

must learn about our history and government. Next, you must be of good character. Next, you must swear an oath to renounce the old government from where you came and swear allegiance to the United States of America and its Constitution. That is no small thing.

Between 500,000 and 1 million new citizens each year come in and complete that process and take that oath.

Earlier this year, Senator SCHUMER and I introduced a bill to codify that oath of allegiance that new citizens swear to when they become citizens. It is hard to believe that while the Pledge of Allegiance, the National Anthem, and the American Flag are all prescribed by law, we have been allowing the oath of allegiance, a binding pledge for new citizens, to be determined merely by Federal regulators. We can do more to welcome these new citizens.

In the near future, in September, I hope to introduce legislation that perhaps could become part of a comprehensive immigration bill. This legislation would provide new incentives and support for legal immigrants to learn English, our common language, and to learn about our Nation's history and government and values. I hope that effort to welcome new legal immigrants and to help them become a part of our American community will become a part of the Senate's overall approach to immigration reform.

Our country is unique in the world. We are not defined by common ethnic background or origin. We and our ancestors came from every corner of the world to be a part of this country because it was founded on something much bigger, much grander than ethnic heritage or a tie to the land. In the Declaration of Independence, our Founders wrote:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

This is what binds us together as Americans: a belief in our common values, values such as equal opportunity, the rule of law, and liberty. That is why we welcome immigrants who swear allegiance to our country and to those values as new citizens. That is why our Nation of immigrants has always succeeded and can succeed in the future.

If we are to continue to succeed, we must pass along these values that comprise our American identity—pass them on to posterity—both to our children and to those new citizens who come to our shores from distant lands.

In the coming months, this Senate will have a chance to reform our Nation's immigration policy. The Cornyn-Kyl legislation is a tremendously important first step toward a comprehensive immigration bill. It is one whose principles I support. I look forward to working with its authors as it moves through the Senate. I hope as we write this comprehensive immigration legis-

lation, though, we also remember to welcome foreign students who add so much to our economy and spread our values to the world, and that we remember to welcome legal immigrants who wish to join the American family and help them learn our common language, learn our values, and become American citizens.

I hope the legislation that I will offer in September can help us along that track.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I join with Senator ALEXANDER in complimenting you and Senator KYL for the legislation that you have just described for us. The Senator from Texas, as I know, has taken the lead on this very important and complex subject. I salute you for it.

Some would say it is a thankless task, it can't be done, and will make nobody happy. But I believe you have the right principles. If the right principles are applied with the right prescriptive language, we can make great progress in this area, and I salute you for it.

Frequently have I quoted Senator ALEXANDER in the phrase he has used: No child should grow up in America who doesn't know what it means to be an American.

I think that is good for immigrants, too, as the Senator just said so eloquently. I salute him.

I also thank the Senator from Texas for considering a critical component of this legislation he has proposed, and that is the part that deals with State and local law enforcement. I have just written a Law Review article for Stanford University to deal with that area of the law. Suffice it to say, local law enforcement does have complete authority to detain people who are violating the criminal laws of the United States. But that has been confused. Clearing this up more, setting up a mechanism so that they can participate if they choose, would be helpful to enforcing the law. That is so because we have 700,000 State and local law enforcement officers at every street corner and town in America. We have only 2,000 INS immigration officers inside the border—not those on the Border Patrol and on the border, but those inside the border. So obviously we are not very serious about ultimately reaching a lawful system if we exclude them.

I thank the Senator from Texas.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. THUNE. Mr. President, I ask unanimous consent to proceed as if in morning business and I be allowed to speak for up to 20 minutes.

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

BRAC

Mr. THUNE. Mr. President, last week I offered an amendment to suspend the 45-day congressional review of the President's final BRAC recommendations pending completion of several vital studies pertaining to long-range security needs in the implementation of BRAC and redeployment of many units presently deployed in Iraq and Afghanistan back to bases in the United States.

I also introduced a similar amendment yesterday that would allow Congress discretion to remove individual bases from the closure list based upon the findings of these studies and results of the redeployments.

There are two separate options, one of which I hope comes to the Senate for a vote. I underscore the assertions I made last week. The underlying purpose of the Base Realignment and Closure Commission, or BRAC, is not only good for our Armed Forces, it is good for American taxpayers. We all want to eliminate waste and reduce redundancy in the Government, but when Congress modified the BRAC law in December of 2001 to make way for the 2005 round of base closings, it failed to envision this country involved in a protracted war involving stretched manpower resources and the burden of large overseas rotational deployments of troops and equipment. This is not the time to begin a new round of domestic base closures and massive relocations of manpower and equipment.

