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.

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 conference is 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.

This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
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 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 might have, 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 constituents. 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 necessary, very 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, and will finish our work earlier, 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 constituents. 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 necessary, very 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.

So people ask, What is the problem? 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 issues on the minds 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 need 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: I think he is dead. 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 mean 0.25% of the deaths, 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 these deaths is compounded by the fact that these deaths and the many errors that result in prolonged hospitalization, more misery, greater cost, can be prevented, 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.

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 develop a system to keep it from happening in the future. We all do that in our everyday lives.

For example, in hospitals, there is a tendency not to do that because if you share your mistake, there is a predatory trial lawyer who will swoop in and find that error and take you to court and destroy you and the system. It is human nature to say, if that is the case, Yes, I made a mistake, I will immediately admit it because it will destroy my future. People are afraid of sharing their internal data, such as their collection of reporting of infections that could have been prevented with preventable techniques or a medical error that might expose them to a ruinous lawsuit. That drives the reporting of these medical errors underground.

The bill will change all of that, and it will lift this threat of litigation and age-try. Everyone in the aviation system—mechanics, pilots, air traffic controllers, flight attendants, and the general public—to voluntarily report—I remember the blue cards you reported on—potential or actual safety problems, and you could do so without fear of retribution.

That is why this voluntary aspect is so important. Because that information in the aviation field was shared internally and with others, accidents went down and overall safety went up dramatically. Everyone improved. Quality improved and safety improved by learning from others.

The patient safety bill that is before the Senate of Representatives today—the same bill that passed in this body last Thursday—promises exactly the same kind of benefits, in parallel, that were passed in 1975, and this is 2005, 30 years later than it should have been. I believe providing a system to 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 lawsuits, and this transparency will improve quality.

America has the absolute best health care in the world. I have seen it by
doing heart transplants, using the best of lasers to resect tumors out of the trachea or windpipe, and with developing ventricular assist devices. I was in Tennessee some weeks ago working at a small clinic out in the bush, and when you talk to folks in America, they have 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, driving 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 hopeful 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 400,000 physicians out there to be able 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 Mark Enzi, Senator Judd Gregg, Senator Jim Jeffords, who has been at it as long as anybody on 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, thePatient 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, is that 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


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 myself—are now in support of the 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 reemphasizes 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 more. This is not a broad attempt to aim 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 by雷霆’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.

This bill has 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 in the balance. This bill would require the dismissal of existing suits, as well as future suits that fit this very narrow category of description. It is not a gun industry immunity bill because it does not protect firearms or ammunition manufacturers, sellers, or trade associations from any other lawsuits based on their own negligence or criminal conduct.

This bill gives specific examples of lawsuits not prohibited—product liability, negligence or negligent entrustment, 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 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 provisions. In other words, already 33
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 would fall off the hook by 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 this floor to make that charge, 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 nor 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 the exception, such as violations of Federal and State law, negligent entrustment, knowingly transferring to a dangerous person. That is what that 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 of the manufacturer 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 be won 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 fact that the majority of the Senate musters 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 by discussing this very point: the importance of dealing with this issue of reckless lawsuits against members of the firearms 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 believe in 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 new 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 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.

Mr. President, I strongly believe it is important that we not write legislation that provides immunity for an industry that knowingly harms consumers.

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—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 dozens of 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 act of third parties, regardless of whether they have absolutely no control.

In testimony before a House subcommittee in 2005, the general counsel of the National Shooting Sports Foundation, Inc., said that "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 firearm 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 suffer 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, are supporting this bill. The gun 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 positive. Hunters bring in retail sales of over $252 million a year; 6,755 jobs in Oklahoma alone; $22 million in new demand for firearms and to cease sales of firearms to individuals who are under the influence of alcohol or illegal drugs.

One of the worst demands is the 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 handgun 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. The same argument could not accomplish by passing such an ordinance.”

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 positive. Hunters bring in retail sales of over $252 million a year; 6,755 jobs in Oklahoma alone; $22 million in new demand for firearms and to cease sales of firearms to individuals who are under the influence of alcohol or illegal drugs.

In 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 shot or drove the inquests of their own crimes. This is not the handwriting of 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 negligence on 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 anti-gun 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 Supreme Court struck down the right of New Orleans to bring a suit in the face of a State law forbidding it, in an opinion stating clearly:

This lawsuit constitutes an indirect attempt to regulate the design, manufacture, marketing, and sale of firearms. It is no more directly related to the Federal interest than regulations on auto safety or food safety. It is not necessary for the Federal interest to have control over the market for firearms, an interest that has never been claimed.

This is the ultimate goal of these lawsuits—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 inconsequential. That is why it is essential that we pass Federal legislation.

Insurance rates for firearm manufacturers have skyrocketed since these suits began, and some manufacturers are abandoning 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 inconsequential. 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 manufacture, the distribution, the marketing, and the sale of firearms.

Judges 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. This bill is limited in scope. 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. Claimants may still go to court to argue that their 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; the Arms Act; 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 background check or through state systems that also use the NICS system. All relevant gun buyers are screened to the best of the Government’s ability.

Additionally, the 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 sure products are packaged and sold that way because they become aware of potential defects.

In the past, Congress has found it necessary to protect other classes; for example, the light aircraft industry. Jim Inouye, a Senator from Oklahoma, moved the amendment that hour ultimately through the Senate, an industry that was killed, literally destroyed by frivolous lawsuits. Community health centers, same thing; the aviation industry; the medical implant makers; Amtrak—we have created a special exception for 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 own and use firearms responsibly.

This bill will protect our national security. It will protect our constitutional rights. It will protect an industry and law-abiding manufacturers and dealers of firearms may continue to serve the law-abiding citizens exercising their constitutionally guaranteed second amendment rights.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I 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 whom the other chair was speaking: Why are you 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 that the American people are highly concerned about because 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 around and have our family 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 throw those balls in the air. That is exactly what 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 set 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 to 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 and I would agree that when our President came to town, now, nearly 6 years ago—and I remember President George W. Bush—he said the following: 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 a 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.

And, while we did put it, 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 Saturday, and we can do our work done. 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 Major-ity 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 that challenge, producing unprecedented quantities of arms, armor, and explosives. The very same companies that arm our men and women on the battlefront today were 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—the industry has surged on its own. It 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 each 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 campaign trail 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 the verdict for plaintiffs would risk irreparable harm to a vital defense industry.

These are some of the reasons I have cosponsored S. 397, the Protection of Lawful Commerce in Arms Act. This bill would protect America’s small arms industry against these lawsuits, while allowing legitimate, recognized types of suits against companies that make defective 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 American small arms industry.” As I said, S. 397 to the Senate floor before the August recess, and working to pass it without any amendments that would jeopardize its speedy enactment into law.

That is why we are here today, because 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 flexible, and the Senate has been.

