we cannot even get on the bill, we cannot attempt to solve whatever problems they think might be in the bill.

I am hopeful that we won't have the situation we had a few months ago, where folks on the other side claimed to want to do something about the problems with our medical liability system, but then, to a man, filibustered the motion to proceed on medical liability reform. We will soon see if our friends on the other side of the aisle are sincerely interested in moving forward on this legislation.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 having arrived, the Senate will resume consideration of the motion to proceed to the consideration of S. 1751, with the time until 12:30 p.m. equally divided between the two leaders or their designees. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent that the 5 additional minutes of morning business just consumed by the distinguished assistant majority leader be charged against the Republican time for debate on the motion to proceed to S. 1751.

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

Mr. CORNYN. Mr. President, in a moment, I am going to ask that the Chair recognize the distinguished Senator from Nevada for comments that he may care to make on the motion to proceed and on the upcoming vote at 12:30 on cloture regarding that issue. I want to perhaps tee it up a little bit and talk about why I think this motion to proceed is so important. I am only going to do so for a few minutes, and I will talk some more after the Senator from Nevada has had a chance to speak, and perhaps someone on the other side who wishes to speak.

I worry that our system of litigation has simply become too expensive and too time-consuming to serve the needs of consumers and the public. Those of us who have represented people in court, whether they be a plaintiff or a defendant in a lawsuit, know that sometimes after the lawsuit is over, even though lawsuits invariably have winners and losers, sometimes it is hard to tell the difference between the two because the process, as I say, costs so much and takes so much time.

Unfortunately, because of that, a lot of people with valid claims, who have been dealt an injustice and should have access to our courts or some means to vindicate those claims, are simply frozen out. That is something we need to work on not just on this bill, on this day, but going forward. I hope we will.

This bill, I believe, is very important because, indeed, I think the purpose of a class action lawsuit is a good one. It does, as originally intended, serve the purpose of providing individuals with relatively small claims an opportunity to get access to the court to get justice, even though it may not be economically sustainable because, of course, they have to hire a lawyer, pay court costs, and all the like.

The purpose, I believe, is laudable, but as in a lot of areas, experience and scholarship by the Nation's leading thinkers and just plain common sense tell us that, with the circumstances that confront us today when it comes to class action lawsuits, the system is not just broken but that it is falling completely apart.

Mr. President, I reserve any remaining comments that I may have and, according to the time that has been split between the parties on this issue, recognize the Senator from Nevada for comments he may care to make at this time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Chair. Mr. President, I do not want to interfere with my friend from Nevada, but I understood we were going back and forth; is that correct?

Mr. CORNYN. That is certainly fine.

The PRESIDING OFFICER. There is no agreement to that effect.

Mr. LEAHY. Has there been time reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. There is time reserved.

Mr. CORNYN. Mr. President, if I may inquire of my colleague from Vermont, Senator ENSIGN was here when I started, and then Senator LEAHY came in after I started, so I apologize. May I inquire approximately how long the Senator from Vermont wishes to speak?

Mr. LEAHY. Mr. President, how much time is reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. About 30 minutes.

Mr. LEAHY. I will not use the 30 minutes. I am going to use approximately 5 minutes of my 30 minutes.

Mr. CORNYN. I certainly ask that the Senator from Vermont be recognized for that purpose.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair. Mr. President, I do take my time under the order.

As I stated before, I do oppose this bill, a bill that has not had hearings, has not had a vote in the committee, but when you review it, you realize—let me be parochial for a moment—this legislation would deprive Vermonters of the right to band together to protect themselves against violations of State civil rights, consumer, health, and environmental protection laws in their own State courts.

That is unacceptable to this Vermonter. The same could be said of all the other 49 States, and it ought to be unacceptable to the Senators from each of the other 49 States.

In fact, the country might ask what it says about our priorities that we are even having this debate. Of the many pressing issues already on the Senate's plate awaiting action and awaiting time on the floor, all the appropriations bills that we are required by law to pass by September 30 and have yet to even be taken up for a vote or debate should be among our highest priorities. If we are going to tell how the laws should be made and how the courts should be run, we ought to at least demonstrate to the American people that we, in the Senate, can follow the law and do our appropriations bills at the time we are supposed to.

Instead, we set aside those issues that by law we are required to do, those issues that are the priorities of the American people, to take up another priority. We ask: Whose priority is this bill? The bill is a top priority to special interests that include big polluters and big violators of the American people's consumer rights and civil rights past, present, and future.

Class actions are one remaining tool available to the average American in seeking justice, and some special interests want nothing more than to weaken the public's hand in class action proceedings.

While the Senate is spending several days debating this bill, think of those appropriations bills that by law we should have brought up weeks ago and what is in those bills: not special interests but American interests, such as funding for the Department of Justice to provide bulletproof vests for law enforcement officers, the same law enforcement officers who protect all of us, or how about the money to put more cops on the streets and to implement the prevention programs of the Violence Against Women Act? Those are not special interests; they are American interests.

Despite the fact the fiscal year began 3 weeks ago, we are dallying with this special interest legislation that benefits large corporate interests at the expense of individuals harmed by these corporations.

At its core, this bill deprives citizens of the right to sue on State law claims in their own State courts if the principal defendant is a citizen of another State, even if that defendant has a substantial presence in the plaintiffs' home State, and even if the harm done was in the plaintiffs' home State.

Less than a week ago, with no hearings before our committee, mass tort actions were included in the bill along with true class actions, despite the fact

that when we actually did vote on it in the Judiciary Committee, both Republicans and Democrats voted to take that out. This simply amplifies the harm done to citizens' rights, and to the possibility of vindicating those rights in their own State courts.

It also shows how special interest legislation comes on the floor. Here is legislation bypassing the committee, legislation that is dumped on the floor and provisions added to it that had been voted down by a majority of the committee of jurisdiction, a majority requiring both Republicans and Democrats to vote for it.

Special interests groups are distorting the state of class action litigation by relying on a few anecdotes in an ends-oriented attempt to impede plaintiffs bringing class action cases. There are problems in class action litigation. There are ways of taking care of that. But simply shoving most suits into Federal court with new one-sided rules will not correct the real problems faced by plaintiffs and defendants.

After all, our State-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world. I think of when the Soviet Union broke up, as I said before on the floor, and members of the new governing body came to the United States to study how we do things. I recall a group coming to my office and saying: We have heard that people in the United States in your States can sue the Government, sue the State.

I said: That's right.

They said: We have heard further that they actually could win, and the State could lose.

I said: It happens all the time.

They said: You mean, you don't fire the judges; you don't start over again?

I said: Absolutely not; this is our system. We set it up that way so people can go to their State courts and sue.

If this is passed, I would hate to have to explain to those people from the former Soviet Union that we have taken such a step backward.

One reason that our State-based tort systems are so great is that there is an availability of class action litigation that lets ordinary people band together to take on powerful corporations or even their own Government. Defrauded investors, deceived consumers, victims of defective products, and environmental torts, and thousands of other ordinary people have been able to rely on class action lawsuits in our State court systems to seek and receive justice.

If they cannot, that is what the cheaters count on. We are only cheating you $5 or $6 or $10 or $15. Why would you sue for that? But if there are millions being cheated, then you have a chance to do something. Class actions allow the little guys to band together. Whether it is to force manufacturers to recall and correct dangerous products, as we saw with the Bridgestone/Firestone tire recall, or to clean up after devastating environmental harms, as we saw with Monsanto in Alabama, or to vindicate the basic civil rights they are entitled to as citizens of our great country, they are using class actions, and they should continue to do so.

The so-called Class Action Fairness Act is something that appeared on the Senate desk with no hearings. It almost looks as if it has been drafted in the legal section of one of the major polluters of this country. It would leave injured parties who have valid claims with no effective way to seek relief.

Class action suits have helped win justice and exposed wrongdoing by corporate and Government wrongdoers. They have given average Americans at least a chance for justice. We should not take that away.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, first I inquire as to the remaining time on the Republican side.

The PRESIDING OFFICER. For the majority, there are 21½ minutes remaining.

Mr. CORNYN. I ask unanimous consent that of that time, the last 10 minutes before the vote be reserved for the Senator from Iowa, the sponsor of the bill, or his designee; that following this UC request we go to the Senator from Nevada for 5 minutes; thereafter, that the Senator from Delaware be recognized for 5 minutes for any comments he may make; and then that the remainder of the time be reserved for me or my designee.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the Senator from Texas for yielding.

We just heard that what class action lawsuits are really about is the little guys in our system. That may have been the way it was intended, but unfortunately trial lawyers have abused this system where now—I am from the State of Nevada where we have these megabucks jackpots—what this system has become is the megabucks jackpots for the trial lawyers. It is not about the little guys anymore.

I have several examples I will cite to show exactly how out of control this system is. Between 1997 and the year 2000, American corporations reported a 300-percent increase in Federal class actions, and a 1,000-percent increase in State class actions filed against them. Class action lawsuits were conceived as an expeditious way for people with the same grievances to join in a common suit and seek justice in instances where it would be difficult to do so individually. Unfortunately, what has evolved now is a means for a select set of trial attorneys to abuse the class action litigation system and to seek absurd financial rewards. Whether or not these lawsuits are successful, the cost of these lawsuits hurts the very people the lawyers claim to protect, the consumer.

Oftentimes, the so-called clients of these class action attorneys end up with token awards in the form of coupons or rebates, while the attorneys pocket millions of dollars.

Just a few examples: In 1997, lawyers got nearly $2 million in fees and settlement with Cheerios over a food additive where there was no evidence any consumer had been injured. There was nearly $2,000 an hour charged for this case for personal injury lawyers. Consumers received a coupon for a free box of Cheerios. That is really protecting the consumer.

Southwestern Bell customers were told they would benefit from a class action lawsuit. Instead, they ended up with three optional phone services for 3 months or a $15 credit if they already subscribed to those services. The trial lawyers received $4.5 million in fees.

In a class action lawsuit against Chase Manhattan Bank—and this one is really good—a State court awarded the plaintiffs a multimillion-dollar judgment. The trial lawyers walked away with over $4 million in attorney's fees. Each plaintiff was awarded, get this, a settlement check of 33 cents. Since the plaintiffs had to claim their check by mail at the then-cost of a 34-cent stamp, the class action ''win'' for the consumer was a net loss of one penny.

It is obvious there is a need to reform our class action system. We need to take it where we have the best jurists in the Federal system.

A couple of years ago, one of the best trial attorneys in Las Vegas came to me. He actually makes his living doing these things. He said: If you want to reform the system, take it out of the State courts where you can just select the cheapest State that there is to sue, and take it where you have the most talented jurists in the Federal system. That way the legitimate lawsuits will go forward. Those cases where the consumer really does need protection will go forward, but we will get rid of a lot of the frivolous, outrageous lawsuits that are happening at the State court level.

So I urge that this Senate would proceed to the debate. If there are amendments, let us have the amendments, but let us at least proceed to the debate on reforming our broken class action system.

I thank the Senator for yielding me the time. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Delaware is recognized for 5 minutes.

Mr. CARPER. Mr. President, I thank the Senator for yielding. This is an important vote. I think in some ways this may be the most important vote we have cast in the 2½ years I have been here. I want to speak to Democrats first and then to Republicans. I suggest to my colleagues, my Democrat friends, why it is important for us to vote for the motion to proceed to take

up this bill and to improve this legislation before we end up voting for it and sending it to conference.

First, I say to my Democrat colleagues, the status quo is not acceptable. We cannot feel good about the system of justice which exists today. There are many who disparage the trial bar, but I will say a kind word toward the efforts of many members of the trial bar. They do important work. They make sure when the little people are damaged or hurt that there is a way for them to have their grievances addressed, and when people are harmed to be compensated. That is important. It is important we preserve that right.

The system that has evolved over the last 200 years with the class actions, and what I think everyone regards as venue shopping too often between different State courts and the Federal courts, is a system that is just out of balance today. We can do better than this. It is important that we do better than this.

I want to go back and talk about the evolution of the legislation. When this bill was first introduced and talked about in the 105th Congress, there were a lot of people who thought that class action reform ought to be tort reform; that we ought to put caps on attorney's fees, caps on pain and suffering, caps on punitive damages, dismember joint and several liability. That is what a lot of people thought we ought to do 6, 7, 8 years ago. This legislation does not look like that at all. This is a modest, measured approach to fixing what I believe is a real problem.

I am not going to get into the weeds and talk about one aspect of the bill or the other. Some concerns have been raised about it. Some are legitimate, some are not. I say to my colleagues, particularly Democrats, the bill is not perfect. This bill can be improved. If it is not perfect, make it better. We can make this bill better. In the end, in order for us to have the opportunity to make this bill better, we have to move to the bill. We have to vote affirmatively for the motion to proceed. If we do that, we will have the opportunity for me to offer amendments, as well as other colleagues to whom I have talked on our side. A number of our colleagues have very good ideas for amendments. And I invite not only Democrats to support them but our Republican friends as well.

Republican leadership has indicated in a number of these instances they will support the amendments that are being prepared to be offered.

Back to my Democrats, as the minority we have three bites out of this apple to protect our position as the minority. One, we can filibuster and not vote for the motion to proceed. That is one protection. The second protection comes when we reach cloture on the bill and the decision comes do we actually vote on the bill, do we go to cloture. That is a second bite out of the apple. The third bite out of the apple is if there is a conference report between the House and the Senate, and the conference report comes back, and the Republicans have not acted in good faith, the majority has not acted in good faith, we have a third bite out of the apple. I believe we have those protections down the road and especially the second, on the motion to proceed.

I say straight out to our Republican friends, if we approve the motion to proceed today, we actually get to the bill today, and have the opportunity in the next days and week to offer amendments, if my Republican friends do not act in good faith—and I believe they will—but if they do not act in good faith, not only will I oppose cloture on the bill, I will help lead a fight against cloture.

I want us to be able to offer our amendments. I want to see a lot of those amendments adopted. If that happens, we can improve this bill further and then go to conference further down the line.

The last thing I want to say, in my view, there is more at stake than the motion to proceed, and I have suggested this to Majority Leader FRIST. What is at stake is whether we are going to be able to work together on a difficult and contentious issue; whether or not in this instance we are going to be able to maybe take what could be a very good experience, very positive experience of walking together across party lines on a tough issue, and maybe apply that on other difficult issues we face.

So there is a responsibility on both sides: for us as Democrats to offer reasonable amendments, to join in good faith in the debate, but also for our Republican colleagues to support those good amendments and act in good faith on their own. If they and we act in good faith, we could end up with good policy, which is what makes good politics. That is the potential. It is important we all realize that.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I would like to pick up where the distinguished Senator from Delaware left off because I could not agree more. This is an issue that should not divide us politically or even philosophically. This is an opportunity for us to find common ground and work together. That is what many of us have sought to do from the very beginning, what we have tried to do with our colleagues on the other side and with others, because we believe there is ample opportunity to find common ground if we only seek it.

I don't know the number of times I have offered to sit down, along with many of our colleagues, with Senators on the other side in an effort to find the common ground we are looking for. For whatever reason, none of those offers have been accepted. So we find ourselves in a very difficult situation this morning. If I had the same confidence the Senator from Delaware had that we could offer amendments and they would truly be considered and perhaps some of them adopted, I would have no hesitation to support the motion to proceed. Unfortunately, on too many occasions now, especially involving tort, that has been an elusive goal, to say the least. We have not had the opportunity to have amendments offered in good faith. They have been rejected, one after the other, on a party line vote. As a result, we are left with no recourse but to simply say: Look, let's find a way to resolve this matter. Let's negotiate a bipartisan solution and let's resolve this issue.

I would even use the current circumstances as an illustration of what it is I am talking about. The Judiciary Committee passed a bill that enjoyed bipartisan support, signed by several of our colleagues on this side. They sent it to the floor. We fully expected the debate would be about that committee bill.

But that is not what the issue is this morning. The issue is whether we should support a motion to proceed to a bill that was ''rule XIVed'' onto the calendar in spite of what the Judiciary Committee did; I would say in direct conflict with what the Judiciary Committee did.

This bill is not just a class action bill. This bill is also a mass tort bill. The committee voiced its opinion on mass tort. They objected. On a unanimous vote, mass tort was excluded from the class action bill.

Lo and behold, it is right back in the legislation today. So we will be voting on the motion to proceed not only to class action but to mass tort, and mass tort for many of us is a woman's issue. It is the Dalkon shield, it is silicon breast implants, it is fen/phen. It is a lot of issues that would not have been addressed had this legislation been in law when those cases were taken up. It is that simple. Mass tort is something most of our colleagues did not bargain for, but it is in this bill.

The second issue has to do with the right of removal. Defendants now have an opportunity to remove a case from State court within a 30-day snapshot. They do that. Everyone understands that is their opportunity to move to a different venue. Under this legislation, they strip that legislation. At any time during the consideration of a case they can remove themselves from that particular court's jurisdiction. That is unprecedented. You talk about forum shopping. I can't think of a better invitation to forum shopping than the right of removal at any time up to the time the verdict is about to be announced. That is in this legislation.

This is bad legislating. It is bad legislating because it overrides the rules of the committee, because it overrides the voice, the opinion, the position of the committee on some of these key questions. Frankly, it overrides the consensus that I know we can establish together.

I have said as late as yesterday to the majority leader, I want to sit down with you. I want to negotiate some way

to resolve these issues. Do we recognize there is abuse? Absolutely. But this legislation is killing a housefly with a shotgun. There is a lot of collateral damage that is going to be done if it passes.

I am very hopeful we all recognize the distinguished Senator from Louisiana has offered a viable alternative that recognizes there are times when class actions ought to be held in State court, but there are times when class actions ought to be held at the Federal court level. We can recognize that there are those times when there is a Federal jurisdictional question.

Whether it is his language or something like it, we can work with our colleagues on the other side. But the only way that is going to happen is if we sit down and do this together. That is what I am offering. That is why I opposed the motion to proceed, because that has not happened yet. I am hopeful it will.

Whether or not we can succeed in establishing that important priority with this vote remains to be seen. I am hoping my colleagues will join me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. How much time remains for the Republican side?

The PRESIDING OFFICER. Eleven minutes.

Mr. CORNYN. I ask unanimous consent to revise the previous unanimous consent agreement to provide for 7 minutes for Senator GRASSLEY or his designee, 3 minutes for Senator KOHL, the Senator from Wisconsin, and I reserve the remaining time for myself, such as remains.

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

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise in support of the Class Action Fairness bill. What those of us who are supportive of this bill are trying to do is simply get it to the floor where it can be debated, amended, and even filibustered, so I do not understand the objections of those who want to prevent the bill from even reaching the floor. Those who do not support the final bill as it would emerge can vote against it and can even filibuster it, which would require 60 votes at that time.

My fear is those people who do not even want the bill to reach the floor in fact do not want—and I will bet we will not have—any class action reform. I believe many of those on the other side on this issue want to put this whole question of class action reform to bed and not address it at all. I would be willing to bet any of them we will not have any class action reform if in fact this bill we are proposing is prevented from even reaching the floor at this time.

The bill that is being voted upon at 12:30 is a bill that has gone through the committee process in the most fair and democratic of ways. It has been years in the making. It has been amended at the committee level by Democrats as well as Republicans, and finally voted out of the committee on a bipartisan basis. This is the way bills are supposed to reach the floor for debate and amendment and final approval or disapproval. I cannot understand legitimate motivations of those who are in opposition, as they have expressed themselves, except as it may be their motivations are to kill class action reform entirely in this session of the Congress and for as long as we can look ahead and foresee.

I urge my colleagues who want to see class action reform to allow this bill to reach the floor where it can be, as I said, fully debated and fully amended. I point out to them once again if in fact there is that kind of opposition to the bill that would finally emerge for final vote, they can require 60 votes. So all of their concerns as they have been expressed in this debate can still be addressed in that final vote, which could be, in fact, a filibuster vote.

I urge my colleagues to vote yes on the motion to proceed. I hope very much that we will have a chance to debate class action reform.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I yield myself 5 minutes under the time remaining.

Mr. President, my colleagues, I am for reforming the so-called class action litigation system we have in place. I think a strong majority of the Members of the Senate also favor a reform piece of legislation passing this body and ultimately being signed into law. But this is a two-way street, as everything we have to do in this body has to be. A 51-to-49 Senate means that neither side has the ability to do whatever they want without negotiating with the other half of the Senate. Either side has the potential to stop anything. That is what happens so many times in this body during this period of time we are in now where both sides can say, we are not going to do it this way, or, do it my way or don't do it at all. The clear result of that is nothing gets done. The end result is that both sides can blame the other side for failure in getting anything accomplished.