I am aware, hearing that coming from a Member of Congress with a major base on the chopping block, that assertion may sound like another pitch to defend a home State parochial interest. Regardless of the outcome for my base, I am very concerned about how this BRAC round will affect our Nation's overall military posture, not only in South Dakota but around the country and around the world. This BRAC, in particular, has serious implications both in the short term, because we are engaged in a war, and in the longer term because of the need to preserve critical infrastructure as we enter a very uncertain future.

In essence, we cannot lose sight of the imperative of, in addition to saving money, perhaps the most critical goal of BRAC should be to maximize our Nation's warfighting capability. If we fail to follow that fundamental principle, the BRAC process will fail us and ultimately put this country at risk.

This BRAC, in particular, not only has serious implications, it raises serious questions, especially in terms of its timing. In the short term, our war in Iraq and Afghanistan has put great logistical strain on our Active military

and Reserve Forces in terms of both manpower and resources. The rotational deployment of personnel and assets to overseas areas of operation has disrupted normal training and maintenance cycles and left military families with uncertainty.

The drain of resources also raised questions as to our ability to respond to additional flashpoints if a crisis should arise elsewhere in the world. Yes, the military is performing its ongoing missions remarkably well under the circumstances, but is this the time to add to those commitments by initiating a massive reshuffle of personnel, equipment, and missions between bases all over the country?

In the long term, these recommendations may pose an even more serious risk to our security. As the DOD itself points out in the National Defense Strategy, published earlier this year:

Particularly troublesome is the nexus of transnational terrorists, proliferation and problem states that possess or seek WMD, increasing the risk of WMD attack against the United States.

We simply do not know what dangers may emerge from military powers such as North Korea, China, Iran, or various rogue states in the next 20 years or more. The threat of terrorism directed against targets in this country should be indisputable after September 11.

There have been four prior BRAC rounds in the last 20 years. I believe it is readily apparent that the Pentagon's 2005 BRAC recommendations go beyond reducing excess infrastructure and would, instead, reduce critical infrastructure needed to fight the wars of the 21st century.

Prior rounds have been successful in pulling much of the low-hanging fruit and in reducing waste.

This round begins to cut into the muscle. I want to show you a chart from 1958, for example. You see there was a large number of Air Force bases in the northern region of this country. Air Force bases were dotted all across the northern tier of the United States: Up in the Northeast, North Central Plains, areas such as that—1, 2, 3, 4, 5, 6, 7, 8, 9, 10—a dozen Air Force bases or more in the northern tier of this country.

Today, take a look at how that has changed. One can plainly see how dramatically that number has been reduced and will be further reduced in the 2005 BRAC round.

You saw the previous chart from 1958. All those bases have been wiped out. There are three left in the northern tier of the country. This BRAC round would eliminate Ellsworth Air Force Base in South Dakota and make Grand Forks Air Force Base essentially a "warm" base, hopeful of an emerging mission but for all intents and purposes removes the principal mission that has been housed there for some time and leaves literally only one major Air Force base in the northern tier of this country.

Of course, one of the flaws I see in this BRAC is not only the stripping of

our air and naval bases in the northern tier, but I seriously question what I believe to be one of the Pentagon's most apparent errors in judgment; and that is to consolidate high-value assets in fewer locations.

In light of the potential threats we face, I wonder whether we really want to discard a tenet of military doctrine that we have lived by for the past 60 years. It is called "strategic redundancy." Put simply, it is the doctrine of dispersing high-value assets at different locations in order to prevent their complete destruction in a single attack.

If you look at the statement here, this is from the Air Force doctrine document, dated November 9, of 2004. It says:

... it is easier and more effective to destroy the enemy's aerial power by destroying his nests and eggs on the ground than to hunt his flying birds in the air.

If you look at what the potential threats are we face going forward, and what it means to this Nation to have strategic redundancy, to have those assets dispersed in several locations around the country, and if you look at how that fits in with the Defense Department's own military strategy, you have to ask a question about some of the decisions that have been made in this particular BRAC round.

Let's look at what it says right here. Again, this is the Department of Defense, in its March 2005 National Defense Strategy, when it stated its goal of "developing greater flexibility to contend with uncertainty by emphasizing agility and by not overly concentrating military forces in a few locations."

I want to put up another chart. It has to do with principles and imperatives. Even in the Pentagon's deliberative briefing materials that outline those "principles and imperatives" of this BRAC round, it stated that the Department needed secure installations optimally located, that support power projection, sustain the capability to mobilize and "that ensure strategic redundancy."

