



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151

WASHINGTON, WEDNESDAY, JULY 27, 2005

No. 104

Senate

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

PRAYER

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

Let us pray.

Eternal God, You have challenged us to become like children in order to enter Your kingdom. Today give us a child's trust, that we may find joy in Your guidance. Give us a child's wonder, that we may never take for granted the Earth's beauty and the sky's glory. Give us a child's love, that we may find our greatest joy in being close to You. Give us a child's humility, that we will trust Your wisdom to order our steps.

Guide our Senators and those who support them through the challenges of this day. As they look to You for wisdom, supply their needs according to Your infinite riches.

We pray in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

RESERVATION OF LEADER TIME

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

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 397, which the clerk will report.

The legislative clerk read as follows:

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

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

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

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

Just a quick update on several of these. In terms of the Energy bill, after 5 years of hard work, the energy conferees are now done. I expect that that legislation will be filed shortly. This is a major accomplishment that will cause serious and dramatic changes in how we produce, deliver, and consume energy. We simply would not be at this point without the hard work, the perse-

verance, 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.



Printed on recycled paper.

S9059

I mentioned all these to give my colleagues an update because there is so much activity going on right now, in addition to the very important legislation that is on the floor.

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

Now we have the opportunity over the next 3 to 4 days of completing action on the very 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 dreams they 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 constituencies. We do have a long recess in August. I say that to preface how important it is that we complete all of our work this week. The American people expect us to complete action on the items I have mentioned. There is a tendency to think the recess is going to start maybe a day early. It certainly looks like, because we are going to be so busy, that we will be working through Friday of this week. I will be in constant consultation with the Democratic leader. We will have the opportunity to talk several times throughout the day.

At this point, we cannot rule out a Saturday session, if it is absolutely necessary. I think we can finish our work earlier, but we simply can't rule out a Saturday session at this point.

I do ask for Members to keep their schedules flexible until we get through this legislative calendar. We will in a bipartisan way have a lot to be proud of once we leave for our August recess.

HEALTH CARE

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

As I travel around the country, in part because I am a physician but in larger part because of the reality of the problem, the cost of health care, as well as the safety and quality of health care, is among the first and foremost issues on the minds of the 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: Of course, you do. But if you look back at the Institute of Medicine's report not too long ago that really started a lot of this debate, they estimated that up to 98,000 deaths are caused each year by medical errors. That would make medical errors, that are occurring every day in hospitals and clinics, and even at home when people are taking medicines, the eighth leading cause of death each year. That is more than car accidents, HIV/AIDS, or breast cancer. People dispute the number. Is it 98,000? Is it 125,000? Is it 75,000? The exact number doesn't matter. The fact that there are thousands and thousands of needless deaths being caused is inexcusable. This body has acted. The House will act. And I am hopeful the President will be able to sign that important legislation in the next several days.

What is so obvious to me as a physician, having spent 20 years in the medical arena, every day in the healing profession, is that the tragedy of all 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 absolutely 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 de-

velop 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 improve, but I am not going to share 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 allow health care providers, doctors, nurses, and other health care professionals to share information and to develop effective solutions and to develop effective systems whereby those mistakes will never occur again. That is the way this patient safety bill will improve lives but also save lives of tens of thousands of people.

This type of nonpunitive reporting isn't new. I began flying small planes fairly young, when I was a teenager. Over the years, I have watched how self-reporting in that field has revolutionized safety in general aviation, private aviation, and in the airline industry as well. In 1975, I had been flying for about 7 years. I remember it because it was a big deal at the time. Similar to what we are doing now with the patient safety bill, the FAA established a system called the Aviation Safety Reporting System. It encouraged 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 recrimination.

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 patients safety bill that is before the House 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. Under the provisions of this act, hospitals and physicians and other health professionals will be able to share this information about their practices with independent PSOs, or patient safety organizations, without the fear of 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 Tanzania some weeks ago working at a small clinic out in the bush, and when you look back at America, we 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 in 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 900,000 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 MIKE ENZI, Senator JUDD GREGG, Senator JIM JEFFORDS, who has been at it as long as anybody—this particular bill on patient safety—and, of course, Senator TED KENNEDY. On the House side, Chairman JOE BARTON and ranking member JOHN DINGELL have done a tremendous job as well shepherding through, the Patient Safety and Quality Improvement Act. We are saving lives and moving American medicine forward.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I understand that the Republican side has from 10 until 11, 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

Sen. Baucus, Max [D-MT]—2/16/2005*, Sen. Bunning, Jim [R-KY]—2/16/2005*, Sen. Chambliss, Saxby [R-GA]—2/16/2005*, Sen. Collins, Susan M. [R-ME]—2/16/2005*, Sen. Craig, Larry [R-ID], Sen. Crapo, Mike [R-ID]—2/16/2005*, Sen. Ensign, John [R-NV]—2/16/2005*, Sen. Hutchison, Kay Bailey [R-TX]—2/16/2005*, Sen. Isakson, Johnny [R-GA]—2/16/2005*, Sen. Kyl, Jon [R-AZ]—2/16/2005*, Sen. Murkowski, Lisa [R-AK]—2/16/2005*, Sen. Santorum, Rick [R-PA]—2/16/2005*, Sen. Snowe, Olympia J. [R-ME]—2/16/2005*, Sen. Thomas, Craig [R-WY]—2/16/2005*, Sen. Sununu, John E. [R-NH]—2/16/2005*, Sen. Vitter, David [R-LA]—2/17/2005, Sen. DeMint, Jim [R-SC]—3/1/2005.

Sen. Dorgan, Byron L. [D-ND]—3/1/2005, Sen. Gregg, Judd [R-NH]—3/1/2005, Sen. Hatch, Orrin G. [R-UT]—3/1/2005, Sen. Frist, William H. [R-TN]—3/3/2005, Sen. Graham, Lindsey [R-SC]—3/4/2005, Sen. Cochran, Thad [R-MS]—3/9/2005, Sen. Shelby, Richard C. [R-AL]—3/9/2005, Sen. Burr, Richard [R-NC]—3/10/2005, Sen. Specter, Arlen [R-PA]—3/14/2005, Sen. Pryor, Mark L. [D-AR]—3/16/2005, Sen. Roberts, Pat [R-KS]—3/17/2005, Sen. Bennett, Robert F. [R-UT]—4/12/2005, Sen. McCain, John [R-AZ]—7/21/2005, Sen. Byrd, Robert C. [D-WV]—7/25/2005, Sen. Alexander, Lamar [R-TN]—2/16/2005*, Sen. Burns, Conrad R. [R-MT]—2/16/2005*, Sen. Coburn, Tom [R-OK]—2/16/2005*.

Sen. Cornyn, John [R-TX]—2/16/2005*, Sen. Domenici, Pete V. [R-NM]—2/16/2005*, Sen. Enzi, Michael B. [R-WY]—2/16/2005*, Sen. Inhofe, James M. [R-OK]—2/16/2005*, Sen. Johnson, Tim [D-SD]—2/16/2005*, Sen. Lincoln, Blanche L. [D-AR]—2/16/2005*, Sen. Nelson, E. Benjamin [D-NE]—2/16/2005*, Sen. Sessions, Jeff [R-AL]—2/16/2005*, Sen. Stevens, Ted [R-AK]—2/16/2005*, Sen. Thune, John [R-SD]—2/16/2005*, Sen. Allen, George [R-VA]—2/17/2005, Sen. Landrieu, Mary L. [D-LA]—2/17/2005, Sen. Dole, Elizabeth [R-NC]—3/1/2005, Sen. Grassley, Chuck [R-IA]—3/1/2005, Sen. Hagel, Chuck [R-NE]—3/1/2005.

Sen. Lott, Trent [R-MS]—3/2/2005, Sen. Talent, Jim [R-MO]—3/3/2005, Sen. Allard, Wayne [R-CO]—3/7/2005, Sen. Martinez, Mel [R-FL]—3/9/2005, Sen. Brownback, Sam [R-KS]—3/10/2005, Sen. Bond, Christopher S. [R-MO]—3/14/2005, Sen. McConnell, Mitch [R-KY]—3/15/2005, Sen. Coleman, Norm [R-MN]—3/16/2005, Sen. Voinovich, George V. [R-OH]—4/12/2005, Sen. Smith, Gordon H. [R-OR]—4/27/2005, Sen. Salazar, Ken [D-CO]—7/21/2005, Sen. Rockefeller, John D. [R-WV]—7/26/2005.

Mr. CRAIG. Mr. President, the reason I sent that list of cosponsors to the desk is to demonstrate to all of our colleagues that 61 Senators—60 plus 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 a clear recognition 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. These predatory lawsuits are aimed at bankrupting the firearms industry. The courts of our Nation are supposed to be a forum for resolving controversies between citizens and providing relief where it is warranted, not a mechanism for achieving political ends that are rejected by the people's representatives, the Congress of the United States.

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

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

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

While half of these lawsuits have already been fully and finally dismissed, other cases are still on appeal and pending. Hundreds of millions of dollars are still being spent. The 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 protection. 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 be let 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 under the exception, such as violations of Federal and State law, negligent entrustment, knowingly transferring to a dangerous person. That is what that all means, that you have knowingly sold a firearm to a person who cannot legally have it or who you have reason to believe could use it for a purpose other than intended. That all comes under the current definition of Federal law.

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

Opponents have complained about the Senate considering this bill at the same time and even have impugned the motives of the Senators who support it. The votes yesterday speak for themselves. Sixty-six Senators said it is time we got this bill before the Senate, and that is where we are today. When a supermajority of the Senate speaks, there is no question that the Senate moves, as it should, in that direction. The Senate could not muster the votes needed to invoke cloture on the Defense authorization bill which would have moved us to a final vote on that measure possibly by tonight. But the Senate, as I have said, by a wide margin spoke yesterday to the importance of dealing with this issue. Sixty-six Senators said let's deal with it now, and I have just sent to the desk 61 signatures of the cosponsors of this bill that demonstrate broad bipartisan support.

I think it is appropriate to consider all of this in the context of the Defense authorization bill because the reckless lawsuits we are seeking to stop are

aimed at businesses that supply our soldiers, our sailors, and our airmen with their firepower. Stop and think about it. Would there ever be a day when all of our military would be armed with weapons manufactured in a foreign nation? There are many in this country, in driving or 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 that we ought to be talking about the credibility and the assurance we are able to sustain the firearm manufacturing industry in this country. In fact, the United States is the only major world power that does not have a firearm factory of its own. That is something that simply ought not be tolerated. Thirty-eight of our colleagues of both parties signed on to a letter to Majority Leader FRIST making this very point: the importance of protecting America's small 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 renewal and expansion of that ban on this bill today.

Now anti-gun activists have found another way to constrict the right to bear arms and attack the Bill of Rights and attack the Constitution, and that is through frivolous litigation. They have not succeeded in jailing thousands of law-abiding Americans for having

guns, or making the registration and purchase process so onerous that nobody bothers to buy a gun. They have failed to get their cosmetic weapons ban renewed. So now they must attack the arms industry financially through lawsuits—frivolous lawsuits, I might say.

This is why we are here today—to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country.

As an important aside, 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 1988, individuals and municipalities have filed dozens of novel 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 over whom they have absolutely no control.

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

I believe a conservative estimate of the total, industry-wide cost of defending ourselves to date now exceeds \$200 million.

What does that produce in our country other than waste and abnormal enrichment of the legal system?

This is a huge sum for a small industry such as the gun industry. The firearms industry taken together would not equal the value of a Fortune 500 company.

The danger that these lawsuits could destroy the gun industry is especially threatening because our national security and our civil liberties are at stake.

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

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

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

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

The economic impact of this problem may be felt in other ways. In my home State of Oklahoma, hunting and fishing creates an enormous economic impact. It is tremendously positive. Hunters bring in retail sales of over \$292 million per year; 6,755 jobs in Oklahoma are dependent on hunting; \$137,122,000 in salaries and wages in Oklahoma alone; and \$22 million in State sales tax per year. The financial insolvency of gun manufacturers and sellers would have a devastating effect on my State and many other States similar to Oklahoma.

Insurance rates for firearm manufacturers have skyrocketed since these suits began, and some manufacturers are already being denied 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 one 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.

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

These lawsuits are frivolous. Anti-gun activists want to blame violent acts of third parties on manufacturers of guns for simply manufacturing guns and sellers of guns for simply selling them. This doesn't make any sense. This would be the equivalent of holding a car dealer responsible for a person who intentionally runs down a pedestrian simply because the car that was sold by the dealer was used by a third party to commit negligent homicide.

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

Most of the victims of 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 these patients deserve aggressive prosecution, not the industry that made the guns or the legal sellers of the guns. Even when I treated individuals who injured themselves with guns, these tragedies were accidents. It was not part of a quality or product defect. It was an act of stupidity 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 Louisiana 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 lawful design, manufacture, marketing and sale of firearms.

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

The Delaware Superior Court adeptly stated that "the Court sees no duty on the manufacturer's part that goes beyond their duties with respect to design and manufacture. The Court cannot imagine that a weapon 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 and ammunition manufacture; the Arms Export Control Act; the Commerce Department export regulations; the Department of Transportation regulations on ammunition explosives and hazardous material transport.

In addition to keeping explicit records that can be inspected by BATF, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, licensed dealers have to conduct a Federal criminal background check on their retail sales either directly by the FBI through its national instant criminal background check or through State systems that also use the NICS system. All retail gun buyers are screened to the best of the Government's ability.

Additionally, the industry has voluntary programs to promote safe gun storage and to help dealers avoid sales to potential illegal traffickers.

Manufacturers also have a time-honored tradition of acting responsibly to make recalls or make repairs as they become aware of product defects.

In the past, Congress has found it necessary to protect other classes; for example, the light aircraft industry. JIM INHOFE, a Senator from Oklahoma, moved that through the House and 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 requires personal accountability and responsibility.

Furthermore, Congress may enact litigation reform when lawsuits are affecting interstate commerce. In many of these lawsuits cities and individuals are trying to use the State court to restrict the conduct of the firearms industry nationally, often contrary to state policies expressed through their own legislatures.

A single verdict in favor of an anti-gun plaintiff could bankrupt or regulate an entire segment of the economy—and of America's national defense. It could be out of business, but most importantly, my right, Oklahomans' right, all of America's right to a guarantee of the second amendment to the Bill of Rights secured for them in their ability to own and use firearms responsibly.

This bill will protect our national security. It will protect our constitutional rights. It will protect an industry responsibly, and it will protect thousands of jobs. It also will ensure that people who have suffered a real injury from a real cause of action can be

heard and taken seriously while law-abiding manufacturers and dealers of firearms may continue to serve the law-abiding citizens exercising their constitutionally guaranteed second amendment rights.

Mr. President, 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 the other end of the line: 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 off for personal time and family vacation as do many Americans, and we reconvene after Labor Day.

So why now are you addressing the Protection of Lawful Commerce in Arms 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 keep multiple balls in the air. That is exactly what the leader is doing at this moment.

Last night, I signed, and I think the Presiding Officer 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 completed its 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 Presiding Officer and I would agree that when our President came to town, now, nearly 6 years ago—and I remember President George W. Bush elect in the leader's office saying: 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.

He did, but we did not. He pushed, but we could not produce. He continued to push, and now we have produced, and finally we have a comprehensive energy policy before us. So I would say to those listening and to all of our colleagues, I hope we can dribble a ball and chew gum at the same time and get all of this work done before the August recess. If reasonable heads prevail, we should get it all done by late Friday night. But the leader also said we do have Saturday, and we will get 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 Majority Leader FRIST that we think sets into the right context exactly why we are here today and tomorrow debating this important legislation.

The letter goes something like this: Dear Majority Leader FRIST—and 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, not only for U.S. forces but also for our allies around the world.

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

I said, in earlier statements this morning, we are the only major world power where the Government does not own a firearms factory. They are all owned by private citizens—has contracted to buy over 200,000 rifles, pistols, machine guns, and other small arms for our soldiers, sailors, airmen and Marines. In addition, the U.S. Army alone uses about 2 billion rounds of ammunition 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 courts to promote their agenda of 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 one verdict for plaintiffs would risk irreparable harm to a vital defense industry.

These are some of the reasons I have co-sponsored 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 arsenal of democracy" by bringing 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, as is typical in the Senate. While 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, the national energy policy, a 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 this 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, gee, I know 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 by the trial bar and these frivolous lawsuits to the tune of hundreds of thousands, if not millions, of dollars a year, in necessary legal defenses.

So that is why we have been very specific in the law. It is not the gun industry immunity bill. It is important that we say that and say it again because it does not protect firearms or ammunitions manufacturers, sellers or trade associations from any lawsuits based on their own negligence or criminal conduct. The bill gives specific examples of lawsuits not prohibited. Let me repeat, not prohibited:

Product liability, in other words, a gun that is defective, that misfires, that does damage to the operator of it, those definitions are clearly spelled out within the law. Negligence or negligent entrustment, breach of contract, lawsuits based on a violation of State and Federal law, it is very straightforward, and we think it is very clear.

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 violence, and we know that.

Furthermore, it threatens the domestic industry that I think is critical, as I have mentioned earlier, to the national defense of this country.

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

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

That is why we are on the floor today. That is why we are dealing with this important legislation. It is my understanding that we have arrived at a unanimous consent agreement that brings us on to the bill by 2 this afternoon. I hope at that time many of my colleagues who are cosponsors would join with me so that we can move this legislation expeditiously through the Senate. I know there are several amendments that will probably be brought to the floor, most of them destructive to the intent of the bill, marginalizing it at best. As a result, I urge all of my colleagues to stay with us on the construct of S. 397, to be able to pass it from the Senate as clean as possible, hopefully, very clean, so the

House can act on it immediately and move it to our President's desk.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I take a moment to explain the effect of our proceeding to this gun bill. We are putting aside an important debate on national security and the needs of our troops in a time of war. Last Friday I listed a number of the amendments that still were pending that would affect the National Guard and our Reserve troops and also provide additional kinds of protections for the service men and women. The decision by the Republican leadership was that we had spent enough time on the legislation, even though we chose to spend 2 weeks earlier in the year on the credit card industry and on bankruptcy and a similar amount of time on the class action legislation which benefited special interest groups. The credit card industry will profit about \$6 billion more this year than last year because of the actions taken. We also spent time on the special interest legislation dealing with class actions. We spent the time on that, but we are not on the Defense authorization bill.

We had an important amendment on the whole policy of the administration in developing new nuclear weapons which has profound implications in terms of the issues of nuclear proliferation and nuclear safety. We looked forward to having an opportunity to debate that issue. That was put aside by the Republican leadership because they were concerned about a provision that had been introduced to the Defense authorization bill last Thursday. Senator LEVIN, Senator REED, Senator ROCKEFELLER, and I introduced an amendment to create an independent commission to examine the administration's policy surrounding the detention and interrogation of detainees as an amendment to the Defense authorization bill.

The response of the White House was instant and negative. The President announced he would veto the Defense authorization bill, all \$442 billion of it, if it included any provisions to restrict the Pentagon's treatment of detainees or creating a commission to investigate detainee operations. No other response could have demonstrated so

clearly the urgent need to establish a commission than that this imperial White House considers itself immune from restraints by Congress on its powers no matter what the Constitution says.

It is appalling that the administration is so afraid of the truth that they are even willing to veto the Defense bill which includes billions of dollars for our troops, pay raises for our troops, and funds for armored humvees to protect our troops in Iraq. But the administration was prepared to veto 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 already obvious 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 officials. In today's newspapers we see the result of this action once again with the use of dogs against detainees.

We need to return to our core values of openness and accountability. The facts we know so far about torture and other abuses, about indefinite detention, have already become recruiting tools for terrorists. But if we act now to uphold our principles, we can end the outrage, we can end the coverups, and hold officials accountable 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 help 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 targeted.

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 has adequately examined the role that civilian authorities have played in crafting the policies that led to our missteps. Twelve investigations and counting, and the coverup continues.

The administration and its proxies in the coverup have vilified anyone who calls for a full inquiry into the policies. They even stooped to claiming a request for full accounting is somehow a smear against our troops. The real smear is that the administration continues to prosecute only a few low-level offenders without holding accountable the higher-ups who laid the groundwork for all the abuses. The real disservice to our troops and to our country is done by those who leave those at the bottom of the chain of command holding the bag while officials at the top are promoted and rewarded.

We need a commission independent of political influence to find the relevant facts, not just the facts that suit the partisan needs of the administration. We need an investigation of the country's so-called rendition policy which sends detainees to other countries where torture is well known. We need answers about the administration's reaction to FBI complaints about abuse. We need a thorough assessment of the legal regime that is currently in effect.

With its willingness to conceal the truth, the administration will never tell the American people about this practice of rendition on its own. We need an independent commission to examine our policies and practices and make appropriate recommendations. The American people deserve to understand the choices made by this President and to evaluate them.

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 dis-

regard 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 open and 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. They abuse their power, conceal 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 "it is no secret that 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 cochairmen, 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 Department of Defense.

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

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

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

This administration, once in office, wasted no time challenging those who would hold them accountable. In May 2001, Vice President CHENEY's energy task force issued its report recommending more oil and gas drilling to solve our energy problems. In light of his former employment at Halliburton, the recommendation was hardly astonishing. What was astonishing was the Vice President's refusal to identify the people and groups who helped write the policy. In June 2001, the GAO, the non-partisan, investigative arm of Congress, requested information on the energy task force, following reports that campaign contributors had special access while the public was shut out. GAO's request was simple. It asked, "Who serves on this task force; what information is being presented to the task force and by whom is it being given; and the costs involved in the gathering of the facts." Considering that the task force wrote the nation's energy policy, it was not an unreasonable request.

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

But the Bush administration argued that GAO did not have the authority to conduct the investigation. For the first time in its 80-year history, GAO was forced to file suit against an administration to obtain requested information. But the court sided with the administration in *Walker v. Cheney*, and GAO's investigative oversight authority was effectively reduced. Independent oversight is critically important when one party controls both Congress and the White House, and GAO is critical to that oversight.

On October 12, 2001, John Ashcroft wrote a memo outlining the Justice Department's views on Freedom of Information Act requests. The memo set the tone for an administration hostile

to such requests. It discouraged executive branch agencies from responding to Freedom of Information Act requests, even when the agencies had the option to respond. He basically reversed the longstanding policy of prior administrations.

The Clinton administration policy, set forth by Attorney General Janet Reno, was that if a document could be released without harm, an agency should do so, even if there were technical grounds for withholding it. They knew that government openness was essential to an informed public.

When the Bush administration came to office, Attorney General Ashcroft disagreed—he wrote that if there is any technical ground for withholding a document under the Freedom of Information Act, an agency should withhold it. The Clinton policy had been "release if at all possible." The Bush policy was "keep secret if at all possible."

Why should the public know what the administration is doing? Why release documents that might be embarrassing to the White House or its friends in business?

Some organizations claim, based on their experience, that this obsession with secrecy goes even farther, and that executive branch agencies are being told to withhold information until it is subpoenaed. Sean Moulton, a senior policy analyst at OMB Watch, argued that "if there are documents the government doesn't want to release but doesn't have any legal basis for withholding, unless you're willing to go to court, you're not getting those documents."

Since the tragedy of September 11, this administration has effectively shut down inquiry after inquiry:

In November 2001, energy companies were planning a natural gas pipeline through the Blue Ridge Mountains of Virginia. Local citizens, led by former U.S. Army Ranger Joseph McCormick, asked the Federal Energy Regulatory Commission for a map of the planned pipeline. These citizens weren't being nosy—they wanted to know if a large new pipeline for natural gas would be going through their backyards. FERC denied the citizens' request in the name of national security, even though this type of information had been public before 9/11. Clearly, national security concerns are legitimate. But without knowledge of the pipeline's location, how could these citizens defend their property? Joseph McCormick put it bluntly: "There certainly is a balance," he said. "It's about people's right to use the information of an open society to protect their rights."

In the fall of 2002, the chemical compound perchlorate was found in the water supply of Aberdeen, Maryland—near the Army's famous Aberdeen Proving Ground. Perchlorate is a main ingredient of rocket fuel. It also stunts the metabolism and brain growth of newborns. A group of citizens organized, and worked with the Army to protect their drinking water from fur-

ther contamination. But a few months later, the Army began censoring maps and information that would help determine which areas were contaminated, supposedly in the interest of national security—if citizens could find out where the water was contaminated, then terrorists could find it too. The head of the citizens' group was a 20-year army veteran. His water well was only a mile and a half away from the proving ground. "It's an abuse of power," he said. "The government has to be transparent."

Even Members of Congress have had to subpoena information in order to do their work. Last October, Congressmen CHRISTOPHER SHAYS and HENRY WAXMAN, the chairman and ranking Democrat on the House Government Reform Subcommittee on National Security, Emerging Threats and International Relations, asked for an audit of the Development Fund for Iraq. The copy they received had over 400 items blacked out. They had so much difficulty obtaining an unredacted report from the Defense Department that they had to prepare a subpoena. Once they finally received an unredacted copy, guess what had been blacked out? More than \$218 million in charges from Halliburton. So far, no one has been held accountable.

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

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

Also last week, the administration submitted an initial report on progress in training Iraqi security forces. It has been more than 2 years since the fall of Baghdad, and a reliable assessment of our progress in training those forces was long overdue. The key questions that the American people want to know are how many Iraqi security forces are capable of fighting on their own and what our military requirements will be the months ahead. But the answers remain classified. The American people deserve to know the facts about our policy. They want to know how long it will take to fully train the Iraqis and when our military mission will be completed. They can deal with the truth, and they deserve it.

No one wants to do anything that would help the insurgents. But the administration must do a better job of responding to the legitimate concerns of the American people. The administration still isn't willing to be candid. It needs to find a way to shed some of the secrecy and answer these questions in good faith for the American people. The silence is deafening.

There is also a pattern of withholding information from members of Congress on the administration's nominations. In 2003, Miguel Estrada was nominated for a Federal judgeship. We requested legal memoranda he wrote as Assistant Solicitor General, and we were repeatedly denied. In 2004, Alberto Gonzales was nominated to be Attorney General. We requested various memoranda he authorized on administration torture policy, and we were repeatedly denied. Earlier this year, John Bolton was nominated to be Ambassador to the United Nations. We requested documents to determine if he acted appropriately in his previous job, and we have been repeatedly denied.

Instead of coming clean and providing the information to the Congress, we have been stonewalled. Our questions have gone unanswered. And now, the President appears to be poised to abuse his power further, rub salt in the wound, and send John Bolton to the United Nations anyway with a recess appointment of dubious constitutionality.

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

As we all know, no one is simply entitled to serve on the Supreme Court of the United States. One has to earn that right. And one earns that right by getting the support of the American people, reflected in the vote here in the United States Senate. And that is what the confirmation process is all about. We know that the administration is familiar with and aware of Judge Roberts' positions on various issues. They have had a year to study it and had their associates talk with him and with those who worked with him. The real question is: Shouldn't the American people have the opportunity to get the same kind of information so that they can form their own impression and so

that the Senate can make a balanced, informed judgment and see whether or not the balance in the Supreme Court will be furthered? That is the issue and it appears that the administration is continuing to withhold important information that would permit the Congress the ability to do so.

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

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

In 2000, Congress responded to the disclosure of defects in Firestone tires, which may have been responsible for as many as 270 deaths, by passing legislation which would make information on auto safety and related defects readily available. But in July 2003, the National Highway Traffic Safety Administration decided that reports of defects would cause "substantial competitive harm" to the auto industry, and exempted warranty 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 costs over \$100 billion more than the administration claimed, but the information was withheld because of fears that the actual numbers would persuade Members of Congress to vote no. Administration officials threatened to fire Chief Actuary Richard Foster "so fast his head would spin," if he informed Congress of the real cost estimate. I wrote a letter to the administration on this subject, but they never responded to my questions.

In 2003, the Food 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 presenting his findings to an FDA advisory committee. Dr. Joseph Glenmullen, a Harvard psychiatrist, said "Evidence that they're suppressing a report like this is an outrage, given the public health and safety issues at stake . . . For the FDA to issue an ambiguous warning when they had unambiguous data like this is an outrage."

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

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

In August 2004, under pressure from the Department of Homeland Security, the FCC decided to make telephone service outage reports confidential, and exempt them from Freedom of Information Act requests. The FCC argued it was because companies could use competitors' service outages in ad campaigns. You may not be able 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 Web site in March 2004. The Labor Department ordered its removal from the website, banned its release, and barred the contractor's employees from discussing the report. The Department of Labor denied a Congressman's request for the report under the Freedom of Information Act. These are the American people's tax dollars. 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 yet another list of abuses in Iraq reconstruction. Ten billion dollars of no-bid contracts were awarded; \$89 million was doled out without contracts at all; \$9 billion is unaccounted for, and may have been embezzled. An official fired for incompetence was still giving out millions of dollars in aid, weeks 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 shame, the Republican leadership 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? This is a critical moment 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 the National Guard and 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 Congress can do more for our citizens than rush to pass unprecedented special interest legislation. We can and should be acting to meet our real challenges.

Last year, the Federal Government recalled a water pistol, the Super Soaker, just a few days before the assault weapons ban expired. America does more to regulate the safety of toy guns than real guns, and it is a national disgrace. The gun industry has worked hard to avoid Federal consumer safety regulation. Where are our priorities? Where is the logic in passing a bill that makes it harder to sue for harm caused by real guns than harm caused by a plastic toy gun?

The industry has conspicuously failed to use technology to make guns safer. It has attempted to insulate itself from its distributors and dealers, once guns leave the factory. Under this bill, it will not even matter if the guns are stolen by factory employees and snuck out of the factory in the middle of the night.

The overwhelming majority of Americans believe gun dealers and gun manufacturers should be held accountable for their irresponsible conduct, similar to everyone else.

Cities, counties, and States incur billions of dollars in costs each year as a result of gun violence. Studies estimate that the public cost of firearm-related injuries is over \$1 million for each shooting victim. Yet this bill would take a fierce toll and dismiss even pending cases where communities are trying to get relief.

This bill would bar the legal rights of hard-working law enforcement officers, such as Ken McGuire and David Lemongello. These two police officers from Orange, NJ, were seriously wounded in a shootout with a burglary

suspect. The gun used by the suspect was one of 12 guns sold by a West Virginia pawnshop to an obvious straw purchaser for an illegal gun trafficker. Fortunately for the officers, this bill did not become law last year, and their case was able to proceed.

Recently, David Lemongello was able to obtain a \$1 million settlement. Significantly, the settlement required the dealer and other area pawnshops to adopt safer practices. These reforms go beyond the requirements of current law and are not imposed by any manufacturers or distributors. This is not about money. This is about public safety, and I commend these brave officers for their courageous battle to change the system.

It is clear what will happen if Congress gives the gun industry this unprecedented legal immunity, on top of its existing exemption from Federal consumer safety regulations. Guns will be more dangerous. Gun dealers will be more irresponsible. More guns will be available to terrorists and criminals. There will be more shootings and more dead children.

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

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

Before I begin, I want to say I find it incongruous that we had the Defense Authorization bill up, an important bill—we were about to consider some amendments affecting enemy combatants and detainees, I think very important amendments, by Senator McCRAIN, Senator WARNER, and Senator GRAHAM. The bill was up for an unprecedented short time, and had to have cloture, according to the Republican side. Well, some of us wanted to hear what Senators McCRAIN, WARNER, and GRAHAM had to say. So, we voted against clo-

ture. Then, the leader took down the bill, and now we are on a bill for a real special interest in this country, the National Rifle Association.

Mr. President, I have carefully reviewed this bill, and in my assessment it is mistitled. The Protection of Lawful Commerce in Arms Act has nothing to do with protecting lawful commerce; rather, it protects one segment of industry against the lawful interests of our States in remedying and deterring negligent conduct.

The bill pretends to be part of the long-ranging and important debate about gun regulation. Its proponents argue that lawsuits need to be stopped in order to defend their view of the second amendment. But that is pretense. This bill is a simple giveaway to one industry—the gun lobby. It is a special-interest windfall.

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

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

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

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

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

This legislation has one simple purpose: to prevent lawsuits from those harmed by gun violence as a result of the 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 this legislation—and lawsuits 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 or sellers.

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 as well. This bill 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 approach to our 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 industry practice and compensating victims who have been horribly injured through the clear negligence or even borderline criminal conduct of some gun dealers and manufacturers.

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

The judge in Washington State, presiding over the case brought by the DC

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

Let's make that clear. This is the most notorious sniper case in America. There is negligence on the part of the gun dealer who sold that gun. He didn't report it until very late. He allowed the snipers to get the gun. Now we are passing a law to prevent the victims from suing under civil liability. Nowhere else in the law does this concept exist in this form. It is a special carve-out for the DC sniper gun manufacturer and gun seller.

In another case, a Massachusetts court has ruled that gun manufacturer Kahr Arms may be liable for negligently hiring drug-addicted criminals and enabling them to stroll out the 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 a faulty gas tank or 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, all 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 negligent 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 California Hastings College of Law, Houston Law Center, Widener University School of Law, Rutgers, Tulane, Boston, Albany, Temple University Beasley School of Law, Case Western Reserve University School of Law, Cornell Law School, Salmon P. Chase College of Law, Northern Kentucky University, NYU School of Law, The George Washington University Law School, Boston College Law School, Tulane University Law School, Columbia Law School, New York Law School, University of Alabama School 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.

No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

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 which actors would be free utterly to disregard the risk, no matter how high or foreseeable, that their conduct

JULY 26, 2005.

U.S. CONGRESS,
U.S. SENATE,
Washington, DC.

DEAR SENATOR: As active and retired law enforcement officers, we are writing to urge your strong opposition to any legislation granting the gun industry special legal immunity. S. 397 would strip away the legal rights of gun violence victims, including 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 lawsuit brought by former Orange, 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 West Virginia dealer. The dealer had sold the gun, along with 11 other handguns, in a cash sale to a straw buyer for a gun trafficker. In June 2004, the officers obtained a \$1 million settlement from the dealer. The dealer, as well as two other area pawnshops, also have implemented safer practices to prevent sales to traffickers, including a new policy of ending large-volume sales of handguns. These 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 justice would have been denied. Police officers like Ken McGuire and Dave Lemongello put their lives on the line every day to protect the public. Instead of honoring them for their service, legislation granting immunity to the gun industry would deprive them of their basic rights as American citizens to prove their case in a court of law. We stand with officers McGuire and Lemongello in urging you to oppose such legislation.

Sincerely,
International Brotherhood of Police Officers (AFL-CIO Police union); Major Cities Chiefs Association (Represents our nation's largest police departments); National Black Police Association (Nationwide organization with more than 35,000 members); Hispanic American Police Command Officers Association (Serving command level staff and federal agents); National Latino Peace Officers Association; The Police Foundation (A private, nonprofit research institution); Michigan Association of Chiefs of Police; Rhode Island State Association of Chiefs of Police; Maine Chiefs of Police Association.

Departments listed for identification purposes only:

Sergeant Moises Agosto, Pompton Lakes Police Dept. (NJ); Sheriff Drew Alexander, Summit County Sheriff's Office (OH); Sheriff Thomas L. Altieri, Trumbull County Sheriff's Office (OH); Director Anthony F. Ambrose III, Newark Police Dept. (NJ); Chief Jon J. Arcaro, Conneaut Police Dept. (OH); Officer Robert C. Arnold, Rutherford Police Dept. (NJ); Chief Ron Atstupenas, Blackstone Police Dept. (MA); Sheriff Kevin A. Beck, Williams County Sheriff's Office (OH); Detective Sean Burke, Lawrence Police Dept. (MA); Chief William Bratton, Los Angeles Police Dept. (CA); Special Agent (Ret) Ronald J. Brogan, Drug Enforcement Agency; Chief Thomas V. Brownell, Amsterdam Police Dept. (NY).

Chief (Ret) John H. Cease, Wilmington Police Dept. (NC); Chief Michael Chitwood, Portland Police Dept. (ME); Chief William Citty, Oklahoma Police Dept. (OK); Chief Kenneth V. Collins,

might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike any other business or individual, 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 at major law schools all across the Nation. We are facilitating criminal conduct by providing this protection against liability.

It goes on to say:

A firearms dealer, in most states, could sell 100 guns to the same individual every day, even after the dealer is informed that these guns are being used in crime—even, say, by the same violent street gang.

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

Again, it goes on to say:

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

One exception, for example, would purport to permit certain actions 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 cause harm. The "negligent entrustment" exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals—

That is the pickup that is parked on the street corner containing loaded assault weapons and sold to anybody who comes by.

The negligent entrustment exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals, careless handling of firearms, lack of security, or any of a myriad of potentially negligent acts.

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

That is what this bill is opening up.

Again, this represents a radical departure from traditional tort principles.

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

As currently drafted, this bill would not simply protect against the 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 germaneness I have ever seen take place in this body to prevent amendments from being offered once cloture is invoked, which is going to happen. This Senate is going to do 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. 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:

Maplewood Police Dept. (MN); President Lynn N. Cripps, Iowa State Police Association, Marshalltown Police Dept. (IA); Chief Daniel G. Davidson, New Franklin Police Dept. (OH); Asst. Director Jim Deal, U.S. Dept. of Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Bedford Police Dept. (OH); Captain George Egbert, Rutherford Police Dept. (NJ); Sterling Epps, President, Association of Former Customs Agents, Northwest Chapter (WA); Chief Dean Esserman, Providence Police Dept. (RI).

Officer Daniel Fagan, Boston Police Patrolman's Assoc., Boston Police Dept. (MA); Captain Mark Folsom, Kansas City Police Dept. (MO); Chief Charles J. Glorioso, Trinidad Police Dept. (CO); Superintendent Jerry G. Gregory (ret), Radnor 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 Higgins, Director (Ret.) ATF; Officer Rick L. Host, Sec/Treasurer, Iowa State Police Assoc., Des Moines Police Dept. (IA); Officer David Hummer, Ft. Worth Police Officers Association, Ft. Worth Police Dept. (TX); Officer H. Husberg, 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 Kerlikowske, Seattle Police Dept. (WA); Deputy Chief Jeffrey A. Kumorek, Gary Police Dept. (IN); Detective John Kotnour, Overland Park Police Dept. (KS); Detective Curt Lavarello, Sarasota County Sheriffs Office (FL); Chief Michael T. Lazor, Willowick Police Dept. (OH); Sheriff Simon L. Leis, Jr., Hamilton County Sheriffs Dept. (OH); Sheriff Ralph Lopez, Bexar County Sheriff (TX); Chief Cory Lyman, Ketchum Police Dept. (ID); Chief David A. Maine, Euclid Police Dept. (OH); Chief J. