Fourth Amendment to the Constitution. Under my bill, prosecutors will be permitted to seek 7-day extensions if circumstances continue to warrant that the subject not be made aware of the search. But the default should be a week, unless a court is convinced that more time should be permitted.

Third, Section 213 should include a sunset provision so that it expires along with the other expanded surveillance provisions in Title II of the PATRIOT Act, at the end of 2005. This will allow Congress to determine if the balance between civil liberties and law enforcement has been correctly struck.

Finally, the bill requires a public report on the number of times that section 213 is used, the number of times that extensions are sought beyond the 7-day notice period, and the type of crimes being investigated with this power. This information will help the public and Congress evaluate the need for this authority and determine whether it should be retained or modified after the sunset.

These are reasonable and moderate changes to the law. They do not gut the provision. Rather, they recognize the growing and legitimate concern

from across the political spectrum that this provision was passed in haste and presents the potential for abuse. They also send a message that Fourth Amendment rights have meaning and potential violations of those rights should be minimized if at all possible. I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 316

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Reasonable Notice and Search Act".

**SEC. 2. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.**

Section 3103a of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "may have an adverse result (as defined in section 2705)" and inserting "will endanger the life or physical safety of an individual, result in flight from prosecution, result in the destruction of or tampering with the evidence sought under the warrant, or result in intimidation of potential witnesses"; and

(B) in paragraph (3), by striking "a reasonable period" and all that follows and inserting "7 calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to 7 calendar days each if the court finds, for each application, reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual, result in flight from prosecution, result in the destruction of or tampering with the evidence sought under the warrant, or result in intimidation of potential witnesses."; and

(2) by adding at the end the following:

"(c) REPORTS.—

"(1) IN GENERAL.—On a semiannual basis, the Attorney General shall transmit to Congress and make public a report concerning all requests for delays of notice, and for extensions of delays of notice, with respect to warrants under subsection (b).

"(2) CONTENTS.—Each report under paragraph (1) shall include, with respect to the preceding 6-month period—

"(A) the total number of requests for delays of notice with respect to warrants under subsection (b);

"(B) the total number of such requests granted or denied;

"(C) for each request for delayed notice that was granted, the total number of applications for extensions of the delay of notice and the total number of such extensions granted or denied; and

"(D) on an aggregate basis, the nature of the crime being investigated for each request for delay of notice that was granted or denied."

**SEC. 3. SUNSET ON DELAYED NOTICE AUTHORITY.**

(a) PATRIOT ACT.—Section 224(a) of the USA PATRIOT Act of 2001 (Public Law 107-56; 115 Stat. 295) is amended by striking "213."

(b) AMENDMENTS.—The amendments made by this Act shall sunset as provided in section 224 of the USA PATRIOT Act of 2001.

By Mr. FEINGOLD (for himself, Mr. AKAKA, Mr. BINGAMAN, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, Mr. JEFFORDS, Mr. KENNEDY, and Mr. WYDEN):

S. 317. A bill to protect privacy by limiting the access of the Government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I will reintroduce the Library, Bookseller, and Personal Records Privacy Act. The bill is identical to the bill I introduced in the 108th Congress, S. 1507.

This bill would amend Sections 215 and 505 of the USA-PATRIOT Act to protect the privacy of law-abiding Americans. It would set reasonable limits on the Federal Government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act ("FISA") and related foreign intelligence authority.

I am pleased that several of my distinguished colleagues have joined me as original cosponsors of this important legislation.

Millions of Patriotic Americans love our country and support our military men and women in their difficult missions abroad, but worry about the fate of our Constitution here at home.

Much of our Nation's strength comes from our constitutional liberties and respect for the rule of law. That is what has kept us free for our two and a quarter century history. Our constitutional freedoms, our American values, are what make our country worth fighting for as we strive to win the war on terror.

Here at home, there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the PATRIOT Act went too far when it comes to the government's access to personal information about law abiding Americans.

Even though in the end I opposed the PATRIOT Act, there were many provisions that I did support. And even in those provisions I sought to amend when the bill was debated, there was often some change that I supported. For example, Congress was right to expand the category of business records that the FBI could obtain pursuant to the Foreign Intelligence Surveillance Act. Prior to the PATRIOT Act, the FBI could seek a court order to obtain only travel records—such as airline, hotel, and car rental records—and records maintained by storage facilities. The PATRIOT Act allows any business records to be subpoenaed. I don't quibble with that change.

But what my colleagues and I do find problematic—and an increasing number of Americans who value their privacy and First Amendment rights agree with us—is that the current law allows the FBI broad, almost unfettered access to personal information

about law-abiding Americans who have no connection to terrorism or spying.

Section 215 of the PATRIOT Act requires the FBI to show in an application to the court that the documents are "sought for" an international terrorism or foreign intelligence investigation. There is no requirement that the FBI make a showing of individualized suspicion that the documents relate to a suspected terrorist or spy.

In other words, under current law, the FBI could serve a subpoena on a library for all the borrowing records of its patrons or on a bookseller for the purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

Since the passage of the PATRIOT Act, librarians and booksellers have become increasingly concerned by the potential for abuse of this law. I was pleased to stand with the American Booksellers Association and the Free Expression Network over 2 years ago when we first started to raise these concerns.

Librarians and booksellers are concerned that under the PATRIOT Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library's or bookstore's internet computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong that some librarians across the country have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the federal government.

As a librarian in California said, "We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother."

And as the executive director of the American Library Association said, "This law is dangerous. . . . I read murder mysteries—does that make me a murderer? I read spy stories—does that mean I'm a spy? There's no clear link between a person's intellectual pursuits and their actions."

The American people do not know how many or what kind of requests Federal agents have made for library records under the PATRIOT Act. The Justice Department refuses to release that information to the public.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the Nation reported having received requests from Federal or local law enforcement during the past year. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also

contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

In testimony before the Judiciary Committee, Attorney General Ashcroft stated that as of September 18, 2003, the Department of Justice had never used Section 215. The Department has not made that claim in public testimony since then, leading many to speculate that the provision has now been used. Whether it has been used once, or dozens of times, the problem with the section remains—it is too broad and does not permit adequate judicial supervision. There is a potential for overreaching that Congress must address.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American values at stake when he said: "The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and it should be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence."

I would not claim that we have reached the point where people in this country are afraid to buy books, but section 215 is a tool that is unnecessarily broad. And it raises the specter of indiscriminate government snooping into the private lives of innocent citizens, which is an unnecessary distraction from the serious law enforcement work that is needed to fight terrorism.

It is time to reconsider those provisions of the PATRIOT Act that are un-American and, frankly, unpatriotic.

But my concerns with the PATRIOT Act go beyond library and bookseller records. Under section 215 of the PATRIOT Act, the FBI could seek any records maintained by a business. These business records could contain sensitive, personal information—for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are "sought for" its terrorism or foreign intelligence investigation.

Section 215 of the PATRIOT Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are needed to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-PATRIOT Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy while leaving in place other PATRIOT Act expansions of this business records power.

My bill will not prevent the FBI from doing its job. It recognizes that the

post-September 11 world is a different world. There are circumstances when the FBI should legitimately have access to library, bookseller, or other personal information.

I'd like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that suspected members of the group live in a particular neighborhood. The FBI would like to obtain records from the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could obtain only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add that if, as the Justice Department says, the FBI is using its PATRIOT Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill.

The second part of my bill would address privacy concerns with another Federal law enforcement power expanded by the PATRIOT Act—the FBI's national security letter authority. The FBI does not need court approval to use this power.

My bill would amend section 505 of the PATRIOT Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or bookstores with internet access for customers could be deemed "electronic communication providers" and therefore be subject to a request by the FBI under its NSL authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken matters into their own hands before the FBI knocks on their door. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the internet.

Again, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section

215 fix I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it may make sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a Nation in order to protect ourselves from terrorism. We can protect both our Nation and our privacy and civil liberties.

An increasing number of Americans are beginning to understand that the PATRIOT Act went too far. Four States and over 350 cities and counties across the country have now passed resolutions expressing opposition to the PATRIOT Act. And it's not just the Berkeleys and Madisons of this Nation, but other States and communities with strong conservative and libertarian values, such as Alaska and cities in Montana, that have passed such resolutions.

I have many concerns with the PATRIOT Act. I am not seeking to repeal it, in whole or in part. In this bill, my colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

The privacy of law-abiding Americans is at stake, along with their confidence in their government. Congress should act to protect our privacy and reassure our citizens. The Library, Bookseller, and Personal Records Privacy Act bill is a reasonable approach to do just that. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 317

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Library, Bookseller, and Personal Records Privacy Act".

**SEC. 2. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.**

(a) APPLICATIONS FOR ORDERS.—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(3) shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power."

(b) ORDERS.—Subsection (c)(1) of that section is amended by striking "finds" and all that follows and inserting "finds that—

"(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and

"(B) the application meets the other requirements of this section."

(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502 of that Act (50 U.S.C. 1862) is amended—

(1) in subsection (a), by striking "the Permanent" and all that follows through "the Senate" and inserting "the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate"; and

(2) in subsection (b), by striking "On a semiannual basis," and all that follows through "a report setting forth" and inserting "The report of the Attorney General to the Committees on the Judiciary of the House of Representatives and the Senate under subsection (a) shall set forth".

**SEC. 3. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO INFORMATION ON COMPUTER USERS AT BOOKSELLERS AND LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.**

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

"(e) RECORDS OF BOOKSELLERS AND LIBRARIES.—(1) When a request under this section is made to a bookseller or library, the certification required by subsection (b) shall also specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

"(2) In this subsection:

"(A) The term 'bookseller' means a person or entity engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication in print or digitally.

"(B) The term 'library' means a library (as that term is defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

"(C) The terms 'foreign power' and 'agent of a foreign power' have the meaning given such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)."

(b) SUNSET OF CERTAIN MODIFICATIONS ON ACCESS.—Section 224(a) of the USA PATRIOT ACT of 2001 (Public Law 107-56; 115 Stat. 295) is amended by inserting "and section 505" after "by those sections)".

By Mr. FEINGOLD:

S. 318. A bill to clarify conditions for the interceptions of computer trespass communications under the USA-PATRIOT Act; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased to introduce the Computer Trespass Clarification Act of 2005, which would amend and clarify section 217 of the USA-PATRIOT Act. This bill is virtually identical to a bill I introduced in the 108th Congress, S. 2783.

Section 217 of the PATRIOT Act addresses the interception of computer trespass communications. This bill

would modify existing law to more accurately reflect the intent of the provision, and also protect against invasions of privacy.

Section 217 was designed to permit law enforcement to assist computer owners who are subject to denial of service attacks or other episodes of hacking. The original Department of Justice draft of the bill that later became the PATRIOT Act included this provision. A section by section analysis provided by the Department on September 19, 2001, stated the following: "Current law may not allow victims of computer trespassing to request law enforcement assistance in monitoring unauthorized attacks as they occur. Because service providers often lack the expertise, equipment, or financial resources required to monitor attacks themselves as permitted under current law, they often have no way to exercise their rights to protect themselves from unauthorized attackers. Moreover, such attackers can target critical infrastructures and engage in cyberterrorism. To correct this problem, and help to protect national security, the proposed amendments to the wiretap statute would allow victims of computer attacks to authorize persons 'acting under color of law' to monitor trespassers on their computer systems in a narrow class of cases."

I strongly supported the goal of giving computer system owners the ability to call in law enforcement to help defend themselves against hacking. Including such a provision in the PATRIOT Act made a lot of sense. Unfortunately, the drafters of the provision made it much broader than necessary, and refused to amend it at the time we debated the bill in 2001. As a result, the law now gives the government the authority to intercept communications by people using computers owned by others as long as they have engaged in some unauthorized activity on the computer, and the owner gives permission for the computer to be monitored—all without judicial approval.

Only people who have a "contractual relationship" with the owner allowing the use of a computer are exempt from the definition of a computer trespasser under section 217 of the PATRIOT Act. Many people—for example, college students, patrons of libraries, Internet cafes or airport business lounges, and guests at hotels—use computers owned by others with permission, but without a contractual relationship. They could end up being the subject of government snooping if the owner of the computer gives permission to law enforcement.

My bill would clarify that a computer trespasser is not someone who has permission to use a computer by the owner or operator of that computer. It would bring the existing computer trespass provision in line with the purpose of section 217 as expressed in the Department of Justice's initial explanation of the provision. Section 217 was intended to target only a narrow class of people: Unauthorized

cyberhackers. It was not intended to give the government the opportunity to engage in widespread surveillance of computer users without a warrant.

I should note that there is no specific evidence that the provision is being abused. But, of course, unless criminal charges are brought against someone as a result of such surveillance, there would never be any notice at all that the surveillance has taken place. The computer owner authorizes the surveillance, and the FBI carries it out. There is no warrant, no court proceeding, no opportunity even for the subject of the surveillance to challenge the assertion of the owner that some unauthorized use of the computer has occurred.

My bill would modify the computer trespass provision in the following ways to protect against abuse, while still maintaining its usefulness in cases of denial of service attacks and other forms of hacking.

First, it would require that the owner or operator of the protected computer authorizing the interception has been subject to "an ongoing pattern of communications activity that threatens the integrity or operation of such computer." In other words, the owner has to be the target of some kind of hacking.

Second, the bill limits the length of warrantless surveillance to 96 hours. This is twice as long as is allowed for an emergency wiretap. With four days of surveillance, it should not be difficult for the government to gather sufficient evidence of wrongdoing to obtain a warrant if continued surveillance is necessary.

Finally, the bill would require the Attorney General to annually report on the use of Section 217 to the Senate and House Judiciary Committees. Section 217 is one of the provisions that is subject to the sunset provision in the PATRIOT Act and will expire at the end of 2005. We in the Congress need to do more oversight of the use of this and other provisions of PATRIOT Act in order to evaluate their effectiveness.

The computer trespass provision now in the law as a result of section 217 of the PATRIOT Act leaves open the possibility for significant and unnecessary invasions of privacy. The reasonable and modest changes to the provision contained in this bill preserve the usefulness of the provision for investigations of cyberhacking, but reduce the possibility of government abuse. We must continually seek to balance the need for effective tools to fight crime and terrorism against the civil liberties of our citizens. The Computer Trespass Clarification Act strikes the right balance, and I urge my colleagues to support it.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 318

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Computer Trespass Clarification Act of 2005".

**SEC. 2. AMENDMENTS TO TITLE 18.**

(a) **DEFINITIONS.**—Section 2510(21)(B) of title 18, United States Code, is amended by—

(1) inserting "or other" after "contractual"; and

(2) striking "for access" and inserting "permitting access".

(b) **INTERCEPTION AND DISCLOSURE.**—Section 2511(2)(i) of title 18, United States Code, is amended—

(1) in clause (I), by inserting after "the owner or operator of the protected computer" the following: "is attempting to respond to communications activity that threatens the integrity or operation of such computer and requests assistance to protect rights and property of the owner or operator, and"; and

(2) in clause (IV), by inserting after "interception" the following: "ceases as soon as the communications sought are obtained or after 96 hours, whichever is earlier, unless an interception order is obtained under this chapter, and".

(c) **REPORT.**—The Attorney General shall, within 60 days of enactment and annually thereafter, report to the Committees on the Judiciary of the Senate and the House of Representatives on the use during the previous year of section 2511 of title 18, United States Code, relating to computer trespass provisions as amended by subsection (b).

By Mr. DOMENICI (for himself and Mr. KENNEDY):

S. 319. A bill to amend the Public Health Service Act to revise the amount of minimum allotments under the Projects for Assistance in Transition from Homelessness program; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Mr. President, I rise today with my friend Senator KENNEDY to introduce a bill that will raise the minimum grant amounts given to States and territories under the PATH program. The PATH program provides services through formula grants of at least \$300,000 to each State, the District of Columbia and Puerto Rico and \$50,000 to eligible U.S. territories. Subject to available appropriations, this bill will raise the minimum allotments to \$600,000 to each State and \$100,000 to eligible US territories.

