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.
Eternal God, You have challenged us to become like children in order to enter Your kingdom. Today give us a child’s trust, that we may find joy in Your guidance. Give us a child’s wonder, that we may never take for granted the Earth’s beauty and the sky’s glory. Give us a child’s love, that we may find our greatest joy in being close to You. Give us a child’s humility, that we will trust Your wisdom to order our steps.
Guide our Senators and those who support them through the challenges of this day. As they look to You for wisdom, supply their needs according to Your infinite riches.
We pray in Your righteous 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.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED
The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 397, which the clerk will report.

The legislative clerk read as follows:
A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

The PRESIDENT pro tempore. Under the previous order, the time from 10 to 2 p.m. shall be equally divided, with the majority in control of the first hour and the Democrats in control of the second hour, rotating in that fashion until 2 p.m.

RECOGNITION OF THE MAJORITY LEADER
The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE
Mr. FRIST. Mr. President, this morning we are returning to the motion to proceed to the Protection of Lawful Commerce in Arms Act, otherwise known as the gun manufacturers liability legislation. Yesterday we invoked cloture on the motion to proceed. We now have an order to begin the bill at 2 p.m. today. The debate will be equally divided until 2 o’clock today. I understand a rollover vote will not be necessary, and we will have a voice vote at 2 p.m. and then be on the bill.

Senators can expect a cloture vote on the underlying bill to occur on Friday, unless we change that time by consent. As I stated repeatedly over the last several days, we are going to have a very busy session as we address a range of issues, including energy and highways and the Interior funding bill, the gun manufacturers liability bill, veterans funding, nominations, and other issues.

Just a quick update on several of these. In terms of the Energy bill, after 5 years of hard work, the energy conferees are now done. I expect that that legislation will be filed shortly. This is a major accomplishment that will cause serious and dramatic changes in how we produce, deliver, and consume energy. We simply would not be at this point without the hard work, the perseverance, and the patience of Senator DOMENICI and his partner, Senator BINGAMAN, as well as Congressman BARTON. We will pass that conference report this week. Our country will be all the better for it.

I was talking to the Secretary of Energy earlier this morning. We were discussing the absolute importance of passing this bill to establish a framework of policy from this legislative body. He again referred to the great good this bill will do.

On highways, it has taken this Congress 3 tough years of work to come to this point, but with just a little more work, we will have a bill that the President will sign. Our conferees are working and should complete the writing of it today. I spent time with several of the conferees yesterday and with the Speaker, as we coordinate completion of this highway bill.

The good news for the American people is, as they see what is sometimes confusing on the floor of the Senate as these bills come in, this particular highway bill will make our streets and our highways safer. It will make our economy more productive. It will create many new jobs.

I mentioned veterans funding. Yesterday, the House and Senate majority agreed to ensure that $1.5 billion of needed funding will be given to the Department of Veterans Affairs this fiscal year. Veterans can be assured that their health care will remain funded. I know it is confusing what you hear on the floor, but that action is being taken.

I mentioned Interior funding. Yesterday both Houses agreed to fund many of the programs that affect many of our public lands held in trust for Americans throughout the country. We intend to complete action on this conference report this week as well.

Late last night, the conferees completed work on the Legislative Branch appropriations bill, and we will be attempting to clear that legislation as well this week.
I mentioned all these to give my colleagues an update because there is so much activity going on right now, in addition to the very important legislation that is on the floor.

After several months of aggressive work, we can now look back and say that we have brought the Cabinet full strength for the President's second term in effect. We have accomplished very important class action legislation, after years and years and years of delay. We finished bankruptcy reform, which we have worked on in the Congress, both Houses, since the late 1990s. We completed writing one of the fastest budgets in congressional history with the goal, which we have accomplished, of pushing down the deficit, keeping our economy growing, and creating jobs, funding our efforts to confront the terrorist threat overseas, confirming, after what was tough for us all, many of the judicial nominees that have been held up for years. All of that is what we have done.

Now we have the opportunity over the next 3 to 4 days of completing action on important bills which I have mentioned—bills that will make a real difference in the everyday lives of Americans. We are talking about funding for health care, veterans, highways, and energy. We are demonstrating governing with meaningful solutions to everyday problems of Americans.

These bills will affect people's lives directly, will create opportunities for new jobs, help people to fulfill the American dream, they are important, as well as address critical national needs. By the time we get to the recess—I mention that because we have a long recess. A recess is the time that we can use to go back and be with our constituencies. We do have a long recess in August. I say that to preface how important it is that we complete all of our work this week. The American people expect us to complete action on the items mentioned, and you also have a tendency to think the recess is going to start maybe a day early. It certainly looks like, because we are going to be so busy, that we will be working through Friday of this week. I will be in constant consultation with the Democratic leader. We will have the opportunity to talk several times throughout the day.

At this point, we cannot rule out a Saturday session, if it is absolutely necessary, very important, very important bills which I have mentioned—bills that have to do with accomplishments, that have to do with the President's second term in effect. We have accomplished very important legislation. Under the provisions of this act, hospitals and physicians and other health professionals will be able to share this information about their practices with independent PSOs, or patient safety organizations, without the fear of legal action. And this transparency will improve quality.

Health care

Mr. President, most of what I have said has to do with accomplishments, challenges, and schedule. I want to turn to something I care passionately about, an issue that most, if not all Americans, care about, and that is health care.

As I travel around the country, in part because I am a physician but in larger part because of the reality of the problem, the cost of health care, as well as the safety and quality of health care, is among the first and foremost concerns of American people. They want us to lower the cost. You do that by improving quality and getting rid of waste, and we are doing just that.

I am pleased to report that after years of challenging work, difficult work, and a lot of negotiation among ourselves on both sides of the aisle, the House is expected to join the Senate in passing a bill called the Patient Safety and Quality Improvement Act. I am hopeful they will pass that bill today. We passed it not too long ago. I mention it because it focuses on getting waste out of the system, and it does so by putting the emphasis on patients.

A patient-centered system is what I strongly believe we have to move to in the future. This does just that. Patient safety is something that concerns me. We have an obligation, as physicians, as nurses, as the health care sector, but also as a public policy body, to make sure that patient safety is maximized. People say: But if you look back at the Institute of Medicine's report not too long ago that really started a lot of this debate, they estimated that up to 98,000 deaths are caused each year by medical errors. That would make the rate of medical errors, that are occurring every day in hospitals and clinics, and even at home when people are taking medicines, the eighth leading cause of death each year. That is more than car accidents, HIV/AIDS, or breast cancer. People dispute the number. Is it 98,000? Is it 125,000? Is it 75,000? The exact number doesn't matter. The fact that there are thousands and thousands of needless deaths being caused is inexcusable. This body has acted. The House will act. And I am hopeful the President will be able to sign that important legislation in the next several days.

What is so obvious to me as a physician, having spent 20 years in the medical arena, every day in the healing profession, is that the tragedy of all sorts of medical errors, that result in prolonged hospitalization, more misery, greater cost, can be prevented, can be prevented. Simple reporting procedures, sharing of information, improved technology, a systems approach—all can reduce these preventable errors, and thereby improve hundreds of thousands of lives and actually save tens of thousands of lives.

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So people ask, What is the problem? The fear of litigation has kept many health care providers—doctors, nurses, and lab technicians in the hospitals—from sharing information if a mistake is inadvertently made. Everybody makes mistakes, but if you have a mistake that is made, you need to be able to share it with people so you can de-
Chairman JOE BARTON and ranking member JOHN DINGELL have done a tremendous job on this bill. We have had the most advanced health care in the world, with new treatments and techniques, improving millions of lives every day.

Through this bill, we are putting that same sort of American ingenuity to work improving patient safety in hospitals and clinics and thus getting rid of waste and improving the overall quality of care. This bill is a major step forward to making health care safer and less costly, driven up the quality, driving down costs, and getting out the waste.

I can tell you, this is the first major health bill in this Congress. But I hope in the very near future we will pass other important legislation we are working on in a similarly bipartisan way—namely, information technology to have privacy-protected, electronic medical records available to everybody who wants it. It is a bipartisan effort. We have come a long way, and I am very pleased that we can do that in the near future.

We are establishing interoperability standards—working with the private sector to establish interoperability standards which will allow the 6,000 hospitals and the 500,000 physicians out there to communicate in a seamless way, with privacy-protected information. Again, it is another bill that would get rid of waste, drive down the cost of health care, and improve quality.

I am excited about these health initiatives. I thank my colleagues who have specifically been involved in this bill, including Chairman MIKE ENZI, Senator JUDD GREGG, Senator JIM JEFFORDS, who has been at it as long as anybody in this particular bill on patient safety—and, of course, Senator TED KENNEDY. On the House side, Chairman JOE BARTON and ranking member JOHN DINGELL have done a tremendous job as well shepherding through, the Patient Safety and Quality Improvement Act. We are saving lives and moving American medicine forward.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I understand that the Republican side has from 10 until 11, that is correct, under the unanimous consent agreement?

The PRESIDENT pro tempore. That is correct. The first hour is under the control of the majority, the second hour is under the control of the minority, and it reverts back to the majority and then the minority.

Mr. CRAIG. Mr. President, I send to the desk a list of 61 cosponsors of S. 397, the Protection of Lawful Commerce in Arms Act that is currently pending before the Senate, and I ask unanimous consent that it be printed in the RECORD.

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

COSPONSORS, BY DATE

Sen. Baucus, Max (D-MT)—2/16/2005*
Sen. Bunning, Jim (R-KY)—3/15/2005*
Sen. Chambliss, Saxby (R-GA)—2/16/2005*
Sen. Collins, Susan M. (R-ME)—2/16/2005*
Sen. Craig, Larry (R-ID)—2/16/2005*
Sen. Crapo, Mike (R-ID)—2/16/2005*
Sen. Ensign, John (R-NV)—2/16/2005*
Sen. Hatch, Kay Bailey (R-TX)—2/16/2005*
Sen. Isakson, Johnny (R-GA)—2/16/2005*
Sen. Kyl, Jon (R-AZ)—2/16/2005*
Sen. Santorum, Rick (R-PA)—2/16/2005*
Sen. Snowe, Olympia J. (R-ME)—2/16/2005*
Thomas, Craig (R-WY)—2/16/2005*
Sen. Sununu, John E. (R-NH)—2/16/2005*
Sen. Vitter, David (R-LA)—2/17/2005*
Sen. DeMint, Jim (R-SC)—3/1/2005
Sen. Dorgan, Tom (D-ND)—3/3/2005
Sen. Gregg, Judd (R-NH)—3/3/2005
Sen. Pritzker, Mark (D-IL)—3/3/2005
Sen. Roberts, Pat (R-KS)—3/3/2005
Sen. Bennett, Robert F. (R-UT)—4/12/2005
Sen. McCain, John (R-AZ)—7/21/2005
Sen. Coburn, Tom (R-OK)—2/16/2005*
Sen. Cornyn, John (R-TX)—2/16/2005*
Sen. Domenici, Pete V. (R-NM)—2/16/2005*
Sen. Enzi, Michael B. (R-WY)—2/16/2005*
Sen. Inhofe, Jim (R-OK)—2/16/2005*
Sen. Johnson, Tim (D-SD)—2/16/2005*
Sen. Lincoln, Blanche L. (D-AR)—2/16/2005*
Sen. Nelson, E. Benjamin (D-NE)—2/16/2005*
Sen. Sessions, Jeff (R-AL)—2/16/2005*
Sen. Stevens, Ted (R-MA)—2/16/2005*
Sen. Thune, John (R-SD)—2/16/2005*
Sen. Allen, George (R-VA)—2/17/2005
Sen. Landrieu, Mary L. (D-LA)—2/17/2005
Sen. Coats, Richard J. (R-IN)—3/1/2005
Sen. Grassley, Chuck (R-IA)—3/1/2005
Sen. Hagel, Chuck (R-NE)—3/1/2005
Sen. Lott, Trent (R-MS)—3/2/2005
Sen. Talent, Jim (R-MO)—3/2/2005
Sen. Martinez, Mel (R-NM)—3/3/2005
Sen. Brownback, Sam (R-KS)—3/13/2005
Sen. Bond, Christopher S. (R-MO)—3/13/2005
Sen. Cochran, Thad (R-MS)—3/13/2005
Sen. Coleman, Norm (R-MN)—3/13/2005
Sen. Volinovich, George V. (R-OH)—4/12/2005
Sen. Rockefeller, John D. (D-WV)—7/29/2005

Mr. CRAIG. Mr. President, the reason I sent that list of cosponsors to the desk is to demonstrate to all of our colleagues that 61 Senators—60 plus my home state of Wyoming—are involved in this legislation that is pending before the Senate that we will move to active consideration of this afternoon at 2 o’clock. I think it demonstrates to all of us the broad, bipartisan support this legislation has and the commitment that the time for S. 397 has arrived.

This legislation prohibits one narrow category of lawsuits: suits against the firearms industry for damages resulting from the criminal or unlawful misuse of a firearm or ammunition by a third party.

It is very important for everybody to understand that it is that and nothing else that is being defended here. We are not aimed at bankrupting the firearms industry. The courts of our Nation are supposed to be a forum for resolving controversies between citizens and providing relief where it is warranted, not a mechanism for achieving political ends. Too often, this is the people’s representatives, the Congress of the United States.

Time and time again down through history, that rejection has occurred on this floor and the floor of the other body.

Interest groups, knowing that clear well, have now chosen the court route to attempt to destroy this very valuable industry in our country.

Two dozen suits have been filed on a variety of theories, but all seek the same goal of forcing law-abiding businesses selling a legal product to pay for damages from the criminal misuse of that product. I must say, if the trial bar wins here, the next step could be another industry and another product.

While half of these lawsuits have already been fully and finally dismissed, other cases are still on appeal and pending. Hundreds of millions of dollars still hang over the firearms industry that is critical to our national defense, jeopardizes hundreds of thousands of good-paying jobs, and puts at risk access Americans have to a legal product used for hundreds of years for defense, breach of contract, lawsuits based on violations of States and Federal law. And yet, we already heard the arguments on the floor yesterday, and I am quite confident we will hear them again and tomorrow. That is this is a sweeping approach toward creating immunity for the firearms industry.

I repeat for those who question it, read the bill and read it thoroughly. It is not a long bill. It is very clear and very specific.

The trend of abusive litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence. Furthermore, it threatens a domestic industry that is critical to our national defense, jeopardizes hundreds of thousands of good-paying jobs, and puts at risk access Americans have to a legal product used for hundreds of years across this Nation for lawful purposes, such as recreation and self-defense.

Thirty-three States enacted similar gun lawsuit bans or civil liability prohibitions.
States, because of our silence, have felt it necessary to speak up to protect law-abiding citizens from this misuse of our courts.

Yesterday, opponents repeatedly charged that negligent businesses and people could be held liable for the harm caused by guns. Mr. President, I would look at the hook in this bill. It was even stated that this bill would bar virtually all negligence and product liability cases in States and Federal courts. I repeat, nothing can be further from the truth. For those who come to make an imposition on the hook by this bill, my challenge to them is to read the bill. Obviously they have not. They are simply following the script of the anti-gun community of this Nation. That is not fair to Senators on this floor to be allowed to believe what this legislation simply does not do or does it say.

The bill affirmatively allows lawsuits brought against the gun industry when they have been negligent. The bill affirmatively allows product liability action. Any manufacturer, distributor, or dealer who knowingly violates any State or Federal law can be held civilly liable under the bill. This bill does not shut the courthouse door.

Under S. 397, plaintiffs will have the opportunity to argue that their case falls within a new statutory, such as violations of Federal and State law, negligent entrustment, knowingly transferring to a dangerous person. That is what that all means, that you have knowingly sold a firearm to a person who cannot legally have it or who you have reason to believe could use it for a purpose other than intended. That all comes under the current definition of Federal law.

Breach of contract or the warranty or the manufacture or sale of a defective product—these are all well-accepted legal principles, and they are protected by this bill. Current cases where a manufacturer, distributor, or dealer knowingly violates a State or Federal law will not be thrown out.

Opponents have complained about the Senate considering this bill at the same time and even have impugned the motives of the Senators who support it. The votes yesterday speak for themselves. Sixty-six Senators said it is time we got this bill before the Senate, and that is where we are today. When a supermajority of the Senate speaks, there is no question that the Senate moves, as it should, in that direction. The Senate must muster the votes needed to invoke cloture on the Defense authorization bill which would have moved us to a final vote on that measure possibly by tonight. But the Senate, as I have said, by a wide margin spoke yesterday to the importance of dealing with this issue. Sixty-six Senators said let’s deal with it now, and I have just sent to the desk 61 signatures of the cosponsors of this bill that demonstrate broad bipartisan support.

I think it is appropriate to consider all of this in the context of the Defense authorization bill because the reckless lawsuits we are seeking to stop are aimed at businesses that supply our soldiers, our sailors, and our airmen with their firepower. Stop and think about it. Would there ever be a day when all of our military would be armed with weapons manufactured in a foreign nation? There are many in this country attempting to drive our firearm manufacturers from this country, who would have it that way.

Clearly, it is within the appropriate context as we deal with Defense authorization to be talking about the credibility and the assurance we are able to sustain the firearm manufacturing industry in this country. In fact, the United States is the only major world power that does not have a firearm factory of its own. That is something that simply ought not be tolerated. Thirty-eight of our colleagues of both parties signed on to a letter to Majority Leader Frist making this very point; the importance of sustaining our firearm industries against reckless lawsuits.

I would read from that letter, but I see that my colleague from Oklahoma is now on the floor wishing to discuss this legislation.

Mr. President, I yield the floor in recognition of Senator Coburn.

The PRESIDING OFFICER (Mr. Alexander). The Senator from Oklahoma.

Mr. COBURN. Mr. President, first, I thank the Senator from Idaho for his unwavering faithfulness to the Constitution and upholding his oath as a Senator, as a Member of this body.

The Bill of Rights is important to us, and I rise today in support of that Bill of Rights and, in particular, the second amendment. Not only do I believe the right to bear arms is guaranteed by the U.S. Constitution. I exercise that right personally as a gun owner. I stand on behalf of the people of Oklahoma who adamantly support the second amendment and the right to carry arms and against the attack on that right by the frivolous lawsuits that have come about of late.

We have seen many attempts to curtail the second amendment. Nearly a decade ago anti-gun activists tried to limit the right of law-abiding citizens under the banner of ‘terrorism’ legislation by slipping in anti-gun provisions.

In another line of attack, the anti-gun lobby responded to decreasing enthusiasm for limiting handguns by promoting a new form of gun control—a cosmetic ban on guns labeled with the inflammatory title ‘assault weapons.’ While that ban expired in 2004, we will likely see Members of this body attempt to add a renewal and expansion of that ban on this bill today.

Now anti-gun activists have found another way to constrict the right to bear arms and attack the Bill of Rights and attack the Constitution, and that is through frivolous litigation. They have not succeeded in jailing thousands of law-abiding Americans for having guns, or making the registration and purchase process so onerous that nobody bothers to buy a gun. They have failed to get their cosmetic weapons ban renewed. So now they must attack the arms industry financially through lawsuits—frivolous lawsuits, I might say. This is why we are here today—to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country.

It is also important that those who commit crimes, with or without the use of firearms, should be punished for their actions. I have always been a strong supporter of tough crime legislation. However, make no mistake, the lawsuits that will be prohibited under this legislation are intended to drive the gun industry out of business. With no gun industry, there is no second amendment right because there is no supply.

These lawsuits against gun manufacturers and sellers are not directed at perpetrators of crime. Instead, they are part of a stealth effort to limit gun ownership, and I oppose any such effort adamantly.

Anti-gun activists have failed to advance their agenda at the ballot box. They failed to advance their agenda in the legislatures. Therefore, they are hoping these cases will be brought before sympathetic activist judges—who will determine by judicial fiat that the arms industry is responsible for the action of third parties.

Additionally, trial lawyers are working hand in glove with the anti-gun activists because they see the next litigation cash cow, the next cause of action that will create a fortune for them in legal fees.

As a result of some of the efforts of the anti-gun activists and some trial lawyers, the gun manufacturing and sales industry face huge costs that arise from simply defending unjustified lawsuits, not to mention the potential of runaway verdicts. This small industry has already experienced over $200 million in such charges. Even one large verdict could bankrupt an entire industry.

Since 1989, individuals and municipalities have filed over a hundred lawsuits against members of the firearms industry. These suits are not intended to create a solution. They are intended to drive the gun industry out of business by holding manufacturers and dealers liable for the intentional and criminal acts of third parties, whom they have absolutely no control.

In testimony before a House subcommittee in 2005, the general counsel of the National Shooting Sports Foundation, Inc., said:

I believe a conservative estimate of the total, industry-wide cost of defending ourselves to date now exceeds $200 million.
What does that produce in our country other than waste and abnormal enrichment of the legal system?

This is a huge sum for a small industry such as the gun industry. The firearms industry manufactures firearms for America's military forces and law enforcement agencies, the 9, the 11. Due in part to Federal purchasing rules, these guns are made in the U.S. by American workers. Successful lawsuits could leave the U.S. at the mercy of small foreign suppliers.

Second, by restricting the gun industry's ability to make and sell guns and ammunition, the lawsuits threaten the ability of Americans to exercise their second amendment right to bear arms.

Finally, if the firearms industry must continue to spend millions of dollars on litigation or eventually goes bankrupt, thousands of people will lose their jobs. Secondary suppliers to gunmakers will also have suffered and will continue to suffer.

This is why it is not surprising that the labor unions, representing workers at major firearms plants, such as the International Association of Machinists and Aerospace Workers in East Alton, IL, this bill. This union's business representatives stated that the jobs of their 2,850 union members "would disappear if trial lawyers and opportunistic politicians get their way."

The economic impact of this problem may be felt in other ways. In my home State of Oklahoma, hunting and fishing creates an enormous economic impact. It is tremendously productive. Hunters bring in retail sales of over $292 million a year; 8,755 jobs in Oklahoma are dependent on hunting; $370,000 in salaries and wages in Oklahoma alone; and $22 million in State sales tax per year. The financial insolvency of gun manufacturers and sellers would have a devastating effect on my State and many other States similar to Oklahoma.

Insurance rates for firearm manufacturers have skyrocketed since these suits began, and some manufacturers are already seeking insurance and seeing their policies canceled, leaving them unprotected and vulnerable to bankruptcy.

That is the ultimate goal of these suits—bankruptcy and the elimination of this arms industry. Because of that, 33 State legislatures have acted to block similar lawsuits, either by limiting the power of localities to file suit or by amending State product liability laws. However, it only takes one lawsuit in the State to bankrupt the entire industry, making all of those State laws inessential. That is why it is essential that we pass Federal legislation.

Additionally, plaintiffs in these suits demand enormous monetary damages and a broad variety of injunctive relief relating to the design, the manufacturer, the distribution, the marketing, and the sale of firearms.

Some of these lawsuits demand: One-gun-a-month purchase restrictions not required by State laws; requiring manufacturers and distributors to "participate in a court-ordered study of lawful demand for firearms and to cease sales in excess of lawful demand; "prohibition on sales to dealers who are not stocking dealers with at least $250,000 of inventory—"in other words, we are going to regulate how much you have to have in inventory before you can be a gun seller; a permanent injunction requiring the addition of a safety feature for handguns that will prevent their discharge by "those who steal handguns"; and a prohibition on the sales of guns near Chicago that by their design are unreasonably attractive to criminals.

These lawsuits are frivolous. Anti-gun activists want to blame violent acts of third parties on manufacturers of guns for simply manufacturing guns and sellers of guns for simply selling guns. A conclusion has no sense. This would be the equivalent of holding a car dealer responsible for a person who intentionally runs down a pedestrian simply because the car that was sold by the dealer was used by a third party to commit a crime.

Guns, like many other things, can be dangerous in the wrong hands. The manufacturer or seller of a gun who is not negligent and owes all applicable laws should not be held accountable for the unforeseeable actions of a third party. This is a country based on personal accountability, and when we start muddying that aspect of our law and culture we will see all sorts of unintended consequences.

Most of the gun injuries I have seen in the emergency room as a practicing physician were people who were intentionally shot by other people. The gun was the mechanism that was used, but it was the individual who carried out that act. The gun was a tool. Should we ban all tools that are capable of committing homicide or committing injury? These people were not injured by defective guns or defective ammunition. The individuals who were shot chose to commit this violence to avoid prosecution, not the industry that made the guns or the legal sellers of the guns. Even when I treated individuals who injured themselves with guns, these tragedies were accidents. It was not part of a quality or product defect. It was an act of sin by the part of people. Part of our freedom comes with the ability to make wise choices. If we limit our ability to make choices, then we limit our freedom.

These lawsuits are part of an antigun activist effort to make an end run around the legislative system. We have seen that in multiple areas in our country. When you can't pass it in the legislature, you get an activist judge to get done what you wanted to do in the first place, even though a majority of Americans and a majority of legislatures don't want it. But one judge decides for the rest of us.

We are coming up on a judicial nomination for the Supreme Court. One of the questions that has to be asked is what is the proposal. What is the role in terms of judges making law rather than interpreting law? It will be a key question.

So far judges have not been convinced by their arguments. Here are a few examples. The District Court of Philadelphia struck down the right of New Orleans to bring a suit in the face of the State law forbidding it, in an opinion stating clearly:

This lawsuit constitutes an indirect attempt to regulate the lawful design, manufacture, marketing and sale of firearms.

Judge Berle M. Schiller of the U.S. District Court for the Eastern District of Pennsylvania struck the nail on the head when dismissing all of Philadelphia's allegations, stating that "the city's action seeks to control the gun industry by litigation, an end the city could not accomplish by passing such an ordinance."

The Delaware Superior Court adeptly stated that "the Court sees no duty on the manufacturer's part that goes beyond their duties with respect to design and manufacture. The Court cannot imagine that a gun can be designed that operates for law-abiding people but not for criminals."

A word of caution. Most new tort ideas took a while to work. All it would take is one multimillion-dollar lawsuit to severely damage this industry. The bill is limited to States. It protects only licensed and law-abiding firearms and ammunition manufacturers and sellers from lawsuits that seek to hold manufacturers and sellers responsible for the crime that third party criminals commit with their nondefective products.

Manufacturers and sellers are still responsible for their own negligent or criminal conduct and must operate entirely within the Federal and State laws.

Firearms and ammunition manufacturers or sellers may be held liable for negligent entrustment or negligence per se; violation of a State or Federal statute applicable to the sale or marketing of the product where the violation was the proximate cause of the harm for which relief is sought; breach of contract or warranty; and product defect. They still are responsible for all that through this bill. It takes none of that away. It holds personal accountability solid and steadfast. It does not infringe on it. Claims may still go to court to argue that the claims fall under one of the exceptions.

In my opinion, gun manufacturers and sellers are already policed enough, too much, through hundreds of pages of
statutes, hundreds of pages of regulations. To name a few sources of regulations of guns and ammunition: the Internal Revenue Code, including the National Firearms Act postal regulations restricting shipping of handguns; Federal explosive law; regulations for gunpowder production and importation; the Arms Export Control Act; the Commerce Department export regulations; the Department of Transportation regulations on ammunition explosives and hazardous material transport. In keeping explicit records that can be inspected by BATF, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, licensed dealers have to conduct a Federal criminal background check on their retail sales either directly by the FBI through its national instant criminal background check or through State systems that also use the NICS system. All retail gun buyers are screened to the best of the Government’s ability. Additionally, the firearms industry has voluntary programs to promote safe gun storage and to help dealers avoid sales to potential illegal traffickers. Manufacturers also have a time-honored tradition of acting responsibly to make recalls or make repairs as they become aware of product defects.

In the past, Congress has found it necessary to protect other classes; for example, the light aircraft industry. Jim Inhofe, a Senator from Oklahoma, moved that Amendment reported in Committee by Unanimous Consent be stricken, the Senate, industry that was killed, literally destroyed by frivolous lawsuits. Community health centers, same thing; the aviation industry; the medical implant industry; Amtrak—the computer industry members who are affected by Y2K. We took the nonsense out of the courts and put it where it belongs, into statutes with common sense that require personal accountability and responsibility.

Furthermore, Congress may enact litigation reform when lawsuits are affecting interstate commerce. In many of these lawsuits cities and individuals are trying to use the State court to restrict the conduct of the firearms industry nationally, often contrary to state policies expressed through their own legislatures. A single verdict in favor of an anti-gun plaintiff could bankrupt or regulate an entire segment of the economy—and of America’s national defense. It could be out of business, but most importantly, my right, Oklahomans’ right, all of America’s right to a guarantor of the second amendment to the Bill of Rights is secured for them, in their ability to own and use firearms responsibly.

This bill will protect our national security. It will protect our constitutional rights. It will protect an industry and it will protect thousands of jobs. It also will ensure that people who have suffered a real injury from a real cause of action can be heard and taken seriously while law-abiding manufacturers and dealers of firearms may continue to serve the law-abiding citizens exercising their constitutionally guaranteed second amendment rights.

Mr. President, thank you, and I note the passage of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll. 

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

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

Mr. CRAIG. Mr. President, I just came from our Republican Senate cloakroom doing an interview on this important piece of legislation, and I thought that in the course of that interview there was an interesting comment made by the person on the other end that is probably doing something today and I wonder what you are doing this now? And I thought it would be important for me to put it in the appropriate context because there is a tremendous number of important issues before the U.S. Congress at this time, and that the American people are doing an extraordinarily high level of research as we are headed toward the end of the week. As the leader said a few moments ago, we are headed toward the August recess, which means Congress, in its traditional way, will take the month of August and just sit and have the Labor Day vacation as do many Americans, and we reconvene after Labor Day.

So why now are you addressing the Protection of Lawful Commerce in Firearms Act? S. 397? It was stated in the context that the Senate really can only chew gum or dribble a ball, but it can’t do both. What I think is important for those who might be listening to understand is that we can chew gum and dribble a ball at the same time, and probably have a better time doing that. What is it that the leader is doing at this moment.

Last night, I signed, and I think the President signed, a document that we are very proud of that has been 6 years in coming to the desk of the President of the United States, and now comes to this President because of his very clear urging, and that is the national energy policy.

Yes, the Congress of the United States has been out of work on a national energy policy, and we believe we can take up the conference report now on the floor of the Senate during the remainder of the week before we recess, and we hope that all of our colleagues would let us step back for a moment from this legislation and do so before we move to final passage.

It is very possible that we could also do the transportation conference report. We have extended the legal authority under the Transportation Act 11 times while the Senate and the House did its work, and I hope we would not extend it anymore. So, clearly, there are multiple things we can do, and I trust we will do, before we adjourn for the August recess. But I think the President signed, and I would agree that when our President came to town, now, nearly 6 years ago—and I remember President George W. Bush saying to the leadership: While I spent a good deal of the campaign time talking about education and a variety of other issues, I am here now to talk about national energy. And the first thing I am going to do, as a President-elect and sworn in President, is to name a task force headed by the Vice President to recommend to the Congress the development of a national comprehensive energy policy.

He did, but we did not. He pushed, but we could not produce. He continued to push, and now we have produced, and finally we have a comprehensive energy policy before us. So I would say to those listening and to all of our colleagues, I hope we can dribble a ball and chew gum at the same time and get all of this work done before the August recess. If reasonable heads prevail, we should get it all done by late Friday night. But the leader also said we do have a Saturday, and we do have our work to do. By early afternoon today, we will be on S. 397, the Protection of Lawful Commerce in Firearms Act.

What I would like to do at this time is read a letter that we sent to Majority Leader Frist that we think sets into the right context exactly why we are here today and tomorrow debating this important legislation.

The letter goes something like this: Dear Majority Leader Frist, this was sent on July 12, signed by a great many Senators, Democrats, and Republicans alike, Max Baucus, who is my cosponsor of this legislation, and I, along with a good many others. We said in the early days of World War II, President Franklin Roosevelt foresaw that America “must be the great arsenal of democracy.” Americans rose to this challenge, produced unprecedented arms, arms, not only for U.S. forces but also for our allies around the world.

That tradition continues today, during our Global War on Terror. In 2004–2005, the United States—the only major world power without a government firearms factory of its own—

I said, in earlier statements this morning, we are the only major world power where the Government does not own a firearms factory. They are all owned by private citizens—has contracted to buy over 200,000 rifles, pistols, machine guns, and other small arms for our soldiers, sailors, airmen and Marines. In addition, the U.S. Army alone uses about 2 billion rounds of ammunition per year—about half of it made by private industry. Those guns and ammunition are made in the U.S. and provide good jobs for hardworking Americans.

Those gun manufacturing facilities and ammunition facilities are spread across the United States.