We have legislation on the floor and conference reports on major bills pending, 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 energy, conference report on transportation, and a conference report on the Interior appropriations bill, which has some critical 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 of the 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 context. I am not going to name names, but I will say that I know of at least three firearms companies that have around $100 million worth of sales a year apiece, not collectively but apiece.

They were comparing it in this interview with the tobacco industry. I said, Well, the two of those companies alone, they were selling $1.1 billion, $1.2 billion, some of them $2 billion industries in their collective value. So we are talking apples and oranges, an industry that is very limited in its capability that is now being sucked to death line and that if those companies by themselves alone, they were selling $1.1 billion, $1.2 billion, some of them $2 billion industries in their collective value. So we are talking apples and oranges, an industry that is very limited in its capability that is now being sucked to death line and that if those companies alone, they were selling $1.1 billion, $1.2 billion, some of them $2 billion industries in their collective value. So we are talking apples and oranges, an industry that is very limited in its capability that is now being sucked to death line and that if those companies alone, they were selling $1.1 billion, $1.2 billion, some of them $2 billion industries in their collective value.
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 is so afraid of vetoing that legislation because of this 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 alarming 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 ignoring the standards of today’s new administration. So 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 at the highest levels. We need to disavow the abuses and harsh techniques. We need to ensure our actions do not become an excuse for our enemies to torture American troops when they are captured in the future or to attack innocent Americans in any part of the world.

The reports of abuse also undermine our own security efforts at home. The vast majority of Muslim Americans and Arab Americans are willing to identify potential terrorists, help prevent charitable donations from being misused, and act as eyes and ears of a community uniquely capable of identifying potential threats. When the reports of abuses go unanswered, they undermine the community’s willingness to provide that assistance. It is impossible for many Muslim Americans and Arab Americans to be persuaded to help against such threats if they feel their own religious beliefs have been compromised.

The reality is our safety and security depend on accountability. It is not enough to pretend that problem does not exist, but that is how the President has responded to the flow of reports about abuses. Contrary to the protests of the administration, we do not have the answers we need. So far, we have had 12 separate so-called investigations of allegations, but not a single report that answers the critical questions that civilian authorities have played in crafting the policies that led to our mistakes. Twelve investigations and counting, and the coverup continues.

In sum, our interrogation and detention policies need much more thorough review. In avoiding accountability, the administration has made it clear it won’t accept responsibility for giving our Nation the clear answers it deserves. As Benjamin Franklin said, half a truth is often a great lie. Until now we have been fed half truths and coverups by the administration. With the recent veto threat, the White House has declared war on any full and honest accounting of responsibility. The safety of our troops and our citizens depends on finding out the whole truth and acting on it. An independent commission of respected professionals with backgrounds in law and military policy and international relations is the only way we can learn the truth about what has happened so we can end the suppression and establish a policy for the future that is worthy of our Nation and worthy of our respect of all nations.

Administration secrecy doesn’t stop with their interrogation policy. This administration has a systematic disregard for oversight and openness. Government is intended to be “of the people, by the people, and for the people.” Democracy requires informed citizens, and to be informed, citizens need to have information about the government. Congress and the executive branch are supposed to be held accountable, so the American people know what is being done in their name. But under the Bush administration, openness and accountability have been replaced by secrecy and evasion of responsibility. The White House, concealing their actions from the American people, and refuse to hold officials accountable.

No one disputes the necessity of classifying information critical to protecting our national security—military operations, weapon designs, intelligence sources, and similar information. But in the post-9/11 world, the administration is making secrecy the norm and openness the exception. It has used the tragedy of 9/11 to classify unprecedented amounts of information. Material off-limits to the public has become so extensive that no other conclusion is possible. The Bush administration has a pervasive strategy to limit access to information in order to avoid independent evaluation of its actions by Americans whose job it is to observe and critique their government. When even Congressmen, journalists, and public interest groups complain about limits on access to information, we know the difficulties faced by ordinary Americans seeking information from their government.

At a hearing last August in the House Subcommittee on National Security, the Director of the Government’s Information Security Oversight Office, J. William Leonard, testified that “there is no sense the government classifies too much information. Too much classification unnecessarily impedes effective information sharing.”

The Deputy Under Secretary of Defense for Counterintelligence and Security, Carol A. Haave, said that as much as half of all classified information doesn’t need to be classified.

Last year, a record 15.6 million documents were classified by the Bush administration at a cost of $7.2 billion, many under newly invented categories with fewer requirements for classification.

The administration argues that all this secrecy is necessary to win the war on terrorism. But the 9/11 Commission Report said that too much government secrecy had hurt U.S. intelligence capability even before 9/11. “Secrecy stifles oversight, accountability, and information sharing,” says the report. They know from their own experience.

In July 2003, the 9/11 Commission’s co-chairmen, Thomas Kean and Lee Hamilton, complained publicly that the administration was failing to provide requested information.
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 Defense Department.

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 sought countability? were classified. So, is all this secrecy important to the Commission’s investigation? 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?

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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 what happened. The answer is for the administration to provide the needed information so that they 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 that would permit the Congress the ability to do so.

Yes, the administration has consistently used the horror of 9/11 and its disarray to congressional oversight to get away with avoiding 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.

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 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 that 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, both the FDA and 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 releasing it. 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 involved.” The FDA told us that it would not 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 campaigns. You have to make informed decisions on your phone company, but at least the company will be protected from nasty advertising.

Last 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 Central American countries had improved on labor issues. The contractor found the opposite, and posted its results on its website by then it was too late. 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. But when the administration didn’t like an answer, it abused its power to avoid accountability—at their expense.

Yesterday, the Wall Street Journal disclosed 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 Halliburton was paid to manage are missing. It is a staggering display of incompetence and cover-up, so that no one will be held accountable. Americans deserve better. They deserve the information necessary to become informed, effective citizens. We as lawmakers are better able to represent our constituents when we have access to the critical information held by the executive branch. We must never forget who we work for—the American people. Congress is a co-equal branch of government, and we...
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 such a flawed law enforcement bill, the manufacture of a高峰条纹匹夫 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? Gun industry special interest is not in this country’s future. 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 about to come out of Afghanistan—into gun defense—in order to consider special interest legislation?

That is what is before the Senate, and that is what we are considering at the present time, as a result of the Republican leadership. 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 about to come out of Afghanistan—into gun defense—in order to consider special interest legislation?

The way the bill was up for an unprecedented special interest amendment, by Senator MCCAIN, 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, the NRA lobby is a special interest windfall. I, for one, do not believe we should be giving the gun industry sweeping and unprecedented legal immunity for the gun industry, thus, a special interest windfall. This bill is a simple giveaway to one industry—the gun lobby. It is a special-interest windfall.

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 provide sweeping and unprecedented protection from those harmed by gun violence as a result of the wrongful 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 gun violence and have filed by organizations on behalf of their members and victims 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 narrow 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 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 circumstances. 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 the way the gun industry does business.

In another case, a Massachusetts court has ruled that gun manufacturer Kahr Arms may be liable for negligently hiring drug-addicted criminals to work at the company’s 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 criminals 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 unsafe cars 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 gun 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 the principles of common law, individuals and industries have 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 own 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 Oregon 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 Georgia, College of Law, University of 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 Arizona College of Law, 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 . . . would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in America who would be free utterly to disregard the risk, no matter how high or foreseeable, that their conduct

S. 397...
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 other people all across the country every day, even after the dealer is informed that these guns are being used in crime—even, safely 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:

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

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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 inducement to the risks of foreseeable third party misconduct.

One exception, for example, would purport to exempt gunmakers and distributors 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 argues 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 a crime. Any negligent entrustment exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals, careless handling or use of firearms, lack of security, or any of a myriad of potentially negligent acts.

Another exception would leave open the possibility of strict liability for statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a small part 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 firearm 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 storing a stray gun in the same place as the same street gang 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 extend an expansion 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 government I have ever seen take place in this body to prevent amendments from being offered once cloture is invoked, which is going to do to the people it represents an enormous harm. They are going to protect the most powerful lobby in the United States and open millions of Americans to egregious injury from negligent practices by distributors and sellers of firearms in this country.

That is not 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 have pointed out.

Additionally, I will put into the RECORD a letter of opposition from law enforcement officers and their families, to seek redress against irresponsible gun dealers and manufacturers.

The impact of this bill on the law enforcement community is well illustrated by the law enforcement officers 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 trafficked gun negligently sold by a 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 2001, 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 bagging large-volume sales of handguns. Those reforms go beyond the requirements of current law and are not imposed by any manufacturers or distributors.

If immunity for the gun industry had been enacted, the officers’ case would have been thrown out of court and 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.

I say to you we do not protect the public welfare.

Mr. President, this is what we are doing. 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 extend an expansion 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 government I have ever seen take place in this body to prevent amendments from being offered once cloture is invoked, which is going to do to the people it represents an enormous harm. They are going to protect the most powerful lobby in the United States and open millions of Americans to egregious injury from negligent practices by distributors and sellers of firearms in this country.

That is not 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 have pointed out.

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CONGRESSIONAL RECORD — SENATE
July 27, 2005

Maplewood Police Dept. (MN); President Lynn N. Cripps, Iowa State Police Association, Marshalltown Police Dept. (IA); Chief Daniel G. Davidson, New Florence Police Dept. (OH); Aetna’s director Jim Deal, U.S. Dept. of Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Bernard City Police Dept. (OH); Captain George Egbert, Rutherford Police Dept. (NJ); Sterling Epps, President, Association of Former Customs Agents, northwest (WA); Chief Dean Esserman, Providence Police Dept. (RI).

Other Daniel Fagan, Boston Police Patrolman’s Assoc., Boston Police Dept (MA); Captain Mark Folsom, Kansas City Police Dept. (MO); Chief Charles J. Glogowski, Franklin Police Dept. (CO); Superintendent Jerry G. Gregory (ret), Rainn Township Police Dept. (PA); Chief Jack F. Harris, Phoenix Police Dept. (AZ); Chief (Ret) Thomas K. Hayselden, Shawnee Police Dept. (KS); Terry G. Hillard, Retired Superintendent, Chicago Police Dept. (IL); Steven R. William, Director (Ret) APD; Officer Rick L. Host, Sec/Treasurer, Iowa State Police Assoc., Des Moines Police Dept. (IA); Officer David Hummer, Maricopa Police Officers Association, Ft. Worth Police Dept. (TX); Officer H. Hubserg, Ft. Worth Police Officers Association, Ft. Worth Police Dept. (TX); Chief Ken James, Emeryville Police Dept. (CA).

Chief Calvin Johnson, Dumfries Police Dept. (VA); Chief Gil Kellikowski, Seattle Police Dept. (WA); Chief Jeffrey A. Kummert, Gary Police Dept. (IN); Detective John Kotnour, Overland Park Police Dept. (KS); Detective Kurt Lavarello, Sarasota County Sheriff’s Office (FL); Chief Michael T. Lazor, Willow Police Dept. (OH); Sheriff Simon L. Leis, Jr., Hamilton County Sheriff’s Office (OH); Sheriff Ralph Lopez, Bexar County Sheriff (TX); Chief Cory Lyman, Ketchum Police Dept. (ID); Chief David A. Maine, Middlesex County Sheriff’s Office (NJ); Sheriff Thomas R. Percich, St. Louis Police Dept. (MO); Sheriff Mark E. Reddick, Delano Police Dept. (CA); Chief Michael T. Matulavich, Akron Police Dept. (OH).

Chief Daniel C. McCoy, Ravenna Police Dept. (OH); Sergeant Michael McGuire, Essex County Sheriff’s Dept. (NJ); Chief William P. McMamus, Minneapolite Borough Police Dept. (MN); Chief//'en Meiser, Berkeley Police Dept. (CA); Sheriff Al Myers, Delaware County Sheriff’s Office (OH); Chief Albert Nagy, Sacramento Police Dept. (CA); Detective Michael Palladino, Defensive Vice President, National Association of Police Organizations, President, Detective Volunteers of America, New York City; Chief Mark S. Paresi, North Las Vegas Police Dept. (NV); President Thomas R. Percich, St. Louis Police Leadership Organization, St. Louis Police Department (MO); Sheriff Charles C. Pflum, Alameda County Sheriff’s Department (CA).

Chief Edward Reines, Yavapai-Prescott Tribal Police Dept. (AZ); Chief Cel Rivera, Lorain Police Dept. (OH); Officer Kevin J. Scanell, Rutherford Police Dept. (NJ); Chief M. Schwartz, Executive Director, Maine Police Dept. (ME); Chief Ronald C. Sloan, Arvada Police Dept. (CO); Chief William Taylor, Rice University Police Dept. (TX); Chief Lee Roy Villareal, Bexar County Sheriff’s Dept (TX); Chief (Ret) Joseph J. Vince, Jr., Crime Gun Analysis Branch, ATF (VA); Chief Garnett F. Watson Jr., Gary Police Dept. (IN); Hubert Williams, President, The Police Foundation (NC); President Greg Wurm, St. Louis Police Leadership Organization, St. Louis Police Dept. (MO).

Mrs. FEINSTEIN. This letter of opposition details the case that Senator KENNEDY mentioned, involving two law enforcement officers from Orange, NJ, and points out that that case would have been thrown out of court. It is signed by numerous chiefs of police and major law entities.

The American Bar Association states in their letter of opposition:

S. 397 would preempt State substantive legal standards for most negligence and product liability actions for this one industry, abrogating State law in cases in which the defendant is a gun manufacturer, gun seller, or gun trade association, and would insulate this new class of protected defendants from almost all ordinary civil liability actions.