When the PATH program was established in fiscal year 1991 as a formula grant program, Congress appropriated \$33 million. That amount has steadily increased over the years with Congress appropriating \$55 million this past year. However, despite these increases, States and territories such as New Mexico that have rural and frontier populations, have not received an increase in their PATH funds. Under the formula, as it currently exists, many states and territories will never receive an increase to their PATH program, even with increasing demand and inflation. This problem is occurring in my home State of New Mexico as well as twenty-five other States and territories throughout the United States.

The PATH program is authorized under the Public Health Service Act and it funds community-based outreach, mental health, substance abuse, case management and other support services, as well as a limited set of housing services for people who are homeless and have serious mental illnesses. Program services are provided in a variety of different settings, including clinic sites, shelter-based clinics, and mobile units. In addition, the PATH program takes health care services to locations where homeless individuals are found, such as streets, parks, and soup kitchens.

PATH services are a key element in the plan to end chronic homelessness. Every night, an estimated 600,000 people are homeless in America. Of these, about one-third are single adults with serious mental illnesses. I have worked closely with organizations in New Mexico such as Albuquerque Health Care for the Homeless and I have seen first hand the difficulties faced by the more than 15,000 homeless people in New Mexico, 35 percent of who are chronically mentally ill or mentally incapacitated.

PATH is a proven program that has been very successful in moving people out of homelessness. PATH has been reviewed by the Office of Management and Budget and has scored significantly high marks in meeting program goals and objectives. Unquestionably, homelessness is not just an urban issue. Rural and frontier communities face unique challenges in serving PATH eligible persons and the PATH program funding mechanisms must account for these differences.

Thank you and I look forward to working with my colleague Senator KENNEDY on this important issue.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 319

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MINIMUM ALLOTMENTS UNDER THE PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS PROGRAM.**

Section 524 of the Public Health Service Act (42 U.S.C. 290cc-24) is amended to read as follows:

**"SEC. 524. DETERMINATION OF AMOUNT OF ALLOTMENT.**

"(a) **DETERMINATION UNDER FORMULA.**—Subject to subsection (b), the allotment required in section 521 for a State for a fiscal year is the product of—

"(1) an amount equal to the amount appropriated under section 535 for the fiscal year; and

"(2) a percentage equal to the quotient of—

"(A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and

"(B) an amount equal to the population living in urbanized areas of the United States, as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

“(b) MINIMUM ALLOTMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), the allotment for a State under section 521 for a fiscal year shall, at a minimum, be the greater of—

“(A) the amount the State received under section 521 in fiscal year 2005; and

“(B) \$600,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and \$100,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(2) CONDITION.—If the funds appropriated in any fiscal year under section 535 are insufficient to ensure that States receive a minimum allotment in accordance with paragraph (1), then—

“(A) no State shall receive less than the amount they received in fiscal year 2005; and

“(B) any funds remaining after amounts are provided under subparagraph (A) shall be used to meet the requirement of paragraph (1)(B), to the maximum extent possible.”.

By Mr. ALLARD:

S. 320. A bill to require the Secretary of the Army to carry out a pilot on compatible use buffers on real property bordering Fort Carson, Colorado, and for other purposes; to the Committee on Armed Services.

Mr. ALLARD. Mr. President, I rise today to introduce the Fort Carson Conservation Act of 2005 and take a moment to explain why this legislation is critical to our national security.

Since World War II, hundreds of thousands of soldiers at Fort Carson have trained in relative isolation. With few current residents nearby, the Army has been using Fort Carson's ranges for large-scale training exercises, weapons testing and live fire. This training often occurs at night, a vital capability given the Army's preference to conduct military operations in darkness.

The 140,000 acre Army installation and training facility was once miles from Colorado Springs and Pueblo. As both cities grow closer to the base's fence line, Fort Carson is facing constraints on its training flexibility, impacting military readiness. The issue of training at the post is particularly relevant considering nearly 15,000 soldiers based at Fort Carson have been deployed or are currently employed to Iraq.

The situation is not getting better. Over the last two decades, real estate and industrial development along Colorado's front range has exploded. Hundreds of thousands of people have moved to the Centennial State and settled along the 1-25 corridor. I remember the days when it was possible to drive for miles along the eastern foothills of the Rocky Mountains and encounter few if any residential areas. Today, there seems to be development all along Colorado's front range.

Yet, military readiness at the post is not the only thing at risk. The post's fragile prairie habitat is also in danger. Fort Carson has always prided itself on its conservation of the public trust. Mountain Post has a special office just to ensure environmental compliance and protect the post's biodiversity. The mountain plover, the black-tailed prairie

dog, the Arkansas River feverfew, and the Pueblo goldenweed are among the many rare species protected at Fort Carson.

Over the last 3 years Fort Carson has partnered with the Nature Conservancy on a unique plan to address the rising encroachment concerns. This forward-thinking plan calls for the purchase of conservation easements of lands south and southeast of the base for a small number of willing sellers.

If implemented, I believe the plan will preserve the military utility of key Fort Carson training areas while conserving important short grass prairie at a landscape scale, along with the ranching community that sustains it. As much as 82,000 acres of uninhabited, precious prairie would be protected, including four globally rare plant species.

The Army fully supports this plan and has consistently described it as its number one priority under the service's Compatible Use Buffer program. This plan also enjoys widespread support from the local community, including the Colorado Springs Chamber of Commerce. The Colorado Department of Transportation, the Great Outdoors of Colorado, and the Nature Conservancy all support the plan as well.

I believe we need to act now to protect unique training facilities like those at Fort Carson before it is too late. This program makes sense for the soldiers training at Fort Carson who require an isolated environment to conduct their maneuvers. This program makes sense for the environment.

This plan makes too much sense for Congress to pass up. That is why I am introducing the Fort Carson Conservation Act. I am pleased that Congressman JOEL HEFLEY is introducing this landmark legislation in the House of Representatives today as well.

The Fort Carson Conservation Act of 2005 would require the Secretary of the Army to carry out a pilot project that creates a buffer zone out of the property bordering Fort Carson. The objective of this pilot would be to demonstrate the feasibility and effectiveness of utilizing conservation easements and leases to limit encroachment and preserve the environment.

Under the pilot project, the Secretary of the Army would enter into agreements with one or more willing sellers to purchase conservation easements. These agreements would be founded on the authority already provided in section 2684a of title 10 of the United States Code. The pilot project would expire when either the project is completed or within 5 years.

From my perspective, this pilot project is only the beginning. By working closely with the Army and the other military services, the Nature Conservancy has planted the seed for the expansion of this project. I strongly support the Conservancy's effort and believe that key military installations like Fort Bragg, Camp Lejeune, Fort Huachuca, Fort Stewart, and Eglin Air

Force Base will soon be in a position to benefit from this proactive conservation effort.

Mr. President, it is a little known secret that the Department of Defense is one of the best stewards of our environment. Almost 350 endangered and threatened species live on military bases across the country—that is more than are found on land managed by the National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management. In an era of rapid growth and urban development, military training areas have become, in many respects, the last refuge for many endangered species.

Creating natural buffer zones that protect fragile habitat and ensure our military readiness is a win-win proposal. It is the right thing to do for the environment. It is the right thing to do for our Nation's Armed Forces. I urge my colleagues to support the Fort Carson Conservation Act.

Thank you for the opportunity to speak on this important matter.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 320

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fort Carson Conservation Act of 2005”.

**SEC. 2. PILOT PROJECT ON COMPATIBLE USE BUFFERS ON REAL PROPERTY BORDERING FORT CARSON, COLORADO.**

(a) IN GENERAL.—The Secretary of the Army shall carry out a pilot project at Fort Carson, Colorado, for purposes of evaluating the feasibility and effectiveness of utilizing conservation easements and leases granted by one or more willing sources to limit development and preserve habitat on real property in the vicinity of or ecologically related to military installations in the United States.

(b) PROCEDURES.—

(1) PHASES.—The Secretary shall carry out the pilot project in four phases, as specified in the Fort Carson Army Compatible Use Buffer Project.

(2) LEASE AND EASEMENT AGREEMENTS.—Under the pilot project, the Secretary shall enter into agreements with one or more eligible entities who are willing to do so to purchase from the entity or entities one or more conservation easements, or to lease from the entity or entities one or more conservation leases, on real property in the vicinity of or ecologically related to Fort Carson for the purposes of—

(A) limiting any development or use of the property that would be incompatible with the current and anticipated future missions of Fort Carson; or

(B) preserving habitat on the property in a manner that—

(i) is compatible with environmental requirements; and

(ii) may eliminate or reduce current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on Fort Carson.

(3) ENCROACHMENTS AND OTHER CONSTRAINTS ON USE.—In entering into agreements under the pilot project, the Secretary may, subject to the provisions of this section, utilize the authority for agreements under this subsection to limit encroachments and other constraints on military training, testing, and operations under section 2684a of title 10, United States Code.

(4) RELATIONSHIP TO CURRENT USE PLAN.—Any agreement entered into under the pilot project shall be compatible with the Fort Carson Army Compatible Use Buffer Project.

(c) EXPIRATION.—The authority of the Secretary to enter into agreements under the pilot project shall expire on the earlier of—

(1) the date of the completion of phase IV of the Fort Carson Army Compatible Use Buffer Project; or

(2) the date that is five years after the date of the enactment of this Act.

(d) DEFINITIONS.—In this section:

(1) The term “Fort Carson Army Compatible Use Buffer Project” means the Fort Carson Army Compatible Use Buffer Project, a plan to use conservation easements and leases on property in the vicinity of or ecologically related to Fort Carson to create a land buffer to accommodate current and future missions at Fort Carson while conserving sensitive natural resources.

(2) The term “eligible entity” means any of the following:

(A) A State or political subdivision of a State.

(B) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 2006 for the Department of Defense, for expenses not otherwise provided for, for operation and maintenance for Defense-wide activities in the amount of \$30,000,000, to be available for the pilot project.

(2) AVAILABILITY WITHOUT FISCAL YEAR LIMITATION.—Funds authorized to be appropriated by paragraph (1) shall be available without fiscal year limitation.

By Ms. SNOWE (for herself, Mr. KOHL, Mr. ROCKEFELLER, and Ms. LANDRIEU):

S. 321. A bill to provide more child support money to families leaving welfare, to simplify the rules governing the assignment and distribution of child support collected by States on behalf of children, to improve the collection of child support, and for other purposes; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today in strong support of the Child Support Distribution Act 2005, which Senator SNOWE and I introduced today. I want to thank Senator SNOWE for her hard work and dedication to this important issue and am proud to have worked with her for many years on this legislation. And I'd like to thank Senators ROCKEFELLER and LANDRIEU for their cosponsorship and support.

Senator SNOWE and I have worked, both separately and in tandem, on issues related to child support for more than ten years. On many occasions, we've come close to seeing the positive changes contained in this legislation enacted. In 2000, a House version of this bill passed by an overwhelming bipar-

tisan vote of 405 to 18. In the 108th Congress, our legislation was included in the TANF Reauthorization bill that passed out of the Senate Finance Committee with bipartisan support. This year, S. 6, which was introduced by Senator SANTORUM, and is supported by Majority Leader FRIST and Senators MCCONNELL and HUTCHISON, contains child support provisions that are almost based entirely on the legislation we're discussing today.

This legislation consistently receives bipartisan support because it takes a common sense approach to child support. By passing through more child support funds directly to low-income families, rather than sending it to the federal government, non-custodial parents are more likely pay, and families see a huge benefit from the additional income.

Currently, approximately 60 percent of poor children who live with their mothers and whose fathers live outside the home do not receive child support. Though there are a variety of reasons why non-custodial parents may not be paying support for their children, many don't pay because the system actually discourages them from doing so.

Under current law, \$2.1 billion in child support is retained every year by the State and Federal Governments as repayment for welfare benefits—rather than delivered to the children to whom it is owed. Fifty-six percent of that amount is for families who have left welfare. Since the money doesn't benefit their kids, fathers are discouraged from paying support. And mothers have no incentive to push for payment since the support doesn't go to them.

The current rules withhold a key source of income for low-income families that could help them maintain self-sufficiency. According to the Center for Law and Social Policy, child support constitutes 16 percent of family income for low-income households that receive it. For families who leave welfare, this number almost doubles. A Washington State study of families leaving welfare with regular child support payments found that these families found work faster and kept jobs longer, compared to families without steady child support income.

It's time for Congress to change this system and encourage States to distribute more child support to families. My home State of Wisconsin has been a leader in this practice, which has benefited thousands of working families. In 1997, I worked with my State to institute an innovative program of passing through child support payments directly to families. An evaluation of the Wisconsin program clearly shows that when child support payments are delivered to families, non-custodial parents are more apt to pay, and to pay more. In addition, Wisconsin has found that, overall, this policy does not increase government costs. That makes sense because “passing through” support payments to families means they have more of their own resources, and are

less apt to depend on public help to meet other needs such as food, transportation or child care.

We now have a key opportunity to encourage all States to follow Wisconsin's example. This legislation gives States options and strong incentives to send more child support directly to families who are working their way off—or are already off—public assistance. Not only will this create the right incentives for non-custodial parents to pay, but it will also simplify the job for States, who currently face an administrative nightmare in following the complicated rules of the current system.

This legislation finally brings the Child Support Enforcement program into the post-welfare reform era, shifting its focus from recovering welfare costs to increasing child support to families so they can sustain work and maintain self-sufficiency. After all, it's only fair that if we are asking parents to move off welfare, stay off welfare, and take financial responsibility for their families, then we in Congress must make sure that child support payments actually go to the families to whom they are owed and who are working so hard to succeed.

It is time for Congress to make this change. It's time that we finally make child support meaningful for families, and make sure that children get the support they need and deserve.

Mr. JEFFORDS (for himself, Mr. LEAHY, Mrs. CLINTON, and Mr. SCHUMER):

S. 322. A bill to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. JEFFORDS. Mr. President, I am very pleased to introduce the Champlain Valley National Heritage Act of 2005. I am joined by Senator LEAHY and Senators SCHUMER and CLINTON of New York. This bill will establish a National Heritage Partnership within the Champlain Valley. Passage of this bill will culminate a process to enhance the incredible cultural resources of the Champlain Valley.

The Champlain Valley of Vermont and New York has one of the richest and most intact collections of historic resources in the United States. Fort Ticonderoga still stands where it has for centuries, at the scene of numerous battles critical to the birth of our nation. Revolutionary gunboats have recently been found fully intact on the bottom of Lake Champlain. Our cemeteries are the permanent resting place for great explorers, soldiers and sailors. The United States and Canada would not exist today but for events that occurred in this region.

We in Vermont and New York take great pride in our history. We preserve it, honor it and show it off to visitors from around the world. These visitors

are also very important to our economy. Tourism is among the most important industries in this region and has much potential for growth.

The Champlain Valley Heritage Partnership will bring together more than one hundred local groups working to preserve and promote our heritage.

This project has taken many years for me to bring to the point of introducing legislation. This has been time well spent working at the grass-roots level to develop a framework to direct federal resources to where it will do the most good. I am confident that we have found the best model. This will be a true partnership that supports each member but does not impose any new federal requirements.

The Champlain Valley National Heritage Partnership will preserve our historic resources, interpret and teach about the events that shaped our nation and will be an engine for economic growth. I am hopeful that this bill, which was passed unanimously by the Senate last year, will become law during this Congress.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 322

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Champlain Valley National Heritage Partnership Act of 2005”.

#### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Champlain Valley and its extensive cultural and natural resources have played a significant role in the history of the United States and the individual States of Vermont and New York;

(2) archaeological evidence indicates that the Champlain Valley has been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Iroquois and Algonquin descent;

(3) the linked waterways of the Champlain Valley, including the Richelieu River in Canada, played a unique and significant role in the establishment and development of the United States and Canada through several distinct eras, including—

(A) the era of European exploration, during which Samuel de Champlain and other explorers used the waterways as a means of access through the wilderness;

(B) the era of military campaigns, including highly significant military campaigns of the French and Indian War, the American Revolution, and the War of 1812; and

(C) the era of maritime commerce, during which canals, boats, schooners, and steamships formed the backbone of commercial transportation for the region;

(4) those unique and significant eras are best described by the theme “The Making of Nations and Corridors of Commerce”;

(5) the artifacts and structures associated with those eras are unusually well-preserved;

(6) the Champlain Valley is recognized as having one of the richest collections of historical resources in North America;

(7) the history and cultural heritage of the Champlain Valley are shared with Canada and the Province of Quebec;

(8) there are benefits in celebrating and promoting this mutual heritage;

(9) tourism is among the most important industries in the Champlain Valley, and heritage tourism in particular plays a significant role in the economy of the Champlain Valley;

(10) it is important to enhance heritage tourism in the Champlain Valley while ensuring that increased visitation will not impair the historical and cultural resources of the region;

(11) according to the 1999 report of the National Park Service entitled “Champlain Valley Heritage Corridor Project”, “the Champlain Valley contains resources and represents a theme ‘The Making of Nations and Corridors of Commerce’, that is of outstanding importance in U.S. history”; and

(12) it is in the interest of the United States to preserve and interpret the historical and cultural resources of the Champlain Valley for the education and benefit of present and future generations.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York to recognize the importance of the historical, cultural, and recreational resources of the Champlain Valley region to the United States;

(2) to assist the State of Vermont and New York, including units of local government and nongovernmental organizations in the States, in preserving, protecting, and interpreting those resources for the benefit of the people of the United States;

(3) to use those resources and the theme “The Making of Nations and Corridors of Commerce” to—

(A) revitalize the economy of communities in the Champlain Valley; and

(B) generate and sustain increased levels of tourism in the Champlain Valley;

(4) to encourage—

(A) partnerships among State and local governments and nongovernmental organizations in the United States; and

(B) collaboration with Canada and the Province of Quebec to—

(i) interpret and promote the history of the waterways of the Champlain Valley region;

(ii) form stronger bonds between the United States and Canada; and

(iii) promote the international aspects of the Champlain Valley region; and

(5) to provide financial and technical assistance for the purposes described in paragraphs (1) through (4).

#### SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE PARTNERSHIP.—The term “Heritage Partnership” means the Champlain Valley National Heritage Partnership established by section 4(a).

(2) MANAGEMENT ENTITY.—The term “management entity” means the Lake Champlain Basin Program.

(3) MANAGEMENT PLAN.—The term “management plan” means the management plan developed under section 4(b)(B)(i).

(4) REGION.—

(A) IN GENERAL.—The term “region” means any area or community in 1 of the States in which a physical, cultural, or historical resource that represents the theme is located.

(B) INCLUSIONS.—The term “region” includes

(i) the linked navigable waterways of—

(I) Lake Champlain;

(II) Lake George;

(III) the Champlain Canal; and

(IV) the portion of the Upper Hudson River extending south to Saratoga;

(ii) portions of Grand Isle, Franklin, Chittenden, Addison, Rutland, and

Bennington Counties in the State of Vermont; and

(iii) portions of Clinton, Essex, Warren, Saratoga and Washington Counties in the State of New York.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(6) STATE.—the term “State” means—

(A) the State of Vermont; and

(B) the State of New York.

(7) THEME.—The term “theme” means the theme “The Making of Nations and Corridors of Commerce”, as the term is used in the 1999 report of the National Park Service entitled “Champlain Valley Heritage Corridor Project”, that describes the periods of international conflict and maritime commerce during which the region played a unique and significant role in the development of the United States and Canada.

#### SEC. 4. HERITAGE PARTNERSHIP.

(a) ESTABLISHMENT.—There is established in the regional the Champlain Valley National Heritage Partnership.

(b) MANAGEMENT ENTITY.—

(1) DUTIES.—

(A) IN GENERAL.—The management entity shall implement the Act.

(B) MANAGEMENT PLAN.—

(i) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop a management plan for the Heritage Partnership.

(ii) EXISTING PLAN.—Pending the completion and approval of the management plan, the management entity may implement the provisions of this Act based on its federally authorized plan “Opportunities for Action, an Evolving Plan For Lake Champlain”.

(iii) CONTENTS.—The management plan shall include—

(I) recommendations for funding, managing, and developing the Heritage Partnership;

(II) a description of activities to be carried out by public and private organizations to protect the resources of the Heritage Partnership;

(III) a list of specific, potential sources of funding for the protection, management, and development of the Heritage Partnership;

(IV) an assessment of the organizational capacity of the management entity to achieve the goals for implementation; and

(V) recommendations of ways in which to encourage collaboration with Canada and the Province of Quebec in implementing this Act.

(iv) CONSIDERATIONS.—In developing the management plan under clause (i), the management entity shall take into consideration existing Federal, State, and local plans relating to the region.

(v) SUBMISSION TO SECRETARY FOR APPROVAL.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit the management plan to the Secretary for approval.

(II) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (I), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Partnership is submitted to the Secretary.

(vi) APPROVAL.—Not later than 90 days after receiving the management plan submitted under subparagraph (V)(I), the Secretary, in consultation with the States, shall approve or disapprove the management plan.

(vii) ACTION FOLLOWING DISAPPROVAL.—

(I) GENERAL.—If the Secretary disapproves a management plan under subparagraph (vi), the Secretary shall—

(aa) advise the management entity in writing of the reasons for the disapproval;

(bb) make recommendations for revisions to the management plan; and

(cc) allow the management entity to submit to the Secretary revisions to the management plan.

(II) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (vii)(I)(cc), the Secretary shall approve or disapprove the revision.

(viii) AMENDMENT.—

(I) IN GENERAL.—After approval by the Secretary of the management plan, the management entity shall periodically—

(aa) review the management plan; and

(bb) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any amendments to the management plan that the management entity considers to be appropriate.

(II) EXPENDITURE OF FUNDS.—No funds made available under this Act shall be used to implement any amendment proposed by the management entity under subparagraph (viii)(1) until the Secretary approves the amendments.

(2) PARTNERSHIPS.—

(A) IN GENERAL.—In carrying out this Act, the management entity may enter into partnerships with—

(i) the States, including units of local governments in the States;

(ii) nongovernmental organizations;

(iii) Indian Tribes; and

(iv) other persons in the Heritage Partnership.

(B) GRANTS.—Subject to the availability of funds, the management entity may provide grants to partners under subparagraph (A) to assist in implementing this Act.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(c) ASSISTANCE FROM SECRETARY.—To carry out the purposes of this Act, the Secretary may provide technical and financial assistance to the management entity.

#### SEC. 5. EFFECT.

Nothing in this Act—

(1) grants powers of zoning or land use to the management entity;

(2) modifies, enlarges, or diminishes the authority of the Federal Government or a State or local government to manage or regulate any use of land under any law (including regulations); or

(3) obstructs or limits private business development activities or resource development activities.

#### SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act not more than a total of \$10,000,000, of which not more than \$1,000,000 may be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) not be less than 50 percent.

#### SEC. 7. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 43—DESIGNATING THE FIRST DAY OF APRIL 2005 AS “NATIONAL ASBESTOS AWARENESS DAY”

Mr. REID submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 43

Whereas deadly asbestos fibers are invisible and cannot be smelled or tasted;

Whereas when airborne fibers are inhaled or swallowed, the damage is permanent and irreversible;

Whereas these fibers can cause mesothelioma, asbestosis, lung cancer, and pleural diseases;

Whereas asbestos-related diseases can take 10 to 50 years to present themselves;

Whereas the expected survival rate of those diagnosed with mesothelioma is between 6 and 24 months;

Whereas little is known about late stage treatment and there is no cure for asbestos-related diseases;

Whereas early detection of asbestos-related diseases would give patients increased treatment options and often improve their prognosis;

Whereas asbestos is a toxic and dangerous substance and must be disposed of properly;

Whereas nearly half of the more than 1,000 screened firefighters, police officers, rescue workers, and volunteers who responded to the World Trade Center attacks on September 11, 2001, have new and persistent respiratory problems;

Whereas the industry groups with the highest incidence rates of asbestos-related diseases, based on 2000 to 2002 figures, were shipyard workers, vehicle body builders (including rail vehicles), pipefitters, carpenters and electricians, construction (including insulation work and stripping), extraction, energy and water supply, and manufacturing;

Whereas the United States imports more than 30,000,000 pounds of asbestos used in products throughout the Nation;

Whereas asbestos-related diseases kill 10,000 people in the United States each year, and the numbers are increasing;

Whereas asbestos exposure is responsible for 1 in every 125 deaths of men over the age of 50;

Whereas safety and prevention will reduce asbestos exposure and asbestos-related diseases;

Whereas asbestos has been the largest single cause of occupational cancer;

Whereas asbestos is still a hazard for 1,300,000 workers in the United States;

Whereas asbestos-related deaths have greatly increased in the last 20 years and are expected to continue to increase;

Whereas 30 percent of all asbestos-related disease victims were exposed to asbestos on naval ships and in shipyards;

Whereas asbestos was used in the construction of virtually all office buildings, public schools, and homes built before 1975; and

Whereas the establishment of a “National Asbestos Awareness Day” would raise public awareness about the prevalence of asbestos-related diseases and the dangers of asbestos exposure: Now, therefore, be it

*Resolved*, That the Senate designates the first day of April 2005 as “National Asbestos Awareness Day”.

Mr. REID. Mr. President, I am submitting a resolution today to designate April 1 of this year as “National Asbestos Awareness Day.”

I submitted this resolution toward the end of the last Congress and the

Senate did not have a chance to act on it. I submit it again today because strengthening public awareness about the danger of asbestos exposure could save thousands of lives.

Scientists have shown that inhalation of asbestos fibers can cause several serious diseases that might not show up for years after exposure. These diseases include lung cancer and asbestosis, the progressive scarring of the lungs by asbestos fibers causing respiratory distress, as well as malignant mesothelioma, a form of cancer for which asbestos exposure is the only known cause.

Over the next decade, more than 100,000 U.S. citizens will die of asbestos-related diseases. That is approximately 30 people per day—and it means one person will die in the time it takes us to act on this resolution.

Asbestos not only kills thousands of Americans every year. It also causes pain and suffering, tears families apart, and adds to the costs of our health care system.

I have been touched by the stories of Americans affected by asbestos-related diseases.

Last fall, I received a phone call from my brother, Don, who told me that a long-time family friend, Harold Hansen, had died from mesothelioma. Harold was a wonderful friend and family man. He hadn’t worked directly with asbestos in his lifetime, but he had been unwittingly exposed—and that exposure took his life.

Alan Reinstein was diagnosed with mesothelioma on June 16, 2003, and soon after underwent radical surgery to remove his entire lung, pericardium, diaphragm, and other affected parts of his body. He continues to courageously fight this deadly illness, and each day he must face the fear that the cancer might return.

Despite his illness, Alan is a lucky man because he has a loving wife, Linda, and family that give him strength. Linda Reinstein couldn’t sit by and watch her husband suffer, knowing that thousands of others had also been afflicted. So she founded the Asbestos Disease Awareness Organization to educate the public and the medical community about diseases caused by asbestos exposure.

I have received many letters from Nevadans who have family members with asbestos-related diseases. Eleanor Shook, from my home town of Searchlight, NV, lost her husband Chuck to mesothelioma. He had been repeatedly exposed to asbestos while at work. Two months after his diagnosis, he passed away—no cure, no treatment, no reprieve. There is a hole in that family where Chuck once stood.

I also received a letter from Jack Holmes a former school teacher from Las Vegas, who wrote: “I am dying. I have malignant mesothelioma . . . I can expect extreme pain and suffering before I die.”

I also heard from Robert Wright of Henderson, NV, who was exposed to asbestos while serving in the United

States Navy. He now suffers from asbestosis.

These are just a few of the hundreds of citizens of Nevada that are suffering with asbestos-related diseases. Every one of their stories is a tragedy and every one of them could have been prevented with greater awareness and education.

Most Americans think asbestos was banned a long time ago. Nothing could be further from the truth. New asbestos is used every day to insulate water pipes, as insulation, in making ceiling tiles and in many other building materials. When the tiny particles are released, they are invisible, and can't be smelled or tasted. Once inhaled, the particles lodge themselves in the lining of the lungs and remain there, causing irreversible damage for up to 50 years before disease sets in.

A single large dose of asbestos can fill your lungs with enough particles to cause disease. Simply walking by a construction site where asbestos particles are at a heavy concentration could be enough to give you a lethal dose.

Perhaps the most frightening thing about asbestos is that a person can be exposed without knowing it. A New York City police officer told me he worked in an undercover sting as a construction worker. The goal of the sting was to catch individuals who would improperly dispose of asbestos that had been removed from buildings. He told of catching men who tried to illegally dump asbestos in a school yard, where children would have been exposed to its dangers for years to come.

This story underscores the importance of raising public awareness about the dangers of asbestos exposure.

Better awareness and education can reduce exposure. For those who have been exposed, early detection and screening can increase treatment options and improve prognosis.

Asbestos kills—but asbestos education can save lives.

Just as victims and their families joined together to raise awareness of asbestos-related disease by forming the Asbestos Disease Awareness Organization, the Senate can increase awareness of this silent killer by declaring April 1, 2005 as Asbestos Awareness Day. I hope all senators will join me in this effort.

SENATE RESOLUTION 44—CELEBRATING BLACK HISTORY MONTH

Mr. ALEXANDER (for himself and Mr. COLEMAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 44

Whereas the first African Americans were brought forcibly to these shores as early as the 17th century;

Whereas African Americans were enslaved in the United States and subsequently faced the injustices of lynch mobs, segregation, and denial of basic, fundamental rights;

Whereas in spite of these injustices, African Americans have made significant contributions to the economic, educational, political, artistic, literary, scientific, and technological advancement of the United States;

Whereas in the face of these injustices African Americans of all races distinguished themselves in their commitment to the ideals on which the United States was founded, and fought for the rights of African Americans;

Whereas the greatness of America is reflected in the contributions of African Americans in all walks of life throughout the history of the United States: in the writings of W.E.B. DuBois, James Baldwin, Ralph Ellison, and Alex Haley; in the music of Mahalia Jackson, Billie Holiday, and Duke Ellington; in the resolve of athletes such as Jackie Robinson and Muhammed Ali; in the vision of leaders such as Frederick Douglass, Thurgood Marshall, and Martin Luther King, Jr.; and in the bravery of those who stood on the front lines in the battle against oppression such as Harriet Tubman and Rosa Parks;

Whereas the United States of America was conceived, as stated in the Declaration of Independence, as a new nation dedicated to the proposition that "all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness";

Whereas the actions of Americans of all races demonstrate their commitment to that proposition: actions such as those of Allan Pinkerton, Thomas Garrett, and the Rev. John Rankin who served as conductors on the Underground Railroad; actions such as those of Harriet Beecher Stowe, who shined a light on the injustices of slavery; actions such as those of President Abraham Lincoln, who issued the Emancipation Proclamation, and Senator Lyman Trumbull, who introduced the 13th Amendment to the Constitution of the United States; actions such as those of President Lyndon B. Johnson, Chief Justice Earl Warren, Senator Mike Mansfield, and Senator Hubert Humphrey, who fought to end segregation and the denial of civil rights to African Americans; and the thousands of Americans of all races who marched side-by-side with African Americans during the civil rights movement;

Whereas since its founding the United States has been an imperfect work in progress towards these noble goals;

Whereas American History is the story of a people regularly affirming high ideals, striving to reach them but often failing, and then struggling to come to terms with the disappointment of that failure before recommitting themselves to trying again;

Whereas from the beginning of our Nation the most conspicuous and persistent failure of Americans to reach our noble goals has been the enslavement of African Americans and the resulting racism;

Whereas the crime of lynching succeeded slavery as the ultimate expression of racism in the United States following Reconstruction;

Whereas the Federal Government failed to put an end to slavery until the ratification of the 13th Amendment in 1865, repeatedly failed to enact a federal anti-lynching law, and still struggles to deal with the evils of racism; and

Whereas the fact that 61 percent of African American 4th graders read at a below basic level and only 16 percent of native born African Americans have earned a Bachelor's degree; 50 percent of all new HIV cases are reported in African Americans; and the leading cause of death for African American males ages 15 to 34 is homicide demonstrates that the United States continues to struggle to

reach the high ideal of equal opportunity for all Americans: Now, therefore, be it

*Resolved*, That the Senate—

(1) acknowledges the tragedies of slavery, lynching, segregation, and condemns them as an infringement on human liberty and equal opportunity so that they will stand forever as a reminder of what can happen when Americans fail to live up to their noble goals;

(2) honors those Americans who during the time of slavery, lynching, and segregation risked their lives in the underground railway and in other efforts to assist fugitive slaves and other African Americans who might have been targets and victims of lynch mobs and those who have stood beside African Americans in the fight for equal opportunity that continues to this day;

(3) reaffirms its commitment to the founding principles of the United States of America that "all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness"; and

(4) commits itself to addressing those situations in which the African American community struggles with disparities in education, health care, and other areas where the Federal Government can play a role in improving conditions for all Americans.