Now, unfortunately, Secretary Rumsfeld's recent BRAC recommendations to consolidate some of the Nation's most valuable U.S. air and naval platforms at single installations would apparently abandon that basic tenet in favor of cutting costs.

Hopefully, we have not forgotten the shortsightedness we once had as a Nation before Pearl Harbor. Now, folks might dismiss such lapses as distant events from another time and another place that are not applicable to today's threats. See on this chart a scene from Pearl Harbor that took place 60-some years ago. Even in the DOD's Strategy for Homeland Defense and Civil Support, released a few weeks ago—and, incidentally, this is a partial completion of one of the amendment's conditions—it notes that "a significant element of mission assurance is continuity of operations—maintaining the ability to

carry out DOD mission essential functions in the event of a national emergency or terrorist attack."

It also goes on to state that "an attack on DOD facilities could directly affect the Department's ability to project power overseas." One well-positioned crater in a runway could ground the entire fleet of this Nation's B-1 bombers during an emergency, if they are all stationed at one location. It should always come back to the intuitive logic possessed by most Americans, and that is that we simply cannot allow analytical cost models to trump sound and proven security precautions.

Strategic redundancy, obviously, still has a place in our planning, as demonstrated in the Pentagon's own planning documents. Why was it not reflected in its BRAC recommendations?

Additionally, the risk of natural disasters is a constant reminder that we should not put all our assets in a single location. This chart shows a tornado that passed within 1,000 feet of the F-16s and B-1 bombers stationed at McConnell Air Force Base back in 1991. Tornadoes have wreaked havoc on Air Force bases in the past. The one I am going to show you in a moment is Carswell Air Force Base in Texas. We simply cannot afford to risk our Nation's security on the whims of a single deadly tornado that could destroy or damage an entire fleet of aircraft.

Finally, the GAO has also questioned the potential for cost savings estimated by the DOD, calling into question whether we want to risk our national security for questionable cost savings. want to read to you what it says from the GAO study:

There are clear limitations associated with DOD's projection of nearly \$50 billion in savings over a 20-year period. Much of the projected net annual recurring savings (47 percent) is associated with eliminating jobs currently held by military personnel. However, rather than reducing end-strength levels, DOD indicates the positions are expected to be reassigned to other areas.

As this implies, much of these cost savings are apparently illusory. To quote the distinguished chairman of the Armed Services Committee, Senator WARNER, during his testimony before the BRAC Commission, he said:

Since 32 percent of BRAC savings come from personnel reductions, this calls into question the entire savings estimate—particularly since we are not reducing any meaningful force structure.

I want to show another GAO chart. The GAO questions, one, the lengthy payback periods; inconsistencies in how DOD estimated costs for BRAC actions involving military construction projects; and uncertainties in estimating the total costs to the Government to implement.

GAO estimates upfront costs of an estimated \$24 billion to implement this round of BRAC. To again quote the distinguished chairman of the Armed Services Committee before the BRAC Commission, he said this:

My observations are consistent with the testimony of witnesses and Congressional

delegations around the country to date who have presented the Commission firm evidence supporting similar observations of questionable data and an internal collapse of the quantitative analytical foundation in lieu of other guidance provided by senior defense officials. These observations are also consistent with issues raised by the Government Accountability Office in its July 1, 2005, report to the Commission and to Congress.

Last week, when I was offering my amendment, the distinguished chairman, Senator WARNER, made what I believe was a reasonable argument, that by suspending the 45-day review period until these conditions are met would cause anxiety among some communities by not knowing their ultimate fate or delaying the process of redeveloping the base to civilian use.

Now, this may be the case for some communities, but I believe most communities desperately want to retain their bases because they are the lifeblood of their local economy. They would do anything—exhaust every possibility—to have these bases remain open. If anything, knowing that this Congress has done all it could to have all the answers before making such a decision I think is tremendously important to these communities.

I also challenge the perception made by many that these communities will have many opportunities to develop these closed bases and quickly restore their economy. This will probably not be the case in rural areas around bases like Ellsworth Air Force Base and Cannon Air Force Base.

Some communities may actually prosper from a base closing, where land for business or home development comes at a high premium and sells for thousands of dollars per square foot. Bases like Oceana, in Virginia, will have no difficulty putting the land to profitable use.

As you can see in this picture, Oceana is surrounded by a sea of development and prosperity. The base is up here. The entire area around it is completely developed. The land is worth lots of money.

But other bases, like Ellsworth, in my State, as you can see in this aerial photograph, are surrounded by miles and miles of empty rangeland and have scant hopes of a booming development taking hold of the former base. There is little doubt that the nearby community of Rapid City would have no problems with the delay if it means ensuring the right decision has truly been made.

There are too many unanswered questions regarding our Nation's long-term security needs and the circumstances in which our military may have to operate in the future to make irreversible decisions for which we could pay a terrible price later. We will not be able to easily replace or position these installations and units once this BRAC is fully implemented and we discover we have made a colossal mistake.

Let's take a breath and slow down. My two amendments, offered as op-

tions, merely allow this Nation to have the full benefit of all the information we need before moving ahead to implement BRAC. The risk is too great.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, if you could tell me the parliamentary state of affairs.

The PRESIDING OFFICER. The Senate is postcloture on the motion to proceed to S. 397.

Mr. HATCH. Thank you, Mr. President. I rise in strong support of S. 397, the gun liability bill.

Now, this legislation is a necessary response to the growing problem of junk lawsuits filed, no doubt, in part with the intention of driving the firearms industry out of business.

These ill-advised suits attempt to hold manufacturers and dealers liable for the criminal acts of third parties, actions totally beyond the control of the manufacturer. These types of lawsuits continue to be filed in multiple States, seeking a vast array of remedies concerning the marketing of guns and alleged design flaws. And they continue to be flawed.

The White House, in its Statement of Administration Policy, summarized the current problem well. This is what they said:

The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, sets a poor precedent for other lawful industries, will cause a loss of jobs, and burdens interstate and foreign commerce.

That is a heck of a good statement because that is exactly what will happen if we allow these types of suits to continue.

This bill does nothing more than prohibit—with five exceptions—lawsuits against manufacturers or sellers of guns and ammunition for damages “resulting from the criminal or unlawful misuse” of nondefective guns and ammunition.

Now, let me repeat that: “resulting from the criminal or unlawful misuse” of nondefective guns and ammunition.

This bill is not a license for the gun industry to act irresponsibly. If a manufacturer or seller does not operate entirely within Federal or State law, it is not entitled to the protection of this legislation.

Listen to a few comments from one judge who dismissed some of these suits. In Ohio, a judge dismissed a gun liability lawsuit, and the court of appeals affirmed this decision saying:

to do otherwise would open a Pandora's box. For example, the city could sue manufacturers of matches for arson, or automobile manufacturers for traffic accidents, or breweries for drunk driving.

Now, there is no reason the gunmakers should have to continue to defend these types of meritless lawsuits. We must protect against the po-

tential harm to interstate commerce here. The gun industry has already had to bear over \$200 million in defense costs thus far. That is ridiculous. It is immoral. It is wrong.

This legislation is not without precedent. In the 106th Congress, legislation was introduced to address the possibility of junk lawsuits related to the Y2K computer problems. This bill sought to “lessen the burdens on interstate commerce by discouraging insubstantial lawsuits.” It sought to do so by preempting State law to provide a uniform standard for such suits. This bill merely seeks the same type of remedy using the same reasoning.

In the past, some have thrown out red herrings arguing against this bill and suggesting that negligent entrustment will be immunized. This is pure bunk. It is untrue. That argument doesn't deserve to see the light of day. Those who make it ought to be ashamed of themselves. The bill provides an explicit exception for anyone who supplies a gun to someone they reasonably should have known was likely to use that gun in a way that would injure another person.

Let me state that again. The bill provides an explicit exception for anyone who supplies a gun to someone they reasonably should have known was likely to use the gun in a way that would injure another person. The bottom line is that this is a reasonable measure to prevent a growing abuse of our civil justice system. We have had far too many abuses of that system. This is a chance for Members of this body to stand up and do something about it.

If we allow these kinds of suits to go forward with guns, then what is next? Holding manufacturers of knives responsible for stabbings? Holding manufacturers of baseball bats liable for beatings? We simply should not force a lawful manufacturer or seller to be responsible for criminal and unlawful misuse of its products by others.

Individuals who misuse lawful products should be held responsible, but not those who make lawful products.

We have had through the years a desire by some to put gun controls on all kinds of guns, even though the second amendment gives us the freedom to keep and carry arms. To be honest with you, it is an explicit provision of the Constitution. We should not allow any misuse of guns, but we should not allow a change in the Constitution by mere statute that takes away our right to keep and bear arms. That is a God-given right, in my book, especially in some of the areas of the country where people have to defend themselves. In my area of the country, we had to defend ourselves in tremendous ways throughout the whole history of the West.

To make a long story short, we should not be abusing honest, decent, law-abiding people who want to collect, shoot, target practice, hunt, and own guns. We have been through it before.