For those who truly want to get something done and worry less about who gets the credit, it is obvious that the way to do it is to sit down and negotiate and try to reach an agreement. I am absolutely convinced that an agreement that addresses the real problems dealing with class action could be reached in short order and allow us to get as many as 70 to 75 votes for a real class action reform bill. But that has not happened. It has not happened because my colleagues on the Republican side have generally said, we have what we want and we want to pass the bill that we wrote, even though they wrote much of it after it had already left the committee, as the distinguished Democratic leader talked about just a moment ago.

I have introduced a bill—S. 1769—which I think addresses all of the concerns people have raised about any potential abuses dealing with class action litigation. The idea would be for us to sit down with our colleagues and negotiate between their version and the version I have introduced to see if we can reach common ground and pass this in less than an hour with a substantial three-fourths of the Senate probably voting for it.

Many people have said the problem is forum shopping; many plaintiffs try to find the best forum they can possibly find and litigate in that forum for the best judgment they can get. My legislation says, no, we are going to follow principally the same rules the committee set out. If a third or fewer of the plaintiffs are from one single State, it belongs not in State court but in Federal court. That is the same situation that the committee has reported out. We are in agreement. If between one-third of the plaintiffs are from one State and two-thirds are from one State—if between one-third and two-thirds have been injured in Louisiana and filed suit—then Federal court decides whether it belongs in Federal court or State court.

That is principally the same finding that the committee bill has. We are in principle agreement in that regard. The Federal court makes the decision. For those who want it in Federal court, a Federal judge looking at all of the particulars of the litigation will decide whether it belongs in his or her court on the Federal level or whether the State has a greater interest in trying it on the State level. There is no disagreement.

But one area of disagreement I would like to point out is the situation of what happens if over two-thirds of the plaintiffs happen to be from one State, such as Louisiana. It is a big difference in what we do here. If two-thirds or more of the plaintiffs suffer injuries in my State, or any particular State, by the alleged defendant who is doing business in that State, who sells products in that State, and who must follow the law of that State passed by the State legislature, my proposal says that belongs in State court.

In the committee bill as drafted, they say even if every single person has been injured or has allegedly been injured in my State of Louisiana by a defendant allegedly in violation of the laws of Louisiana, passed by the State Legislature of Louisiana, if the defendant who caused the injury—even though they do business in my State and sell their products in my State, even if they have multiple stores in my State and are doing business and taking money out of my State for the things they sell, and if the defendant happens to have citizenship of Delaware, where many corporations are incorporated, or any other State, that doesn't belong in State court anymore; we are going to

put that in Federal court, which is already overburdened. The Federal judiciary says they don't want that jurisdiction.

Justice Rehnquist says he is opposed to it for that reason, among others.

This legislation says: No, we are going to put it in Federal court, even if everybody who is hurt and who is residing in the State, and the injuries were caused in violation of State law passed by the State legislature, because the defendant happens to have citizenship and is incorporated in another State, we will send it to Federal court.

People much more articulate than I have talked about this. One of the distinguished writers who has looked at this, Professor Arthur Miller from Harvard Law School, said the following:

S. 274 goes too far in broadening Federal diversity jurisdiction. S. 274 would place in Federal courts most class actions if the defendant is a citizen of a State that is different from any member of the plaintiff class. I can find no justification for denying State courts the right to hear cases primarily involving its own citizens who claim they have been harmed by a violation of their State's laws.

That is what the committee bill does. That is a principal reason their great expansion of Federal jurisdiction is so wrong.

I had a case in Louisiana. There are many crawfish farmers in Louisiana, probably the only State that has crawfish farmers—and maybe a few in the State of Texas. But they allege injuries because some chemical manufacturer had sold them pesticides and killed all of the crawfish in Louisiana. Every single plaintiff was from Louisiana. The injuries occurred in Louisiana. They sold the product in Louisiana. They were doing business in Louisiana selling the products. The State law of Louisiana said what they did was illegal and wrong and the plaintiffs deserved some compensation for the injuries they received. But no; under the committee bill, just because the defendant chemical manufacturer happens to be out of State the Federal court is going to be brought in to interpret State law that has been interpreted by the State supreme court and passed by the State legislature applying it to every State resident of my State.

That is not a legitimate way of handling cases that are uniquely a State concern, covered by State law and affecting only State injured plaintiffs in these cases. That is not what we want to do.

Our legislation also says that one of the abuses is these coupon sellers. We solved that problem in the past. Attorneys were filing on the number of coupons that may have been issued in settling a case for a defective product. You could go to the store and buy the product for a discount. The lawyers were being paid on the total number of coupons issued—not the ones actually redeemed. The attorney fees would be based only on those who exercised the right of buying the product with the use of their coupon.

As many people said, this is forum shopping, which the distinguished minority leader, Senator DASCHLE, talked about. They don't want forum shopping for plaintiffs, but they don't mind giving it to the defendant because the defendant, under this legislation, could ask that the case be removed out of State court at any time. Before the jury gets the case, if they think it may not go well, they will file a motion to move it to another court.

That is not right. How many times do they have a bite at the apple? Things aren't going very well anymore; we had better try another court. Let's go to the Federal court because we may lose in State court. If forum shopping is bad for plaintiffs—which we correct—it is no more justifiable for defendants to be able to do it, which is what this committee bill does.

I am only saying we need to say no to bringing this bill up until we have had a chance to talk about these issues in a serious form.

If I offer my amendment and the bill is brought up, they will move to table it, and, bingo, it is all over with, and we all go home. That is not the way to legislate on something as important as this. We need to negotiate. We need to talk about it.

What we are trying to say is, don't bring this bill up now. Vote against the motion to invoke cloture and let us see if we cannot sit down and talk about the differences that are not that great but hugely important—not that many but very important—between the two versions of the bill. I think we can put them together and get 75 votes, call it a day and everyone can be proud of the product we have produced.

I reserve the remaining time.

The PRESIDING OFFICER. There are 5 minutes remaining.

The Senator from Texas.

Mr. CORNYN. How much time is on the Republican side?

The PRESIDING OFFICER. Seven minutes.

Mr. CORNYN. I commend the Senator from Louisiana for his constructive efforts to get involved in class action reform. He has made a good contribution to the debate by offering some additional ideas for those that were considered in the Judiciary Committee when we voted this Class Action Fairness Act out of the committee.

It makes no sense to me to say vote against bringing the bill up in order to fix class action abuse. If people are serious about class action reform, then they would want us to bring up the bill. They would vote in favor of cloture and we would simply have a debate, as we do on all legislation on the merits of the bill, as voted out of committee or at least brought up for consideration here with whatever amendments may be offered.

The Senator from Louisiana has some constructive amendments, no doubt, and he has shown himself to be a master at bridging the gaps in this body and achieving consensus. He is to be commended for it. We need more people willing to look at the merits of legislation and vote on those merits. That is all we are asking.