Unfortunately, our military suppliers are in danger. Anti-gun activists have taken to the airwaves to promote more restrictive gun control. The very same companies that arm our men and women on the...
front line against terrorism have been sued all over the country, where plaintiffs blame them for the acts of criminals. These lawsuits defy all the rules of traditional tort law. While many have been rejected in the court—

And that is many of the lawsuits, some 24-plus filed, about half of them now rejected. 

even on verdict for plaintiffs would risk ir-
reparable harm to a vital defense industry. These are some of the reasons I have co-

sporored S. 397, the Protection of Lawful 

Commerce in Arms Act. This bill would pro-
tect America’s small arms industry against these lawsuits, while allowing legitimate, recognized types of suits against companies that negligently sell products, or against gun dealers who break the law.

I was very clear earlier today that S. 397 sets that out in clear fashion. 

The letter goes on to say: 

We urge you to help safeguard our ‘great arsenal of democracy’ by bringing S. 397 to the Senate floor before the August recess, and working to pass it without any amend-
ments that would jeopardize its speedy en-
actment into law. 

That is why we are here today, be-
cause a substantial majority of the Senate has urged our leader to bring this important legislation to the floor. We have asked the Senate to be flexi-
ble, and I mean that in the Senate, while we have legislation on the floor and conference reports on major bills pend-
ing, we wanted to come forward to be able to set aside the legislation and to deal with those, and I trust we will, at least three: conference report on en-
ergy, conference report on transportation, and a conference report on the Interior ap-
propriations bill, which has some crit-
ical veterans money in it that I and others have worked for over the last good number of weeks, and we hope all of that can be effectively accomplished before we complete our work by late Friday night or Saturday.

I think that with full cooperation from all of our colleagues, we can get all or whole legislation done in a timely amount of time.

Another question was asked of me a few moments ago by the person I did the interview with, who said, well, these are very big companies that make a lot of money and are you not protecting them a great deal?

Let me put that into the right con-
text. I am not going to name names, but I will say that I know of at least three firearm companies that have around $100 million worth of sales a year apiece, not collectively but apiece. 

They were comparing it in this inter-
view with the tobacco industry. I said, Well, yes, but of those companies alone, they were selling $1.1 billion, $1.2 billion, some of them $2 billion in-
dustries in their collective value. So we are talking apples and oranges, an industry that is very limited in its ca-
pability that is now being sucked to death in the trade of those companies alone, and even if one of those companies alone, it was bringing in the billions of dollars a year, in necessary legal defenses.

So that is why we have been very specific in the law. It is not the gun in-
dustry immunity bill. It is important that we say that and say it again because it does not protect firearms or ammunitions manufacturers, sellers or trade associations from any lawsuits based on those definitions, but for criminal conduct. The bill gives specific ex-
amples of lawsuits not prohibited. Let me repeat, not prohibited: Product liability, in other words, a gun that misfires, that does damage to the operator of it, those definitions are clearly spelled out within the law. Negligence or neg-
ligent entrustment, breach of contract, lawsuits based on a violation of State and Federal law, it is very straight-
forward, and we think it is very clear.

The trend of abusive litigation tar-
getting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal violence, and we know that.

Furthermore, it threatens the domes-
tic industry that I think is critical, as I have mentioned earlier, to the na-
tional defense of this country. 

It would be possible and I do not know of a soldier serving today or one who has served that would want to serve with a firearm at his or her side being made by a foreign manufacturer. It does not make sense whatsoever. Yet that is the end product of the effort that is under way today, to simply put firearms manufacturers out of busi-
ness. If they can be pushed overseas, then other forms of law can be used to block access to firearms or access to the importation of firearms from for-
eign countries. The argument would be foreign nations are attempting to flood the American consumer with a foreign product. I have heard the argument on the floor by those who have attempted to ban certain types of importation over the years.

It is an argument well spelled out and well used by many. Faulty as it may be, it is an argument that of-
ten-times resonates to the American con-
sumer. But when the American con-
sumer finds out that they have been denied access to a quality U.S. product or that product does not exist, then the argument turns around.

That is why we are on the floor to-day. That is why we are dealing with this bill quickly. And my un-
derstanding that we have arrived at a unanimous consent agreement that brings us on to the bill by 2 this after-
noon. I hope at that time many of my colleagues who are co-sponsors would join with me so that we can move this legislation expeditiously through the Senate. I know there are several amendments that will probably be brought to the floor, most of them de-
structive to the intent of the bill, marginalizing it at best. As a result, I urge everyone with me to join with me on the construct of S. 397, to be able to pass it from the Senate as clean as possible, hopefully, very clean, so the House can act on it immediately and move it to our President’s desk.

That is the intent. As we move through S. 397 over the course of today and tomorrow, I trust we will also be able to deal with the conference re-
ports I have mentioned that it is vital are extremely important for this country and for all of us to have prior to the August recess.

I see no other of my colleagues on this floor wishing to speak at this mo-
moment and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRA-
HAM). The clerk will call the roll.

The assistant legislative clerk pro-
cceeded to call the roll.

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

The PRESIDING OFFICER. Without ob-
jection.

Mr. KENNEDY, Mr. President, I take a moment to explain the effect of our proceeding to this gun bill. We are put-
ing aside an important debate on na-
tional security and the need for our troops in a time of war. Last Friday I listed a number of the amendments that still were pending that would af-
fect the National Guard and our Re-
serve troops and also provide addi-
tional kinds of protections for the serv-
ice men and women. The decision by the Republican leadership was that we had spent enough time on the legis-
lation, even though we chose to spend 2 weeks earlier in the year on the credit

interest and on bankruptcy and a similar amount of time on the class ac-
tion legislation which benefited special interest groups. The credit card indus-
try will profit about $6 billion more this year than last year because of the actions taken. We also spent time on the special interest legislation dealing with class actions. We spent the time on that, but we are not on the Defense authorization bill.

We had an important amendment on the whole policy of the administration in developing new nuclear weapons which has profound implications in terms of the issues of nuclear prolifera-
tion and nuclear safety. We looked for-
ward to having an opportunity to de-
bate that issue. That was put aside by the Republican leadership because they were concerned about a provision that had been introduced to the Defense au-
thorization bill last Thursday. Senator LEVIN, Senator REED, Senator ROCKE-
FELLER, and I introduced an amend-
ment to create an independent com-
mission to examine the administra-
tion’s policy surrounding the detention and interrogation of detainees as an amendment to the Defense authoriza-
tion bill.

The response of the White House was instant and negative. The President announced he would veto the Defense authorization bill, all $442 billion of it, if it included any provisions to restrict the powers I have mentioned that I think are extremely important, and to creating a commission to inves-
tigate detainee operations. No other re-
response could have demonstrated so
clearly the urgent need to establish a commission than that this imperial White House considers itself immune from restraints by Congress on its powers no matter what the Constitution says.

It is appalling that the administration is so afraid of the truth that they are even willing to veto the Defense bill which includes billions of dollars for our troops, pay raises for our troops, and funds for armored humvees to protect our troops in Iraq. But the administration has been so successful that it is not even willing to veto that legislation because of an amendment that had been offered by Senator Levin, Senator Reed, Senator Rockefeller, and myself.

Now the Senate Republican leaders have pulled the Defense bill from the floor. It is interesting that Republican leaders hatched this plan after Vice President Cheney visited with Senate Republicans last week. He told them the White House does not want votes on amendments to require an inquiry into their detention policies and practices. The White House has not only threatened to veto a national defense bill to avoid accountability, but is preventing us from voting on the issue. It is almost certain that the administration’s detention and interrogation policy failed to respect the longstanding rules that have guided our policy in the past, rejecting the collective wisdom of our career military and State Department professionals and today’s newspapers. We see the result of this action once again with the use of dogs against detainees.

We need to return to our core values of openness and accountability. The facts we know so far about torture and other abuses, about indefinite detention, have already become recruiting tools for terrorists. But if we act now to uphold our principles, we can end the outrage, we can end the coverups, and hold officials accountable. The White House has not only threatened to veto a national defense bill to avoid accountability, but is preventing us from voting on the issue. It is almost certain that the administration’s detention and interrogation failed to respect the longstanding rules that have guided our policy in the past, rejecting the collective wisdom of our career military and State Department professionals. Today’s newspapers. We see the result of this action once again with the use of dogs against detainees.

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In October 2003, the Commission had no choice, after repeated requests, but to subpoena records from the FAA.

In November 2003, after multiple requests, the Commission again had to subpoena information, this time from the Department of Defense.

For the rest of that fall and spring, the administration repeatedly tried to deny access to presidential documents important to the Commission’s investigation, until public outcry grew loud enough to convince the administration otherwise.

Key members of the administration balked at testifying, until public opinion again swayed their stance.

And then, in an ironic twist, 28 pages of the 9/11 Commission Report itself was classified. So, is all this secrecy really about protecting us from the terrorists? Or is it just to avoid accountability?

This administration, once in office, wasted no time challenging those who would hold them accountable. In May 2001, Vice President CHENEY’s energy task force issued its report recommending more oil and gas drilling to solve our energy problems. In light of his former employment at Halliburton, the report was hard to ignore, but was left unchallenged. What was astonishing was the Vice President’s refusal to identify the people and groups who helped write the policy.

In June 2001, the GAO, the non-partisan, investigative arm of Congress, requested information on the energy task force, following reports that campaign contributors had special access while the public was shut out. GAO’s request was simple. It asked, “Who serves on this task force; what information is being presented to the task force and by whom is it being given; and the costs involved in the gathering of the facts.” Considering that the task force wrote the nation’s energy policy, it was not an unreasonable request.

The administration refused to comply, even though GAO’s request was not out of the ordinary. President CLINTON’s task forces on health care and on China trade relations were both investigated by GAO. The Clinton administration turned over detailed information on the participants and proceedings of the task forces.

But the Bush administration argued that GAO did not have the authority to conduct this investigation. For the first time in its 80-year history, GAO was forced to file suit against an administration to obtain requested information. But the court sided with the administration in Walker v. Cheney, and GAO’s investigative oversight authority was effectively reduced.

Independent oversight is critically important when one party controls both Congress and the White House, and GAO is critical to that oversight.

On October 12, 2001, John Ashcroft wrote a memo outlining the Justice Department’s views on Freedom of Information Act requests. The memo set the tone for an administration hostile to such requests. It discouraged executive branch agencies from responding to Freedom of Information Act requests, even when the agencies had the option to respond. He basically reversed the longstanding policy of prior administration, watered down, and then, terrorists could find it too. The head of the citizens’ group was a 20-year army veteran. His water well was only a mile and a half away from the proving ground. “It’s an abuse of power,” he said. “The government has to be transparent.”

Even Members of Congress have had to subpoena information in order to do their work. Last October, Congressmen CHRISTOPHER SHAYS and HENRY WAXMAN, the chairman and ranking Democrat on the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations, asked for an audit of the Development Fund for Iraq. The copy they received had over 400 items blacked out. They then faced difficulty obtaining an unredacted report from the Defense Department that they had to prepare a subpoena. Once they finally received an unredacted copy, guess what had been blacked out? More than $228 million in charges from Halliburton. So far, no one has been held accountable.

It has now been 744 days without a White House investigation into the CIA leak case. It took 85 days for the administration to turn over evidence relating to the leak. Senate Republicans held 20 hearings on accusations against President CLINTON and the Whitewater case, but they have held zero hearings on the leak of the covert identity of CIA agent Valerie Plame. So far, no one has been held accountable.

Last week, the Defense Department refused to cooperate with a federal judge’s order to release secret photographs and videotapes of prisoner abuse at Abu Ghraib. The ACLU had sued to obtain release of 87 photographs and 4 videotapes, but the administration filed sealed documents resisting the order. They are so obsessed with secrecy that they even make secret arguments to keep their secrets. So far, no one has been held accountable.

Also last week, the administration submitted an initial report on progress in training Iraqi security forces. It has been more than 2 years since the fall of Baghdad, and a reliable assessment of our progress in training those forces was long overdue. The key questions that the American people want to know are how many Iraqi security forces are capable of fighting on their own and what our military requirements will be the months ahead. But the answers remain classified. The American people deserve to know the facts about our policy. They want to know how long it will take to fully train the Iraqis in which our military mission will be completed. They can deal with the truth, and they deserve it.
No one wants to do anything that would help the insurgents. But the administration must do a better job of responding to the legitimate concerns of the American people. The administration still isn’t willing to be candid. It needs to shed some light on the secrecy and answer these questions in good faith for the American people. The silence is deafening.

There is also a pattern of withholding information from members of Congress on the administration’s nominations. In 2003, Miguel Estrada was nominated for a Federal judgeship. We requested legal memoranda he wrote as Assistant Solicitor General, and we were repeatedly denied. In 2004, Alberto Gonzales was nominated to be Attorney General. We requested various memoranda he authorized on administration torture policy, and we were repeatedly denied. Earlier this year, John Bolton was nominated to be Ambassador to the United Nations. We requested legal memoranda he wrote as Assistant Secretary of State and he denied those requests. We have had a year to study it and had we been repeatedly denied. Instead of coming clean and providing the information to the Congress, we have been stonewalled. Our questions have gone unanswered. And now, the President appears to be poised to abuse his power further, rub salt in the wound, and send John Bolton to the United Nations anyway with a recess appointment of dubious constitutionality.

Now John Roberts has been nominated to a lifetime seat on the Supreme Court. We hope this nomination will not be another occasion for administration secrecy, but press accounts suggest otherwise. Even before we asked for any documents, the administration announced it will not release many of the memoranda written by John Roberts. The White House spokesmen says they will claim attorney-client privilege in many of the documents vital to our consideration of Judge Roberts for the Supreme Court were written while he worked as a top political and policy official in the Solicitor General’s office. That office works for all the American people—not just the President. Attorney-client privilege clearly has never been a bar to providing the Senate with what it needs to process a nomination.

As we all know, no one is simply entitled to serve on the Supreme Court of the United States. One has to earn that right. And one earns that right by getting the support of the American people, reflected in the vote here in the United States Senate. And that is what the confirmation process is all about. We know that the administration is familiar with and aware of Judge Roberts’ positions on various issues. They have had a year to study it and had their associates talk with him and with those who worked with him. The real question is: Shouldn’t the American people have the opportunity to get the same kind of information so that they can form their own impression and so that the Senate can make a balanced, informed judgment and see whether or not the balance in the Supreme Court will be furthered? That is the issue and it appears that the administration is continuing to withhold important information to permit the Congress the ability to do so.

Yes, the administration has consistently used the horror of 9/11 and its disdain of congressional oversight to get what it wants and to avoid accountability. It consistently uses this secrecy to roll back the rights of average Americans. But even its best spin doctors can’t conceal some of the administration’s most flagrant abuses of power.

Last August, the New York Times reported that “health rules, environmental regulations, energy initiatives, worker-safety standards and product-safety disclosure policies have been modified in ways that often please business and industry leaders while dismaying interest groups representing consumers, workers, drivers, medical patients, the elderly and many others.” Often, this has been done in silence and near secrecy.

In 2000, Congress responded to the disclosure of defects in Firestone tires, which may have been responsible for as many as 270 deaths, by passing legislation that would make information on auto safety and related defects readily available. But in July 2003, the National Highway Traffic Safety Administration decided that reports of defects would cause “substantial competitive harm” to the auto industry, and exempted claims and consumer complaints from the Freedom of Information Act. Clearly, that was another abuse of power that protects big business while putting the American public at greater risk.

In 2003, the administration knowingly withheld cost estimates of its Medicare prescription drug bill—one of the most important pieces of legislation that year. The estimates showed higher costs over more years than the administration claimed, but the information was withheld because of fears that the actual numbers would persuade Members of Congress to vote no.

Administration officials threatened to fire Chief Actuary Richard Foster “so fast his head would spin,” if he informed Congress of the real cost estimate. I wrote a letter to the administration on this subject, but they never responded to my questions.

In 2003, the Drug Administration kept secret a report that children on antidepressants were twice as likely to be involved in suicide-related behavior. The FDA also prevented the author of the study—their expert on the issue—from discussing his findings to an FDA advisory committee. Dr. Joseph Glenmullen, a Harvard psychiatrist, said “Evidence that they’re suppressing a report like this is an outrage, given the public health and safety issues at stake.”

The FDA also refused to issue an ambiguous warning when they had unambiguous data like this is an outrage.”

In November 2003, the White House told the Appropriations Committees in both Houses of Congress that it would only respond to requests for information if they were signed by the committee chairman. In a time of one-party rule, this tactic made congressional oversight almost completely impossible.