Mr. ALEXANDER. Mr. President, this is Black History Month.

I look forward to Black History Month each year because it reminds me of my late friend, Alex Haley. Alex Haley died 13 years ago this month. I can still remember his funeral in Memphis and the big crowd there—people from all over America, leaders like Jesse Jackson. I spoke too; lots of us did.

There must have been 300 people in the room who thought they were his best friend. There were thousands of people around America and around the world who thought they were Alex Haley's best friend. He was a remarkable individual.

I remember saying that Alex Haley was God's storyteller, because he could tell a story. I remember saying, too, that I think we just used him up because he was such a generous man with his time.

After the funeral in Memphis, a procession drove to Henning, TN—not so far from Memphis—50 or 60 miles. We were there at the home where Alex Haley stayed in the summers with his grandparents.

This was a Friday. The African flute played a beautiful melody. It was cold. It was cold in February.

After the casket was laid in the grave, the stone was put there. On that stone were the words that Alex Haley lived his life by: "Find the good and praise it."

I remember that afternoon as if it were yesterday, even though it was 13 years ago. I remember Alex Haley as if he were perched here in this room looking us over.

I remember Alex Haley not just because of his death during Black History Month 13 years ago, but because of how he lived his life during Black History Month in the Februaries before 1992. Almost every February would find Alex

Haley on an all-night red-eye flight to Tennessee from a speaking engagement in some distant place so he could drive to some small Tennessee town and fulfill a commitment he made months earlier to a 4th grade teacher to help her students celebrate Black History Month.

Teachers loved Alex Haley's visits because he had wonderful stories to tell, stories of Frederick Douglass, of Thurgood Marshall, of Martin Luther King. Of the heroes and heroines, both black and white of the underground railroad, of Jackie Robinson, Muhammad Ali, W.E.B. Dubois, James Baldwin, and Ralph Ellison.

But the most riveting of all the stories that Alex Haley told those children were the ones Alex learned sitting on the porch steps in Henning, TN, in the summertime, listening to his great-aunts and his grandmother tell stories of his ancestor Kunta Kinte. He used to say his Great-Aunt Plus, rocking on the porch, telling those stories, could knock a firefly out of the air at 15 feet with an accurate stream of tobacco juice.

Once Alex Haley rode across the Atlantic Ocean for 3 weeks in the belly of a freighter to try to imagine what it must have been like for Kunta Kinte to be captured in the Gambia, Africa, and brought to Annapolis and sold as a slave. Alex spent 13 years tracing what had happened between the arrival of Kunta Kinte, his seventh generation grandfather, and Alex's own birth.

Alex Haley discovered one important piece of that puzzle when speaking in Simpson College in Iowa in the early 1970s. He told students and faculty there that he had found the name of the man who had bought Kunta Kinte on the Annapolis dock, but Alex could not trace what had happened after that.

A faculty member arose and said, Mr. Haley, my seventh generation grandfather purchased your seventh generation grandfather. Alex stayed with that faculty member for several weeks and because of that encounter was finally able to weave together the rest of the story of the struggle for freedom which became America's best-watched television miniseries, the story of "Roots."

It is in the spirit of Alex Haley that I offer this resolution celebrating Black History Month. This resolution honors the contributions of African Americans throughout the history of our country. It recommits the Senate to the goals of liberty and equal opportunity for every American. It condemns the horrors of slavery, of lynching, of segregation, and other instances in which our country has failed to measure up to its noble goals, and it pledges to work harder to improve educational, health, and job opportunities for African Americans and for all Americans.

African Americans were brought forcibly to these shores in the 17th century. From that dark beginning, however, they have overcome great obsta-

cles and continue to do so, to take a prominent place among the many people of diverse backgrounds who have come together here to form a single nation. African Americans have made and continue to make significant contributions to the economic, educational, political, artistic, literary, scientific, and technical advancement of the United States of America.

I have repeatedly emphasized the importance of the study of American history. One of our national tragedies and embarrassments is that our twelfth graders score lower on the national assessment of educational progress on U.S. history than on any other subject. We should be ashamed of that. Senator REID, the Democratic leader, Senator KENNEDY, other Senators on this side, and I have worked together to try to change that.

This is our opportunity—in a month devoted to black history—to especially recognize the history of African Americans in this country and to recognize that it is one of the greatest examples of our national quest to reach the high ideals set for us by our Founding Fathers. The Declaration of Independence dedicated us to the proposition that "all Men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness."

Our history is one of striving to reach this lofty ideal. The treatment of African Americans is our most egregious failure. Slavery, lynching, and segregation are all examples of times when this Nation failed African Americans. We failed to live up to our own promise of that fundamental truth that all men are created equal.

However, for every time we have failed, we have struggled to come to terms with that disappointment and we have recommitted ourselves to try again. Where there once was slavery, we passed the thirteenth and fourteenth amendments abolishing slavery and declaring equal protection under the law for all races. Where there was segregation, came Brown v. Board of Education and the Voting Rights Act. There are so many moments like these in our history and it is these moments we also celebrate with this resolution.

In addition, I do not believe we should simply rest on the accomplishments of our past. We celebrate and remember our history so we can learn its lessons and apply them today. Today's wrongs are begging for attention. African Americans in this country face significant and often crippling disparities in education, in health care, in quality of life, and in other areas where the Federal Government can play a role. The best way for each one of us, and for the United States Senate, to commemorate Black History Month is to get to work on legislation that would offer African Americans and other Americans better access to good schools, better access to quality health care, better access to decent jobs.

There is no resolution we can pass today that will teach one more child to read, prevent one more case of AIDS, or stop one more violent crime. However, I hope by joining me and supporting this resolution, the Members of this Senate will also join me in finding ways to look to the future and continue to contribute to this work in progress that is the United States of America.

I don't know what my friend Alex Haley would say about this Senate resolution, the one I am about to introduce, or that Senate resolution. But I do know how he lived his life. I do know how he celebrated Black History Month. He told wonderful stories about African Americans and other Americans who believed in the struggle for freedom and the struggle for equality. He minced no words in describing the terrible injustices they overcame. He said to those children he had flown all night to see that they were living in a wonderful country of great goals, and while many in the past had often failed to reach those goals, that we Americans always recommit ourselves to keep trying.

So, Mr. President, today I introduce a Senate resolution celebrating Black History Month, and it is in the spirit of Alex Haley that I offer it.

SENATE RESOLUTION 45—COM-  
MENDING THE JAMES MADISON  
UNIVERSITY DUKES FOOTBALL  
TEAM FOR WINNING THE 2004  
NCAA DIVISION I-AA NATIONAL  
FOOTBALL CHAMPIONSHIP

Mr. ALLEN (for himself, Mr. WARNER, and Mr. SCHUMER) submitted the following resolution; which was considered and agreed to:

S. RES. 45

Whereas the students, alumni, faculty, and supporters of James Madison University are to be congratulated for their commitment and pride in the James Madison University Dukes national champion football team;

Whereas in the National Collegiate Athletic Association championship game against the Montana Grizzlies, the Dukes drove to a 10-to-7 lead at the half on the strength of the 1-yard touchdown by seemingly indefatigable tailback Maurice Fenner and the 28-yard field goal by kicker David Rabil;

Whereas the Dukes won the 2004 NCAA Division I-AA National Football Championship with an outstanding second half performance, rushing for 257 yards and outscoring the Montana Grizzlies 21 to 14, to win the Championship by a score of 31 to 21;

Whereas the Dukes added the NCAA Division I-AA title to their share in the Atlantic Ten Conference title to claim their second championship in 2004;

Whereas every player on the Dukes football team (Nick Adams, Ryan Bache, L.C. Baker, Alvin Banks, Brandon Beach, Antoine Bolton, D.D. Boxley, Rondell Bradley, Isai Bradshaw, Ardon Bransford, Anderson Braswell, Marvin Brown, Michael Brown, Ryan Brown, Shawn Bryant, George Burns, Robbie Catterton, Frank Cobbs, Sean Connaghan, Jamaal Crowder, Ben Crumlin, Corey Davis, John Michael Deeds, Isaiah Dottin-Carter, Harry Dunn, Sudan Ellington, Nick Englehart, Sid Evans, Maurice Fenner,

Adam Ford, Casime Harris, Josh Haymore, Marcus Haywood, Tahir Hinds, Raymond Hines, Ryan Holston, Ryan Horn, David Ingraldi, Chris Iorio, Mike Jenkins, Bruce Johnson, Shelton Johnson, Akeem Jordan, Jacob Kahle, Clint Kent, Andrew Kern, Tim Kibler, Joe Kluesner, Rodney Landers, Scott Lemn, Matt LeZotte, Matt Magerko, Dexter Manley, Franklin Martin, Justin Mathias, Frank McArdle, Rodney McCarter, Craig McSherry, Andrew Michael, Bryce Miller, Leon Mizelle, Mike Mozby, William Nowell, Tom O'Connor, Will Patrick, David Rabil, Justin Rascati, Tom Ridley, Demetrius Shambley, Khary Sharpe, Andre Shuler, Bryan Smith, Leon Steinfeld, Chuck Suppon, Cortez Thompson, Nic Tolley, Trey Townsend, Brian Vaccarino, Kwynn Walton, Paul Wantuck, Mike Wilkerson, Kevin Winston, Stephen Wyatt, Kyle Zehr, and Jake Zielinski) contributed to the success of the team in this impressive championship season;

Whereas the Dukes became the first team in Division I-AA history to win the national title without playing a single playoff game at home, battling for 3 consecutive playoff road victories;

Whereas the Dukes football team Head Coach Mickey Matthews has won 40 games in his 6 years at James Madison University and has taken the Dukes to the playoffs twice in his tenure;

Whereas Coach Matthews has been named the 2004 Division I-AA National Coach of the Year by the American Football Coaches Association, for his performance in the Dukes championship season; and

Whereas Assistant Coaches Curt Newsome, Jeff Durden, George Barlow, Kyle Gillenwater, Phil Ratliff, Chip West, Ulrick Edmonds, J.C. Price, Tony Tallent, and Jim Durning deserve high recommendation for their strong leadership of, and superb coaching support to, the James Madison University Dukes football team: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates James Madison University Dukes football team for winning the 2004 NCAA Division I-AA National Championship; and

(2) recognizes the achievements of all the players, coaches, and support staff of the team.

SENATE RESOLUTION 46—COMMEMORATING THE LIFE OF THE LATE ZURAB ZHVANIA, FORMER PRIME MINISTER OF THE REPUBLIC OF GEORGIA

Mr. LUGAR (for himself, Mr. BIDEN, Mr. HAGEL, and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 46

Whereas on the night of February 3, 2005, the Prime Minister of the Republic of Georgia, Zurab Zhvania, died, apparently due to carbon monoxide poisoning caused by a malfunctioning heater;

Whereas the death of Prime Minister Zhvania at the age of 41 is a tragic loss for the Republic of Georgia;

Whereas Zurab Zhvania was a dedicated reformer whose visionary leadership inspired a new generation of political leaders in the Republic of Georgia;

Whereas Zurab Zhvania founded the Citizen's Union Party, which won elections in 1995, making him the Speaker of the Georgian Parliament;

Whereas under the leadership of Speaker Zhvania, the Georgian Parliament was trans-

formed into an effective and transparent legislative institution;

Whereas in November 2001, Speaker Zhvania resigned his position in protest when government authorities attempted to suppress the leading independent television station in the Republic of Georgia;

Whereas Zurab Zhvania formed the United Democrats, a party that blossomed into one of the major forces that brought about the Rose Revolution in the Republic of Georgia in November 2003;

Whereas in the most dangerous hours of the Rose Revolution, when it appeared that armed force could be used against the peaceful protestors, Zurab Zhvania dismissed his bodyguards and led a march to Parliament accompanied only by his young children;

Whereas Zurab Zhvania was named Prime Minister of the Republic of Georgia in November 2003, and led governmental efforts to develop and implement far-reaching economic, judicial, military, and social reforms thereby turning the promise of the Rose Revolution into real results that have dramatically improved life in the Republic of Georgia;

Whereas the strong commitment of Zurab Zhvania to the peaceful restoration of the territorial integrity of Georgia was most recently displayed in the central role he played in the development of the unprecedented and generous proposal of the Republic of Georgia for resolving the status of South Ossetia peacefully and justly; and

Whereas Zurab Zhvania's vision of the historical destiny of Georgia was eloquently expressed before the Council of Europe on April 27, 1999, when he said, "I am Georgian and therefore, I am European";

Now, therefore, be it

*Resolved*, That the Senate—

(1) expresses its deepest condolences to the family of Zurab Zhvania for their tragic loss of a son, husband, and father;

(2) commends the courage, energy, political imagination, and leadership of Zurab Zhvania that were so critical to the development of a democratic Republic of Georgia; and

(3) recognizes that the integration of the Republic of Georgia into Euro-Atlantic institutions will be the completion of the vision of Zurab Zhvania and his most lasting legacy.

SENATE CONCURRENT RESOLUTION 10—RAISING AWARENESS AND ENCOURAGING PREVENTION OF STALKING BY ESTABLISHING JANUARY 2006 AS "NATIONAL STALKING AWARENESS MONTH"

Mr. DEWINE (for himself and Mr. BIDEN) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 10

Whereas an estimated 1,006,970 women and 370,990 men are stalked annually in the United States and, in the majority of such cases, the person is stalked by someone who is not a stranger;

Whereas 81 percent of women who are stalked by an intimate partner are also physically assaulted by that partner, and 76 percent of women who are killed by an intimate partner were also stalked by that intimate partner;

Whereas 26 percent of stalking victims lose time from work as a result of their victimization and 7 percent never return to work;

Whereas stalking victims are forced to take drastic measures to protect themselves, such as relocating, changing their addresses,

changing their identities, changing jobs, and obtaining protection orders;

Whereas stalking is a crime that cuts across race, culture, gender, age, sexual orientation, physical and mental ability, and economic status;

Whereas stalking is a crime under Federal law and under the laws of all 50 States and the District of Columbia;

Whereas rapid advancements in technology have made cyber-surveillance the new frontier in stalking;

Whereas there are national organizations, local victim service organizations, prosecutors' offices, and police departments that stand ready to assist stalking victims and who are working diligently to craft competent, thorough, and innovative responses to stalking;

Whereas there is a need to enhance the criminal justice system's response to stalking and stalking victims, including aggressive investigation and prosecution; and

Whereas Congress urges the establishment of January, 2006 as National Stalking Awareness Month: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That—

(1) it is the sense of Congress that—

(A) National Stalking Awareness Month provides an opportunity to educate the people of the United States about stalking;

(B) all Americans should applaud the efforts of the many victim service providers, police, prosecutors, national and community organizations, and private sector supporters for their efforts in promoting awareness about stalking; and

(C) policymakers, criminal justice officials, victim service and human service agencies, nonprofits, and others should recognize the need to increase awareness of stalking and availability of services for stalking victims; and

(2) Congress urges national and community organizations, businesses in the private sector, and the media to promote, through National Stalking Awareness Month, awareness of the crime of stalking.