I point out that, while there are a lot of different newspapers in the country, one that watches what happens in Washington, in particular, is the Washington Post which has observed that:

. . . ''clients'' in class action lawsuits get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix.

Very strong words. Not mine but those of the editorial board of the Washington Post.

Others who should be in a position to know a lot about this subject—for example, the Judicial Conference of the United States, chaired by the Chief Justice of the U.S. Supreme Court—have acknowledged problems with the class action system. While they are not in the business of lobbying for specific language, certainly we want to pay attention to some of the suggestions they may have about ways we can correct some of those problems. That is what this is all about.

This is some of the language I was referring to, obviously, speaking of the Judicial Conference:

. . . thanked Congress for ''working to resolve the serious problems generated by overlapping and competing class actions.''

Ultimately, I think we are all interested in the same thing; that is, that people who are hurt due to the wrongful conduct of others have a means to redress those injuries and make sure the wrongful actor pays. But we are not in the business of making sure that a few benefit at the expense of many. That is what happens now with an abusive class action system which enriches entrepreneurial class lawyers who find a so-called class representative and are then able to manufacture a huge lawsuit where they reap millions of dollars in fees and the consumer gets a coupon.

There is an old country and western song ''she gets the gold mine and he gets the shaft.'' In this instance, it is the lawyers who get the gold mine and consumers get the shaft in modern class action litigation. We ought to be about fixing that. We cannot fix it until this matter comes up on the motion to proceed and at least 60 Senators vote on the motion to proceed.

I hope my colleagues will heed the eloquent words of the Senator from Delaware, Mr. CARPER, and Senator KOHL, my colleague on the Judiciary Committee, and vote to bring the matter up.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I yield myself the time I consume.

I echo the remarks of the distinguished Democratic leader which indicate another reason why we should not be voting for cloture on this bill; that is, the changes that were made to the bill after it got out of committee. I refer to it as being the ''committee

bill,'' but the bill before the Senate is not the committee bill. A funny thing happened on the way to the forum: the committee bill was changed. You report one thing out of committee, you expect that will be the thing that comes to the floor—maybe some technical changes, a period here, a paragraph there—but they changed the substance of the bill from the time it left the committee.

If we were dealing with a committee bill, you could make a legitimate argument that you should proceed to the bill that the committee reported. But what they are asking us to do is proceed to a bill that the committee did not report. In fact, it is substantially different from the committee bill. That is not normal procedure.

That is why the Democratic leader has suggested what we ought to do is say: Time out. Put together the heads of the people interested in this and see if we cannot produce a package where we could get three-fourths of all the Senators voting for it. It has substantial changes made by the committee managers. They certainly have a legal right to do it, but from the terms of policy and how we legislate, if you have a clear vote in the committee to do one thing and then come out and do something entirely different on a key part of the bill, that is a substantial change that did not come through the committee process.

What I am saying is we ought to be talking together, both sides talking together, in order to get a substantial vote to enact this legislation.

I support class action reform. I think our bill, S. 1769, has, in fact, clearly addressed the issues of forum shopping and the coupon settlements. We clearly spelled out when cases would be in State court and when cases would be in Federal court. We do not reach out and say that even if every single injured party was from one State and was injured in violation of the State laws passed by the State legislature and previously interpreted by the State supreme court, that just because a defendant happens to be incorporated in the State of Delaware, for instance, that somehow yanks that case out of State court which is best suited for interpreting State law and brought into Federal court which the Federal Judiciary Conference already says they do not want because they have more business than they can handle, resulting in further delays. That is not what this bill should be all about.

Therefore, I suggest we say no to the cloture vote and that we sit down and work out the minor differences but important differences between S. 1769 and the bill in the Senate which has never come through the committee process. That is unfortunate. That is the main reason we should say no to cloture at this time.

Mr. GRASSLEY. Mr. President, I rise to ask my colleagues to vote in support of the motion to proceed to S. 1751, the Class Action Fairness Act of 2003. This bill is a fair and balanced solution to the growing problem of class action abuses, and it has solid bipartisan support. The process that was used to get to the floor was open and fair. The bill deserves to be debated, and my colleagues should support cloture on the motion to proceed so that we can get on the bill and consider amendments.

This modest bill will preserve class action lawsuits as an important tool that brings representation to the unrepresented. But it will also go a long way toward ending class action lawsuit abuses where the plaintiffs receive coupons of little or no value, while their lawyers receive millions. It makes you wonder who benefits from these class actions: the consumers or their lawyers? Given the trial lawyers' opposition to this bill, I think we know the answer to that question.

Both forum-shopping plaintiffs' lawyers and corporate defense lawyers are abusing the system. Lawyers are choosing plaintiff-friendly county courts to hear national class action cases, and defendants are shopping around for the best settlement deal regardless of whether it is the right thing to do. The lawyers file competing class actions, and enter into collusive settlements.

Some class action lawyers manipulate pleadings to avoid the removal of cases to the Federal courts, even if it hurts their clients. Some even name an innocent local defendant just to beat Federal jurisdiction. In the end, it is the consumer that is the big loser. This just isn't right.

The Class Action Fairness Act of 2003 tries to fix the more egregious abuses. The bill includes a number of provisions to help protect class members. It requires that notice of proposed settlements in all class actions, as well as all class notices, must be in clear, easily understood English. It requires that State attorneys general be notified of any proposed class settlement that would affect residents of their States so that they can act as watchdogs for fairness.

The bill includes provisions to help ensure that there are fair settlements. For example, it disallows cash bounty payments to lead plaintiffs so lawyers looking for victims can't promise them unwarranted payoffs to be their excuses for filing suit. It requires that judges to carefully scrutinize settlements where the plaintiffs get only coupons or noncash awards, and the lawyers get money. The bill requires a court to make a written finding that the settlement is fair and reasonable for class members.

Finally, the bill injects some rationality in terms of where large, nationwide class actions can be heard. It allows more class action lawsuits to be removed from State court to Federal court, either by a defendant or an unnamed class member. A class action would qualify for Federal jurisdiction if the total damages exceed $5,000,000 and parties included citizens from multiple states. But if a case really belongs in State court because it is a local problem or the class members and defendants are in-State, the case won't be decided in Federal court.

This is a good bill. It is fair and balanced. We have been working with Senators on both sides of the aisle to try to get it right. There is no question that there are serious problems with the current class action system and we need to deal with these abuses. So I urge all my colleagues to join me in supporting cloture on the motion to proceed so that we can finally get to the bill and debate this legislation.

Ms. CANTWELL. Mr. President, as a former business person and technology executive who has direct experience with class action litigation, I agree with the proponents of this bill that class action cases that impact Americans in every State ought to be litigated in Federal court. American business should be focused on developing innovative technologies, growing and creating jobs, and securing our economic future. American businesses should not be forced to defend themselves simultaneously in the exact same case in as many as seven different States at the same time.

I believe the current consolidation mechanism in Federal court offers both consumers and businesses a fair and efficient means of having their claims heard, and I support allowing more cases to be tried in Federal courts.