In April 2004, the ranking member of the Environment and Public Works Committee, Senator Jeffords, was forced to place holds on several EPA nominees after the administration refused to respond to twelve outstanding information requests, including information on air pollution.

In August 2004, under pressure from the Department of Homeland Security, the FCC decided to make telephone service outage reports confidential, and exempt them from Freedom of Information Act requests. The FCC argued it was because companies could use competitors’ service outages in advertising. You have to make informed decisions on your phone company, but at least the company will be protected from nasty advertising.

In the same month, we discovered that the administration had blocked studies criticizing the Central American Free Trade Agreement—after it had already paid for them. In 2002, the Department of Labor hired the International Labor Rights Fund to back up its argument that the Central American Free Trade Agreement had improved on labor issues. The contractor found the opposite, and posted its results on its Web site in March 2004. The Labor Department ordered its removal from the website, banned its release, and barred the contractor’s employees from discussing the report. The Department of Labor denied a Congressman’s request for the report under the Freedom of Information Act. These are the American people’s tax dollars. Faced with the administration’s refusal, the Senate didn’t like an answer, it abused its power to avoid accountability—at their expense.

Yesterday, the Wall Street Journal disclosed yet another list of abuses in Iraq reconstruction. Ten billion dollars of no-bid contracts were awarded; $89 million was doled out without contracts at all; $9 billion is unaccounted for, and may have been embezzled. An official fired for incompetence was still giving out millions of dollars in aid, after his termination. A contractor was paid twice for the same job. A third of all U.S. vehicles that had unambiguous data like this is an outrage.”

Yes, the administration has consistently used the horror of 9/11 and its disdain of congressional oversight to get what it wants and to avoid accountability. It consistently uses this secrecy to roll back the rights of average Americans. But even its best spin doctors can’t conceal some of the administration’s most flagrant abuses of power.
have a duty to hold the administration accountable for its actions.

Mr. President, on the matter we have before the Senate at the present time, here we go again on the issue of legal immunity for the gun industry. Without a doubt, the political interaction has brought back this special interest, anti-law enforcement bill that strips away the rights of victims to go to court.

Why the urgency to take up this bill now? Why is Congress considering this bill again? Surely, the Republican leadership can take some time to address other priorities before attempting to give a free pass to the gun industry. Why aren't we completing our work on the Defense authorization bill? That is what was before the Senate. Why have we displaced a full and fair debate on the issue of the Defense authorization bill—which has so many provisions in there concerning our fighting men and women in Iraq and abroad? Surely, this is an appropriate forum for these discussions.

I commend these brave officers for their courageous battle to change the system.

There will be more shootings and more dead children.

The Nation's response to this death toll has been unacceptable. Yet, year after year, one hearing after another, we continue to ignore the vast discrepancy in gun deaths in the United States compared to other nations? How can we possibly justify this effort to give the gun industry even greater protection for irresponsible behavior?

Mr. President, this bill is nothing short of Congress aiding and abetting the provision of guns to criminals. It takes the gun industry off the hook when their guns are sold to the wrong people who are out to hurt us. Under this administration, we have seen the budget cuts to the Bureau of Alcohol, Tobacco and Firearms, so our law enforcement forces don't have the resources they need to keep guns out of criminal hands. That is why these citizen lawsuits are so important. If the police cannot do their job, then citizens should have the ability to sue. But this legislation will throw the citizens out of court. It is wrong. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I come to the floor to speak in opposition to the motion to proceed on the gun liability bill.

Before I begin, I want to say I find it incongruous that we had the Defense Authorization bill up, an important bill—we were about to consider some amendments affecting enemy combatants and detainees, I think very important amendments, by Senator MCCAIN, Senator WARNER, and Senator GRAHAM. The bill was up for an unprecedented short time, and had to have cloture, according to the rules. Well, some of us wanted to hear what Senators MCCAIN, WARNER, and GRAHAM had to say. So, we voted against cloture. Then, the leader took down the bill, and now we are on a bill for a real special interest in this country, the National Rifle Association.

Mr. President, I have carefully reviewed this bill, and in my assessment, it is not a bill to prevent gun violence; rather, it protects one segment of industry against the lawful interests of our States in remedying and deterring negligent conduct.

This bill is a simple giveaway to one industry—the gun lobby. It is a special-interest windfall.

I, for one, do not believe we should be giving the gun industry sweeping and unprecedented protection from the type of lawsuits that are available to every individual involving every other industry anywhere in America.

We have to recognize that guns in America are responsible for the deaths of 30,000 Americans a year. If we remove the incentives to responsible behavior, individuals will have no recourse. Gun owners and gun victims alike will be left virtually powerless against an industry that is already immune from so many other consumer protections. So we find ourselves today on the cusp of yet another NRA victory.

Simply put, we are considering legislation that would ensure that it is not in the financial interests of gun manufacturers or sellers to take reasonable care in administering their business. We are removing the incentives of the tort system to encourage responsible behavior. No longer will those incentives to responsible behavior be protected.

Let me be clear, if this bill is approved, it will not be a victory for law-abiding gun owners who might someday benefit from the ability to sue a manufacturer or dealer for their negligent conduct. No, this will be a victory for those who have turned the NRA into a political powerhouse, unconcerned with the rights of a majority of Americans who want prudent controls over firearms and who want to maintain their basic legal right in our civil law system.

Now, I do not support meritless lawsuits against the gun industry. I do not think anybody does. It is my belief gun manufacturers and dealers should be held accountable for irresponsible marketing and distribution practices, as anyone else would be, particularly when these practices may cause guns to fall into the hands of criminals, juveniles or mentally ill people.

This legislation has one simple purpose: to prevent lawsuits from those harmed by gun violence as a result of the irresponsible conduct of others. These include lawsuits filed by cities and
counties responding to crimes often committed using guns that flood the illegal market, with the full knowledge of the distributors that the legal market could not possibly be absorbing so many of these weapons—that is why so many mayors have written strongly against this bill. Those who buy and sell firearms often have been convicted of violent crimes and their families who are injured or killed as a result of gun violence facilitated by the negligence of gun manufacturers. This issue is not an abstract one. The bill is going to hurt real people—victims not only of criminal misuse by a well-designed firearm, but victims of guns that have been marketed in ways which, quite frankly, should be illegal.

Essentially, this bill prohibits any civil liability lawsuit from being filed against the gun industry for damages resulting from the criminal or unlawful misuse of a gun by a third party, with a number of exceptions. In doing so, the bill effectively re-writes traditional principles of liability law which generally hold that persons and companies may be liable for their negligence, even if others are liable and would essentially give the gun industry blanket immunity from civil liability cases of this type, an immunity no other industry in America has today. This is truly a remarkable aspect of the legislation. It is a radical departure from the nation’s laws and the principles of federalism.

The bill does allow certain cases to move forward, as its supporters have pointed out, but these cases can proceed only on the narrowest of circum-stances. Countless experts have now said that this bill would stop virtually all of the suits against gun dealers and manufacturers filed to date which are based on distribution practice, many of which are vital to changing industry practice and compensating victims who have been horribly injured through the clear negligence or even borderline criminal conduct of some gun dealers and manufacturers.

With any other business or product, in every other industry, a seller or manufacturer can be liable if that seller or manufacturer is negligent, but not here. Since money, rather than life or liberty, is at stake in a civil case, the standard of proof is lower. There need be no proximate cause, no causation, no liability for emotional distress and no violation of the right to fair compensation to cover damages. In the overwhelming majority of civil cases, there is no criminal violation. But here, contrary to general negligence law covering almost every other product, the bill allows negligent gun dealers and manufacturers to get off the hook unless they violated a criminal law. This is dreadful. It is despicable. This bill would create a special area of law for gun manufacturers and says that unless they violate a law, they can be careless, carelessly stock, secure, and sell dangerous weapons.

The judge in Washington State, presiding over the case brought by the DC area sniper victims—the case where a sniper lay in the trunk of a car with a hole punched through the trunk, went to different gasoline stations, schools, parks, and stores, and simply fired at people, indiscriminately killing them—has ruled twice that the dealer of the trigger used in the DC sniper case, Bull’s Eye Shooters Supply, and its manufacturer, Bushmaster Firearms, may be liable in negligence for enabling the snipers to obtain their weapon. But even with the new modifications of this bill, the court will likely be thrown out of court under this legislation. So guess whose side this Senate is coming down on. Not the side of the victims of the DC sniper but the side of Bull’s Eye Shooters Supply and the manufacturer, Bushmaster Firearms.

Let’s make that clear. This is the most notorious sniper case in America. There is negligence on the part of the gun dealer who sold that gun. He didn’t report it. He allowed his plant door with unmarked guns to be sold to criminals. But with these proposed changes, the case against Kahr Arms would be dismissed. A case would be dismissed where a gun manufacturer negligently hired drug-addicted criminal and let them go out the plant door with unmarked guns to be sold to criminals. That is what this does. This conduct, though outrageous, violated no law—negligent, yes; criminal, no. Contrary to current law which allows judges and juries to apportion blame and damages, this bill would bar any damages against a manufacturer if another party was liable due to a criminal act.

Why should firearms get special treatment? In our society, we hold manufacturers liable for the damage their negligence causes. We do this across the board for every industry, such as the automobile industry if they build an unsafe car even if they are negligent putting it together. Lawsuits filed against the gun industry provide a way for those harmed to seek justice from the damages and destruction caused by firearms. Just as important, they create incentives to reform practices proven to be dangerous. I will bet Kahr Arms will make every effort not to hire drug addicts to sell guns to criminals. If that case is dismissed, they can hire them. They can sell to criminals. That is not going to make a difference.

When this bill was introduced in the last Congress and again in this Congress, its supporters spoke about the need to protect the industry from frivolous lawsuits and the need to protect the industry from the potential loss of jobs brought on by future lawsuits. These claims are unfounded. This bill is simply the latest attempt of the gun lobby to evade industry accountability. The suits against the industry come in varying forms, but they all have one goal in common—forcing the firearms industry to become more responsible. What is wrong with that? Under current tort law, an individual has a duty to act responsibly. What is special about the gun industry that they should be exempt from this most basic of civil responsibilities? Answer: Nothing. This is an industry that is less accountable under law than any other in America right now. The only avenue of accountability left is the courtroom. This bill attempts to slam the courtroom door in the face of those who would hold the industry responsible for its criminal actions.

We ought to hold the industry responsible for taking the proper precautions to ensure law-abiding citizens are able to obtain the guns they choose while criminals and other prohibited individuals are not.

Let me read from a letter that was sent by more than 50 full professors from law schools all across this Nation, from the University of Michigan School of Law, UCLA Law School, the University of Virginia School of Law, Indiana University School of Law, Harvard Law School, Syracuse University College of Law, Brooklyn Law School, Georgetown University Law Center, Lewis and Clark Law School, Roger Williams University School of Law, Northwestern School of Law, University of Chicago Law School, William Mitchell College of Law, University of Colorado School of Law, Duke Law School, Albany Law School, University of Oklahoma College of Law, Houston Law Center, Widener University School of Law, Rutgers, Tulane, Boston, Albany, Temple University Beasley School of Law, Case Western Reserve University School of Law, Cornell Law School, Salmon P. Chase College of Law, Northern Kentucky University, NYU School of Law, The George Washington University Law School, Boston College Law School, Tulane University Law School, Columbia Law School, New York Law School, University of Alabama Law School, Emory University School of Law, University of California Boalt School of Law, and on and on.

Let me tell you what they say. I will read parts of it. They have reviewed this bill, S. 397.

No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligence. S. 397 . . . would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in America that would be free utterly to disregard the risk, no matter how high or foreseeable, that their conduct
might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike other businesses or individuals, be free to take no precautions against even the most foreseeable and easily preventable harms resulting from the illegal actions of third parties. And they could engage in this negligent conduct persistently, even with the specific intent of profiting from the sales of guns that are foreseeably headed to criminal hands.

They could engage in the conduct in an unlimited way and profit from the sales of guns that are foreseeably headed for criminal hands.

Under this bill, a firearms dealer, distributor, or manufacturer could park an unguarded open pickup truck full of loaded assault weapons on a city street corner, leave it there for a week, and yet be free from any negligence liability if and when the guns were stolen and used to do harm.

Mr. President, this is what we are doing. This isn’t just my view, this is the view of more than 50 professors of law and public policy, including some of the most prominent scholars and figures in the Nation. We are facilitating criminal conduct by providing this protection against liability.

It goes on to say:

A firearms dealer, in most states, could sell firearms to an individual every day, even after the dealer is informed that these guns are being used in crime—even, say by the same violent street gang.

That is a direct quote. So you are facilitating a situation where somebody could sell a hundred guns a day to a street gang and have no liability for that action. That is what I think is really despicable—all because of the power of one lobby.

Again, it goes on to say:

It might appear from the face of the bill that S. 397 and H.R. 800 would leave open the possibility of tort liability for truly egregious misconduct, by virtue of several exceptions set forth in Section 4(5)(1). Those exceptions, however, are in fact quite narrow and would give those in the firearm industry little incentive to the risks of foreseeable third party misconduct.

One exception, for example, would purport to provide exceptions for “negligent entrustment.” The bill goes on, however, to define “negligent entrustment” extremely narrowly.

The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct.

So when somebody comes to the floor and says this bill provide for negligent entrustment, don’t believe it. It is so limited that it doesn’t cover the whole field of those who handle firearms.

And then it goes on to say:

Even as the sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the seller knows or ought to know will use it to commit crimes or negligent entrustment. The exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals, careless handling of firearms, lack of security, or any of a myriad of potentially negligent acts.

Another exception would leave open the possibilites for statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a legal technical case of negligence liability. No jurisdiction attempts to legislate standards of care as to every detail of life, even in a regulated industry; and there is no need to do so here. Because general principles of tort law make clear that the mere absence of a specific statutory prohibition is not carte blanche for unreasonable or dangerous behavior. S. 397 and H.R. 800 would turn this traditional framework on its head, and free those in the firearms industry to behave as carelessly as they would like, so long as the conduct has not been specifically prohibited. If there is no statute against leaving an open truckload of assault weapons on a street corner, or against leaving firearms in the same room with the same individual, under this bill there could be no tort liability.

That is what this bill is opening up. Again, this represents a radical departure from traditional tort principles.

Again, this isn’t just me saying this; this is more than 50 law professors from almost 50 different law schools.

As currently drafted, this bill would not simply provide an exemption of tort liability, as has been suggested, but would in fact dramatically limit the application of longstanding and otherwise universally applicable tort principles. It provides to firearm makers and distributors a literally unprecedented form of tort immunity not enjoyed, or even dreamed of, by any other industry.

Mr. President, I know the motion to proceed will pass. I also know that what is being engaged upon is the most stringent test of statesmanship I have ever seen take place in this body to prevent amendments from being offered once cloture is invoked, which is unprecedented form of tort immunity not enjoyed, or even dreamed of, by any other industry.

That is what we were elected to do. That is what we were elected to do. No one in this body was elected to be the Senator from the National Rifle Association. Although they have a point of view, and although this point of view is popular in many places, the question is, do we still protect the public welfare?

I say to you we do not protect the public welfare, as more than 50 professors of law and public policy, including some of the most prominent scholars and figures in the Nation. We are facilitating criminal conduct by providing this protection against liability.

The impact of this bill on the law enforcement community is well illustrated by the lawsuit brought by former New Jersey police officers Ken McGuire and David Lemongello. On January 12, 2001, McGuire and Lemongello were shot in the line of duty with a firearm negligently sold by a West Virginia dealer. The dealer had sold the gun, along with 11 other handguns, in a cash sale to a straw buyer for a gun trafficker. In June 2004, the officers obtained a $1 million settlement from the dealer. The dealer, as well as two other area pawnshops, also have implemented safer practices to prevent sales to traffickers, including the new policy of ending large-volume sales of handguns. These reforms go beyond the requirements of current law and are not imposed by any manufacturer or distributors.

If immunity for the gun industry had been enacted, the officers’ case would have been thrown out of court and would have been denied. Police officers like Ken McGuire and Dave Lemongello put their lives on the line every day to protect the public. Instead of honoring them for their service, legislation granting immunity to the gun industry would deprive them of their basic rights as American citizens to prove their case in a court of law. We stand with officers McGuire and Lemongello in urging you to oppose such legislation.