Mr. DEWINE. Mr. President, I rise today to submit a resolution calling for the establishment of a National Stalking Awareness Month. Each year, approximately 1.4 million Americans—over 1 million women and about 400,000 men—are stalked. This statistic is truly staggering. Despite the prevalence of stalking and its recognition as a crime in all 50 States, this crime is often ignored.

Stalking is an issue that affects 1 in 12 women and 1 in 45 men during their lifetime. It cuts across all lines of race, age, and gender. Women and men across the United States have struggled emotionally and financially to rebuild their lives after being victimized by a stalker.

With rapidly advancing technology, I fear that stalking will become even more common and that the perpetrators will become even harder to catch. Increasingly, smaller cameras now allow perpetrators to stalk their victims from afar, often without even being detected. Video voyeurism is the next frontier in stalking and more must be done to combat this problem.

This resolution applauds the efforts of policymakers, law enforcement officers, victim service agencies, and other groups that currently promote awareness of stalking. This resolution also

encourages these groups to examine new and innovative ways to promote prevention and prosecution of stalking crimes. By increasing awareness and devising practical and effective means to reduce the prevalence of this crime, we can help the police, prosecutors, and victims to confront this horrible crime.

Stalking is a tremendous problem, and it is one that we need to do more to address. A National Stalking Awareness Month would help to educate and increase awareness about stalking. I encourage my colleagues to support this resolution. We can—and we should—do more to ensure that stalkers are brought to justice and that their victims are not forced to live in fear.

SENATE CONCURRENT RESOLUTION  
11—HONORING THE  
TUSKEGEE AIRMEN FOR THEIR  
BRAVERY IN FIGHTING FOR OUR  
FREEDOM IN WORLD WAR II,  
AND FOR THEIR CONTRIBUTION  
IN CREATING AN INTEGRATED  
UNITED STATES AIR FORCE

Mr. SESSIONS (for himself and Mr. SHELBY) submitted the following concurrent resolution; which was referred to the Committee on Armed Services.

S. CON. RES. 11

Whereas the United States is currently combating terrorism around the world and is highly dependent on the global reach and presence provided by the Air Force;

Whereas these operations require the highest skill and devotion to duty from all Air Force personnel involved;

Whereas the Tuskegee Airmen proved that such skill and devotion, and not skin color, are the determining factors in aviation;

Whereas the Tuskegee Airmen served honorably in the Second World War struggle against global fascism; and

Whereas the example of the Tuskegee Airmen has encouraged millions of Americans of every race to pursue careers in air and space technology; Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That it is the sense of Congress that the United States Air Force should continue to honor and learn from the example provided by the Tuskegee Airmen as it faces the challenges of the 21st century and the war on terror.

AMENDMENTS SUBMITTED AND  
PROPOSED

SA 2. Mr. KENNEDY (for himself, Ms. CANTWELL, Mr. BIDEN, Mr. LEAHY, Mr. CORZINE, Mrs. MURRAY, Ms. MIKULSKI, and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table.

SA 3. Mr. DURBIN proposed an amendment to the bill S. 5, supra.

TEXT OF AMENDMENTS

SA 2. Mr. KENNEDY (for himself, Ms. CANTWELL, Mr. BIDEN, Mr. LEAHY, Mr. CORZINE, Mrs. MURRAY, Ms. MIKULSKI,

and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 15, strike lines 3 through 7, and insert the following:

“(B) the term ‘class action’—

“(i) means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action; and

“(ii) does not include—

“(I) any class action brought under a State or local civil rights law prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, disability, or other classification specified in that law; or

“(II) any class action or collective action brought to obtain relief under State or local law for failure to pay the minimum wage, overtime pay, or wages for all time worked, failure to provide rest or meal breaks, or unlawful use of child labor;

SA 3. Mr. DURBIN proposed an amendment to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 20, before the semicolon at the end of line 23, insert “or by the court sua sponte”.

On page 21, line 5, strike “solely”.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON ENERGY

Mr. ALEXANDER. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Energy and Natural Resources' Subcommittee on Energy.

The hearing, entitled *The Future of Liquefied Natural Gas: Siting and Safety*, will be held on Tuesday, February 15th at 2:30 p.m. in Room SD-366.

The purpose of the hearing is to receive testimony regarding the prospects for liquefied natural gas (LNG) in the United States, Panel 1, and to discuss the safety and security issues related to LNG development, Panel 2. Witnesses will be the FERC, the Coast Guard, State authorities, and industry stakeholders. Issues that will be discussed include LNG siting process; risk assessment; and the State and local governments' role.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-366 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact: Shane Perkins at 202-224-7555.

AUTHORITY FOR COMMITTEES TO  
MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN  
AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 8, 2005, at 10 a.m., to conduct a hearing on “examining the Role of Credit Rating Agencies in the Capital Markets.”

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

COMMITTEE ON FINANCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, February 8, 2005, at 2:15 p.m., to hear testimony on Revenue Proposals in the President's FY06 Budget.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Tuesday, February 8, 2005, at 9:30 a.m., to conduct its organizational meeting for the 109th Congress.

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

SUBCOMMITTEE ON BIOTERRORISM AND PUBLIC  
HEALTH PREPAREDNESS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Subcommittee on Bioterrorism and Public Health Preparedness be authorized to hold a hearing during the session of the Senate on Tuesday, February 8, 2005, at 10 a.m. in SD-430.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Tuesday, February 8, 2005, at 10 a.m.

The purpose of the hearing is to review the implementation of Titles I through III of P.L. 106-393, the Secure Rural Schools and Community Self-Determination Act of 2000.

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

PRIVILEGE OF THE FLOOR

Mr. CORNYN. Mr. President, I ask unanimous consent that a member of my staff, Magan Dredla, be given floor privileges for the duration of the debate.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Matt Drake of my staff be granted the privileges of the floor for the duration of today's session.

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

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 105-83, announces the appointment of the following individuals to serve as members of the National Council of the Arts: the Senator from Ohio, Mr. DEWINE, and the Senator from Utah, Mr. BENNETT.

The Chair, pursuant to Executive Order No. 12131, reappoints the following Member to the President's Export Council: the Honorable MIKE ENZI of Wyoming.

The Chair, on behalf of the President of the Senate, pursuant to Public Law 85-874, as amended, appoints the Senator from Mississippi, Mr. COCHRAN, to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, vice the Senator from Alaska, Mr. STEVENS.

#### COMMENDING THE JAMES MADISON UNIVERSITY FOOTBALL TEAM

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 45, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 45) commending the James Madison University Dukes football team for winning the 2004 NCAA Division I-AA National Football Championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. ALLEN. Mr. President, today I congratulate the James Madison University Football team for winning the 2004 NCAA Division I-AA football championship with a 31 to 21 victory over the Montana Grizzlies. This resolution expresses congratulations of the Senate these outstanding young men.

As a former collegiate athlete and an avid football fan, I want to express the pride felt by all students, faculty and alumni of James Madison University at this tremendous accomplishment by the football team. Head Coach Mickey Matthews and his superb coaching staff: Curt Newsome, Jeff Durden, George Barlow, Kyle Gillenwater, Phil Ratliff, Chip West, Ulrick Edmonds, J.C. Price, Tony Tallent, Jim Durning, deserve much of the credit for the accomplishment of these student athletes and should also be highly commended.

The James Madison University Dukes Football team fought to a 10 to 7 halftime lead on the strength of tailback Maurice Fenner's 1-yard touchdown and kicker David Rabil's 28-yard field goal. The Dukes went on to win the game with an outstanding second half performance, rushing for 257 and outscoring the Montana Grizzlies 31 to 21.

In his distinguished career, Head Coach Mickey Matthews has won 40 games in 6 years at James Madison University and has taken the Dukes to the playoffs twice in his tenure. The American Football Coaches Association has named Coach Matthews the 2004 Division I-AA National Coach of the Year for his performance in the Dukes' championship season. Coach Matthews lead the Dukes to become the first team in Division I-AA history to win the national title without playing a single playoff game at home, battling for three consecutive playoff road victories. In addition to their 2004 national title, the team also shares the Atlantic Ten Championship title, one of the toughest Division I-AA conferences in the country.

The members of the 2004 James Madison University Football have indeed made their university proud and should be applauded for their character and leadership, both on and off the playing field. I congratulate Nick Adams, Ryan Bache, L.C. Baker, Alvin Banks, Brandon Beach, Antoine Bolton, D.D. Boxley, Rondell Bradley, Isai Bradshaw, Ardon Bransford, Anderson Braswell, Marvin Brown, Michael Brown, Ryan Brown, Shawn Bryant, George Burns, Robbie Catterton, Frank Cobbs, Sean Connaghan, Jamaal Crowder, Ben Crumlin, Corey Davis, John Michael Deeds, Isaiah Dottin-Carter, Harry Dunn, Sudan Ellington, Nick Englehart, Sid Evans, Maurice Fenner, Adam Ford, Casime Harris, Josh Haymore, Marcus Haywood, Tahir Hinds, Raymond Hines, Ryan Holston, Ryan Horn, David Ingraldi, Chris Iorio, Mike Jenkins, Bruce Johnson, Shelton Johnson, Akeem Jordan, Jacob Kahle, Clint Kent, Andrew Kern, Tim Kibler, Joe Kluesner, Rodney Landers, Scott Lemn, Matt LeZotte, Matt Magerko, Dexter Manley, Franklin Martin, Justin Mathias, Frank McArdle, Rodney McCarter, Craig McSherry, Andrew Michael, Bryce Miller, Leon Mizelle, Mike Mozby, William Nowell, Tom O'Connor, Will Patrick, David Rabil, Justin Rascati, Tom Ridley, Demetrius Shambley, Khary Sharpe, Andre Shuler, Bryan Smith, Leon Steinfeld, Chuck Suppon, Cortez Thompson, Nic Tolley, Trey Townsend, Brian Vaccarino, Kwynn Walton, Paul Wantuck, Mike Wilkerson, Kevin Winston, Stephen Wyatt, Kyle Zehr and Jake Zielinski.

Mr. President, I hope my colleagues will join with Senator WARNER and I to pass this resolution recognizing the National Champion James Madison University Football team.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

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

The resolution (S. Res. 45) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 45

Whereas the students, alumni, faculty, and supporters of James Madison University are to be congratulated for their commitment and pride in the James Madison University Dukes national champion football team;

Whereas in the National Collegiate Athletic Association championship game against the Montana Grizzlies, the Dukes drove to a 10-to-7 lead at the half on the strength of the 1-yard touchdown by seemingly indefatigable tailback Maurice Fenner and the 28-yard field goal by kicker David Rabil;

Whereas the Dukes won the 2004 NCAA Division I-AA National Football Championship with an outstanding second half performance, rushing for 257 yards and outscoring the Montana Grizzlies 21 to 14, to win the Championship by a score of 31 to 21;

Whereas the Dukes added the NCAA Division I-AA title to their share in the Atlantic Ten Conference title to claim their second championship in 2004;

Whereas every player on the Dukes football team (Nick Adams, Ryan Bache, L.C. Baker, Alvin Banks, Brandon Beach, Antoine Bolton, D.D. Boxley, Rondell Bradley, Isai Bradshaw, Ardon Bransford, Anderson Braswell, Marvin Brown, Michael Brown, Ryan Brown, Shawn Bryant, George Burns, Robbie Catterton, Frank Cobbs, Sean Connaghan, Jamaal Crowder, Ben Crumlin, Corey Davis, John Michael Deeds, Isaiah Dottin-Carter, Harry Dunn, Sudan Ellington, Nick Englehart, Sid Evans, Maurice Fenner, Adam Ford, Casime Harris, Josh Haymore, Marcus Haywood, Tahir Hinds, Raymond Hines, Ryan Holston, Ryan Horn, David Ingraldi, Chris Iorio, Mike Jenkins, Bruce Johnson, Shelton Johnson, Akeem Jordan, Jacob Kahle, Clint Kent, Andrew Kern, Tim Kibler, Joe Kluesner, Rodney Landers, Scott Lemn, Matt LeZotte, Matt Magerko, Dexter Manley, Franklin Martin, Justin Mathias, Frank McArdle, Rodney McCarter, Craig McSherry, Andrew Michael, Bryce Miller, Leon Mizelle, Mike Mozby, William Nowell, Tom O'Connor, Will Patrick, David Rabil, Justin Rascati, Tom Ridley, Demetrius Shambley, Khary Sharpe, Andre Shuler, Bryan Smith, Leon Steinfeld, Chuck Suppon, Cortez Thompson, Nic Tolley, Trey Townsend, Brian Vaccarino, Kwynn Walton, Paul Wantuck, Mike Wilkerson, Kevin Winston, Stephen Wyatt, Kyle Zehr, and Jake Zielinski) contributed to the success of the team in this impressive championship season;

Whereas the Dukes became the first team in Division I-AA history to win the national title without playing a single playoff game at home, battling for 3 consecutive playoff road victories;

Whereas the Dukes football team Head Coach Mickey Matthews has won 40 games in his 6 years at James Madison University and has taken the Dukes to the playoffs twice in his tenure;

Whereas Coach Matthews has been named the 2004 Division I-AA National Coach of the Year by the American Football Coaches Association, for his performance in the Dukes championship season; and

Whereas Assistant Coaches Curt Newsome, Jeff Durden, George Barlow, Kyle Gillenwater, Phil Ratliff, Chip West, Ulrick Edmonds, J.C. Price, Tony Tallent, and Jim Durning deserve high recommendation for their strong leadership of, and superb coaching support to, the James Madison University Dukes football team: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates James Madison University Dukes football team for winning the 2004 NCAA Division I-AA National Championship; and

(2) recognizes the achievements of all the players, coaches, and support staff of the team.

COMMEMORATING THE LIFE OF  
THE LATE ZURAB ZHVANIA OF  
THE REPUBLIC OF GEORGIA

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 46, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 46) commemorating the life of the late Zurab Zhvania, former Prime Minister of the Republic of Georgia.

This being no objection, the Senate proceeded to consider the resolution.

Mr. LUGAR. Mr. President, today I offer a resolution commemorating the life of the late Zurab Zhvania, former Prime Minister of the Republic of Georgia.

At the request of President Bush, I was honored to lead a delegation last weekend to represent the United States at Prime Minister Zhvania's funeral. Also representing the United States was Paul Applegarth, Millennium Challenge Corporation CEO; and Lorne Craner, President of the International Republican Institute.

Prime Minister Zhvania was a prominent leader in Georgia's Rose Revolution. He was a true reformer, lauded for his intellectual acuity, and a friend of America. I was fortunate to meet with Zhvania last December. We had an extensive discussion about Georgia's promising future and vigorous agenda to transform it into a regional model of political and economic progress.

The U.S.-Georgia relationship is strong. I am grateful to Georgia's recent decision to increase its troop level in Iraq. I am also grateful for its partnership in the War on Terror, including its troop commitment in Afghanistan and to the peacekeeping mission in Kosovo. I am hopeful that our strategic relationship with Georgia will continue to grow as we face the new threats of the 21st century.