Unfortunately, I cannot support the bill before us today. While some positive changes have been made to the bill, the bill would close the State courthouse doors to almost all class action cases and move those cases to Federal court. The bill could overwhelm our Federal court system and cause delay not just in the cases that are being removed, but in the important class action matters that are already in Federal court.

I come from a State that is ranked as having the third best civil justice system in the country, according to the Chamber of Commerce. I recognize the rights of my constituents to have their claims heard in our own State courts and according to our own State laws. In 1993, hundreds of people in my State became critically ill and several died as a result of eating Jack-in-the-Box hamburgers tainted with deadly E-coli bacteria. Five hundred of those victims and family members came together and filed a class action lawsuit in State court for damages as a result of the injuries they sustained. The case was settled for $12 million. This is not frivolous litigation.

In fact, not one of the hundreds of businesses I have talked to about this bill has ever suggested that any abusive or frivolous class action litigation had occurred in Washington State. However, even though most of the plaintiffs in this class action were from Washington, and the case was about personal injury, a claim traditionally heard by State courts, if this lawsuit

were to be filed in the future, this bill would give defendants the right to remove the case to Federal court causing additional expense and grievances for the victims in this case.

I have three concerns about the bill. We need a better balance between cases being heard in State and Federal court. We need better protections for civil rights cases and a time deadline for moving cases to Federal courts.

First, we need to have the proper balance between addressing lawsuits in State and Federal courts. Currently, virtually all class actions are tried in State court. However, by moving virtually all of the lawsuits to Federal courts, this bill does not provide that balance. I support an approach that provides for keeping some cases in State courts and improving the flexibility to try more cases in Federal courts.

I have heard from many of the business leaders in my State who have expressed their concerns about the increasing challenges of defending themselves against the same claims in multiple states. I have heard their frustrations about seeing the claims dismissed in one State only to have them filed in another. I have heard from some of the oldest established businesses in my State to the newest. From Weyerhaeuser to Microsoft to AT&T Wireless, Intel, Amazon, the Madrona Group, Expedia, and Starbucks.

These employers have been forced to defend class action suits that are either dismissed or settled in a manner that provides little benefit to the class but great financial benefit to the lawyers. That isn't right, and that is why I have asked these companies in my State to analyze what the effects would be of removing any case to Federal court in which less than one third of the plaintiffs were from the State where the case was filed. I have committed to each of these businesses that I will continue to work with them to find a way to move more cases to Federal court while keeping cases that primarily affect a group of consumers in a State in that State's court.

While I believe that finding a better balance between class action lawsuits in State and Federal court is critical, I also cannot support this bill in the absence of protections that allow higher portions of settlement awards to be made to those individuals who agree to act as lead plaintiffs in class action cases. In addition, I believe that there needs to be a fixed date for defendants to seek to move a class action case to Federal court. As the bill is written now, a class action case can be proceeded all the way through trial and into jury deliberations—and defendants can still seek to remove it to Federal court even at this late date. I do not believe this serves the interests of justice. This provision should be fixed.

I have communicated my three concerns to supporters of the bill. I am disappointed that these straightforward changes, which are in the interests of both consumers and businesses, were not included in the bill. Absent these improvements to the bill, I cannot vote for the measure before us today.

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

First, let me note that S. 1751 is a different bill than was reported by the Judiciary Committee. It includes a new and potentially very significant provision concerning mass torts. A provision on this topic was in the original bill, but was stricken in committee. Now it is back, but with some complicated exceptions. The ramifications of this provision are not apparent on first reading, and it certainly would have been preferable for this kind of fine tuning to have been considered by the Judiciary Committee.

Make no mistake, by loosening the requirements for Federal diversity jurisdiction over class actions, S. 1751 will result in nearly all class actions being removed to Federal court. This is a radical change in our Federal system of justice. We have 50 States in this country with their own laws and courts. State courts are an integral part of our system of justice. They have worked well for our entire history. It is hard to imagine why this Senate, which includes many ardent defenders of federalism and the prerogatives of State courts and State lawmakers, would support such a wholesale stripping of jurisdiction from the States over class actions. In my opinion, the need for such a radical step has not been demonstrated.

Yes, there are abuses in some class actions suits. Some of the most disturbing have to do with class action settlements that offer only discount coupons to the members of the class and a big payoff to the plaintiffs' lawyers. But those abuses have occurred in Federal as well as State class actions. This bill does nothing to address those problems; it just moves them all to Federal court.

I note that a substitute amendment being crafted by the senior Senator from Louisiana will include a provision to address discount coupons. It is puzzling to me that such a provision is not contained in the underlying bill. Could it be that these coupon settlements, so often held up as the poster child for what is wrong with class actions, are actually something that the defendants' bar that is promoting this bill wants to preserve? We will find out if the Senate does proceed to the bill and an amendment is offered on that issue.

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

There are three possible outcomes of this bill being enacted. Either the State courts will be deluged with individual claims, since class actions can no longer be maintained there, or there will be a huge increase in the workload of the Federal courts, resulting in delays and lengthy litigation over procedural issues rather than the substance of the claims, or many injured people will never get redress for their injuries. I don't believe any of these three choices are acceptable.

Particularly troubling is the increase in the workload of the Federal courts. These courts are already overloaded. The Congress has led the way in bringing more and more litigation to the Federal courts, particularly criminal cases. Criminal cases, of course, take precedence in the Federal courts because of the Speedy Trial Act. So the net result of removing virtually all class actions to Federal court will be to delay those cases.

There is an old saying with which I am sure we are all familiar: justice delayed is justice denied. I hope my colleagues will think about that aphorism before voting for this bill. Think about the real world of Federal court litigation and the very real possibilities that long procedural delays in overloaded Federal courts will mean that legitimate claims may not ever be heard. At the very least, we should provide in this bill some priority to class certification motions brought in Federal class actions.

One little noticed provision of this bill illustrates the possibilities for delay that this bill provides, even to defendants who are not entitled to have a case removed to Federal court under the bill's relaxed diversity jurisdiction standards. Under current law, if a Federal court decides that a removed case should be remanded to State court, that decision is not appealable. The only exception is for civil rights cases removed under the special authority of 28 U.S.C. § 1443. But this bill allows defendants to immediately appeal a decision by a Federal district court that a case does not qualify for removal. That means that a plaintiff class that is entitled even under this bill to have a case heard by a State court may still have to endure years of delay while the appeal of a procedural ruling is heard. Where is the fairness in that?

Some in the business community have expressed concern about resolving nationwide class actions, like some of the tobacco litigation, in a single State court. I can understand why that might seem unfair to some. But this bill does not just address that situation. It also prevents a group of plaintiffs who are all from the same State from pursuing a class action in their own State courts if even one defendant is from another State. The proponents of this bill have chosen a remedy that goes far beyond the alleged problem. That raises questions about what the intent behind this bill really is.