It is time to stand up and realize that the people who misuse guns are criminals. Those criminals should be prosecuted. But to make gun manufacturers responsible for the irresponsible acts of others, over which the gun manufacturers had no control, is just plain wrong.

I hope we can pass this bill. It would set a good standard to stop the frivolous and abusive lawsuits that are occurring in this country in so many ways, but especially in this particular way.

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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 ask to be recognized to speak on the pending business.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DURBIN. Mr. President, it is amazing how we have reached this point in Senate business today. We started this day debating the Department of Defense authorization bill. It is hard to imagine a more important bill for this Senate to consider and conclude this week. We are going to be gone for 4 or 5 weeks. The idea was, we would take the important amendments and decisions to be made about our military, our men and women in uniform, their benefits, their equipment, and make the decision this week before we went home. Then a decision was made by the Republican leadership to interrupt the debate on the Department of Defense authorization bill and move to the pending bill.

What is this bill? It is a bill that is characterized as "the gun industry immunity bill." What does it mean? It means that those who are pushing for this bill want to carve out one industry in America and say that the people who run the businesses that make the firearms and sell the firearms cannot be held personally responsible for their wrongdoing. That's right. If you and I get in an automobile going home from work, are negligent in our driving the car in any respect, and there is an accident, we are held personally responsible. If the business down the street from where you live sells a product that is defective or dangerous, the person who owns the business, the person who made the product can be held personally responsible. It is really part of life that we are responsible for our wrongdoing. The legal system of America says even people who are powerless have their day in court to hold accountable the businesses and people who have been guilty of wrongdoing.

Now comes to the floor the proposal by the Republican leadership that we take one industry in America and say

that it cannot be held personally responsible for its wrongdoing. Why in the world would we be doing this? How powerful must the group be that pushes through the legislation that says they will be treated as an exception in the whole American body of law? You know the group. They are well known. The gun lobby, the National Rifle Association. They are so powerful that they pushed the Senate away from the Department of Defense authorization bill in the middle of a war. Think about that. How could you move the Senate from considering a bill to help the men and women in uniform in the middle of a war? The only way you can do it is if you are a powerful lobby that snaps and Senators jump. That is what this is all about.

Before we adjourn at the end of the week, the Republican leadership wants to make certain that if we can't keep our word to our troops in the field, we keep our word to the lobbyists downtown for the gun lobby. We carve out a piece of American law and say they cannot be held personally responsible. Their businesses can't be held responsible for wrongdoing.

Is it because there is some huge problem in the gun industry? Are there businesses that sell guns that are about to go bankrupt because of all the lawsuits that are being filed against them? Not at all. Listen to this. On June 29, 2005, the huge American gunmaker Smith & Wesson said in a press release:

We expect net product sales for fiscal year 2005 to be approximately 124 million dollars, a 5 percent increase over the \$117.9 million reported for the last fiscal year. Firearms sales for the next fiscal year are expected to increase by approximately 11 percent over the last year.

Then March of 2005, Smith & Wesson also said:

In the nine months ended January 31, 2005, we incurred \$4,535 in legal defense costs, net of amounts received from insurance carriers relative to product liability and municipal litigation.

Four thousand five hundred thirty-five dollars? Does that sound like a crisis in the gun industry that would cause us to move away from considering the Department of Defense authorization bill?

Listen to this from another gunmaker. This is a filing with the Securities and Exchange Commission, March 11, 2005, from the gunmaker Sturm, Ruger:

It is not probable and is unlikely that litigation, including punitive damage claims, will have a material adverse effect on the financial position of the company.

These companies are doing very well. They are making a lot of money. They are selling a lot of guns. They aren't being sued. It isn't costing them a heck of a lot of money when they are sued. Why are we doing it? Why would we give this unprecedented sweeping immunity to any industry in America, let alone an industry that makes firearms?

This bill closes the courthouse doors to victims with legitimate lawsuits. It

says: If you are a victim of a gun dealer or a gun manufacturer who sold a gun in commerce, where they might have known or should have known that it was going to be used for bad purposes, you can't go to the courthouse. The door is closed. Sorry. That is the way it is going to be. The gun industry is going to be treated like royalty. They are above the law.

During the debate on this bill during the last Congress, the supporters said a lot of cases about victims were frivolous. We were told all these companies were on the verge of bankruptcy. None of that turned out to be true. Two high-profile cases settled. These settlements would not have occurred had this bill been enacted last year. One of them, Bull's Eye Shooter Supply, was the dealer and Bushmaster was the assault weapon maker in the DC sniper case. I remember that case. These crazy snipers ran around town, killing people willy-nilly, innocent victims. When it was all over, the company that made the sniper rifle, the assault weapon, ended up settling with the families, paying over \$2.5 million because of their wrongdoing. And Bushmaster agreed to inform its dealers of safer sales practices to prevent other criminals from obtaining guns.

It was only right that the victims had their day in court. It was only right that a jury of fellow citizens decided their fate. It was only right that this company was held accountable for sales practices that ended up endangering the lives of innocent people. Had this bill now on the floor been passed, there would have been no day in court for the families who were killed by these DC snipers.

Is that justice, fairness, or is that what we should be doing on the floor of the Senate instead of working to help the men and women in uniform who are engaged in a war across the ocean, risking their lives?

Listen to this case. Will's Jewelry and Loan, a West Virginia pawn shop, settled with Police Officers McGuire and Lemongello in June 2004 for \$1 million and agreed to change its practices to prevent sales to underground traffickers, which includes instituting a policy of avoiding large-volume sales. Will's had sold the gun used to shoot the two police officers to a straw purchaser.

It is not only the innocent victims filing who were shot in DC who would be stopped from suing. This bill will stop policemen and their families from suing those who were selling guns, putting them into commerce and endangering the lives of the men and women in uniform who get up every morning and try to protect us in our communities.

Not surprisingly, law enforcement officials in our Nation oppose this bill, such as the International Brotherhood of Police Officers and the Major Cities Chiefs Association, as well as police officers from around the country have signed a letter begging Congress: Don't

pass this bill. It will make America more dangerous. It will endanger the lives of policemen.

Newspapers in 19 different States have editorialized against this bill. What is troubling to me is that we could go from a bill designed to help protect America by helping our men and women in uniform to a bill that makes America less safe, a bill that allows companies to make guns, which are junk, Saturday-night specials, destined to be used in a holdup or a killing by some crazed drug addict. We can protect those companies, but we cannot protect our men and women in uniform, whether they are serving in our military or serving as our policemen. What a dramatic distortion of priorities.

The Senate should be embarrassed that we have done this. This is a week that the Republican leadership will never be able to explain—that they would leave that bill in the midst of a war in order to do this grand favor for the gun lobby, the National Rifle Association. It is not fair. It is not fair that all we do around here is carve out special treatment and special exceptions for a lot of people who, frankly, don't need them. We started off with the bankruptcy bill so credit card companies could make sure that those who end up in bankruptcy carry the credit card debt to the grave. We passed the class action bill so individuals filing environmental class actions would have a difficult time going to court. We have a bill waiting in the wings that says to 10,000 asbestos victims a year, you victims who never dreamed you would be dying from exposure to asbestos are going to be limited when you go to court too. There are bills pending dealing with the victims of medical malpractice.

And now comes this bill—the absolute icing on the cake—that we would give to the gun lobby immunity from their own wrongdoing, that when they make guns that end up killing people, that should not have been made, without the appropriate warnings, the appropriate safety devices, when they sell guns by the carload to people who were clearly destined to sell them on the street, to be used by drug gangs, they cannot be held accountable.

There is no personal responsibility under this law. That is not American. That is not what the system of justice is all about. It certainly doesn't speak to the fairness that we believe is essential to the American system of justice. When you think of all the things we could be doing, instead of finding another special interest group to give their lobbyists such good news that we passed their big bill—we could be passing a bill that says we are going to stop giving tax credit to companies that run jobs overseas. We could have done that this week. No, we didn't have time. We had to help this special interest group, the NRA. They could have been changing the Medicare drug prescription bill so they would be able to bargain for

lower prices for seniors. No, that is not on the priority list of the Republican leadership. We could have been making certain that we don't privatize Social Security, and instead make it last. That is not a high priority for the Republican leadership. The gun lobby is the highest priority this week—higher than our service men and women. They could have protected the pensions and retirements of Americans who are scared they won't have anything to rely on. No time for that. No time this year to deal with it. We could have been dealing with portability of health insurance and the availability of health insurance for small businesses. No, we have to deal with helping the NRA. We could have been helping people with college loans, figuring out new ways that families can finance the education of their children. Sorry, if you don't have a big lobby with a lot of power such as the gun lobby, we cannot do that. We could have been talking about the outsourcing of medical and financial records, destroying the privacy of individuals and families. No way. We could have talked about credit card companies, giving more disclosures on credit cards such as when they increase your interest rate. No, we don't have time. We have to protect the gun makers and gun sellers from being held personally responsible in court. We could have increased our energy availability, it could have been part of our energy bill. You can hardly find it.