The death of Prime Minister Zhvania is a loss for Georgia, for the United States, and for the community of democratic nations. I ask my colleagues for their support of this resolution.

Mr. BROWNBACK. Mr. President, on a personal note, I knew Zurab Zhvania. I worked with him quite a bit. He was one of the original democracy advocates inside Georgia, a country that came out of the former Soviet Union, a wonderful man, with a great heart. He started out as an environmentalist. That is how he got active in the political system. He and Mr. Shevardnaze formed an alliance and moved the

country toward democracy through a tumultuous time period. He was one of the lead architects of the Rose Revolution and democracy coming forward in Georgia.

I cannot let this pass without noting what an incredible loss he is to Georgia. He would have been one of at least the top one to three people who make that country move to where it is today. They are suspicious circumstances under which he died—gas inhalation in an apartment. It appears to be natural causes, but there has been a lot of difficult political activity going on in Georgia—kidnappings and deaths that have taken place. I hope that was not the case.

I have my own personal thoughts of him, and my sympathy goes out to his family—his wife and young children. He was 41 years old. He was a wonderful guy and he will be sorely missed in Georgia and around the world. I know his family will miss him dearly.

Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 46) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 46

Whereas on the night of February 3, 2005, the Prime Minister of the Republic of Georgia, Zurab Zhvania, died, apparently due to carbon monoxide poisoning caused by a malfunctioning heater;

Whereas the death of Prime Minister Zhvania at the age of 41 is a tragic loss for the Republic of Georgia;

Whereas Zurab Zhvania was a dedicated reformer whose visionary leadership inspired a new generation of political leaders in the Republic of Georgia;

Whereas Zurab Zhvania founded the Citizen's Union Party, which won elections in 1995, making him the Speaker of the Georgian Parliament;

Whereas under the leadership of Speaker Zhvania, the Georgian Parliament was transformed into an effective and transparent legislative institution;

Whereas in November 2001, Speaker Zhvania resigned his position in protest when government authorities attempted to suppress the leading independent television station in the Republic of Georgia;

Whereas Zurab Zhvania formed the United Democrats, a party that blossomed into one of the major forces that brought about the Rose Revolution in the Republic of Georgia in November 2003;

Whereas in the most dangerous hours of the Rose Revolution, when it appeared that armed force could be used against the peaceful protestors, Zurab Zhvania dismissed his bodyguards and led a march to Parliament accompanied only by his young children;

Whereas Zurab Zhvania was named Prime Minister of the Republic of Georgia in November 2003, and led governmental efforts to develop and implement far-reaching economic, judicial, military, and social reforms thereby turning the promise of the Rose Revolution into real results that have dramatically improved life in the Republic of Georgia;

Whereas the strong commitment of Zurab Zhvania to the peaceful restoration of the territorial integrity of Georgia was most recently displayed in the central role he played in the development of the unprecedented and generous proposal of the Republic of Georgia for resolving the status of South Ossetia peacefully and justly; and

Whereas Zurab Zhvania's vision of the historical destiny of Georgia was eloquently expressed before the Council of Europe on April 27, 1999, when he said, "I am Georgian and therefore, I am European";

Now, therefore, be it  
Resolved, That the Senate—

(1) expresses its deepest condolences to the family of Zurab Zhvania for their tragic loss of a son, husband, and father;

(2) commends the courage, energy, political imagination, and leadership of Zurab Zhvania that were so critical to the development of a democratic Republic of Georgia; and

(3) recognizes that the integration of the Republic of Georgia into Euro-Atlantic institutions will be the completion of the vision of Zurab Zhvania and his most lasting legacy.

ORDERS FOR WEDNESDAY,  
FEBRUARY 9, 2005

Mr. BROWNBACK. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, February 9. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate begin a period for the transaction of morning business for up to 1 hour, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the Republican leader or his designee; provided that following morning business, the Senate resume consideration of S. 5, the class action bill, and upon reporting the bill, the pending amendment be set aside and Senator PRYOR be recognized to offer an amendment.

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

PROGRAM

Mr. BROWNBACK. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the class action fairness bill. Senator PRYOR will offer an amendment on State attorneys general. We also have a Durbin amendment pending on mass actions. We hope to dispose of these amendments early tomorrow, and Members should plan accordingly. For the remainder of the day, we will continue to offer and debate amendments to the class action bill. Therefore, roll-call votes are expected throughout tomorrow's session.

Just for the knowledge of Members, I know the leader intends to move this bill forward, getting it done this week. As has been stated during the debate, it is the hope to move this forward so the House can consider it and move it on to the President in as early a fashion as possible.

This is a bipartisan bill with strong support. Not everybody agrees with it, obviously, but this is something we hope can move forward as soon as possible.

Mr. DURBIN. If the Senator from Kansas will yield, through the Chair, I would like to make a point on the RECORD that there will be other Senators offering amendments tomorrow. Senator KENNEDY is seeking that opportunity. As we understand it, we are going to Senator PRYOR by this unanimous consent agreement, and I want the RECORD to reflect other Senators on this side of the aisle will be offering amendments.

Mr. BROWNBACK. Mr. President, we have a few other items to come before the body, but we are not quite prepared to bring those forward yet. 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. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. BROWNBACK. Mr. President, at this time, there is no further business to come before the Senate. I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:32 p.m., adjourned until Wednesday, February 9, 2005, at 9:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate February 8, 2005:

##### MISSISSIPPI RIVER COMMISSION

BRIGADIER GENERAL WILLIAM T. GRISOLI, UNITED STATES ARMY, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION.

##### FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE FOR PROMOTION WITHIN AND INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR:

EDGAR FULTON, JR., OF MASSACHUSETTS  
GEORGE RUFFNER, OF PENNSYLVANIA  
JAMES WILSON, OF PENNSYLVANIA  
KAREN ZENS, OF THE DISTRICT OF COLUMBIA

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

NANCY CHARLES-PARKER, OF COLORADO  
CATHERINE HOUGHTON, OF CALIFORNIA  
GREGORY LOOSE, OF CALIFORNIA  
PATRICK SANTILLO, OF MARYLAND  
KAREN WARE, OF THE DISTRICT OF COLUMBIA  
WILLIAM ZARIT, OF FLORIDA

##### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GRADES INDICATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

##### To be commander

JAMES D. RATHBURN

##### To be lieutenant (junior grade)

ANDREW P. SEAMAN

##### IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

##### To be major general

BRIGADIER GENERAL THOMAS A BENES, 0000  
BRIGADIER GENERAL WILLIAM D CATTO, 0000  
BRIGADIER GENERAL MICHAEL E ENNIS, 0000  
BRIGADIER GENERAL WALTER E GASKIN, SR, 0000  
BRIGADIER GENERAL TIMOTHY R LARSEN, 0000  
BRIGADIER GENERAL MICHAEL R LEHNERT, 0000  
BRIGADIER GENERAL DUANE D THIESSEN, 0000  
BRIGADIER GENERAL GEORGE J TRAUTMAN III, 0000  
BRIGADIER GENERAL WILLIE J WILLIAMS, 0000  
BRIGADIER GENERAL RICHARD C ZILMER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

##### To be brigadier general

COLONEL GEORGE J ALLEN, 0000  
COLONEL RAYMOND C FOX, 0000  
COLONEL ANTHONY M HASLAM, 0000  
COLONEL DAVID R HEINZ, 0000  
COLONEL STEVEN A HUMMER, 0000  
COLONEL ANTHONY L JACKSON, 0000  
COLONEL RICHARD M LAKE, 0000  
COLONEL ROBERT E MILSTEAD, JR, 0000  
COLONEL MICHAEL R REGNER, 0000  
COLONEL DAVID G REIST, 0000  
COLONEL MELVIN G SPIESE, 0000  
COLONEL JOHN E WISSLER, 0000

##### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531:

##### To be colonel

BARBARA S. BLACK, 0000  
VINCENT T. JONES, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE, UNDER TITLE 10, U.S.C., SECTIONS 624 AND 1552:

##### To be colonel

GLENN T. LUNSFORD, 0000

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 1552:

##### To be colonel

FREDERICK E. JACKSON, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 1552:

##### To be lieutenant colonel

ROBERT G. PATE, 0000  
DWAYNE A. STICH, 0000

THE FOLLOWING NAMED OFFICER FOR A REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 2114.

##### To be captain

KELLY E. NATION, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

##### To be colonel

LOURDES J. ALMONTE, 0000  
JAMES E. BILLINGS II, 0000  
MARY E. BURKE, 0000  
JAMES M. GERMAIN, 0000  
CLAUDE W. MITCHELL, 0000  
WAYNE J. OLSON, 0000  
ROBERT J. WEISENBERGER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

##### To be lieutenant colonel

BRIAN F. \* AGE, 0000  
DALE M. \* AHRENDT, 0000  
CHRISTOPHER S. ALLEN, 0000  
RICHARD L. \* ALLEN, 0000  
STEVEN L. BAYER, 0000  
RODUSA A. BELL, 0000  
RADY N. \* BENHAM, 0000  
CATHERINE A. \* BOBENRIETH, 0000  
MARK E. \* BOSTON, 0000  
RUDY M. \* BRAZA, 0000  
ANTHONY J. BROTHERS, 0000  
HANS C. \* BRUNTMYER, 0000  
DANIEL B. BRUZZINI, 0000  
HEATHER L. CALLUM, 0000  
CHARLES L. \* CAMPBELL, 0000  
SCOTT E. CAULKINS, 0000  
WILLIAM D. \* CLOUSE, 0000  
CHRISTOPHER P. \* COPPOLA, 0000  
CHERYL ANN \* COX, 0000  
MARK C. DELEON, 0000  
CARLO G. N. \* DEMANDANTE, 0000  
RICHARD C. \* DERBY, 0000  
JOHN P. \* DICE, 0000  
DANIEL S. DIETRICH, 0000

DANIEL R. DIRNBERGER, 0000  
MARY BETH \* DURBIN, 0000  
KELCEY D. ELSASS, 0000  
WILLIAM P. ELSASS, 0000  
ANTONIO J. \* EPPOLITO, 0000  
BASSAM M. FAKHOURI, 0000  
JAMES A. FEIG, 0000  
JILL C. \* FEIG, 0000  
EARL E. \* FERGUSON III, 0000  
MELETIOS J. \* FOTINOS, 0000  
DENISE WRIGHT \* FRANCOIS, 0000  
THOMAS J. \* GAL, JR., 0000  
DAVID P. \* GILBERT, 0000  
JAMES M. \* GLASS, 0000  
PAUL E. \* GOURLEY, 0000  
GERALD A. \* GRANT, 0000  
NABIL M. HABIB, 0000  
WILLIAM HALLIER, 0000  
DAVID B. \* HAMMER, 0000  
CHRISTINE D. \* HAMRICK, 0000  
CRAIG M. HAUSER, 0000  
ALISON H. \* HELMKAMP, 0000  
CODY L. \* HENDERSON, 0000  
ALDEN D. \* HILTON, 0000  
THOMAS S. HOFFMAN, 0000  
PAT P. HOGAN, 0000  
WILLIAM C. \* HOOK, 0000  
DREW M. \* HORLBECK, 0000  
BOBBY C. \* HOWARD, 0000  
THOMAS HUANG, 0000  
RICHARD J. \* HUGHES, 0000  
KEITH W. \* HUNSAKER, 0000  
STEPHEN B. IRVIN, 0000  
CHARLES E. \* JOHNSON, 0000  
RONALD B. \* JOHNSTON, JR., 0000  
KATHLEEN M. \* JONES, 0000  
CAROLINE H. KENNEBECK, 0000  
ANDREW M. \* KIM, 0000  
MOLLY E. \* KLEIN, 0000  
LESLIE A. KNIGHT, 0000  
THOMAS J. KNOLMAYER, 0000  
ERIK K. KODA, 0000  
CLARICE H. KONSHOK, 0000  
THOMAS C. \* KRIVAK, 0000  
BRADLEY J. \* LAWSON, 0000  
BRIAN C. \* LEACH, 0000  
MOON H. \* LEE, 0000  
HENRY T. LEIS, 0000  
TAMMY J. \* LINDSAY, 0000  
JOHN J. \* LINNETT, 0000  
PATRICK D. LOWRY, 0000  
LOUIS \* MARTINEZ, JR., 0000  
RICHARD J. MAYERS, 0000  
THOMAS J. \* MCBRIDE, 0000  
TIMOTHY A. MCGRAW, 0000  
ANTHONY J. \* MEYER, 0000  
GARY K. \* MILLER, 0000  
SCOTT A. \* MOORE, 0000  
SEAN I. \* MOORE, 0000  
WILLIAM P. MUELLER, 0000  
TRISTI W. \* MUIR, 0000  
ALAN D. \* MURDOCK, 0000  
MICHAEL S. \* MYNES, 0000  
JACOB P. \* NOORDZIJ, 0000  
JOSEPH D. \* PENDON, 0000  
RODOLFO \* PEREZGALLARDO, 0000  
JON PERLSTEIN, 0000  
STEVEN E. \* PFLANZ, 0000  
NAMTRAN H. \* PHAM, 0000  
DAN E. \* PHILLIPS, 0000  
HEIDI J. \* PINKERTON, 0000  
BRIAN S. PINKSTON, 0000  
JULIE A. \* PLUMBLEY, 0000  
MARK A. POSTLER, 0000  
SCOTT C. PRICE, 0000  
RICHARD D. QUINTANA, 0000  
DAVID P. RAIKEN, 0000  
MATTHEW G. \* RETZLOFF, 0000  
WANDA L. \* SALZER, 0000  
JAMES L. \* SANDERSON, 0000  
DAVID A. \* SARNOV, 0000  
MARK G. \* SCHERRER, 0000  
DALE M. SELBY, 0000  
PAUL M. SHERMAN, 0000  
DANIEL A. SHOOR, 0000  
STEVEN B. SLOAN, 0000  
BARRY C. \* SMITH, 0000  
SCOTT M. STALLINGS, 0000  
DAVID C. \* STREITMAN, 0000  
ERIKA J. STRUBLE, 0000  
DONOVAN N. TAPPER, 0000  
JON C. \* TAYLOR, 0000  
EDWARD B. \* TIENG, 0000  
CHRISTOPHER M. UNTCH, 0000  
STEVEN G. \* VENTICINQUE, 0000  
LYNDA K. \* VU, 0000  
KELLY N. \* WEST, 0000  
JOHANN S. WESTPHALL, 0000  
BRADFORD \* WILLIAMS, 0000  
ANTA JO ANNE \* WINKLER, 0000  
TIMOTHY F. \* WITHAM, 0000  
KIMBERLEY A. \* WOLOSIN, 0000  
RAWSON L. WOOD, 0000  
LUN S. YAN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

##### To be major

MICHELLE D. \* ALLENMCCOY, 0000  
CHARLES P. D. \* AYOTTE, 0000  
NORA A. \* BARBER, 0000  
DAVID P. \* BENNETT, 0000  
LEE RAY AW \* BENNETT, 0000