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

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

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

Why is such a drastic step necessary? Why do we need to prevent State courts from interpreting and applying their own State laws in cases of any size or significance? One argument we hear is that the trial lawyers are extracting huge and unjustified settlements in State courts, which has become a drag on the economy. We also hear that plaintiffs' lawyers are taking the lion's share of judgments or settlements to the detriment of consumers. But a recent empirical study contradicts these arguments. Theodore Eisenberg of Cornell Law School and Geoffrey Miller of NYU Law School recently published the first empirical study of class action settlements. Their conclusions, which are based on data from 1993–2002, may surprise some of the supporters of this bill.

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

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

Mr. President, if the motion to proceed is adopted, I expect there will be many amendments offered. In an area like this the details matter, and if we are going to have class action reform we need a full and fair debate on the details with the opportunity to offer amendments. But the best result is for the Senate not to consider this bill at this time. I do not believe this unfair Class Action Fairness Act is ready to be considered on the floor, and I will vote no on the motion to proceed.

Mr. KYL. Mr. President, I rise today to address the Class Action Fairness Act of 2003. This legislation first was introduced and reported by a Judiciary subcommittee 5 years ago, during the 105th Congress. It is time to enact this legislation into law.

There is no need to recount the parade of horribles that makes the need for this legislation manifest. Suffice to say that even the liberal Washington Post has noted that ''national class actions can be filed just about anywhere and are disproportionately brought in a handful of State courts whose judges get elected with lawyers' money.'' And as one study has noted, ''[v]irtually every sector of the United States economy is on trial in Madison County [Illinois], Palm Beach County [Florida], and Jefferson County [Texas].''

The problem has grown much worse in recent years. Over the course of the 1990s, class-action filings increased by over 1,300 percent. What this suggests is that class-action litigation has become unhinged from actual events. These lawsuits are not being filed because businesses are injuring consumers 13 times more frequently than they did at the beginning of the last decade. Rather, these numbers reflect a breakdown in the litigation system itself. That system no longer bars frivolous suits that are brought purely for attorneys' own gain.

I would like to address several points about this year's bill. First, there has been much argument from the opponents of this bill that its sponsors are doing something sneaky by employing rule XIV to bring a modified bill to the floor. The bill that we currently are considering includes a restored, modified version of the original bill's provision governing mass actions—which provision had been stripped out of the bill by a last-minute amendment in the Judiciary Committee. Bill opponents seem to suggest that whatever damage was done by that amendment they secured fair and square, and that bill supporters have no business undoing the damage on the Senate floor.

It is true that the committee amendment stripping the mass-action provision damaged the bill. The State of Mississippi, among others, entertains actions that are class actions in all but name—these suits technically are not class actions, but they function as their equivalent. And as any lawyer who has observed patterns of class-action litigation can tell you, a reform bill that did not apply in Mississippi would hardly be much of a reform at all.

If anything is improper about the way that the mass-action provision has been handled, it is the way that the original provision was stripped from the bill in the Judiciary Committee. I know, because I was there when it happened and saw it all. The stripping amendment was not circulated to Judiciary members in advance of the Committee's executive session—in contravention of the Committee's own self-imposed rules governing additional amendments to the bill. Most of us had not even had an opportunity to read the amendment. Chairman HATCH already had shown great indulgence toward bill opponents by allowing an additional day's markup of the bill, when he could have insisted on a final vote earlier. An additional amendment nevertheless was allowed, and was adopted once it was clear that it had the support of swing voters on the Committee—as well as the support of all Members who are hostile to the bill. The rest of us who support the underlying bill were forced to accept the amendment, without an opportunity to even learn what it would do.

By contrast to the way that the original amendment was handled, everyone has been afforded ample notice of the modified mass-action provision included in the current bill. This modified provision was negotiated among the bipartisan group of supporters of the original bill—including those whose support led to the adoption of

the original amendment. When a compromise finally was reached, it was announced during an executive session of the Judiciary Committee and reported in the newspapers. And if that was not adequate notice, Chairman HATCH provided a detailed description of the modified provision in the committee report for this bill, which was published last July. Yet to hear bill opponents tell the story, you would think that the modified proposal had been hidden from all members until this bill was introduced. This is simply absurd—a stealth amendment is not one that is announced months beforehand in a committee report.

I would also note today—speaking about the bill more generally—that it is hardly a radical reform. As two Democratic cosponsors of the bill recently emphasized in a letter to all Senators, the current bill ''does not contain any tort reform whatsoever. There are no caps on damages or attorney's fees, no limits on joint and several liability, and no new pleading requirements.'' These Senators also point out that as a result of a Democratic amendment added to the bill in the Judiciary Committee, ''federal jurisdiction does not extend to cases in which the claims involved less than $5 million or in which two-thirds or more of the plaintiffs are from the same state as the defendant.''

This last provision substantially dilutes the bill. The plaintiffs' lawyers who routinely file these class actions are among the wiliest members of the profession—I expect that they will have little difficulty structuring their plaintiff class such that more than two-thirds of plaintiffs are from the state in which the principal defendants are located and the action is filed. If this loophole is exploited to the extent that I fear that it will be, the principal effect of today's bill will be not to remove cases to federal court, but rather to keep them in the courts of the state where the defendants and most plaintiffs are located. Of course, such a reform would not be without its advantages. At the very least, those states that tolerate predatory class actions in their courts would be forced to bear the consequences of such litigation, because the suits would be directed at local businesses. This change might yet alleviate the collective-action problems and indulgence of regional prejudice that underlie much of the current class-action crisis.

Finally, in closing I would remark on the strange new federalism that this bill appears to have evoked in some of its opponents. In a statement of additional views in the committee report for this bill, all seven Judiciary Committee members who voted against the bill have denounced it as a violation of the high principle of States' rights. They describe the bill as raising ''serious constitutional issues'' by ''undermin[ing] James Madison's vision of a Federal government 'limited to certain enumerated objects, which concern all the members of the republic.' '' These opponents even invoke the U.S. Supreme Court's decision in United States v. Morrison (2000), which struck down as beyond Congress's power a Federal law regulating violent crime that is unrelated to commercial activity. As bill opponents remind us, Morrison requires Congress to respect the distinction between what is truly national and what is truly local.

What may strike the casual observer as unusual is that the very members who invoke Morrison against this bill recently have denounced that very decision—and any judicial nominee suspected of harboring views in line with the Supreme Court majority in that case—in the course of the judicial-confirmation process. On this very day, the Judiciary Committee will hold a hearing for one of the President's nominees to the U.S. Court of Appeals for the District of Columbia. I would not be surprised to learn that the same Judiciary Committee members denouncing this bill on the Senate floor today will then proceed down the Capitol elevators, take the shuttle to the large Judiciary hearing room, and denounce the President's nominee as a secret supporter of United States v. Morrison.