The list goes on. When you talk about the values of the Republican leadership in the Senate, you know the values today. To think that the Republican leadership would move away from the Department of Defense bill for our troops to a special interest bill for the gun lobby, so that they are not held accountable for selling Saturday-night specials that kill policemen and innocent people. That is the priority of the Republican leadership. It is not the priority of the American people.

I look forward to voting against this bill. I hope a majority of my colleagues will join me in that effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, a majority of the Senate is going to vote for this bill. We have 61 cosponsors. It ought to have already been passed a long time ago. We will be pleased to get this bill done. It is something that is needed.

Mr. President, there will be more opportunity tomorrow. What happened today was that I voted to invoke cloture on the Defense bill so we can complete the Defense bill, and that was not passed by the votes on the other side. So when cloture was not invoked, we went to this bill, which has strong bipartisan support and which will be passed.

However, some on the other side did choose to filibuster the motion to proceed, as they have a right to do. That

is what we are doing today. Then we will have a filibuster of the bill and we will have cloture, which I believe will be invoked. Certainly the votes appear to be there for it. I think we will get this bill done. There are other things we need to do this week that can still be done.

Mr. President, does Senator REED have any comments?

Mr. REED. Yes. Mr. President, we have had a long discussion today about the legislation. I think some of the points the Senator from Illinois made are very pertinent.

First, there is the erroneous presumption that people who would be sued would be sued because of the actions of others, when in fact the negligent suits lie in showing that first an individual had a duty to someone else—a victim—and that duty was not fulfilled. Essentially, that is the essence of negligence. If you cannot show that, you cannot get into court. This is not about somebody being punished or imposed upon for the actions of others. It goes right to the actions of the individuals—the seller, manufacturer or, in this case, trade associations.

There is a perception also, I think, that has been given that the legislation as drafted actually provides exceptions that will cover the meritorious suits, the ones that should be before the court and eliminate the frivolous suits. In fact, that is not the case. As Senator DURBIN pointed out in the situation with respect to the Washington, DC snipers, there a gun dealer in Washington State was grossly negligent. He had 230 unaccounted for weapons and they should have been accounted for. He allowed a teenage boy to walk in and pick up a sniper rifle off the counter and walk out and didn't know it was missing until it was discovered to be the weapon of the assassins here in Washington, DC. That suit would have been barred by this legislation if it had passed. The two police officers—Lemongello and his partner—responded to a call and they were in a shootout. They were seriously hurt, both of them. It turns out that the criminal firing that gun got it from a gun trafficker who walked into a store, a gun dealership, with another woman as a straw purchaser and acquired 12 weapons for cash and walked out the door. In fact, they were so obvious that the gun dealer called ATF and said he sold them the weapons, but watch out for them, which is negligent to me. Both cases were settled. Those cases would be thrown out.

The lives of all of the families in Washington, DC, have already been totally changed because of the loss of their loved ones. Conrad Johnson was a bus driver, waiting to go on his bus run, and he was shot, leaving a wife and children. They would have been out of luck because they could not have brought a suit like this. And there were others. We all lived in fear ourselves. We drove around here looking over our shoulders wondering

whether the assassins were out here in Washington, DC. One woman who was an employee of the FBI and was walking in the parking lot of Home Depot in suburban Virginia was shot. Those families, those victims, could not have come to the court of justice if this bill passed.

There are other suits that are pending today. There is a case in Massachusetts, where a young man, Danny Guzman, an innocent bystander, was shot and killed in front of a nightclub in Worcester. Six days later, police recovered a 9 mm Kahr Arms handgun without a serial number behind an apartment building, near where Mr. Guzman was shot. In fact, I am told a 4-year-old child discovered the weapon first. Ballistic tests determined that the gun was the one used to kill Danny Guzman.

This gun was one of about 50 guns that disappeared from Kahr Arms' manufacturing plant. Some of the guns were removed from the plant by employees that Kahr Arms hired despite criminal records and histories of drug addiction. The case is being pursued now. The issue is not what Mr. Guzman did. It is what this company failed to do. They failed to have background checks on employees who handled weapons. They failed to have security devices that would monitor if these weapons would be taken out of Kahr Arms. I am told, interestingly enough, Kahr Arms is owned by a holding company for the benefit of the Reverend Sun Myung Moon's Unification Church. So one of the beneficiaries of this bill, if it passes, will be Reverend Moon's financial enterprises because they will be protected from allegations of recklessness, not just negligence.

Now, the first exception to the bill is title 18 United States Code section 924(h). This simply permits cases against sellers who sell guns they know will be used to commit a violent or drug trafficking crime. First, in the Kahr case, the guns were not sold; they were taken surreptitiously out of the factory. This exception would not apply.