MICHAEL A. \* BLACKBURN, 0000  
CHRISTOPHER A. \* BROWN, 0000  
THOMAS P. \* BUCCI, 0000  
AIMEE M. \* CANNON, 0000  
CHAD C. \* CARTER, 0000  
MICHAEL JOHN \* COCO, 0000  
W. SHANE \* COHEN, 0000  
PAUL R. \* CONNOLLY, 0000  
RATNA M. \* CONTRACTOR, 0000  
SETH \* COWELL, 0000  
PAUL E. \* CRONIN, 0000  
BRYAN B. \* DAVIS, 0000  
THOMAS H. \* DOBBS, 0000  
BRADLEY E. \* EAYRS, 0000  
JOEL F. ENGLAND, 0000  
EDWARD S. \* FABI, 0000  
JIN HWA LEE \* FRAZIER, 0000  
JOSEPH B. \* FREEDLE, 0000  
TODD A. \* FROMMEYER, 0000  
GAVIN S. \* GILMOUR, 0000  
PAULA M. \* GRANT, 0000  
MICHAEL K. \* GREENE, 0000  
JULIE C. GRIFFITHS, 0000  
BRENT C. \* HARVEY, 0000  
KENNETH L. \* HOBBS, 0000  
JOHN J. \* HOPKINS III, 0000  
MICHAEL D. \* HUGHES, 0000  
BRADFORD S. \* HUNT, 0000  
JENNIFER C. \* HYZER, 0000  
NATHAN W. \* KEARNS, 0000  
GEORGE J. \* KONOVAL, 0000  
CHRISTINE A. \* LAMONT, 0000  
DANIEL D. \* LEE, 0000  
REBECCA MINA \* LEE, 0000  
PAUL M. \* MARAIA, 0000  
JAMES J. MARSH, 0000  
TERRENCE J. \* MCCOLLOM, 0000  
JEFFREY A. \* MIDDLETON, 0000  
JULIO A. \* OCAMPO, 0000  
JOHN N. \* PAGE III, 0000  
JEFFREY G. \* PALOMINO, 0000  
TODD W. \* PENNINGTON, 0000  
PATRICK J. \* PFALTZGRAFF, 0000  
JULIE L. \* PITVOREC, 0000  
JULIE L. \* RUTHERFORD, 0000  
MICHAEL W. \* SAFKO, 0000  
CHRISTOPHER TAYLOR \* SMITH, 0000  
ROMY D. \* SMITH, 0000  
SKY W. \* SMITH, 0000  
RONALD L. \* SPENCER, JR., 0000  
STERLING R. \* THOMAS, 0000  
MARVIN WARREN \* TUBBS II, 0000  
DAVID E. \* VERCELLONE, 0000  
STACEY J. \* VETTER, 0000  
JUDITH A. \* WALKER, 0000  
MARK S. \* WATT, 0000  
MITZI O. \* WEEMS, 0000  
ERIN BREE \* WIRTANEN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be major*

ARLENE D. \* ADAMS, 0000  
JEFFREY K. \* ATKISSON, 0000  
RENE G. \* BOISSIERE, 0000  
JASON E. \* BUCKNER, 0000  
FRANK M. \* CAPOCCIA, JR., 0000  
BOBBY L. \* CHRISTOPHER, 0000  
JAMES E. \* COMBS, 0000  
JOHN M. \* CROWE, 0000  
SARAH E. \* CUCITI, 0000  
LEE M. \* ERICKSON, 0000  
MARSHALL A. ERICKSON, 0000  
ROBERT A. \* FALE III, 0000  
WILLIAM J. \* FECKE, 0000  
CHRISTOPHER P. FILER, 0000  
RICHARD A. \* FRENCH, 0000  
MICKEY T. \* GOODRIDGE, 0000  
LAILLAH M. \* GUICE, 0000  
TROY A. \* HADDOW, 0000  
MICHAEL D. \* HALL, 0000  
JOHN P. \* HANNIGAN, 0000  
MATTHEW G. \* HARTMANN, 0000  
STEVEN R. \* HOWELL, 0000  
CURTIS B. HUDSON, 0000  
PAGERINE L. \* JACKSON, 0000  
FREDDIE E. \* JENKINS, 0000  
ANDREW M. \* KACZMAREK, 0000  
CRAIG A. \* KEYES, 0000  
MARK R. \* LAMEY, 0000  
ZOTA L. \* LEEZERKEL, 0000  
WILLIAM P. MALLORY, 0000  
JOHN F. XI \* MCDONALD, 0000  
JAMES M. \* MCLEAN, 0000  
ELIZABETH P. \* MILLER, 0000  
TODD L. \* OSGOOD, 0000  
JOHANNA M. \* PAYNE, 0000  
EILEEN J. PERRY, 0000  
MICHAEL J. \* ROBERTS, 0000  
GIGI A. SIMKO, 0000  
JAMES S. \* SMITH, 0000  
VERNON \* SWINTON, 0000  
CARMIA A. \* SYKES, 0000  
WAH WAI \* SZE, 0000  
KARI A. \* TURKALBARRETT, 0000  
CHARLES J. \* TWEEDT, 0000  
JANET K. \* URBANSKI, 0000  
JEFFREY ROBERT \* VANSLYKE, 0000  
WILFRED A. \* VARNO, 0000  
ANDREA C. VINYARD, 0000  
MICHAEL A. \* WHITAKER, 0000  
TERRY W. \* WILLIAMSON, 0000  
ROGER L. \* WILLIS, JR., 0000  
BRENDA J. \* WILSON, 0000  
ELEYCE L. \* WINN, 0000  
ROBERT G. \* YOUNG, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JAMES R. ABBOTT, 0000  
KIMBERLY A. ABERNETHY, 0000  
GRETCHEN M. ADAMS, 0000  
JOSEPH T. ADINARO, 0000  
JENNIFER L. ADKINS, 0000  
AMANDA E. ALFORD, 0000  
COREY L. ANDERSON, 0000  
EDWARD R. ANDERSON III, 0000  
ERIC R. ANDERSON, 0000  
ALAN J. ANTHONY, 0000  
JASON G. ARNOLD, 0000  
MEHDI AZADI, 0000  
KRIS K. BAIK, 0000  
SYNYA K. BALANON, 0000  
CLAY M. BALDWIN, 0000  
ANTHONY S. BANKES, 0000  
JUSTIN T. BARRATT, 0000  
JOSEPH R. BEARD IV, 0000  
SHERYL M. BEARD, 0000  
JASON S. BELL, 0000  
THOMAS W. BENDER III, 0000  
ALEC BENINGFIELD, 0000  
NICHOLAS H. BIRD, 0000  
BRIAN J. BIXLER, 0000  
BRANDON R. BLACK, 0000  
WESS J. BLACKWELL, 0000  
BRYSON D. BORG, 0000  
ALEX P. BORMANN, 0000  
PATRICK S. BRAITHWAITE, JR., 0000  
MATTHEW A. BRIDGES, 0000  
WILLIAM A. BRIGHT, 0000  
YUJI T. BRISTOL, 0000  
LISA D. BROSTROM, 0000  
JOHN S. BRUUN, 0000  
FRANCIS P. BUCKLEY III, 0000  
ANN M. BUELL, 0000  
PHIET T. BUI, 0000  
JAMES M. BYRNE, 0000  
MONIQUE J. CARROLL, 0000  
HEATHER R. CASSELL, 0000  
ROSALIE A. CASTILLO, 0000  
RENEE LI CEVEY, 0000  
JANE W. CHAN, 0000  
STEPHEN B. CHEN, 0000  
KEVIN CHOU, 0000  
COLLEEN M. CHRISTENSEN, 0000  
DANIEL C. CHURCH, 0000  
EMILY C. CHURCH, 0000  
GALEN H. CHURCH, 0000  
CHRIS L. CLEVELAND, 0000  
ALLISON A. COGAR, 0000  
MICHELLE R. COLEN, 0000  
JOSEPH K. COLL, 0000  
ROBERTO J. COLON, 0000  
JOHNATHAN C. CONNER, 0000  
CHRISTOPHER A. COOP, 0000  
TIMOTHY K. CRAIG, 0000  
JAMES A. CRIDER, 0000  
MICHAEL R. CRONE, 0000  
ELVIN J. CRUZZENO, 0000  
DEAN J. CUTTLAR, 0000  
KAREN I. DACEY, 0000  
WILLIAM J. DAHMS, JR., 0000  
LYNNELL M. DANIEL, 0000  
LAURIE C. DAVIGNON, 0000  
RICHARD P. DAVIS, 0000  
RONALD S. DEAN, 0000  
JAMES S. DEAN, 0000  
ALPA S. DESAI, 0000  
PAUL BARTOLOMEO DIDOMENICO, 0000  
SHANE D. DIECKMAN, 0000  
JEFFREY J. DIETRICH, 0000  
ANDREW B. DILL, 0000  
LORI R. DISEATI, 0000  
GLENN DONNELLY, 0000  
YASHIKA T. DOOLEY, 0000  
MICHAEL E. DOWLER, 0000  
CHRISTOPHER D. DREW, 0000  
CLARENCE M. DUNAGAN IV, 0000  
ROBERT D. EDWARDS, 0000  
DANIELLE A. EIGNER, 0000  
JAMISON W. ELDRED, 0000  
DANIEL J. ELDRIDGE, 0000  
PATRICK M. ELLISON, 0000  
ROBERT L. ELWOOD, 0000  
BRIAN A. ERICKSON, 0000  
ISAAC J. FAIBISOFF, 0000  
BRIAN M. FAUX, 0000  
SUSAN P. FEDERINKO, 0000  
BRIDGET K. FIECHTNER, 0000  
LISA B. FIRESTONE, 0000  
COREY D. FOGLEMAN, 0000  
GARY A. FOSKEY, JR., 0000  
MONCARME ALPHONSE FOUCHÉ, 0000  
CHRISTOPHER J. B. FRANDRUP, 0000  
MARY PAT FRIEDLANDER, 0000  
PAUL W. FRUTOS, 0000  
JAMES S. GAINES, 0000  
KATHRYN D. GAINES, 0000  
KATHY M. GAI VAGNO, 0000  
RICHARD J. GERBER, 0000  
RUTH A. GERMAN, 0000  
JON S. GILBERT, 0000  
GILSON B. GIROTTI, 0000  
JEANNETTE E. GONZALEZ, 0000  
MICHAEL G. GONZALEZ, 0000  
MICHAEL C. GOODHOPE, 0000  
WADE T. GORDON, 0000  
SPENCER C. GREENE, 0000  
CHARLES E. GRESSON, 0000  
ERICA J. GRIFFIN, 0000  
COLLEEN M. GROSS, 0000  
DANIEL D. GRUBER, 0000  
CHRISTOPHER M. GRUSSENDORF, 0000  
PAUL W. GRUTTER, 0000  
ABEL T. GUERRA, 0000  
ERIC J. HANLY, 0000  
DAVID A. HARDY, 0000  
AARON C. HARJU, 0000  
SHELLY S. HARKINS, 0000  
JOHN D. HARRAH, 0000  
CINDY LOU HARRIS, 0000  
COREY D. HARRISON, 0000  
AARON N. HARTMAN, 0000  
BRIAN G. HAWKINS, 0000  
BRETT D. HEEREMA, 0000  
ERIC D. HERMES, 0000  
JOSHUA M. HIXSON, 0000  
RANDALL D. HOFBAUER, 0000  
MICHAEL B. HOGAN, 0000  
ALLEN D. HOLDER, 0000  
LANCE D. HOLTRY, 0000  
BRANDON R. HORNE, 0000  
ANDREW L. P. HOUSEMAN, 0000  
MICHAEL A. HOVEY, 0000  
ALLYSON S. HOWE, 0000  
TODD M. HRABAK, 0000  
PATRICK U. HSIEH, 0000  
SOLON G. HUGHES, 0000  
CHRISTINA M. HUMBERD, 0000  
DUSTIN G. HUNTZINGER, 0000  
BANG H. HUYNH, 0000  
KELLY P. HYDE, 0000  
WALTER N. INGRAM, 0000  
RAJIV C. IYER, 0000  
SHAHZAD KERMANI JAHROMI, 0000  
SCOTT A. JANUS, 0000  
ARUN G. JAYAKUMAR, 0000  
KIRK E. JENSEN, 0000  
ROBERT A. JESINGER, 0000  
AMY BENTLEY JOHNSON, 0000  
MICHAEL B. JOHNSON, 0000  
STACEE L. JOHNSON, 0000  
THOMAS L. JOHNSON II, 0000  
TODD M. JOHNSON, 0000  
ANTHONY S. JORDAN, 0000  
KAUSTUBH G. JOSHI, 0000  
KATHLEEN M. JOYCE, 0000  
HOLLIS M. JULSON, 0000  
AMANDA L. KAMPFERT, 0000  
PHYLLIS L. KAPPELLEN, 0000  
MARK A. KARCUKSKIE, 0000  
MATTHEW C. KATUS, 0000  
THOMAS C. KELLEY, 0000  
CHRISTOPHER R. KIELING, 0000  
ALEXANDER P. S. KIM, 0000  
KRISTOPHER D. KNOOP, 0000  
MARIA R. J. KOSTUR, 0000  
STEVEN J. KOZIOL, 0000  
GERALD G. LACHANCE, 0000  
DYJERLYNN C. LAMPLEY, 0000  
GREGORY D. LANGAS, 0000  
STEVEN P. LARSON, 0000  
KERRY P. LATHAM, 0000  
COLLEEN S. LAUGHLIN, 0000  
ERNEST H. LAWHORN, 0000  
DOUGLAS A. LEACH, 0000  
ALARIC C. LEBARON, 0000  
DANETTE SUMLIE LEBARON, 0000  
CHRISTOPHER S. LEE, 0000  
DOUGLAS V. LEMMONS, 0000  
KARYN C. LEWIS, 0000  
PAUL E. LEWIS III, 0000  
JEFFREY M. LODERMEIER, 0000  
ERIN J. LONGLEY, 0000  
MONICA M. LOVASZ, 0000  
BRIT M. LOVVORN, 0000  
RONNIE M. LU, 0000  
MICHAEL W. LUOMA, 0000  
JUSTIN Q. LY, 0000  
ANDREW B. MACKERSIE, 0000  
DEBORAH L. MACKERSIE, 0000  
ANDREW I. MACKINNON, 0000  
DANIEL S. MADSEN, 0000  
DAVID B. MARTIN, 0000  
COREY P. MASSEY, 0000  
TERENCE R. MCALLISTER, 0000  
THOMAS M. MCANDREW, 0000  
MICHAEL J. MCBETH, 0000  
CATHY L. MCELVEIN, 0000  
KIMBERLY R. MCILNAY, 0000  
DONALD J. MCKEEL, 0000  
OLIVER L. MCPHERSON, 0000  
PAMELA J. MCSHANE, 0000  
JETT J. MERCER, 0000  
PETER G. MICHAELSON, 0000  
JASON C. MILLER, 0000  
LISA A. MILLS, 0000  
KENNETH D. MILKS, 0000  
DARIUS F. MITCHELL III, 0000  
KRISTINA D. MONNEY, 0000  
MICHELLE M. MOON, 0000  
ALI D. MORRELLBALANON, 0000  
LEROY MORRISSETTE, 0000  
JENNIFER MUEHL, 0000  
JASON L. MUSSER, 0000  
CHRISTOPHER J. NAGY, 0000  
SCOTT E. NEUMAN, 0000  
PAMELA PHUONG K. NGUYEN, 0000  
BRETT JASON NILE, 0000  
STEVEN J. NORDEEN, 0000  
TIMOTHY J. NORTON, 0000  
SUE ANN NOVAK, 0000  
MARK A. OATMAN, 0000

DAVID J. OBERSTE, 0000  
 SEAN P. O'BRIEN, 0000  
 WILLIAM T. O'BRIEN, 0000  
 JACOB B. OLDHAM, 0000  
 ROBERT P. OLSON, 0000  
 MARIBEL B. ORANTEMAGILOG, 0000  
 DAVID J. ORRINGER, 0000  
 VICTOR L. ORTIZORTIZ, 0000  
 KYLE T. OSBORN, 0000  
 GREG M. OSGOOD, 0000  
 HEATHER K. OTOOLE, 0000  
 KATHERINE E. PAGANO, 0000  
 NICOLE A. PALEKAR, 0000  
 JENNIFER L. PALTZER, 0000  
 LOUIS J. PAPA, 0000  
 AMY L. PARKER, 0000  
 RAYMOND A. PENNY, 0000  
 HEATHER A. PETERSON, 0000  
 YOLANTA V. PETROFSKY, 0000  
 PATRICK T. PETTENGILL, 0000  
 NGHIA T. PHAN, 0000  
 KULLADA O. PICHAKRON, 0000  
 TARA N. PIECH, 0000  
 NATHAN E. PIOVESAN, 0000  
 CATHERINE R. S. PLATT, 0000  
 DANIEL J. PODBERESKY, 0000  
 MICHELLE L. POHLAND, 0000  
 HENRY L. POLK, 0000  
 JAMES R. POLLOCK, 0000  
 BRENT A. PONCE, 0000  
 ROBERT R. PORCHIA, 0000  
 STEPHANIE A. PORTER, 0000  
 ERIC G. POTWARDOWSKI, 0000  
 CHARLA M. QUAYLE, 0000  
 HAR P. RAI, 0000  
 ALEXIES RAMIREZ, 0000  
 CHRISTOPHER B. RANNEY, 0000  
 JEFFREY MICHAEL RENGEL, 0000  
 CHRISTOPHER O. RESTAD, 0000  
 JOHN F. RIANS, 0000  
 DAVID H. RICE, 0000  
 MICHAEL D. RICE, 0000  
 KEVAN D. RILEY, 0000  
 ERIC M. RITTER, 0000  
 PATRICK M. ROHAL, 0000  
 REX T. RUSSELL, 0000  
 TRACY L. RUSSELL, 0000  
 COURTNEY K. RYAN, 0000  
 JOSHUA A. SACHA, 0000  
 FRANK M. SAMARIN, 0000  
 ROBERT SARLAY, JR., 0000  
 SIRIKANYA SASTRI, 0000  
 CHRIS A. SCHEINER, 0000  
 HERBERT F. SCHERL, 0000  
 DOUGLAS G. SCOTT II, 0000  
 RICHARD J. SERKOWSKI, 0000  
 CECIL K. SESSIONS, 0000  
 BRIAN A. SHANER, 0000  
 FAREED A. SHEIKH, 0000  
 JEHAZEB A. SHEIKH, 0000  
 LUCAS M. SHELTON, 0000  
 MIKE S. SHIN, 0000  
 DARREN L. SHIRLEY, 0000  
 TAD M. SHIRLEY, 0000  
 LUKE B. SIMONET, 0000  
 KSHAMATA SKETE, 0000  
 WILLIAM K. SKINNER, 0000  
 JOSEPH C. SKY, 0000  
 MARK A. SLABAUGH, 0000  
 NICOLE A. SMALL, 0000  
 JOZEF L. SMIT, 0000  
 MICHAEL J. SMITH, 0000  
 TODD W. SMITH, 0000  
 JEFFREY A. SODERGREN, 0000  
 JASON A. STAMM, 0000  
 THOMAS W. STAMP, 0000  
 ADAM M. STARR, 0000  
 ELIZABETH STERNBERG PEREZ, 0000  
 MICHELLE STRAKA, 0000  
 DARYN R. STRALEY, 0000  
 AMY D. STRASSBURG, 0000  
 ADRIAN K. STULL, 0000  
 CATHLEEN C. SUTO, 0000  
 JEANINE Y. SWAN, 0000  
 KEITH A. SWARTZ, 0000  
 EVAN C. SWATZE, 0000  
 DEBBE S. TANUS, 0000  
 CHAD I. TARTER, 0000  
 HAMID R. TAVAKOLI, 0000  
 CHRISTINE E. THOLEN, 0000  
 ADRIANNE THOMPSON, 0000  
 RICHARD D. THRASHER III, 0000  
 CHARLES S. TIMNAK, 0000  
 RODNEY E. TODD, 0000  
 THOMAS J. TOFFOLI, 0000  
 JOSEPH A. TRACHIER, 0000  
 ALEXANDER C. TSANG, 0000  
 PETER G. TUCKER, 0000  
 DMITRY TUDER, 0000  
 BRYAN J. UNSELL, 0000  
 ANTONIO VAZQUEZ, 0000  
 JOHN P. VICKERY ANTONIO, 0000  
 JONATHAN L. VINSON, 0000  
 MEGUMI M. VOGT, 0000  
 PENNY J. VROMAN, 0000  
 CHAD E. WAGONER, 0000  
 DAVID J. WALLICK, 0000  
 DERRICK K. WALKER, 0000  
 CHRISTOPHER L. WALTER, 0000  
 ERIK K. WEITZEL, 0000  
 MICHAEL J. WELSH, 0000  
 JEFFREY B. WHITTING, 0000  
 DARREN E. WHITTEMORE, 0000  
 VANESSA K. WILLIAMS, 0000  
 ANDREW L. WINGE, 0000  
 CHAD A. WINTERS, 0000  
 GRAND F. WONG, 0000

SHERALYN D. WOOD, 0000  
 ROBERT B. WOOLLEY, 0000  
 MICHELLE M. WUESTE, 0000  
 ROBBY W. WYATT, 0000  
 XIAOHUI XIONG, 0000  
 ASSY YACOB, 0000  
 ERIC S. YAO, 0000  
 JASON A. YELK, 0000  
 MICHAEL W. YERKEY, 0000  
 EDWARD K. YI, 0000  
 JEREMIE J. YOUNG, 0000  
 ANTHONY I. ZARKA, 0000  
 AN ZHU, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be colonel*

JOSEPH B. ANDERSON, 0000  
 BRANTLY W. BAYNES, 0000  
 WILLIAM \* BENINATI, 0000  
 EUGENE V. BONVENTRE, 0000  
 SIDNEY B. BREVARD, 0000  
 RUDOLPH CACHUELA, 0000  
 MATTHEW T. CARPENTER, 0000  
 TIMOTHY D. CASSIDY, 0000  
 JOSEPH P. CHOZINSKI, 0000  
 JOHN R. CHU, 0000  
 PAULA A. CORRIGAN, 0000  
 HAROLD D. DILLON III, 0000  
 THOMAS A. ERCHINGER, 0000  
 JAMES A. FIKE, 0000  
 JOHN R. FISCHER, 0000  
 JEFFERSON H. HARMAN, JR., 0000  
 BRIAN P. HAYES, 0000  
 PAUL A. \* HEMMER, 0000  
 STEVEN M. HETRICK, 0000  
 LEWIS A. HOFMANN, 0000  
 LESTER A. HUFF, 0000  
 DONALD H. JENKINS, 0000  
 GREGORY W. JOHNSON, 0000  
 STEVEN T. LAMB, 0000  
 KERRY K. \* LARSON, 0000  
 LINDA L. LAWRENCE, 0000  
 NICHOLAS G. LEZAMA, 0000  
 MARK E. MAVITY, 0000  
 KENNETH N. \* OLIVIER, 0000  
 KERRY B. PATTERSON, 0000  
 RONALD D. POOLE, 0000  
 WAYNE M. PRITT, 0000  
 JAMES M. QUINN, 0000  
 JOEL L. RAUTIOLA, 0000  
 MARK W. \* RICHARDSON, 0000  
 RAYMOND A. \* SCHWAB III, 0000  
 DANIEL B. SMITH, 0000  
 MICHAEL R. SNEDECOR, 0000  
 DAVID G. SORGE, 0000  
 TAMA R. VANDECAR, 0000  
 LANE L. \* WALL, 0000  
 SCOTT A. WEGNER, 0000  
 MARK E. WERNER, 0000  
 JOE B. WISEMAN, 0000  
 KONDI WONG, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (\*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be colonel*

JEFFERY F. BAKER, 0000  
 STEVEN L. BARTEL, 0000  
 RICHARD M. BEDINGHAUS, 0000  
 PAUL E. BROWN, 0000  
 DAVID B. CHESA, 0000  
 KENNETH A. CONNER, 0000  
 RICKY D. COOK, 0000  
 DANIEL C. HAMAN, 0000  
 CONSTANCE A. HUFF, 0000  
 JEFFREY P. JESSUP, 0000  
 MICHAEL J. KUCSERA, 0000  
 RUSSELL M. LINMAN, 0000  
 CURTIS M. MARSH, 0000  
 BRENT S. MCCLENNY, 0000  
 JOHN P. MCPHILLIPS, 0000  
 KARL L. MEYER, 0000  
 SUSAN W. MONGEAU, 0000  
 PAUL J. NAWIESNIAK, 0000  
 KYLE C. NUNLEY, 0000  
 JAMES E. \* SCHREINER, 0000  
 MARK A. SLABBEOKORN, 0000  
 DAVID L. WELLS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

COREY R. ANDERSON, 0000  
 UZMA S. ANSARI, 0000  
 GWENNA M. BATES, 0000  
 JOANN BOA, 0000  
 RICHARD A. BUCK, 0000  
 MAURICIO C. CAROTA, 0000  
 MICHAEL J. CHUNG, 0000  
 BRYAN S. DEBOWSKY, 0000  
 SCOTT L. DOYLE, 0000  
 JAMES B. DUNCAN, 0000  
 HUYEN CHAU DUNN, 0000  
 CORBET K. ELLISON, 0000  
 BRENDAN T. FARRELL, 0000  
 ROBERT C. GAY, 0000  
 SAMANTHA R. HAAS, 0000

SAMUEL L. HAYES, 0000  
 MARK W. HENDERSON, 0000  
 JOE W. HOWARD, 0000  
 DWIGHT L. JOHNSON, 0000  
 DAVID M. JONES, 0000  
 EUNKOO KIM, 0000  
 JONATHAN D. KING, 0000  
 DAVID E. KLINGMAN, 0000  
 ELIZABETH N. KUTNER, 0000  
 ROY E. LEE, 0000  
 JERRY L. LEONARD, 0000  
 WEN LIEN, 0000  
 TRENT W. LISTELLO, 0000  
 KATHERINE R. MORGANTI, 0000  
 JAMIE J. MORRIS, 0000  
 KYLE E. PELKEY, 0000  
 BRIAN W. PENTON, 0000  
 TERESA E. REEVES, 0000  
 SONG B. RHIM, 0000  
 CLAYTON L. RICKS, 0000  
 STEVEN F. ROBERTSON, JR., 0000  
 JOZEF SOLTIS, 0000  
 ROBERT E. STOVER, 0000  
 CHARLES H. STUART, 0000  
 JOHN A. THOMAS, 0000  
 JUSTINE R. TOMPKINS, 0000  
 JOHN R. VANCE, 0000  
 GISELLA Y. VELEZ, 0000  
 SON X. VU, 0000  
 ETHAN J. YOZA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be lieutenant colonel*

JANICE M. \* ALLISON, 0000  
 CRAIG L. \* FOLSOM, 0000  
 VILLA L. \* GUILLORY, 0000  
 JOHN W. \* KERSEY, JR., 0000  
 SCOTT C. \* MALTHANER, 0000  
 ROBERT A. \* NIDEA, 0000  
 ENDER S. \* OZGUL, 0000  
 TRENT L. \* PAYNE, 0000  
 THADDEUS H. \* PHILLIPS III, 0000  
 LAWRENCE E. \* ROTH, 0000  
 DONALD \* SHEETS, JR., 0000  
 CHARLES A. \* STOCK, 0000  
 BRADLEY M. \* TURNER, 0000  
 DONALD \* TYLER, JR., 0000  
 MATTHEW A. \* WELCH, 0000  
 DANNY K. \* WONG, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be lieutenant colonel*

JAN E. ALDYKIEWICZ, 0000  
 TANIA M. ANTONI, 0000  
 EUGENE E. BAIME, 0000  
 PAUL N. BRANDAU, 0000  
 MARK A. BRIDGES, 0000  
 KIRSTEN V. BRUNSON, 0000  
 LARRY C. BURNER II, 0000  
 LORIANNE M. CAMPANELLA, 0000  
 JOHN B. CLARKSON, 0000  
 IAN G. COREY, 0000  
 DAVID T. CRAWFORD, 0000  
 BRENDAN M. DONAHOE, 0000  
 CHRISTINA E. EKMAN, 0000  
 MARY M. FOREMAN, 0000  
 ANDREW J. GLASS, 0000  
 ELIZABETH A. GOSSART, 0000  
 CARISSA D. GREGG, 0000  
 MARK W. HOLZER, 0000  
 JOHN A. HUGHEY, 0000  
 RAYMOND A. JACKSON, 0000  
 PHILIP W. JUSSEL, 0000  
 ERIC S. KRAUSS, 0000  
 JAMES M. LANGHAM, 0000  
 EDWARD K. LAWSON IV, 0000  
 JAMES A. LEWIS, 0000  
 PATRICIA H. LEWIS, 0000  
 FRANK A. MARCH, 0000  
 WILLIAM R. MARTIN, 0000  
 SHANNON M. MORNINGSTAR, 0000  
 KEITH E. PULS, 0000  
 SCOTT E. REID, 0000  
 ROBERT F. RESNICK, 0000  
 CARRIE F. RICCSMITH, 0000  
 MICHAEL P. RYAN, 0000  
 SAMUEL A. SCHUBERT, 0000  
 SCOTT D. SCHULER, 0000  
 GEORGE R. SMAWLEY, 0000  
 EVAN M. STONE, 0000  
 MARK H. SYDENHAM, 0000  
 WALTER L. TRIERWEILER, 0000  
 BRADLEY J. UPTON, 0000  
 CHRISTOPHER B. VALENTINO, 0000  
 BRADLEY E. VANDERAU, 0000  
 DAVID D. VELLONEY, 0000  
 JEFFREY T. WALKER, 0000  
 LOUIS P. YOB, 0000  
 ROBERT A. YOH, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

JORGE E. CRISTOBAL, 0000

DONALD Q. FINCHAM, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

RONALD C. CONSTANCE, 0000  
JOEL F. JONES, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

DANIEL J. PETERLICK, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

FREDERICK D. HYDEN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

KATHY L. VELEZ, 0000

THE FOLLOWING NAMED OFFICER FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTIONS 5596 AND 6222:

*To be major*

JOHN R. BARCLAY, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

MATTHEW J. CAFFREY, 0000  
EDWARD M. MUDD, 0000  
KENNETH N. STEINKE, 0000  
WILLIAM R. TIFFANY, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JEFF R. BAILEY, 0000  
TIMOTHY M. COOLEY, 0000  
JOHN D. ESTEP, 0000  
DEAN R. KECK, 0000  
JULIO R. PIRIR, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JACOB D. LEIGHTY III, 0000  
JOHN G. OLIVER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

STEVEN M. DOTSON, 0000  
KURT J. HASTINGS, 0000  
MARIA L. MARTINEZ, 0000  
CALVIN W. SMITH, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

WILLIAM H. BARLOW, 0000  
GUY E. COOLEY, 0000  
CHARLES A. GRAYBEAL, 0000  
RODNEY E. JORDAN, 0000  
BYRON KING, 0000  
PETER W. MCDANIEL, 0000  
RONALD D. MCFAUL, 0000  
DANNY R. MORALES, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ANDREW E. GEPP, 0000  
WILLIAM B. SMITH, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

WILLIAM A. BURWELL, 0000  
CRANE P. DAUKSYS, 0000  
LAFE B. ELLIOTT, 0000  
BARRY ONEAL, 0000  
WILLIAM J. WADLEY, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

KENRICK G. FOWLER, 0000  
KEVIN T. GRAESSLE, 0000  
LAYNE T. PAGE, 0000  
LOWELL W. SCHWEICKART, JR., 0000  
STEVEN E. SPROUT, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JAMES P. MILLER, JR., 0000  
MARC TARTER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

DAVID G. BOONE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

MICHAEL A. LUJAN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

MICHAEL A. MINK, 0000  
LOUANN RICKLEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

MICHAEL S. DRIGGERS, 0000  
DANIEL M. NEWELL, 0000  
ERIC F. PETERSON, 0000  
PAUL E. PRATT, 0000  
ROBERT R. SOMMERS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

ELOISE M. FULLER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

JOHN T. CURRAN, 0000  
THOMAS J. JOHNSON, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

DANNY A. HURD, 0000  
GEORGE C. MCLAIN, 0000