Sincerely,

International Brotherhood of Police Officers (AFL-CIO Police union); Major Cities Chiefs Association (Represents our nation’s largest police departments); National Black Police Association (Nationwide organization with more than 35,000 members); Hispanic American Police Command Officers Association (Serves as liaison to local staff and federal agents); National Latino Peace Officers Association; The Police Foundation (A private, nonprofit research institution); The National Prosecutors’ Conference; Rhode Island State Association of Chiefs of Police; Maine Chiefs of Police Association.

Departments listed for identification purposes only:

Sergeant Moises Agosto, Pompton Lakes Police Dept. (NJ); Sheriff Thomas A. Alexnder, Summit County Sheriff’s Office (OH); Sheriff Thomas L. Altieri, Trumbull County Sheriff’s Office (OH); Commissioner Anthony W. Bialosky III, Newark Police Dept. (NJ); Chief Jon J. Arcaro, Conneaut Police Dept. (OH); Officer Robert C. Arnold, Rutherford Police Dept. (NJ); Sheriff Kevin A. Beck, Williams County Sheriff’s Office (OH); Detective Sean Burke, Lawrence Police Dept. (MA); Chief William Bratton, Los Angeles Police Dept. (CA); Special Agent (Ret) Ronald J. Brogan, Drug Enforcement Agency; Chief Thomas V. Browne, Amsterdam Police Dept. (NY).

Chief (Ret) John H. Celsinki, Wilmington Police Dept. (NC); Chief Michael Chiodo, Portland Police Dept. (ME); Chief William City, Oklahoma Police Dept. (OK); Chief Kenneth V. Collins,
Maplewood Police Dept. (MN); President Lynn N. Cripps, Iowa State Police Association, Marshalltown Police Dept. (IA); Chief Daniel G. Davidson, New Fairfield Police Dept. (CT); Aetna Director, Jim Delahanty, U.S. Dept. of Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Berwick Police Dept. (OR); Captain George Egbert, Rutherford Police Dept. (NJ); Sterling Epis, President, Association of Former Customs Agents, North Dakota (ND); Chief Dean Essemann, Providence Police Dept. (RI).

Other Daniel Fagan, Boston Police Patrolman’s Assoc., Boston Police Dept. (MA); Capt. Mark Folsom, Kansas City Police Dept. (MO); Chief Charles J. Gliniewicz, Elgin Police Dept. (60); Superintendent Jerry G. Gregory (ret.), Rainier Township Police Dept. (PA); Chief Jack F. Hays, Phoenix Police Dept. (AZ); Chief Lee Roy Villareal, Bexar County University Police Dept. (TX); Asst. Police Director, Maine Police Dept. (ME); Chief Ronald C. Sloan, Arvada Police Dept. (CO); Chief William Taylor, Rice University Police Dept. (TX); President Lynn N. Cripps, Iowa State Police Association, Marshalltown Police Dept. (IA); Chief Daniel G. Davidson, New Fairfield Police Dept. (CT); Aetna Director, Jim Delahanty, U.S. Dept. of Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Berwick Police Dept. (OR); Captain George Egbert, Rutherford Police Dept. (NJ); Sterling Epis, President, Association of Former Customs Agents, North Dakota (ND); Chief Dean Essemann, Providence Police Dept. (RI).

Chief Edward Reines, Yavapai-Prescott Officer Daniel Fagan, Boston Police Patrolman’s Assoc., Boston Police Dept. (MA); Capt. Mark Folsom, Kansas City Police Dept. (MO); Chief Charles J. Gliniewicz, Elgin Police Dept. (60); Superintendent Jerry G. Gregory (ret.), Rainier Township Police Dept. (PA); Chief Jack F. Hays, Phoenix Police Dept. (AZ); Chief Lee Roy Villareal, Bexar County University Police Dept. (TX); Asst. Police Director, Maine Police Dept. (ME); Chief Ronald C. Sloan, Arvada Police Dept. (CO); Chief William Taylor, Rice University Police Dept. (TX); President Lynn N. Cripps, Iowa State Police Association, Marshalltown Police Dept. (IA); Chief Daniel G. Davidson, New Fairfield Police Dept. (CT); Aetna Director, Jim Delahanty, U.S. Dept. of Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Berwick Police Dept. (OR); Captain George Egbert, Rutherford Police Dept. (NJ); Sterling Epis, President, Association of Former Customs Agents, North Dakota (ND); Chief Dean Essemann, Providence Police Dept. (RI).

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He provided Judge Roberts a copy of these questions last week when the two of them met and has stated that he will take “responsibility to make sure that those questions are answered.”

Any of our colleagues can, of course, ask whatever questions they want, but the notion that Judge Roberts puts his confirmation at risk if he does not answer the questions on the list from the Senator from New York is contrary to the traditional practice of this body. Nearly every single one of the questions involves an issue that is likely to come before the Supreme Court during Justice Roberts’s tenure. Every single Justice confirmed in recent memory has declined to answer questions of the sort contained on that list.

As Justice Ginsburg has noted:

In accord with longstanding norm, every member of the current Supreme Court declined to furnish such information to the Senate.

Every member of the Court has declined to answer such questions because it has long been understood that forcing nominees to take sides on issues while under oath compromises their ability to rule impartially in cases presenting those issues once they sit on the Court.

Judges are supposed to decide cases after hearing the evidence presented by the parties involved and the arguments presented by their lawyers. They are supposed to keep an open and impartial mind.

As Justice Ginsburg has also noted, “the line each [Justice] drew in response to preconfirmation questioning is . . . crucial to the health of the Federal judiciary.”

Judges in our system are like umpires in a baseball game. They are not supposed to take sides before the game has begun. Judges are not, for example, supposed to pledge to the Senate that they will be “on the side of labor” or “on the side of corporations” once confirmed to the bench. We should not demand of judges that they are biased on behalf of a particular party before they have even gotten to the bench and heard the facts and the arguments of counsel.

The only side that a judge should be on is on the side of the law. Indeed, that is the oath that each of them take when they are sworn into office. Sometimes they will win in court, and sometimes they should lose. Sometimes labor should win in court, and sometimes labor should lose. But it depends on the facts of the case and on the law that applies to those facts. Any judge worth their salt would decline to make a commitment ahead of time about how that hypothetical controversy would come out, not knowing what those facts are or how the question would be presented.

The Senator from New York has said that his questions do not threaten Judge Roberts’s impartiality because he is not asking about specific cases that are already pending before the Supreme Court. He acknowledges that asking questions about those cases—indeed, that is the oath that each of them take when they are sworn into office. Some-
I hope and expect that we will not break that longstanding tradition with Judge Roberts.

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

The PRESIDING OFFICER (Ms. MURKOWSKY). The roll call will now proceed.

The legislative clerk proceeded to call the roll.

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

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

Mr. FRIST. Madam President, the current Congress has taken a stand against frivolous lawsuits, and we have done so in a number of ways as we paint a portrait of the fact that frivolous lawsuits today are not in the interest of the American people. We addressed it in class action reform. We addressed it to a degree with bankruptcy reform, returning to personal responsibility whether or not. We did it with asbestos reform, an issue that has for the last 10, 15, 20 years unfairly resulted in the trial lawyers doing very well, but the patient with cancer, mesothelioma, not being compensated, the victims not being compensated. We will be addressing it at some point in time, hopefully in this Congress, and then gun liability, the Protection of Lawful Commerce in Arms Act, which is being addressed today and tomorrow and possibly the next day.

The bill lays down at the frivolous lawsuits that today are aimed at gun manufacturers and people who are selling firearms. The bill places responsibility on the criminal for the unlawful use of guns, and that is where that responsibility belongs.

Many people believe that the whole gun manufacturing industry is a hugely profitable industry, and that is wrong. It is not. The gun industry is relatively modest. In 1999, the most recent year I have had, there was an industry total profit of about $200 million. If we put all the manufacturers of firearms together, they would not even make the Fortune 500 list.

More important than size is the hard-working people who are manufacturing guns. I have had the opportunity, as many of our colleagues have, to go to these wonderful facilities with hard-working Americans, typically in rural communities, who are manufacturing and passing on the guns.

The firearm maker I visited was in a rural area with not that many employees. They were putting together shotguns which many of us use to hunt over the course of the year. Right now my favorite activity is taking my sons hunting on the weekend, to be together and share fellowship.

I mention that because when one tours these gun manufacturing facilities, they realize that frivolous lawsuits drive people out of the business, which is little recognized, and it has been mentioned on the Senate floor, but I wanted to mention it again because I am sure others will come forward because the problem is so real. It is so apparent, and that is that America relies on small companies to equip our soldiers and our law enforcement officers with the arms they need to protect us or to fight for our freedom. The guns our police officers and soldiers carry are made in the United States by hard-working Americans.

The main manufacturer of guns in my home State, just as one example, supplies important small arms to the military. So far, this middle Tennessee company has not been sued. In fact, Tennessee passed some liability protections back in 1999. But if they are sued and put out of business, the military would lose a critically important supplier, and 70 Tennesseans for this one company, small employer, would lose their jobs.

We all agree that guns need to be kept out of the hands of criminals, and that is why we have innumerable, countless laws and regulations to stop illegal gun sales. We cannot let frivolous lawsuits strip our police officers and our soldiers of the guns they need to protect us. We cannot allow unfair litigation to cripple our national security.

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

Mr. McCONNEL. Madam President, I rise to speak on the nomination of Judge John Roberts to be the next Justice of the Supreme Court of the United States. As we are beginning to learn, the President has selected one of the foremost legal minds of his generation. Many of my colleagues have already spoken Judge Roberts’ praises on
this floor, and I agree with all of them. Judge Roberts possesses a keen intellect, an open mind, very importantly, a judicious temperament, and a sterling reputation for integrity. He will faithfully apply the Constitution, not legislate from the bench. He should be confirmed in time for the Court to operate at full strength by October 3.

Looking to recent history, and looking more specifically to the most recent Supreme Court nominations of Justices Ruth Bader Ginsburg and Stephen Breyer, I would think that I should not have cause to worry how this nominee will be treated. Then, as now, the President’s party controlled the Senate. Then, as now, the President nominated a jurist whose credentials could not be questioned. The only difference is that the occupant of the White House then was a Democrat, and the current President is a Republican.

Bush and Clinton have made all the difference to some of my friends on the other side of the aisle.

In recent weeks I have begun to worry that some of my Democratic friends on the other side have forgotten the standard to which the Senate held Justices Breyer and Ginsburg when they were nominees. Judge Roberts deserves the same standard, no more or no less, than the nominees of President Clinton. But I fear that the Ginsburg-Breyer standard—which I will call the “Ginsburg standard” for short—is giving way to a double standard. I would like to remind my colleagues of recent history, so we may draw some lessons from the confirmation processes of Justices Breyer and Ginsburg.

Both Ruth Bader Ginsburg and Stephen Breyer came to the Senate with a distinguished record and a deserved reputation for a fine legal mind. But Justice Ginsburg almost faced a difficult battle with the Senate. It is fair to say that the Senate respected her nomination, and the nomination of Stephen Breyer.

In the Ginsburg nomination, the Senate recognized that most judicial nominees, including Justice Ginsburg, have at one point been private practitioners of the law. The Senate recognized that it is unfair to attribute to lawyers the actions of their clients. Lawyers are zealous advocates for their clients. Lawyers speak for their clients, not themselves.

After all, if a lawyer defends a client accused of stealing a chicken, it does not then follow that the lawyer is a chicken thief. Again, if a lawyer defends a client accused of stealing a chicken, it does not then follow that the lawyer is a chicken thief. By following this standard, the Senate did not hold against Justice Ginsburg the policy positions of her most famous client, the American Civil Liberties Union.

As we know, the ACLU takes consistently liberal positions on high-profile issues, positions that many Americans strongly disagree with. I respect that, I do not often agree with the ACLU, but its members believe strongly, and they fight for their beliefs. There is certainly nothing but admiration we can have for that.

During Justice Ginsburg’s tenure as a general counsel and a member of its board, the ACLU, for example, opposed restrictions on pornography. Yet even though she helped develop controversial policy positions, the Senate did not attribute them to Justice Ginsburg, let alone disqualify her from service on the Supreme Court because of them.

In addition, this country values a healthy “market-place of ideas.” So, the Senate did not block Justice Ginsburg’s nomination because she made controversial and thought-provoking statements in her private capacity as a legal thinker. Those thoughts ranged from suggesting a constitutional right to prostitution, to proposing abolishing “Mother’s Day” and “Father’s Day” in favor of a unisex “Parent’s Day.” Why did we not hold those views against her? Because we decided she had the integrity to apply the law fairly to each case, despite some rather, to put it mildly, provocative personal views that had been expressed over the years in her writing.

With both the Ginsburg and Breyer nominations, the Senate also continued its long-standing practice of respecting a nominee’s right not to disclose personal views or to answer questions that could prejudice cases or issues. Senators may ask a nominee whatever questions they want. But the nominee also has the right not to comment on matters the nominee feels could compromise their judicial independence.

For example, during his Supreme Court confirmation hearing in 1967, Thurgood Marshall, before the Senate Judiciary Committee, declined to answer a question regarding the Fifth Amendment. He explained:

I do not think you want me to be in a position of giving you a statement on the Fifth Amendment and then, if I am confirmed, sit on the Court and when a Fifth Amendment case comes up, I will have to disqualify myself.

Justice O’Connor, whom our Democratic colleagues have been citing so glowingly in the last few weeks, also demurred regarding questions she thought would compromise her independence. For example, of the questions asked her view of a case that had already been decided, Roe v. Wade; and in explaining her position, she said:

I feel it is improper for me to endorse or criticize a decision which may well come back before the Court in one form or another and indeed appears to be coming back with some regularity in a variety of contexts. I do not think we have seen the end of that issue or that holding the concern I have about expressing an endorsement or criticism of that holding.”

The Senate continued this practice with the Breyer and Ginsburg nominations. It did not require them to state their private views, or to prejudice matters before they had read one word of a brief or heard one word of oral argument.

Justice Breyer explained why he had to be careful about pre-committing to matters:

I do not want to predict or to commit myself on an open issue that I feel is going to come up in the Court. I have my own real reasons. The first real reason is how often it is when we express ourselves casually or express ourselves without thorough briefing and thoughtful thought that I or some other judge might make a mistake. . . . The other reason, which is equally important, is . . . it is so important that the clients and the lawyers understand that judges are really open-minded.

The Senate respected Justice Breyer’s concerns about prejudging and confirmed him by an overwhelming 87-9 margin. This respect extended to a case that had already been decided. For example, our late colleague, Senator Thurmond, asked Justice Breyer about Roe v. Wade, a case that had been decided 21 years earlier. Like Justice O’Connor, Justice Breyer declined to comment, stating:

The questions that you are putting to me are matters of how that basic right applies, where it applies, under what circumstances. And I do not think I should go into those for the reason that those are likely to be the subject of litigation in front of the Court.

Senator Thurmond respected Justice Breyer’s position, and did not hold against Justice Breyer his decision not to answer that question. Other Senators did the same on a host of issues.

Justice Breyer also declined to give his personal views. He explained, “The reason that I hesitate to say what I think as a person opposed to a judge is because down that road are a whole host of subjective beliefs, many of which I would try to abstract from.”

As result, he declined to give his personal views on whether the death penalty was cruel and unusual, what the scope of the exclusionary rule should be and whether he supported tort reform.

Justice Ginsburg also invoked her prerogative not to answer questions that could compromise her independence, and both sides of the aisle respected her decision. Indeed, Senator Biden, who was then chairman, encouraged her not to answer questions that would prejudice her position on a legal issue. He told her:

I will have statements that I made during the process read back to me. But I do think it is appropriate to point out, Judge, that you not only have a right to choose what you will answer and not answer, but in my view you should not answer what your view will be on an issue that clearly is going to come before the Court in 50 different forms, probably, over your tenure on the Court.

Justice Ginsburg’s effort to remain unbiased—like Justices O’Connor and Breyer—included not commenting on cases that had already been decided.
For example, Justice Ginsburg was asked how she would have ruled in Rust v. Sullivan, an abortion case that had already been decided. She declined to answer, explaining her position with a metaphor of the slippery slope:

"I sense that I am in the position of a skier at the top of that hill, because you are asking me how I would have voted in Rust v. Sullivan. Another member of this committee would like to know how I might vote in that case on another day. I have resisted descending that slope, because once you ask me about this case, then you will ask me about another case that is over and done, and another case after that. The decision here, if I tell this legislative chamber what my vote will be, then my position as a judge could be compromised.