It goes on to say:

There is no evidence that Federal legislation is needed or justified. There is no hearing recognizing record in this area of law with little apparent difficulty. The Senate has not examined the unnumbered claims of the industry about State tort cases, choosing not to hold a single hearing on S. 397 or its predecessor bills in the two previous Congresses. More than 50 law professors point out this is a giveaway to one special industry that no other industry enjoys in the United States of America, and 30,000 people a year are killed with firearms in this country. I find it extraordinarily disillusioning.

I thank the Chair and yield the floor. I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. Mr. President, it is my understanding that the majority has control of this next hour under the agreement.

The PRESIDING OFFICER. That is correct.

Mr. GRAHAM. At this time, I will yield to Senator CORNYN 15 minutes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

NOMINATION OF JUDGE JOHN ROBERTS

Mr. CORNYN. Mr. President, I would like to take a few moments to comment on the nomination of Judge John Roberts to serve on the U.S. Supreme Court. In particular, I would like to provide some context in a brief response to some statements that have been made by our colleague on the other side of the aisle, the senior Senator from New York.

My colleague has repeatedly stated his intention to ask Judge Roberts during the confirmation proceedings dozens of questions about his positions on particular constitutional rights, as well as his views of particular cases that have been decided by the U.S. Supreme Court.
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 what 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 be 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—in other words, cases that are actually pending—would be inappropriate. But I would ask my colleague to review, as I have, the Supreme Court’s pending cases set to be heard in October because it clearly shows that this proposed list of questions would force Judge Roberts to prejudge the very pending cases that the Senator has said should be off limits.

Take, for example, the question of whether Judge Roberts “believes Roe v. Wade was correctly decided.” That is one of the Senator’s questions. The Senator has said specifically that this is a “question that should be answered.”

Demanding that Judge Roberts answer questions about Roe v. Wade will undoubtedly force him to prejudge a case that is currently pending on the Court’s docket. On November 30, the Supreme Court will hear arguments in Ayotte v. Planned Parenthood, a case involving the constitutionality of a New Hampshire law requiring a minor to notify her parents before having an abortion. It is nearly certain that some party in that litigation, perhaps even an amicus party, will ask the Court to revisit or overturn Roe v. Wade because one party does so in nearly every abortion case that reaches the U.S. Supreme Court.

Thus, whether Roe v. Wade should be overturned is not only an issue likely to come before the Court during Judge Roberts’s tenure, it is already before the Court.

Accordingly, demanding an answer to a question about Roe v. Wade will force Judge Roberts to prejudge at least one of the issues in the Ayotte case, and, no doubt, many others while he is on the bench.

Perhaps an even better example is the Senator’s question about whether “the Americans with Disabilities Act requires States to be accessible to the disabled . . . or [whether] sovereign immunity exempts the States?” Again, on November 9, the Supreme Court is scheduled to hear a case called Goodman v. Georgia, a case involving a suit by a disabled prisoner against the State of Georgia. The only question in that case is whether the Americans with Disabilities Act requires States to make prisons accessible to the disabled. Again, this is precisely the question that the Senator warned Judge Roberts that he would not have to answer but which, in fact, he is now being asked to answer.

It is clear then that the questions proposed by the Senator from New York will force Judge Roberts to prejudge pending cases. This is something that surely all of us can agree is inappropriate. Thus, surely all of us can agree in this Chamber that Judge Roberts should be permitted to decline to answer questions that the Senator from New York has said he will ask him and others like those questions.

But once it is acknowledged that Judge Roberts should be permitted to decline to answer the questions involving issues already pending before the Supreme Court, it becomes clear that Judge Roberts should be permitted to decline the rest of the questions proposed by the Senator from New York.

There are literally hundreds of cases at this very moment in lower Federal courts raising virtually all of the questions posed by the Senator from New York. Judge Roberts should not be forced to guess whether he will or will not one day make their way to the High Court. This is why the Canons of Judicial Ethics counsel judges against answering questions about issues that are not only already before the Court, but also those that are likely to come before the Court.

Any case pending in the lower courts meets this definition because it could be and, indeed, many will be appealed to the Supreme Court. Indeed, the danger of demanding that Judge Roberts answer such questions, even though some may not now be pending before the Court, is clear from an event involving one of the sitting Justices, Justice Scalia.

Two years ago, after delivering a speech, Justice Scalia was asked whether he thought the phrase “under God”—that is the reference in the Pledge of Allegiance—was constitutional. There was not at that time any case involving that question before the Court, so Justice Scalia answered the question. But there was, as it turns out, a case involving that precise question pending before a lower Federal court and, as we all know, that case eventually made its way to the Supreme Court. As we also know, Justice Scalia was then forced to recuse himself from hearing that case because the rules of ethics prevent judges from publicly commenting on pending or impending cases.

We should not force Judge Roberts to choose between confirmation and recusal. If Judge Roberts is forced to recuse himself in all of the cases, all of the issues on the Senator’s list, then the Supreme Court will be left short-handed for much of his tenure.

The Senator from New York says that his list includes some of the most important questions of the day, and that may well be true. But surely we can imagine that the Supreme Court will be left short-handed to answer those important questions in those cases as they are presented.

Judge Roberts should be permitted to do what we have always permitted nominees to do, and that is to decline to answer questions that might call into question his impartiality at a later date. We have always respected the right of nominees to decline to answer questions that make them feel as though their ability to do their job is compromised. That is the interest of a value that we all hold dear, and that is the independence of the judiciary.
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. Murkowski). The roll call will now begin.

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 where business, and this is being addressed today and tomorrow and possibly the next day.

The bill is directed 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 1995, the most recent year I have seen, 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 hardworking people who are manufacturing guns. I have had the opportunity, as many of my colleagues have, to go to these wonderful facilities with hardworking Americans, typically in rural communities, who are manufacturing and people who make these 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 a loss of jobs. Those jobs happen to be predominantly in rural communities. Anti-gun crusaders say that the firearm business, which today is one of the most regulated industries in America, should be responsible for the criminal acts of others. They believe it is OK to use lawsuits to circumvent the democratic process and legislate actually from the bench, and they say so themselves.

If we turn to the trial attorneys and look at the quotations, one trial attorney claims that what has happened is that the legislatures have failed. Lawyers are taking up the slack, said the trial attorney. Another anti-gun trial lawyer says that trial attorneys are “the new arm of government,” replacing the legislative branch “that’s not working anymore.” These trial attorneys apparently believe they are above the voters, that they are above the legislative process. I do not agree, most Americans do not agree, and thus, we have the bill today.

Most Americans think there is too much litigation and not too little litigation in this country. Legislatures in 33 States are taking the step to preempt frivolous gun lawsuits. They recognize that our Constitution protects the right to keep and bear arms. In fact, 53 percent of American households today own a gun. Still, the anti-gun crusaders, aided and abetted by powerful trial lawyers, charge ahead. They know that all it takes is one successful lawsuit to drive a manufacturer out of business. As one chapter of the United Steelworkers of America points out, “we are just one defeat away from bankruptcy.”

Since 1997, more than 30 cities and counties have sued firearms companies in an attempt to force them to change the way they make and sell guns. Firearm manufacturers have already spent more than $200 million in legal fees to defend themselves. Meanwhile, most of these cases have been dismissed. The Supreme Court of New York says: [The] courts are the least suited, least equipped branch of government to regulate and micro-manage the manufacturing, marketing, distribution and sale of handguns.

The Florida Third District Court of Appeals agrees, adding: “The power to legislate belongs not to the judicial branch of government but to the legislative branch.”

Some cases, however, are still pending and are slated to go forward. Thus, it is critical that we act now, that we pass this legislation now. We need to stop the criminals from getting guns.

In California, former Governor Gray Davis signed legislation explicitly authorizing lawsuits against gunmakers. Because the firearms business is relatively small, just one big verdict—maybe not even big—a substantial verdict could bankrupt the entire industry. In California, that is a real possibility. If the gun industry is forced into bankruptcy, the right to keep and bear arms will be a right in name only. Even if some gunmakers are able to hold on, they say that the cost of bankruptcy, whether it is the shotgun one buys to go hunting with or whatever the firearm might be, will go sky-high.

There is another important issue, 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 our gun manufacturers 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. But we also 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 mention that because when one looks at the quotations, one trial attorney. Another anti-gun trial lawyer says that trial attorneys are “the new arm of government,” replacing the legislative branch “that’s not working anymore.” These trial attorneys apparently believe they are above the voters, that they are above the legislative process. I do not agree, most Americans do not agree, and thus, we have the bill today.

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
As we know, the ACLU takes consistently liberal positions on high-profile issues, positions that many Americans strongly disagree with. I respect that, but 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 her developed 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. One 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 of the holding, that holding is 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 prejudge 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 am agnostic on real reasons. The first real reason is how often it is when we express ourselves casually or express ourselves without thorough briefing and after thoughtful reflection 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 his nomination 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 as 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 a question of 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.
Mr. HATCH. It is my understanding that this bill will continue with the support of S. 397, the gun liability bill.

Mr. HATCH. Madam President, I rise today to express my continued, strong support of S. 397, the gun liability bill. As I outlined yesterday, this legislation is a necessary and vital response to the growing problem of unfounded lawsuits filed against gun manufacturers and sellers. These suits are being filed in no small part with the intention of trying to drive them out of business.

These lawsuits, citing deceptive marketing or some other pretext, continue to be filed in a number of States, and the litigants are asking for equal treatment. In other words, we are asking the Senate to change its practices or standards. We are not asking for a double standard. We are not asking for special protection of the Constitution or the Bill of Rights.

The first amendment was intended to erect a wall of separation between church and state; the Second Amendment guarantees an individual right to bear arms, but it is not unlimited. Congress has the power to regulate commerce, but it is not unlimited. We have to be responsible. We are asking for equal treatment. In short, we are simply asking that the Senate showed President Clinton’s nominees, and prior Supreme Court nominees, will continue with Judge Roberts. After all, it’s only fair.

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 used it to commit 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 Second Amendment.

The rule should be simple. If you buy a gun lawfully, that is not defective, and someone else chooses to do something bad with it, that would ruin our economy. It would fundamentally change the Second Amendment.

The reception of this bill is a cultural moment in American history.

The second amendment gives us a right to bear arms, but it is not unlimited. We have to be responsible. We have to responsibly use that right. The idea that you could sue someone who is lawfully in business because someone else chooses to do something bad with it, that would ruin the way America works. It is a ridiculous concept.

Suing gun manufacturers for defective products is included in this bill. Everyone should stand behind what they make and put in the stream of commerce. That has not changed. The only thing that has changed is we are cutting off a line of legal reasoning that has extended to fast food now: "The reason I have health problems is because you served me food that was bad for me." The bottom line is, if we go down this road, we are going to make the gun industry unlivable in the 21st century, and we are going to rewrite the way America works—to our detriment.

The rule should be simple. If you make a lawful product and someone chooses to buy it and then decide to misuse it, it is not your fault, it is theirs. You are not going to have your money taken because somebody else messed up. Madam President, $200 million in legal fees have already been incurred by gun manufacturers because of this line of reasoning. You win in America; you still lose.

If you want to make sure our country is secure in the future, let’s make sure people can manufacture arms in America. If we continue to give foreign sources for arms for the public or the military. There is a lot at stake here. I enthusiastically support this limitation on what I think would be not only a frivolous lawsuit, but a dangerous concept that will change America for the worse.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I rise today to express my continued, strong support of S. 397, the gun liability bill.
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 or sellers of guns and ammunition 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 and ammunition for damages resulting from the criminal or unlawful misuse of nondefective guns and ammunition.

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 H.R. 4024, the anti-gun suits 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, including light aircraft manufacturers, food donors, volunteers, 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.

The Senate bill 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 guns used in violation of 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 the manufacturers of the lawful products.

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

These abusive gun liability actions usurp the authority of the Congress of and of State legislatures. They are an obvious and 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 colleagues from Utah for relinquishing the rest of the time, and I join my colleagues 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, intelligence agencies, and overlap citizens and community who take the fight to the enemy every day. Most damning, however, is that we have yet to see those who strongly criticize the President’s policies present any comprehensive, workable or viable alternatives.

This kind of politicizing only serves to erode the morale of the men and women in the field who do the heavy lifting. It is nothing short of shameful for our leaders in Congress bicker about nonsubstantive issues while they in the field are united and committed to the missions of freedom and keeping our country safe. The armed conflicts in which our young men and women serve are driven by the enemy, not our leaders. We should be the topic of thoughtful debate.

However, there is no place for this kind of posturing in the business of war because it merely empowers the enemy and belittles the efforts of our troops.

Let’s look at the facts. Some argue there is no connection between Iraq and 9/11. Look at the facts. In late 1994 or early 1995, Saddam Hussein met with senior Iraqi intelligence officer in Khartoum. In March 1998, after bin Laden’s public fatwah against the United States, two al-Qaida members reportedly went to Iraq to meet with Iraqi intelligence. In July, an Iraqi delegation traveled to meet first with the Taliban and then bin Laden. “One reliable source reported bin Laden’s having met with Iraqi officials, who ‘may have offered him asylum.’” These are quotes from the bipartisan 9/11 Commission Report published in July 2004.

I do not think one could argue that these facts are either agenda-driven or biased. These facts demonstrate that prior to the 9/11 attacks, al-Qaeda and bin Laden himself maintained contacts with the Iraqi regime and that the Iraqis even offered to harbor bin Laden. Accordingly, a categorical denial that “Iraq had nothing to do with 9/11” cannot be made responsibly. Next contention: Iraq had and has nothing to do with the global war on terror. That is flat dead wrong. Hardly anyone can refute the fact that Iraq has become the gathering place for Sunni extremists who wish to wage war against the United States. From their optic, the terrorists have a plethora of targets with the presence of U.S. forces in Iraq. They are also motivated to combat our policy of fostering a pluralistic, open, and democratic government in Iraq.

Instead, the terrorists wish to distort Islam’s true meaning, wage an unholy war against Iraq’s Shi’a, 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, a battle for 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 Iraq's—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 had been in Baghdad at least at rest, in fairly dramatic terms, that there is at least substantial connection between Saddam and al-Qaeda."

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 and 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 in D.C. The bomb was never made and the authorities thwarted the terrorist plot and arrested 16 suspects led by two Iraqi nationals.

Finally, Abdul Rahman Yasin, who was indicted in the United States for supplying WMD to terrorists in Iraq, was arrested by authorities in mid-2002. In Iraq, the U.S. and British authorities thwarted the terrorist plot and arrested 16 suspects led by two Iraqi nationals.

Next contention: Iraq did not present a danger to the United States at the time we commenced Operation Iraqi Freedom. Listen to the people who looked at the situation. During a July 28, 2004, Senate Armed Services Committee hearing, the former head of the Iraq survey group who went in and looked at the situation in Iraq after we occupied it, Dr. David Kay, noted, "It was reasonable to conclude that Iraq posed an imminent threat. What we learned from the inspection of Iraq was more dangerous than I thought it was even before the war." He went on to say, "I think the world is far safer with the disappearance and removal of Saddam Hussein. This may be one of these cases where he was more dangerous than we thought." The head of the Iraq survey group.

Next contention: Iraq would have supplied WMD to terrorists. During that same hearing Dr. Kay added, "After 1998, Iraq became a regime that was totally corrupt. Individuals were out for their own protection, and in a world where we know others are seeking WMD, the opportunity to sell to the seller at some point in the future of a seller and a buyer meeting up would have made Iraq a far more dangerous country than we even anticipated.

The 9/11 Commission during the 1990s found: Bin Laden sought the capability to kill on a mass scale. Bin Laden's aides received word that a Sudanese military officer who had been a member of the previous government in Sudan was offering to sell weapons grade uranium. After a number of contacts were made through intermediaries, the officer set the price at $1.5 million which did not deter Bin Laden. Al-Qaida representatives asked to inspect the uranium and were shown a cylinder about 3 feet long and one thought he could pronounce it genuine.

Al-Qaida apparently purchased it, and it turned out that it was not a legitimate one. Given al-Qaida's demonstrated desire to acquire WMD and the Iraqi Government's likelihood of sharing WMD technology or actual devices with anyone for the right price, no one can dispute that the liberation of Iraq from Saddam's dictatorial and corrupt regime was a prudent offensive strike in the war on terror.

Finally, some would argue Iraq is a quagmire and not winnable. But listen to the troops. They say otherwise. These are the boots on the ground, the soldiers, the marines. During a recent trip to Iraq, journalist Michael Graham spoke to more than 100 soldiers, sailors, airmen and marines with different ranks and duties, at their forward operating bases, and they overwhelmingly had the same things to say about the war in Iraq. And he went on to say that these 100 American troops made the following points: We believe in the mission. We are making progress. The Iraqis are making progress too. We are going to win. I believe that says it all. I ask unanimous consent that a copy of his article be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mr. BOND. I believe that article says it all. Michael Graham's sampling of U.S. military personnel was random, varied, not controlled by the Pentagon. The sample may be small, but 100 troops believe in the war in Iraq and that we are going to win.

Historically, we know that the first casu-alty of war is truth. The first casualty of political battles can often be the men and women fighting the real bat-
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 successes after more than one million gallons of fuel across Iraq every day, despite the best efforts of the insurgents. The Generals are supposed to be gung ho. It comes with the badge.

But I heard the same, positive assessments from 23-year-old sergeants from New Iberia, La., and from PFCs from Wisconsin and Alabama. Not one of them said Lieutenant Li, whose Humvee had been hit by IEDs so many times that 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,” Airmen Truong was headed back to Kuwait to do his duty for his adopted country.

Again I heard, 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 obvious Bush-hating-cheering biases but how much closer can a reporter get to delivering unspun, bias-free objective reporting than live-mic broadcasting instantly back to the states, while filtering out editorial meetings? Just the young men in the hot desert telling what they’ve seen, what they’ve heard, and what they now believe.

Isn’t it at least significant that not one in 100 thought invading Iraq was a mistake? Was it because they now recognize 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 were the media. I can’t say for sure, but maybe the major daily newspaper or a national network, I would be concerned that what they said is contrary to what I am printing or broadcasting. 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— and the New York Times editorial page does.

The PRESIDING OFFICER. Mr. CRAFEE. The next hour is controlled by the minority.

Mr. DAYTON. Mr. President, I am one of those 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 I would call a 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. In my 4½ years in the Senate, not once has there been a measure to refer the Senate for an up-or-down vote by the Senate. Evidently it won’t happen this week, either, because, again, that does not rate as a top priority.

No, according to the Republican leadership, the most important issue facing America and earning the most urgent attention of the Senate is the supposed need to give special immunity from the standards for negligence and product liability that apply to all other businesses and all other products. When this legislation passes, and it will pass with ease, because the NRA, National Rifle Association, has the money and the political clout to get whatever it wants, the result will be unnecessary, unfair, or ill advised as is.

Is this bill not benefit gun owners or hunters, who are most of the NRA members. They are being used to give special favors and special treatment to someone’s special friends and someone’s big contributors. This bill does not benefit gun owners or hunters, who are most of the NRA members. They are being used to give special favors and special treatment to someone’s special friends and someone’s big contributors.

Last year, according to industry data, there were over 1.3 million hand guns sold in the United States. That is just handguns. Sales totaled $605 million. The sales of rifles and shotguns last year totaled $1 billion. The number of long guns sold was not available, but simple math puts that number well over 2 million rifles and shotguns sold in the United States last year.

Given that volume of sales and weapons available, can anyone believe any law-abiding American’s constitutional right to lawfully purchase and own as many guns as he or she wants is being endangered? What nonsense. Absolute nonsense.

Our major gun manufacturers are certainly not in danger. Smith and Wesson’s most recent annual report showed net product sales of $118 million last year, an increase of almost 20 percent over the previous year. Sturm, Ruger and Company on July 20 of this year reported net sales for the 6 months ended June 30, 2005 as $778.7 million, an 8 percent increase over 2004, and the chief executive stated firearm unit shipments in the second quarter increased $1 million. The number from the prior year due to strong demand.

This is not an industry being hounded out of business. Would the industry like to rid itself of all lawsuits stemming from products and sales? Of course, and so would every other industry and company in America. I am not here to defend our Nation’s litigation practices, which are often excessive and sometimes even extreme, but whatever so-called reforms are made should apply to everyone. Gun manufacturers are not in danger, only people who make and sell potentially dangerous products or products that can be used illegally and misused and
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 special amendment being accepted and respected by the overwhelming majority of Americans and 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 are at least by very individual 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 veto 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 coach while the gun lobby has special privileges flying first class on Air America under this Congress and preceding Congresses.

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 also to inform their dealers of safer sales practices. Sadly, practice will allow other criminals from obtaining the guns, something that had never been done before.

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 being a West Virginia dealer.

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 knowledge that the gun would pass through 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 aware of any 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 they contrive to be doing so, to justify this legislation. If we are going to design a group that can think of which would just go straightforward with the concept they are more important to the Senate calendar than the fighting men and women who are now risking their lives for our country. They have done it many times.

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 person standing across the counter 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, the U.S. list of terrorists applied 44 times to buy guns. It is not unheard of. It happens in this country.

Well, in the estimation of the Republican leader, Senator Frist, there was one issue that was 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?

In our debate, we should have known could misuse it 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.

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 crimes guns 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 2002, 57 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 Missouri for violations of gun trafficking laws. In contrast, 32 cases were filed in Kentucky, 28 in Tennessee. So we have gun dealers in Missouri selling truckloads of guns to people who get on the interstate 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 are saying, for firearms dealers, they are putting it in the hands of a handful of government officials' to stick in the trunk of your car, “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. So you have a handful of dealers, just a small percentage, who are not paying attention or ignoring openly the fact that they are selling guns over and over again to gun traffickers and to straw purchasers.

How is that done? Well, the person who has a criminal record and cannot buy a gun anyway, he has a girlfriend, while he is standing there picking out the gun, the girlfriend is handing over the credit card or the cash to pay for 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, illegally, 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. When this bill is passed, those who vote for it have decided they will be the jury forever. It is more important to give illusion of capability. We are taking that matter out of the hands of American citizens. We are putting it in the hands of a handful of Senators.

I think of the gun that killed Anthony was sold in 2003 to Lou’s to a trafficker who had purchased six guns in a very short period. They bought multiple guns, including many “Saturday night specials,” which are small, easily concealed, low-quality handguns sought basically by kids, drug gangs, and those who are going to have a fast crime experience on a Saturday night.

The purchase of multiple firearms at one time can be red flag to Lou, but Lou doesn’t pay any attention to that: Give me some cash—I’ll give you a gun; no questions asked.

When this bill passes, the family of Anthony Oliver will lose their lawsuit, the lawyers they brought against Lou’s pawnshop that continues to sell these guns used in crime. So what a great piece of news for that family: the tragedy of losing your 14-year-old son to a “Saturday night special” from a pawnshop which specializes in selling guns to gun traffickers and criminals. This is a great bill, isn’t it?

Let me tell you about another case. Danny Guzman was a 26-year-old father of two from Worcester, MA. killed by a stray bullet fired outside of a nightclub of Christmas Eve in 1999. After the shooting, the loaded gun used in the shooting was found behind an apartment building by a 4-year-old child. The gun had no serial number. They determined the gun was one of thousands stolen from Kahr Arms, a Worcester gun manufacturer, by their own employees, who hired many of these employees and, it turns out, never checked whether they had criminal records.

One of the thieves, Mark Cronin, who worked for this gun manufacturer, had been hired despite his history of crack addiction, theft, alcohol abuse, violence, and assault and battery. They did not check it. The gun manufacturer hired people to make guns and did not do a criminal background check on their employees.

Cronin told an associate that he took guns out of the Kahr company “all the time” and that he could just walk out with a gun. The gun that was used to kill Danny right off the assembly line. And he was pretty smart about it. He took it off the assembly line before it was stamped with a serial number. Smart guy. Can’t be traced.

The investigation also led to the arrest of another employee, Scott Anderson, who had a criminal history, who pled guilty to stealing guns from the company.

One of the Kahr firearms disappeared in a 5-year period. The local police captain classified the recordkeeping at that facility as "shoddy," that it was possible to remove weapons without detection because they did not keep their records well.

Danny Guzman’s family brought a wrongful death suit in Massachusetts State court against the owner of the gun manufacturing company, saying: You should have kept your records so you knew that guns were being stolen. And you certainly should have done a background check on your employees. Hiring somebody who has such a criminal record to work in a plant.
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 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: Shouldn’t we at least create an exception that if the gun is used to kill a police officer in the line of duty, regardless of whether you 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, 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 police officers in uniform defending our communities are involved in methods with which they have 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 two 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 trained to tell Lemongello and Officer McGuire survived, they have suffered serious, debilitating injuries.

The man who shot them was wanted for attempted murder and had been arrested several times. So how did he get a gun? How did this man come into possession of a gun? Gun trafficker James Gray traveled from New Jersey to West Virginia to buy his guns. He and his companion, Tammi Lea Songer, visited Will’s Jewelry and Loan pawnshop in Charleston, WV, and Songer acted as a “straw purchaser” by buying the gun for Gray who couldn’t purchase it himself because he was a three-time convicted felon and out-of-State resident. The girlfriend bought the gun while he was standing there. Good old Will’s Jewelry and Loan took the cash and handed the gun over.

The man turned to Will’s 17 days later, purchased 12 more guns—see the pattern—which the girlfriend bought and paid for with thousands of dollars in cash. Should the gun dealer have been saying at this point, This looks a little fishy, someone might be trying to pull a fast one. No, people would. Gray picked out the guns for 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—officers forward—and I will close with this one. It was used to shoot these 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 practices to best restrict sales to traffickers. 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 do we keep the world we have reached 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 in the world are we doing here? We owe it to the men and women in uniform and their families to live 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?

I yield the floor.

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 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 questionnaire 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 on the White House counsel staff. The supervision of White House Counsel Fred Fielding. These are apparently kept in the Reagan Library in California.

Yesterday, in our continuing effort to expedite the process, we sent a letter to the White House asking that the files from those years be made available as quickly as possible, and to help speed it up, we identified by name the files we wished to be priorities. I hope the reported statements by White House officials indicate a change of days indicating they expect it will take 3 or 4 weeks to make these materials available are in error and, instead,
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 before the hearings and not before they or arrive later. In the event that the time of the hearing, 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 he selected Judge Roberts as 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 its responsibilities, it is appropriate that the Senate’s staff also be entitled 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 be seeing. We could get a practical sense of how, when, and why politics and the law intersect for him. I am not expecting 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 number of requests 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.

The White House, obviously, we are going to be asking, Is this the person the American people deserve, all 280 million of them? If he is not, Republicans and Democrats, as well as Democrats, have to take our constitutional obligations on behalf of the American people seriously.
Let's 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 2020 election.

Mr. President, I see the distinguished senator from Rhode Island. I yield the floor.

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

Mr. REED. 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 of them. It is carefully, 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—cases such as the case of the DC snipers, the case of Police Officers Lamomgello 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 Lamomgello and McGuire similarly had the opportunity to press their cases, and a settlement was reached. Officers Lamomgello 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 interesting aspect of this legislation is that it does not merely attempt to set the rules prospectively, as we go forward, to say these cases we have seen in recent years—the victims of the Washington area snipers, the case of Police Officers Lamomgello and McGuire—should not be traveled.

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 the opportunity to access the material. The 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 of several removed by Kahr Arms employees before serial numbers had even 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 weapons—numbers were 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 performed background tests or drug tests on 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 we have colleagues, 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 and make such an erroneous statement about the law. A memorandum by a professor at the University of Michigan Law School points out that in the re-statement of torts—this is as in all law—this is the basic summary of the status of the law in the U.S. with respect to torts. Section 48B:

If the likelihood that a third person may act in a particular manner is a hazard or one of the hazards which makes the actor negligent, such an act, whether innocent, negligent, intentionally tortious, or criminal, does not prevent the actor from being liable from harm caused thereby.

This is black letter law. There is no special exemption for the criminal act of another if you fail in your duty to secure equipment with respect to Kahr Arms is to secure dangerous weapons and to have employees who are responsible. That is what they are being sued about. They have a duty under the law for the whole community 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. Companies that are the cause of some defection, 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 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, they did not account for 238 weapons. They had no idea where they were. The evidence was overwhelming that there was no standard of adequate care, no effective controls on inventory. The owner of that gun store claimed a teenager—he didn’t realize it at the time—must have walked in and shoplifted an automatic 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.

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 gun that can kill people. I would think most Americans on the streets, if you asked them, Would you say 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.

So this is not about punishing people for the criminal activities of others. It is about holding individuals and corporations up to the product we expect from everybody. There are various examples. Some say, my goodness, if a store sells someone a knife that is then used in a crime, they should not be responsible. Others have talked about car dealers. But if you have the car dealer who leaves the keys in a car, and they have no security, and a teenager gets into that car and harms someone, certainly I think the parents of that individual harmed or that individual themselves could go to that dealer and say, look, we don’t meet the rational standard of care of those in the automobile industry. They have to secure the car and provide security.
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 doesn’t 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 hurt—very, very few.

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 any of my colleagues here on this floor would want to take away rights that they have been harmed by a negligent industry, and let a jury of their peers decide it.

We are not facing a situation where we would be without gun manufacturers because of these lawsuits. It is outlandish to suggest our national security is being jeopardized because we cannot find people in the United States who produce firearms, and that American companies are going to be turned to this torrent of lawsuits. And the suggestion that we have to turn to firearms suppliers for our military is rather odd. Indeed, today, many, if not most, of the suppliers for national defense are the subsidiaries of foreign companies. Browning, Winchester, and Fabrique Nationale, which supplies M-16 A-4 assault rifles and the M-2 49G squad automatic weapons are subsidiaries of Herstal, a Belgian firm. The Pentagon contracted with H&amp;K, a German firm, to help develop the next generation of weapons.

Clearly, the Pentagon doesn’t believe American manufacturers are so disliked that they have to go overseas. They are going overseas because they are looking for what they consider to be the best product and best design. They are dealing with subsidiaries of foreign companies. The suggestion, of course, that these suits are driving American hell out of business is ludicrous.

It is not about preserving our defense. It has nothing to do with our defense. The Pentagon is making decisions today about what they believe they are better weapons. This is about protecting one industry from the legal responsibility to exercise caution, a responsibility every individual must exercise. All industries must do that or, indeed, the vast majority.

This is not about protecting the integrity of the courts. What does it say to the integrity of the courts of West Virginia when a judge found that a suit brought by police officers should proceed, when we say: No, you are wrong, throw that case out. What will it say to Massachusetts courts if we pass this legislation when that case against Kahr Arms is thrown out the door? It will say we are meddling in the affairs of the courts in an unprecedented fashion. Thankfully, Officers Lemongello and McGuire were able to settle their legitimate case, but there are cases pending, and those cases must be dealt with.

I urge my colleagues to reject this gun industry immunity bill.

I want to make one other point before I yield the floor. Much has been made of a letter from the Beretta Company about the danger of an avalanche of lawsuits. If you look closely, what has happened is the District of Columbia, their duly constituted legislative body, passed a strict liability bill. The courts have upheld that. They say it is appropriate. That is the American system. That is what we are trying to do today. That is a strict liability bill, and that may raise concerns with the gun industry. This bill goes way beyond strict liability. It says simple negligence is out the door, and to conflate those two arguments does a great disservice to the accuracy of the truth of this debate.

Mr. President, I believe my time has expired. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that we stay on the Defense bill and that upon completion of that bill, we go to the gun liability legislation.

Mr. FRIST. Reserving the right to object. Mr. President, reflecting on yesterday, if we had invoked cloture yesterday, we would have been able to complete the Department of Defense authorization bill. We were unable to invoke cloture. I made it clear at that time at some point we would return to the Department of Defense authorization bill, a very important bill.

At the same time, we have about five pieces of legislation we have to address over the next 72 hours. We need to move on, as we will.

Also, the chairman and ranking member will have the opportunity over the next few days and weeks to take these more than 200 amendments, look at those amendments and see how many are absolutely necessary, based on their judgment, and then we can come back and address the issue of defense.

Finally, I ask that the Democratic leader consider my request from yesterday so that at any time determined by the majority leader, in consultation with the Democratic leader, then the Senate resume consideration of the Defense authorization bill.

Mr. REID. Mr. President, if the Senator will withhold for one second. There is now before the Senate a request to stay on the Defense bill and finish the gun bill when the Defense bill is finished. It is my understanding the distinguished majority leader has asked to modify that request so that he would be able to call up the Defense bill at any time he wishes; is that the way I understand the request as modified?

Mr. FRIST. Mr. President, I will phrase it that at any time determined by the majority leader, in consultation with the Democratic leader, the Senate will resume consideration of the Defense authorization bill.

Mr. REID. Mr. President, I understand that. I am disappointed we are not going to the Defense bill. My State, Oregon, is on the Record consistently and repeatedly, so there is no need for me to give that speech again.
Mr. KENNEDY. The rules of the Senate provide that 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. It is so ordered. I ask unanimous consent that the motion be put 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, 2007

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 PRESIDENT. Without objection, it is so ordered.

NOMINATIONS

Executive nominations received by the Senate July 27, 2005:

DEPARTMENT OF EDUCATION


EXECUTIVE OFFICE OF THE PRESIDENT

Hertha K. Madras, of Massachusetts, to be Deputy Director for Demand Reduction, Office of National Drug Control Policy, Vice Andra G. Bader.

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 Jack E. Brightwell, Term Expiring.

DEPARTMENT OF STATE

Alfred Hoffman, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Portugal.

SANDRA FRANCES AKERWORTH, OF IDAHO, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2009.

Jan Cellucci, of Massachusetts, to be a Member of the National Commission on Libraries and Information Science for a Term Expiring July 19, 2009, Vice Joanna Chellini, Term Expiring.

IN THE ARMY

The following Army National Guard of the United States Officers for Appointment in the Reserve of the Army to the Grade Indicated Under Title 10, U.S.C., Section 1220.

To be brigadier general

COL. ERIK R. SCHWARTZ, 6000