Second, you have to show they knew that the guns would be used to commit a violent or drug trafficking crime—not that they were negligent in allowing guns in circulation, but that they had to know they would be used in a violent or drug trafficking crime.

The next exception is negligent entrustment. This applies where a gun dealer knows, or should know, that a purchaser will shoot someone with the gun, and that individual shoots a person. This exception only applies to a gun "seller." Once again, Kahr Arms was not, in this situation, a seller. Moreover, Kahr Arms did not entrust its guns to its employees. Rather, Kahr's employees removed the guns from the plant because of Kahr's negligent security, inventory tracking, and hiring of employees with histories of criminal conduct and drug addiction. So that exception doesn't apply.

There is another exception, negligence per se. Under this provision, gun sellers whose negligence causes injury could not be liable unless, at a minimum, they also violated a law or regulation which the court found an "appropriate basis" for a negligence per se claim and which proximately caused the injury. The exception only applies to a gun seller, and the bill defines sellers to include only importers or dealers, not manufacturers.

Moreover, in many States—and Massachusetts is one—negligence per se claims are not allowed under their practice and, therefore, the exception would not apply.

Knowing violation of the law exception: This exception applies where a gun seller or manufacturer knowingly violates a State or Federal statute when it makes a sale that leads to an injury. Here, Kahr Arms did not violate statutes related to the sale or manufacturing of a gun. Rather, Kahr's employees surreptitiously took the guns out.

Breach of contract or warranty exceptions once again do not apply. It merely allows gun purchasers to sue if the seller or manufacturer did not provide the product or service it promised in its sales contract. This exception clearly does not apply.

Defective design is a narrow exception for actions for some deceptive design or manufacturing cases. But that exception does not apply.

Rather than being legislation that allows the good suits through and the frivolous ones out, this legislation effectively denies people, such as the family of Danny Guzman, their day in court, and many others. It would have denied the two police officers from New Jersey their day in court. It would have denied the victims of the snipers their day in court.

For these reasons and many others, I am opposed to the legislation and join others who are and look forward to continuing our discussions in the hours and days ahead.

Mr. SESSIONS. Mr. President, I thank my able colleague and will say, it is such a state we are in America that a company whose employees steal the guns and go out and shoot somebody with them gets sued for it. That is a fact of what my friend is saying, that these companies ought to be sued as a result of the theft of a gun by their employees.

If the law required them to do a background check and they failed to do so, they clearly would be liable under this act. The fact of filing off a serial number is, in fact, a criminal offense for which I have prosecuted quite a number of criminals. In addition, it would trigger, of course, a civil liability.

Gosh, we can talk about it a lot, and I will be glad to continue to discuss it, but the basic fact is a lot of these lawsuits are claiming that if they know, if manufacturers or distributors or sellers either know or should know that

some guns will be used illegally, they should be responsible for it. That is not good law. This is against what we are about in this country.

All this legislation does is say if you sell the firearm according to law, if you manufacture it according to law and somebody commits an intervening criminal act with it and shoots somebody, you should not be sued. But we have this anti-gun crowd which doesn't care about general principles of law that have stood us in good stead for hundreds of years. They have learned to manipulate the matter as effectively as they can to maintain lawsuits. The letter from Beretta I read earlier indicates that in the District of Columbia, the gun manufacturers who sold a gun in Minnesota and it was transported some way to Washington, DC, and was used in a crime and somebody was shot, the gun manufacturer is liable for that. And, in fact, that one jurisdiction that allows that kind of lawsuit can be enough to take down every gun manufacturing company in the United States. They have had some tough years and a lot of litigation going on.

Mr. President, I have spoken again, and unless my colleague would like to reply, we will close. It has been a good debate, and I have enjoyed it.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, on behalf of the leader, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO MAJOR GENERAL JOHN W. HOLLY

Mr. STEVENS. Mr. President, I come to the floor today to recognize the service of an outstanding leader and public servant. After more than 32 years in uniform, MG John W. Holly will soon retire and move into private life.

Four years ago, Major General Holly was appointed Program Director of the Joint Program Office of Ground-Based Midcourse Defense. For the past year he has also served as the Deputy Director of the Missile Defense Agency, overseeing the direction of all other ballistic missile defense programs in the agency.

The Ground-Based Midcourse Defense System is not your run-of-the-mill weapons program. It is virtually global in scope, spanning 12 time zones, from the United Kingdom to the outer reaches of the Aleutian Islands. It has required upgrades to early warning radars from the Cold War era and the development of the most advanced sea-going X-band radar ever built; this equipment was then linked with communication centers throughout the United States and firing sites in Alaska and California. This effort has also