To conclude, I would simply note that it is beyond argument that the interstate commerce clause and Article III's authorization for diversity jurisdiction were included in the Constitution in order to empower Congress to protect both interstate commerce and out-of-State defendants from local prejudice. Nothing could be a more appropriate application of these congressional powers than the legislation that we are considering today. Yet to listen to this bill's opponents, one might come away with the impression that the interstate commerce clause was designed to allow Congress to regulate all violent crime, and any other subject that touches Congress's fancy and that happens to poll well—any subject, that is, except for interstate commerce. The opponents of this bill can play at either John Paul Stevens or John Calhoun. They cannot play at both—or at the very least, they ought not do so on the same day.

I look forward to Congress's enactment of the important legislation before us today.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Texas.

Mr. CORNYN. Mr. President, the Senator from Louisiana has made an eloquent plea for class action reform. Unless we have cloture, there will be no class action reform anytime in the near future. We know the Senate has a very busy calendar of conference committees working on an Energy bill, on Medicare, prescription drug reform, and many other issues. The time is ripe, and I suggest to my colleagues the time for reform is now.

Finally, this is not a matter of lawyer bashing. This is about jobs. This is about added cost to consumers. When frivolous litigation is filed which, in essence, once a class action is certified becomes legal blackmail because class action lawsuits are rarely, if ever, tried with a jury because the risks are so enormous, it literally becomes a ''bet the ranch'' or I should say ''bet the company'' lawsuit. So what happens is they are almost always settled but under unequal terms and really amount to, in too many instances, legal coercion. But what happens is, when that money is paid, that cost is not necessarily absorbed by that company, that job creator, but is passed on to consumers; and consumers pay and, ultimately, job loss occurs.

So, Mr. President, I urge my colleagues who believe we need to address this tremendous problem, we need to address job loss, we need to address consumer cost, we need to address this abuse, to vote for cloture.

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

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Bill Frist, Orrin G. Hatch, Charles Grassley, George Allen, Kay Bailey Hutchison, Rick Santorum, Susan M. Collins, Elizabeth Dole, Lindsey Graham of South Carolina, Wayne Allard, Pat Roberts, John Ensign, Thad Cochran, John Warner, Jon Kyl, John E. Sununu, Saxby Chambliss.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1751 shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER (Mr. HAGEL). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 59, nays 39, as follows:

[Rollcall Vote No. 403 Leg.]

YEAS—59

Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Ensign	McConnell
Bayh	Enzi	Miller
Bennett	Feinstein	Murkowski
Bond	Fitzgerald	Nelson (NE)
Brownback	Frist	Nickles
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Carper	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Jeffords	Sununu
Collins	Kohl	Talent
Cornyn	Kyl	Thomas
Craig	Lieberman	Voinovich
Crapo	Lincoln	Warner
DeWine	Lott	

NAYS—39

Akaka	Dodd	Levin
Baucus	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Graham (FL)	Pryor
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Inouye	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Landrieu	Shelby
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Wyden

NOT VOTING—2

Edwards	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. FRIST. Mr. President, I am clearly disappointed we have been denied the opportunity to proceed to this very important legislation, a bill we very much want to discuss, to debate, and to appropriately amend. It is important to the American people. Thus, I believe we just witnessed a missed opportunity to address a critically and vitally important issue.

With that, for my colleagues, let me say we are making some progress on other issues in terms of how the afternoon will be spent. We are in discussion with regard to the antispam legislation, and I believe we will be able to proceed with that early this afternoon.

Again, let me state my disappointment. We are very committed to addressing this particular issue for the American people, and we will be trying, once again, to pull together and do what the American people deserve.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, the message in this vote is that now is the time for us to sit down and negotiate. I have said on several occasions, as late as this morning, that we are prepared to work with the majority. I will certainly work with the majority leader to bring to the floor a bill that will enjoy much broader support than 59 votes. We can do that. We recognize the need for reform, but we also recognize we have to do it right. I would like to start this afternoon. I will do it tomorrow. I will do it whenever the majority is prepared to do it, but we are prepared to do it, and I look forward to further discussions on this issue in the days ahead.

After that, I hope we can move to other issues that divide us. I think there is an opportunity on asbestos as well, but it takes real negotiation. I am prepared to enter into those negotiations anytime the majority is prepared to do so as well.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, you just heard a willingness to work together. There were 59 Members who spoke just a few moments ago who said, Let's proceed and do it right now on the floor of the Senate. We were one vote short. I accept that. I think we do need to proceed directly to address this issue, and we will work in good faith to do just that.

As I mentioned earlier, I think we are very close on the antispam legislation that we talked about yesterday and today.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that we go into morning business until 2, with the time equally divided. We should be ready to begin the spam legislation at 2.

Mr. DASCHLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senate minority leader.

Mr. DASCHLE. I ask the Chair whether the motion to reconsider has been propounded on the last vote.

The PRESIDING OFFICER. It has not.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DASCHLE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. Who seeks recognition?

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

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

VOTE ON CLASS ACTION REFORM

Mr. DODD. Mr. President, I want to express my disappointment about the outcome of the last vote. I voted not to invoke cloture. I did so with great reluctance. A number of Members called me over the last several days about the class action reform bill that was before us. I appreciate very much the comments of both the majority leader and the minority leader, my good friend from Delaware, TOM CARPER, HERB KOHL, and others who have worked very hard on this legislation. I have great respect for what they have tried to do.

I hope the majority leader will take up the offer of the Democratic leader and so we come together and work out what the provisions of this bill ought to be, at least the main provisions of it, and move forward. I am deeply committed to class action reform, but I do not want to move forward under a process where I am being told merely that I have a right to bring up amendments. I have that right anyway.

It seems to me if we are going to try to put a bill like this together, it takes meaningful cooperation, it takes sitting down. It is hard work. We have done it in the past. As the author of the securities litigation reform bill, the uniform standards legislation, terrorism insurance, the Y2K bill—all matters that brought together the trial bar and the business community trying to sort it out—I know that this can be done. It took a lot of work and a lot of hours to do it in the past. I strongly recommend on class action reform, that we make the same sort of effort.

It is not that difficult to get a good bill, but it does take work. Again, it takes meaningful cooperation. We need to have that if we are going to succeed.

I am terribly disappointed, but I must say to those who argued for cloture that there is a way of achieving the right results and the process we just went through this is not the way to go, in my view.

I can say, without invoking the names of my colleagues, there are a number of us who voted no on cloture who believe as strongly as I do about the need for reform and who would like to see a bill passed. So the majority leader and his staff, the staff of the Judiciary Committee and other interested parties—and there are not that many—if they can put something together, we can move forward. We could have another cloture vote, if we need to have one, although I doubt we will need one, with a more cooperative process there would be no need for one. I believe we can and should go forward.

The challenge is whether or not they want to do that. If they just want to have a 59-to-39 vote and move on to another issue, then that may indicate to some of us what the real intentions were here. If they are interested in getting this bill done, then there is a way to do it.

There are those of us who are willing to roll up our sleeves and get it done. In fact, many of the same people have been involved for months now in the asbestos legislation. I have an uneasy feeling we are heading in the same direction with that bill. It takes hard work. Members from both sides have to sit down, bring people together, and put in the hours it takes to finish the job.