Indeed, Justice Ginsburg declined to comment 55 times on a variety of legal questions. That is 55 times. These included: If the second amendment guarantees an individual right to bear arms; If the death penalty is cruel and unusual punishment under the eighth amendment; If public school vouchers for children are constitutional under the Establishment Clause; If the Supreme Court had interpreted too narrowly the Voting Rights Act; If the first amendment was intended to erect a wall of separation between church and state; and If the Federal Government may prohibit abortion clinics from using Federal funds to advocate performing abortions.

Mr. HATCH. Madam President, I rise today to express my continued, strong support of S. 397, the bill.

Mr. GRAHAM. Madam President, I rise to speak in support of S. 397, protecting gun manufacturers from lawsuits that basically would hold the manufacturer liable if someone bought a gun and then committed a crime with it, was irresponsible in its use. I believe everybody should have their day in court for a legitimate grievance. But it is not legitimate, in my opinion, to sue someone who makes a gun lawfully, that is not defective, and that person is held responsible in court because some other person who bought the gun decides to misuse it, to commit a crime with it. That would ruin our economy. It would fundamentally change the responsibility concept that will change America for the worse.

The PRESIDING OFFICER. The Senator from Utah.

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arms to our Armed Forces are the same targets of these reckless lawsuits: Beretta, Bushmaster, Remington, Smith & Wesson.

These are the companies we rely on for small arms for the military.

But if the proliferation of lawsuits against manufacturers continues, it could jeopardize the supplies we receive and need for our military.

This bill does nothing more than prohibit with five exceptions lawsuits against manufacturers or sellers of guns. That act superseded State law, protected manufacturers of small businesses. And I am proud to be one of them. I am proud to help not only represent them, I am proud to be a business woman I know the strength of America is productive businesses. As a business woman I know the support for S. 397 with no anti-gun amendments.

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 and State law, it is not entitled to the protection of this legislation.

I should also note that this bill carefully preserves the right of individuals to have their day in court with civil liability actions where negligence is truly an issue, or where there were knowing violations of laws on gun sales.

It is also noteworthy that in a recent poll by Moore Information Public Opinion Research, 79 percent of Americans do not believe that firearms manufacturers should be held legally responsible for violence committed by armed criminals.

Seventy-nine percent! And in this poll, 71 percent of Democrats hold this view. So this should not be a partisan issue.

Let me just read a postcard from one of the thousands of people who have written me in support of this bill from Utah. This Utahn, from the city of Hyde Park, writes:

Dear Senator Hatch: Please give your full support to S 397, the gun liability bill. As a business woman I know the strength of America is productive businesses that keep America strong and my fellow citizens employed!

These are the people I represent. I not only represent them, I am proud to be one of them. I am proud to help small businesses. And I am proud to help gun owners.

Let me just say a word about the precedents for this legislation. Congress has the power—and the duty—to prevent activists from abusing the courts to destroy interstate commerce.

We did this in the General Aviation Revitalization Act of 1994 where we protected manufacturers of small planes against personal injury lawsuits. That act superseded State law, as does the gun liability bill.

There are many other precedents for abusive lawsuits, protection, including light aircraft manufacturers, food donors, medical implant manufacturers and makers of anti-terrorism technology, just to mention a few.

There is simply no reason the gun makers should have to continue to defend these types of meritless lawsuits. We must protect against the potential harm to interstate commerce. The gun industry has already had to bear over $200 million in defense costs thus far.

This legislation is a reasonable measure to prevent a growing abuse of our civil justice system.

The bill provides carefully tailored protections for legitimate lawsuits, such as those where there are knowing violations of gun laws or those of gun misuse based on traditional grounds including negligent entrustment or breach of contract.

We simply should not force a lawful manufacturer or seller to be responsible for criminal and unlawful misuse of its product by others. We do not hold the manufacturers of matches responsible for arson for this same reason.

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

In closing, I leave my colleagues with one last thought.

These abusive gun liability actions usurp the authority of the Congress and of State legislators. They are an obviously desperate attempt to enact restrictions that have been widely rejected.

It is for this reason that many States have enacted statutes to prevent this type of litigation. Congress should do the same.

As with class action lawsuits, the few States that allow jackpot jurisdictions can create a disastrous economic effect across the entire country, and across an entire industry.

We cannot allow this to happen. We must stop these abusive lawsuits.

I urge my colleagues to vote for this important legislation.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my colleague from Utah for relinquishing the rest of the time, and I join my colleague in strong support of S. 397, the gun liability bill. But I also wanted to address a topic that continues to draw much heat and discussion here on this floor and in the media. In the heat of political rhetoric over Iraq and the administration’s prosecution of the global war on terror, much has been lost and not all the facts are being presented in the matter. Unfortunately, some are quick to exploit the situation in Iraq and the global war on terror and, by extension, the brave men and women prosecuting these conflicts as cannon fodder in their attacks on the President from the media and others. These folks hope to undermine the administration’s credibility with a keen eye on gaining political advantage. However, in the end, those efforts serve only to undermine the noble efforts of our Armed Forces, the brave men and women who are the backbone of our new generation of heroes in the war against terrorism.

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Instead, the terrorists wish to distort Islam’s true meaning, wage an unholy war against Iraq’s Shia, and induce a sectarian civil war during the aftermath of which the terrorists would like to establish a Taliban-like state in Iraq. These same terrorists are also motivated by their desire to evict U.S. forces not only from Iraq but from the Greater Arab Middle East, and they view our mission in Iraq as an act of occupation when it is a battle of liberation. This battle is one of hearts and minds; a battle, however, that the Iraqi people are determined to win, along with our assistance, as demonstrated...
by the 56-percent voter turnout in January, where they elected a new national government, and also by the continuing willingness of Iraqis—to face the danger of terrorist suicide attacks—to sign up to serve to keep the peace.

But terrorism is not a new phenomenon in Iraq. Chief among the terrorists in Iraq today, Abu Musab al-Zarqawi, was known to have been in Baghdad since at least mid-2002. You might ask, how can a terrorist of Zarqawi’s notoriety operate, let alone live, in a Stalinist police state such as that of Saddam’s Iraq, without the former regime’s knowledge, if not consent. The answer is simple. Saddam knew Zarqawi was there, undoubtedly.

When asked about Iraq’s al-Qaeda relationship by CNN’s Wolf Blitzer, on February 5, 2003, the vice chair of our Senate Intelligence Committee agreed that his presence in Iraq before the war was troubling. He said, “The fact that Zarqawi went to bin Laden, bin Laden’s not known at rest, in fairly dramatic terms, that there is at least substantial connection between Saddam and al-Qaida.”

However, long before Zarqawi descended upon Iraq, Abu Nidal, the secular terrorist leader and founder of the Abu Nidal organization, lived in Iraq from 1998 until he died in 2002. Over the years, that organization carried out terrorist attacks in 20 countries, killing or injuring almost 900 people, including hijacking of Pan Am flight 739 in Karachi in 1986; the assassination of a Jordanian diplomat in Lebanon in 1994. Abu Nidal was arguably the world’s most ruthless terrorist until the rise of Saddam Hussein. He lived and flourished in Saddam’s Iraq for 4 years.

In 1993, the Iraqi Intelligence Service directed and pursued an attempt to assassinate, through the use of a powerful car bomb, former President George Bush. According to reports in the mainstream media, I was part of a “propaganda junket paid for by the Pentagon to buy some desperately needed positive coverage of the unreliable military commander.” All I can say is: If this was a junket, it was the worst-run junket in the history of public relations.

My radio station and I had to pay all my expenses, I slept on a bare cot in a tent in the desert, and at some locations the only available “food” (and I use that term under protest) were MREs—which stands for “Meals Ready to Eat.” Assuming you’ve already eaten both shoes and most of your undergarments.”

This alleged “junket” failed in another way, too. The Pentagon didn’t control what went out over the airwaves. Then again, neither did I. I left it all up to the soldiers.

I traveled about Iraq from Camp Victory at the Baghdad International Airport to Camp Prosperity on the very edge of the Red Zone, then down the Baghdad Highway to Camp Falcon, and on to the Command Headquarters in the heart of the city and, eventually, to the deserts of Kuwait and Camp Arifjan. And everywhere I went, I flipped on my mic, sat back, and let the troops tell their story.

These soldiers weren’t stooges from Public Affairs or handpicked flag wavers foist on me by media handlers. I found some in the mess hall, others working security checkpoints; others sought me out because they have family living in the D.C. area where my radio show is broadcast. The least fortunate were the soldiers in Humvees stuck with “tourist finger-pointing exercises. Let’s speak at the altar of freedom with meaningless exercises. Let us not debase the memories of those who have laid such a sacrifice on the altar of freedom with meaningless finger-pointing exercises. Let’s speak with truth about the issues and facts at hand.

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

Mr. BOND. I thank the Chair, and I yield the floor.

EXHIBIT 1

Handing Over the Mic: Troops Talk from Iraq
(By Michael Graham)

I just spent a week in Kuwait cultivating a skill that I, as a talk-show host, have found nearly impossible to master: shutting up.

Turns out, it was easier than I thought, at least in Iraq. When you’re listening to a 20-year-old kid from Indiana tell how he earned his second Purple Heart, speechlessness is the natural reaction.

I was there as part of the much-maligned “Truth Tour” organized by Move America Forward, a conservative group based in California. According to reports in the mainstream media, I was part of a “propaganda junket paid for by the Pentagon to buy some desperately needed positive coverage of the unreliable military commander.” All I can say is: If this was a junket, it was the worst-run junket in the history of public relations.

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

Mr. BOND. I thank the Chair, and I yield the floor.

I expected to hear this sort of positive assessment from General George Casey, commander of operations in Iraq, when I interviewed him at his headquarters deep inside the International Zone. But I didn’t. Out that, one year ago, there was just one standing battalion in the Iraqi army, but there are
107 battalions today, he was doing his job of supporting the war. And I expected it from Lt. General Steve Whitcomb, commanding general of the 3rd Army, as he talked about success after more than one million gallons of fuel across Iraq every day, despite the best efforts of the insurgents.

Generals are supposed to be gung ho. It comes with the pay grade.

But I heard the same, positive assessments from 23-year-old sergeants from New Iberia, La., and from PFCs from Wisconsin and Alabama. Not from Lieutenant Li, whose Humvee had been hit by IEDs so many times he’d lost count. I heard it from Airmen Truong, who was born in Vietnam and recently returned to his native country to marry. Two weeks after “I do,” Airman Truong was headed back to Kuwait to do his duty for his adopted country.

Again and again, from “white-collar” soldiers working in the relative safety of Camp Victory at the Baghdad airport to the “real” soldiers patrolling Route Irish (a.k.a the “Highway of Death”), I heard that America and their Iraqi-army allies are winning the war against the insurgents. I was told again and again by the soldiers themselves that their (our) cause is just, the strategy is working, and the enemy they fight represents evil.

In other words, I heard things seldom heard on CBS or read in the pages of the New York Times. It was only a week, and I have my own obvious (and sometimes even extreme, but passionate) grounds for hope.

Isn’t it at least significant that not one in 100 thought invading Iraq was a mistake? Was it because they had confidence that a random selection of 100 soldiers all believe their mission is worthwhile? Should we detect the hand of the Vast, Right-Wing Consipracy in the fact that the vast majority of the troops find the media coverage of the war ignorant, harmful, or both?

I’m proud to say that, for a week, the soldiers I met were the doing story. They were major daily newspapers or a national network. I would be concerned that what they said is in contrary to what I am printing or broadasting.

But the mainstream media don’t need to hear from the soldiers. They already know that the war was a terrible mistake, that the world would be safer if we’d left Saddam in power, and that there is no chance for victory in Iraq.

Me, I’m not so smart. I like to let the guys on the ground tell their story. I believe it is completely possible that they know something that I—and the New York Times editorial page—do not.

The PRESIDING OFFICER (Mr. CRAFKA). The next hour is controlled by the minority.

The Senator from Minnesota.

MR. DAYTON. Mr. President, I am one of those who along with a number of my colleagues, who believes we should be debating not this gun liability bill but the Department of Defense authorization bill for the coming fiscal year. I serve on that committee. It was a good bipartisan effort. I was planning to offer an amendment to add $120 million for childcare and family support for the families of reservists and National Guard men and women who are called to active duty. Others had amendments, including one regarding BRAC, of particular note to me and others in Minnesota affected by that process.

But we are not on that bill. Instead, we are dealing with the most special interest legislation I have encountered in my 4½ years in the Senate. We are going to leave at the end of this week for a month and we have one last window of opportunity to take up what some would consider the most important measure before the Nation and the Senate. Instead, we get this special interest bill.

We are not on stem cell legislation that would allow us to create a medically and scientifically based framework to protect the sanctity of human life or prohibit cloning, and yet still allow medical research that could save many thousands of lives for years to come. That is not the Republican leadership’s top priority.

Nor is the constitutional amendment to prohibit the burning or desecration of the American flag, of which I am a proud cosponsor, brought to the Senate. Instead, we get this special interest bill.

The PRESIDING OFFICER (Mr. BURKHARDT). The gentleman’s time has expired.

The PRESIDING OFFICER. The time expired at the hour of 2:58 p.m., and, therefore, the Senate is in recess until 3:00 p.m.
judges and juries are not indiscriminately finding against gun manufacturers. Most are probably gun owners and hunters as well.

Despite what the NRA pedals to its members to justify its existence and their political influence, there is no threat to responsible manufacturers, dealers, lawful buyers, or owners of the millions of guns in America. There is no justification for this special legislation and the special treatment it gives to that industry.

Of course, the gun industry is accustomed to getting special treatment from Congress. Firearms and tobacco are the only two consumer products specifically exempt from regulation by the Consumer Products Safety Commission. What an exemption. I have to hand it to the NRA, whether I agree with them or not, they sure know how to operate around here. Many industries see themselves as individuals corporations pour a lot more money into lobbying and into political contributions than the NRA and they do not get nearly the special treatment, special favors from Congress the gun lobby does—a complete exemption from consumer product safety laws and regulations, and now almost complete immunity for lawsuits from negligence or product malfunctions. All other businesses and industries in America are in discount status to Congress the gun lobby does—a complete exemption from consumer product safety laws and regulations, and now almost complete immunity for lawsuits from negligence or product malfunctions. All other businesses and industries in America are in discount status to Congress the gun lobby does—a complete exemption from consumer product safety laws and regulations, and now almost complete immunity for lawsuits from negligence or product malfunctions. All other businesses and industries in America are in discount status to Congress the gun lobby does—a complete exemption from consumer product safety laws and regulations, and now almost complete immunity for lawsuits from negligence or product malfunctions.

It is because there is that exemption from the consumer product safety laws of this country that some of these lawsuits, not frivolous, but determined by a judge or jury through the process to be legitimate and bona fide, and the resulting civil damages are necessary to move the industry to take some of the safety actions it can technologically and financially certainly afford to make that it probably would not do otherwise.

For example, take Bushmaster. Their dealer lost the sniper's assault rifle along with 238 other guns that were then used by the snipers against the innocent victims in Washington, DC. As a result of its settlement with the victims of those families, they agreed to help the gun industry to take some of the safety actions it can technologically and financially certainly afford to make that it probably would not do otherwise.

In June of 2004, two former New Jersey police officers were shot in the line of duty with a trafficked gun negligently sold by a West Virginia dealer. They won a $1 million settlement, and the dealer who sold the gun, along with 11 other handguns in a cash sale to a straw buyer for a gun trafficker—after that lawsuit that dealer, as well as two other brick and mortar guns, agreed to implement safer practices to prevent sales to traffickers, including a policy of ending large-volume sales of handguns.

In 2004 also, Tennille Jefferson, whose 7-year-old son was unintentionally killed by another child with a trafficked gun, won a settlement from a gun dealer that amounted to $850,000. The handgun was one of many the dealer sold to the trafficker despite clear signs she was a big player on the underground market. That, too, resulted in changes in policies and sales practices that hopefully will prevent other mothers from suffering that terrible fate of losing a child. I am not sure every one of those cases filed against the manufacturers or dealers is proper. Again, that is for the process to determine. But there is no evidence, no evidence at all, that there is anything about the nature of these suits, the outcomes of them, the jury awards relative to the damages that have occurred, that indicates this industry is being prejudiced or plagued by those who contribute to be doing so, to justify this legislation. If we are going to care about the American people in this country, let's do it openly and above board with all industries, all of American businesses affected equally by those changes. To single out one industry, particularly one that manufacturers products, potentially, as dangerous as guns, is just a terrible day for the Senate.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois?

Mr. Durbin. Mr. President, this is a sad day in the Senate. It is a sad day in two respects. Yesterday, we were debating a bill, the Department of Defense Authorization Act. It is an important bill. It is a $440 billion bill for our American military: our soldiers, sailors, marines, airmen, members of the Coast Guard, Guard and Reserve. We were trying, in that bill, to help our fighting men and women and their families.

We had a long list of amendments that we wanted to consider: extra pay for totally disabled veterans, help for the widows and orphans of combat soldiers who die in the line of duty, fair compensation for Guard and Reserve when they are activated and they are Federal employees, daycare for the families of soldiers who are activated, quality-of-life issues for the men and women in uniform who are fighting for America.

A decision was made by the Republican leadership to leave that bill, leave that issue, to come to this one. What could be more important for us to consider than the safety, the lives, and fortunes of the men and women who serve our country and risk their lives, on military duty, and their families?

Well, in the estimation of the Republican leader, Senator Frist, there was one issue that was more important than talking about our men and women in uniform. That issue was providing the gun industry with immunity from liability for one industry in America, to say that of all the businesses in America that provide us with goods and services, all of the businesses that are currently held responsible for wrongdoing, we will create one exception. We will say, if the gun industry is guilty of wrongdoing, they cannot be sued. That is right. The firearms industry, which sells millions of firearms each year in the United States, should not be held responsible for their bad conduct and wrongdoing.

It is hard to say those words and not shake your head. If personal responsibility were the benchmark of what it means to be an American and an American business man or woman, why in the world would you exempt one industry and say they are special, they are political royalty, they cannot be held liable for their misconduct? And why did we move to this bill and away from the Department of Defense authorization bill to help our soldiers and their families? The answer is too obvious. It is because of the political clout of the National Rifle Association and the gun lobby. It is the only group I can think of which would just go straightforward with the concept they are more important with the concept they are more important. They are the Senate calendar than the fighting men and women and risk their lives for our country. They do the work every day.

The NRA runs certain people in this Chamber and on the other side when it comes to the agenda. They decide what will be taken up and what amendments will pass—an extremely powerful group. The NRA succeeded in having the Senate debate guns—and that is a rare debate—but only when it comes to this question of gun immunity.

Isn't it interesting, we want to put an amendment on this bill that says when you sell a firearm you have to check to see if the purchaser is on a watch list of terrorists. Is that unreasonable? If you have computer access through your store—and these stores do—shouldn't you check to see if that selling a firearm to a criminal person from you is on the watch list for terrorism in America? That concept is rejected by the National Rifle Association. Background checks: extremely limited. Information gathered about criminal people is to be destroyed so quickly that it is of little value to law enforcement.

A March 2005 report from the Government Accountability Office found that between February and June of 2004, 976 U.S. lists of terrorists applied 44 times to buy guns. It is not unheard of. It happens in this country. In only nine instances were they turned down. In the months since the study ended, 12 more suspected terrorists had the green light to buy or carry guns.

FBI Director Bob Mueller—who I respect very much—said he was forming a group to study the problem. Why aren't we talking about this instead of granting immunity for the gun dealer who sells a weapon to someone he should have known could misuse it for a crime or for terrorism? We are shielding them from civil liability for not
living up to their responsibility when it comes to the sale of lethal firearms.

Or we could talk about ways to solve the problem in America of guns being trafficked, many crossing State lines, and used in crimes. The ATF says 90 percent of guns recovered in crime were used by persons other than the original purchaser, other than “straw men,” people who bought them to sell them to criminals. One-third of all crime guns cross State lines.

In 2003, 17 percent of guns traced to crimes committed in Illinois originated in other States. One State, Mississippi—the little State of Mississippi—is far and away the per capita leader in selling guns exported from their State and used in crime. Do you know why? Because firearms laws are not really strictly enforced in Mississippi, and some other States.

From 2000 to 2002, Department of Justice prosecutors filed three cases in Mississippi for violations of gun trafficking laws. In contrast, 32 cases were filed in Kentucky, 28 in Tennessee. So we have gun dealers in Mississippi selling truckloads of guns to people who get on planes and drive up to Illinois and, perhaps, your State, too, selling them to gun gangs and drug gangs on the streets, and then spreading out these guns to kill innocent people. And the people pushing this bill are arguing that we should not hold those firearms dealers responsible because they did not “know” that a crime was going to be committed.

One hundred “Saturday night specials” to stick in the trunk of your car, junk guns, that you would never use for sports or hunting, and they didn’t know? They should have known. That is a standard in law almost everywhere: that you knew or should have known. They are changing the law. They bought multiple guns, in fact, and they bought them. They cannot sell to him. He is a criminal. He has a record of felonies, so the girlfriend buys it. So should the gun dealer be aware of that? Why, of course. It is obvious.

Should they be held accountable if they should have known that gun, through that girlfriend, is going straight, legally, directly to a dealer,straight on to the street, killing innocent people? In America, a jury decides that. They will not be able to when this bill is passed.

What kind of cases are we talking about? I said to my staff, you can talk about the law. And I could stand here as a person trained in law school and go through the obvious problems with this bill. But I think it is more important to talk about real-life situations. It is more important to give illustrations of why this is such a terrible bill.

Let me tell you about Anthony Oliver. Anthony Oliver was 14 years old. He was shot and killed on July 23 of last year in a video game with his friend who was 13. Anthony’s friend, his 13-year-old friend, had just bought a gun on the street for $50. He told the police he bought the gun with his allowance near his home because he was intimidated by a group of kids who jumped his friend and threatened to beat him up. He said he thought the safety was on when he accidentally killed Anthony with one shot to the stomach.

Federal investigators traced the gun. It was a “Saturday night special,” one of those cheap guns just used for crime. They traced it to Lou’s Jewelry and Pawn shop in Upper Darby, PA. From 1996 to the year 2000, this pawnshop in Pennsylvania sold 441 guns traced to crime, not 44 in Illinois. Pennsylvania in selling guns to criminals and 43rd in the Nation among all gun dealers.

In 2003, the last year for which we have statistics, Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime. Lou’s sold 178 guns traced to crime.

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that makes guns is clearly a question of negligence.

The trial judge denied the efforts of the company to dismiss the lawsuit, and it is still pending. Do you know what happens to that lawsuit by the family of Danny Guzman against that arms manufacturer if we pass this bill? It is immediately removed. They have no rights in court to pursue that. Why? Why would we say to a person who owns a company that makes guns that you are held to a lesser standard than a person who owns a company that makes toys? That is what it boils down to. You are doing it because the gun lobby insists on it. They want this immunity.

The case that has brought many police officers forward—and I will close with this—involves police officers. The last time we debated this bill, we said: Wouldn’t we at least create an exception that if the gun is used to kill a police officer in the line of duty, that we are going to hold a gun dealer responsible if they should have known that? Wouldn’t we hold a gun manufacturer responsible if they were involved in supplying guns to Lou’s Pawnshop, which ranks one of the highest in the Nation in guns over to criminals? So we asked for an exception for law enforcement. It was defeated. All the people here who talk about law and order and how much they love policemen in uniform defending our communities and neighborhoods with their lives voted against them when they had a chance to put that exception in the law.

Let me give you a specific example. On January 12, 2001, police officers in Orange, NJ, were performing undercover surveillance at a gas station that had been robbed repeatedly. Someone acting suspiciously walked up to the gas station and then turned away. When Detective David Lemongello approached a few blocks away to question him, he responded by turning and opening fire. Detective Lemongello was hit in the chest and left arm, and the suspect fled. When additional officers, including Kenneth McGuire, found the man hiding beneath some bushes, the man started shooting again. Officer McGuire was hit in the abdomen and right leg. McGuire and two other officers returned fire and killed the man, even though they had been warned that he was a felon and out-of-State resident. The girlfriend to purchase in full view of Will’s Jewelry and Loan pawnshop personnel, a clear signal this was a “straw purchase.” One of those guns was the gun used to shoot these police officers. McGuire and Lemongello. Will’s personnel had reservations regarding the nature of the transaction but went through with it anyway before contacting the ATF to report their suspicions. The ATF then contacted the girlfriend, Tammi Lea Songer, who agreed to assist them in a sting operation that resulted in the capture of Gray. However, in the time it took the ATF to set up its sting, Gray had already trafficked the gun—sold it on the street—which the girlfriend bought and turned away. Good old Will’s Jewelry and Loan took the cash. Should the gun dealer have been held to a lesser standard than the manufacturer? Shouldn’t we at least create an exception for police officers. The police officers and their families are suing the gun dealer, saying: You didn’t use good sense and any reasonable standard of conduct in selling to this guy’s girlfriend when you should have known something fishy was up. So they have a lawsuit against them and the manufacturer. Do you know what happens to this lawsuit from these policemen if this bill passes? It is over. Not another day in court. No chance for these wounded policemen or their families to recover.

Will’s settled, incidentally, with Officers McGuire and Lemongello for a million and agreed to change its practice of dealing with straw fanciers. If the current bill passes before this settlement is reached and final, justice will not have been done. The shop would not have agreed to take the steps to make the streets safer.

That is what we are up against—people who want to stand behind and protect gun dealers who are selling guns that they should know are going out on the street to menace and threaten innocent people. How have we come to this point that we leave the Department of Defense bill to come to this? It is a sad day for the Senate. It is sad to think that one lobby has so much power over the Senate that they can move us away from the men and women in uniform, to whom we have a first responsibility, to protecting gun dealers like Will’s pawnshop in Virginia or Lou’s in Pennsylvania. What is the world we are doing here? We owe it to the men and women in uniform who give their lives for us to defeat this bill. We owe it to the mothers and fathers who want their kids to come home safe every night and not be menaced by driveby shootings and “Saturday night specials” to defeat this bill. It is time to decide who you are working for in the Senate. Is it the gun lobby or the policemen and families of America?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I realize we are up against a time limit. I ask unanimous consent that my comments appear as though in morning business.

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

NOMINATION OF JOHN ROBERTS

Mr. LEAHY. Mr. President, I wish to take a few moments to bring people up to date on where we are on the John Roberts nomination to the Supreme Court.

It is now a little over a week since President Bush made a dramatic evening announcement of his intention to nominate Judge John Roberts to succeed Justice Sandra Day O’Connor on the U.S. Supreme Court. In the Senate, we haven’t received this nomination. It has not come up yet. Nonetheless, we are well on the way to preparation for the Senate’s process in considering the nomination.

During the past weeks, some of us have met with Judge Roberts. We have urged him to be forthcoming at his upcoming hearing. The Judiciary Committee has already sent him a questionaire seeking background information. Most importantly, Chairman Specter and I have already begun laying the groundwork for full and fair hearings which we are both committed to holding. I expect that we will soon be able to announce the Judiciary Committee’s schedule for those hearings.

Late yesterday, the White House provided some documents from Mr. Roberts’ time when he served as special counsel to Attorney General French Smith during the Reagan administration. None of us had requested these particular documents but, of course, we are always happy to receive anything they want to send. There are at least three categories of documents from Mr. Roberts’ years in the executive branch that are relevant to this nomination.

The second group relates to Mr. Roberts’ work from 1982 to 1986 as an associate counsel to Attorney General Edwin Meese. In the Reagan administration. None of us had requested these particular documents but, of course, we are always happy to receive anything they want to send. There are at least three categories of documents from Mr. Roberts’ years in the executive branch that are relevant to this nomination.

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they can be made available on a prompt basis, not a delayed basis. Otherwise, it would almost appear—I certainly wouldn’t want to suggest the White House would do this—that they are trying to make sure the documents arrive in the hearings and not before them or arrive late. In the event of the time of the hearings, there would be no time to review them. I trust there will be those at the White House who would understand this would be the wrong way to proceed and would actually in the long run end up adding more time to the process.

The third category of files is from Mr. Roberts’ work when he was a political appointee in the Justice Department’s Office of the Solicitor General. He served as Kenneth Starr’s principal deputy during the prior Bush administration. The reason I say these are important, the President said that his work at this time was one of the reasons Judge Roberts was his nominee. Of course, the President has every right to consider whatever reasons for a Supreme Court nominee. Having said that, however, in carrying out these responsibilities, it is apparent that the White House also extended to the same kind of information that the White House weighed in making its decision about this nomination. In other words, if this work is one of the reasons they say he is qualified to be on the Supreme Court, all the more reason the 100 Members of the Senate should be able to see it and make up our own minds.

Actually, it might be the most informative of the documents we are going to seek. We could get a practical sense of how, when, and why politics and the law intersect for him. I am not seeking to seek production of all the files and the hundreds of matters on which Mr. Roberts worked in those critical years. Nobody is asking for that. Rather, in our effort to cooperate and expedite the process, we are putting together a targeted catalog of documents. I hope we can work with Chairman Specter to send a reasonable bipartisan request for a selected group of those files.

In that regard, I ask unanimous consent that a copy of the letter we sent to the White House yesterday be printed in the RECORD.

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

S9083

CONGRESSIONAL RECORD — SENATE

U.S. SENATE
COMMITTEE ON THE JUDICIARY,
WASHINGTON, DC, JULY 26, 2005.

HON. GEORGE W. BUSH,
THE WHITE HOUSE,
WASHINGTON, DC.

DEAR PRESIDENT: We are disappointed that the White House appears to have so quickly moved to close off access by the Senate to important and informative documents written by or about Supreme Court nominee John Roberts while he was at the Department of Justice. According to news reports today, your Administration may be preemptively protecting judicial documents not yet requested yet by the Committee—documents that could very well hold important information necessary to evaluate Judge Roberts’ judicial philosophy and legal reasoning.

While many documents are being delivered today from Judge Roberts’ work for Attorney General William P. French Smith at the Reagan Justice Department, it is far too early to determine whether these documents are relevant, adequate, or even helpful. It may be that these documents, along with the upcoming hearings, will give us enough information to fulfill our constitutional duty to advise and consent on this nomination. But it would be premature for either the Senate or the White House to make that determination now. Judge Roberts spent some four years working for President George Bush. It may very well be that documents from that time will be helpful to the Committee as well.

It is our hope that the confirmation process moves swiftly and smoothly over the coming weeks. We can assure you that no Senator is attempting to unduly delay the proceedings. We intend to work with Chairman Specter if and when further requests for documents or information appear appropriate. But in the meantime, we believe that judgment should be withheld on which and what documents the President’s nominee might be released to the Senate. The history of past nominations is varied but clear—each confirmation process is different. We think it would be appropriate to see the type of documents shared between the White House and the Senate has depended on the nature of the debate, the needs of the Committee, and a cooperation of the White House and the Senate.

A blanket statement that entire groups of documents are off limits is both premature and ill advised.

Finally, it is important that we are not being told that many more publicly available documents will be sent and delivered to the Committee. In the interests of speeding up the process, we have attached to this request areas within that group we feel would be most helpful to the Committee. To the extent your staff can assist in expediting the delivery of those documents, we would be grateful.

Sincerely,

Patrick Leahy,
Dick Durbin,
Joe Biden,
Edward M. Kennedy,
Chris Dodd,
Dianne Feinstein,
Russell D. Feingold,
Herb Kohl.

PARTICULAR MATTERS OF INTEREST

JGR/Law of War; JGR/Texas Redistricting;
JGR/Abortion; JGR/Acid Rain; JGR/Affirmative
Action Correspondence; JGR/Appointment
Correspondence 1985; JGR/Appointee
Memos, Clearance, Announcements, etc.;
JGR/Appointment Legislation; JGR/DC Chadha;
JGR/Change in Presidential Term; JGR/Civil Rights
Commission; JGR/Comparative Worth; JGR/Con-
flicts of Interest; JGR/Death Squads Investiga-
tion—SSCI; JGR/DOJ Daily Reports;
JGR/EECO; and
JGR/Equal Opportunity in Education; JGR/
Ethics; JGR/Exclusionary Rule; JGR/First
Amendment; JGR/Flag, American; JGR/Inde-
pendent Counsel; JGR/Iran Emergency; JGR/
Jones, Bob—Univ. Decision; JGR/Judges;
JGR/Legal Services Corporation; JGR/Fur-
dons; JGR/Political Activity; JGR/Pro Bono;
JGR/Reagan—Bush Bailiff Guidance; JGR/
Recess Appointments; JGR/School Prayer;
JGR/Supreme Court and JGR/War Powers.

Mr. LEAHY. When we review the doc-
uments volunteered by the White House, obviously, we are going to be asking, Is this more of the old trick of flooding us with stacks of really unimpor-
tant materials in order to divert at-
tention from those that matter the most? I hope the White House will begin to work with us instead of acting unilaterally.

It is one very easy way. They could send up documents that make no sense. They could say, Here is 400 pages of something he had on his desk every day when he was working as a political appointee of the Department, and send us the telephone book. That is 400 pages. It was on his desk. It is not very helpful.

So the bottom line is this: The White House is eager to supply documents it has selected and certainly prejudiced with great fanfare, but we have yet to receive the documents we have, in fact, requested. It is an unfortunate pattern we have seen too often. Of course, the White House has available to it all the documents that Roberts spent so much time in the Reagan White House and at the Bush Justice Department. But they have yet to share those materials with the Senate.

Other nominations have run into trouble when this White House has decided to let the Senate see only what the White House wants the Senate to see. If the White House’s midnight announcement of the Senate’s report embargos to deny Demo-
cratic Senators an opportunity to comment is, contrary to appearances, actually intended to begin a dialog about documents, then I welcome it. Of course, if it is intended to unilaterally preempt a discussion about documents the Senate may need and is entitled to, then this is regrettable.

Past administrations, Republican and Democratic, have been willing cooperatively to work with the Senate to accommodate its requests for documents. There are ample precedents in both parties documenting such cooperation. I believe the Senate is going to need the White House’s full cooperation to expedite this process as the President has requested.

Let us be serious. Now that the White House has gotten the stagecraft out of the way, let’s go back to working on the substance of the Senate’s work on this very important nomination. The President, has rightfully so, announced his choice. Now the Senate must rise to the challenge and do its work. To fulfill our constitutional duties, we need to consider this nomination thoroughly and carefully as the American people deserve. A Supreme Court Justice is not there to represent either the Republican or Democratic Party; they are there to represent all 280 million American people. The Senate is charged to find, Is this the person the American people deserve, all 280 million of them?

That takes time. It takes the cooperation of the nominee, and it takes the cooperation of the administration. It means that Republicans, as well as Democrats, have to take our constitutional obligations on behalf of the American people seriously.
Let us remember this is not to see who scores political points. This is to determine how we protect the rights of all Americans—the ultimate check and balance for all Americans. This is somebody who could well serve until the year 2030 or beyond.

Mr. President, I see the distinguished senior Senator from Rhode Island.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. FEED. Mr. President, I commend the Senator from Vermont for his eloquent remarks. I will talk about the legislation before us, the gun liability legislation.

The legislation before us cannot be all things. It cannot be an effective barrier against litigation to protect the gun industry and, at the same time, be a way to protect legitimate rights of citizens who have been injured or killed by guns. It is not both; it is one or the other. It is clearly, cleverly worded legislation to immunize the entire gun industry from virtually any type of liability.

There are, perhaps, minor exceptions, but the most important, compelling cases in recent years are the case of the DC snipers, the case of Police Officers Lamongello and McGuire in New Jersey, and the pending case of Kahr Arms in Worcester, MA—would be barred. I don’t think that is a mere incidental coincidence. They will be deliberately barred.

Thankfully, the first two cases were settled after the Senate rejected this legislation last year. The families of the victims of the Washington area snipers, the case of Police Officers Lamongello and McGuire similarly had the opportunity to press their cases, and a settlement was reached. Officers Lamongello and McGuire similarly had the opportunity to press their cases, and a settlement was reached, but the Kahr Arms case is still pending in court.

One of the disturbing aspects of this legislation is that it does not merely attempt to set the rules prospectively, as we go forward, to say these cases would not be heard by a court in the U.S.; it literally walks in and tells people who have filed cases—the case of the DC snipers, the case of police officers who have filed cases—that they have survived motions for summary judgment, cases which judges, looking at the facts and circumstances and the law, have said at least can go forward to trial and jury—it would take those cases away from them out of State courts and out of Federal courts if they have been filed.

Let’s take a look at the Kahr Arms case. It is the case of Guzman v. Kahr Arms. It was filed under the wife’s name—Hernandez, I believe. It involves Danny Guzman and Kahr Arms. A lawsuit was filed by the family of 26-year-old Danny Guzman of Worcester, MA, who was fatally wounded with a 9 mm handgun that was stolen from the Kahr plant by a drug-addicted employee who had worked at the ammunition manufacturer, Kahr Arms, operated the factory without basic security measures to protect against theft, such as metal detectors, security mirrors, or security guards. Guns were routinely taken from the factory by felons the company had hired without conducting background checks.

The gun used to kill Danny Guzman was one previously removed by Kahr Arms employees before serial numbers had been stamped on them, rendering them virtually untraceable. Some point has been made about the fact that it is illegal to erase serial numbers. These people were able to get the weapon. Generators were never imprinted upon the weapons, so that law would not apply at all. The guns were then resold to criminals in exchange for money and drugs. The loaded gun that killed Mr. Guzman was found by a 4-year-old behind an apartment building near the scene of the shooting. Thank goodness that 4-year-old didn’t decide to test the weapon himself or herself.

Had Kahr Arms conducted background tests on drug felons, or prospective employees, or secured its facility to prevent theft, Danny Guzman might be alive today. A Massachusetts court held that the suit states a valid legal claim for negligence, but this bill would throw the case out of court, denying Danny’s family their day in court.

Again, this is the Congress reaching into a State court and telling that judge, we don’t care what your law says, we don’t care about 200 years of legal precedent in Massachusetts or any other State in the country amounts to. This suit should be stricken, taken out, thrown out.

This legislation is sweeping and it is unprecedented. It deals a serious blow to citizens throughout this country, while enhancing dramatically the legal protections for the gun industry. Now, the bill’s proponents repeatedly say you cannot hold someone responsible for the criminal actions of another—as my colleague Senator Massiah emphasizes, the intervening criminal actions of another.

First of all, that is not what this case is about. And, frankly, that is not the law. I am surprised that my colleagues who are attorneys would come down unhesitatingly barred.

The gun used to kill Danny Guzman was a 3-foot-long sniper weapon, a weapon that was dubbed by a 4-year-old behind an apartment building near the scene of the shooting. That is not the standard of care the community should expect from anyone engaged in this type of business. Is that the standard of care? No, it is not the standard we expect. It is particularly not the standard when you are dealing with a weapon that can kill people. I would think most Americans on the streets, if you asked them, would say you gun dealers and manufacturers should be a little more cautious than people who make other items. I think the answer would be, invariably: Yes, of course. These are inherently dangerous products.

This is black letter law. There is no way to argue it away. If it were simply about the one or two or even a handful of cases that have come to court, then we would have a different conversation. But that is not the situation. When you ask any businessperson what is the standard of care that they would use in the conduct of that business—the standard of care any businessperson would use. Certainly, this standard of care should apply to those who manufacture weapons, who sell weapons, and the trade associations associated with them.

The allegation in all these cases is that they failed to do that—not that they were unwitting, incidental victims of a criminal mind, but that they failed in their duty. Bull’s Eye Shooter Supply in Washington State, for example, who supplied the Washington snipers with their weapons, didn’t realize it at the time—must have walked in and shopped a sniper weapon, a 3-foot-long sniper weapon, and carried it away, undetected, during business hours. In fact, this was missing without his knowledge for weeks and months. That is not the standard of care the community should expect from anyone engaged in this type of business.

To act in a way that will not unnecessarily cause harm to others. What should be decided in a court is whether they lived up to that duty. If this legislation passes, they will be denied the opportunity to determine whether their duty to the community was upheld.

This is about responsibility for their actions—in this case, the actions of Kahr Arms. They deny due process of law. It is the requirement and the obligation to take precautions, to use the standard of care a businessperson would use in the conduct of that business—the standard of care any businessperson would use. Certainly, this standard of care should apply to those who manufacture weapons, who sell weapons, and the trade associations associated with them.

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The allegation in all these cases is that they failed to do that—not that they were unwitting, incidental victims of a criminal mind, but that they failed in their duty. Bull’s Eye Shooter Supply in Washington State, for example, who supplied the Washington snipers with their weapons, didn’t realize it at the time—must have walked in and shopped a sniper weapon, a 3-foot-long sniper weapon, and carried it away, undetected, during business hours. In fact, this was missing without his knowledge for weeks and months. That is not the standard of care the community should expect from anyone engaged in this type of business.

To act in a way that will not unnecessarily cause harm to others. What should be decided in a court is whether they lived up to that duty. If this legislation passes, they will be denied the opportunity to determine whether their duty to the community was upheld.
They cannot make them so easily available that a young person would take the car and get into an accident. That applies to automobile dealers. But if this legislation passes, common sense does not apply to the gun industry. In fact, this is a license for irresponsibility we are considering today. Whatever precautions they are taking today, because they might anticipate this type of danger and anticipate, perhaps, litigation, there is no incentive today to take those rudimentary precautions. There will be a race to the bottom, to the worst standards of the industry, to the worst operations of the worst operators.

With this bill, we are saying, in addition to your Federal firearms license, you get another license; you can be irresponsible. That is not to suggest all dealers and manufacturers are irresponsible. But some are. Those very few, but very few, but very few, I think.

We talk about junk lawsuits. It is not a junk lawsuit when your husband has been shot by a sniper while sitting in a bus waiting to go to work, to drive his bus, to service this community, to pick people up and get them to work. I don’t think one can say of the families of the very best of the families of the very best of the very best of the worst operators.

That applies to automobile dealers. We talk about junk lawsuits. It is not a junk lawsuit when you get another license; you can be irresponsible. The suggestion that this legislation is in response to some avalanche of lawsuits that is devastating the firearms industry is out of focus. The industry is so stressed that they have managed to raise $100 million to protect themselves—not just in terms of going to court and paying claims, but also in terms of controlling documents and communications between themselves and their attorneys, so they can claim the benefits of the law, attorney-client privilege, at the same time they are trying to take away the benefits of the law from average citizens who have been harmed by guns. That is a stunning hypocrisy.

On the contrary, these families have been harmed, in part, because of the negligence of someone, and that someone should pay. The suggestion that this legislation is in response to some avalanche of lawsuits that is devastating the firearms industry is out of focus. The industry is so stressed that they have managed to raise $100 million to protect themselves—not just in terms of going to court and paying claims, but also in terms of controlling documents and communications between themselves and their attorneys, so they can claim the benefits of the law, attorney-client privilege, at the same time they are trying to take away the benefits of the law from average citizens who have been harmed by guns. That is a stunning hypocrisy.

Mr. President, I will spend a moment of my time on gun control. In fact, this is a license for irresponsibility we are considering today. Whatever precautions they are taking today, because they might anticipate this type of danger and anticipate, perhaps, litigation, there is no incentive today to take those rudimentary precautions. There will be a race to the bottom, to the worst standards of the industry, to the worst operations of the worst operators.

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Mr. KENNEDY. Reserving the right to object, can the leader give us some indication as to when we will go on the Defense authorization bill, as one who has an amendment and is glad to participate?

Mr. FRIST. Mr. President, I am happy to say, that is why I specifically stated in my unanimous consent request ‘in consultation with the Democratic leader.’ Until we get through the highway bill, the Energy bill, Interior appropriations, Legislative Branch appropriations, and gun liability, it is going to be hard for me to predict exactly when—we plus we have a 5-week recess between now and then.

The whole point I will be offering my unanimous consent request is I stay in touch through consultation with the Democratic leader to find the appropriate time.

Mr. KENNEDY. Mr. President, I will not object. My feeling is, I regretted the fact we got off the Defense bill—particularly because of its importance to our national security—to go on to this gun liability bill. I am not going to object to the leader coming back. As one who has an amendment—I know many of our colleagues were eager to focus on those amendments. We will expect to hear from our leader as to when the leader will do that.

Further reserving the right to object, is it the intention of the leader to permit amendments to the gun liability bill so we will, now that we are on that legislation, at least be able to talk about and offer amendments on the gun liability legislation?

Mr. FRIST. Mr. President, it is our intention to have a plan ahead for the Senate, but we will be in discussions with the leadership and the ranking member and chairman discussing amendments and allowing them to be offered accordingly in the judgment of the chairman and ranking member and the leadership.

Mr. KENNEDY. Mr. President, I am not going to object to the other, but that sounds to me as if—having been around and familiar with the rules of the Senate—they can effectively let what amendments come up that are agreeable to the floor managers and deny other Members the opportunity to offer amendments. I think the Senate rules provide, when we are dealing with cloture, to be able to offer amendments that are relevant to the underlying bill. I don’t understand why we are not going to be permitted the different options. I am not going to object to the leader being able to go to Defense authorization when he wants to, but it does seem to me we are facing a stacked deck here and denying Members under the Senate rules the opportunity which the rules provide for. If it is not in order to say we are going to run consideration of the gun liability according to the Senate rules. That on the be-thought or not, it would have hoped. I guess there is a different plan ahead for the Senate, but we all want to be fully aware of what that means. That means some Members will be able to get their amendments in and others will not.

Mr. REID. If I can say one thing, I think it was an oversight on the part of the majority leader, but one of the issues we have to deal with before we leave is Native Hawaiians also.

Mr. FRIST. Mr. President, that is correct, and I am thinking the exact same thing when I was talking, and Department of Defense as well. We have a whole range of issues. The Democratic leader knows I am in constant discussion with him as to how we are going to get the business done, and the fact we did not get cloture yesterday on the Department of Defense bill, we are moving ahead in an orderly fashion, hopefully in a civil way, working with the other side, through the managers on the Democratic side and Republican side, with the leadership in order to complete the business this week.

Mr. President, I guess we have a modified unanimous consent request that at any time determined by the majority leader, after consultation with the Democratic leader, the Senate resume consideration of the Defense authorization bill; is that correct?

The PRESIDING OFFICER. That is correct. Is there objection to the request as modified? Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will proceed to a vote on the motion to proceed to the consideration of S. 397. The question is on agreeing to the motion.

The motion was agreed to.

ORDERS FOR THURSDAY, JUNE 28, 2005

Mr. MCCONNELL. Mr. President and colleagues in the Senate, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow, Thursday, July 28. 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 of morning business for 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 majority leader or his designee. I further ask that following morning business, the Senate resume consideration of S. 397, the gun liability bill.

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

PROGRAM

Mr. MCCONNELL. Tomorrow, the Senate will continue its consideration of the gun liability bill. Under an agreement reached this evening, we will debate and vote on the Kohl amendment on trigger locks. That vote will occur before lunch tomorrow. As a remainder, first-degree amendments must be filed by 1 p.m. tomorrow afternoon. We will have a cloture vote on the pending legislation, and we will announce the exact timing of that vote tomorrow.

ADJOURNMENT UNTIL 9:30 A.M.

Mr. MCCONNELL. If 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 7:40 p.m., adjourned until Thursday, July 28, at 9:30 a.m.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today’s Senate proceedings will be continued in Book II.

NOMINATIONS

Executive nominations received by the Senate July 27, 2005:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

KEITH E. GOTTFRIED, OF CALIFORNIA, TO BE GENERAL MANAGER, REGIONAL OFFICE FOR HOUSING AND URBAN DEVELOPMENT, APPOINTMENT FOR A TERM EXPiring JULY 31, 2008.

DEPARTMENT OF STATE

ALFRED HOFFMAN, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PORTUGAL.

DEPARTMENT OF EDUCATION

MARK S. SCHNEIDER, OF THE DISTRICT OF COLUMBIA, TO BE COMMISSIONER FOR EDUCATION STATISTICS FOR A TERM EXPiring JUNE 21, 2007, VICE ROBERT LEWIS.

EXECUTIVE OFFICE OF THE PRESIDENT

SHRIYA K. MADASAR, OF MASSACHUSETTS, TO BE DEPUTY DIRECTOR FOR FREEDOM OF INFORMATION STATISTICS, OFFICE OF NA- TIONAL DRUG CONTROL POLICY, VICE ANDREA G. BARNWELL.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DIANE RIVERS, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPiring JULY 19, 2009, VICE JACQ. E. BIGHTLE, TERM EXPired.

SANDRA FRANCES ARMSTRONG, OF IDAHO, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPiring JULY 19, 2009, VICE JOHN DICKSON, TERM EXPired.

JAN CELCULI, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPiring JULY 19, 2009, VICE JOHN DICKSON, TERM EXPired.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RE- SERVED OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 1220:

To be brigadier general

COL. ERROL L. SCHWARTZ, 2000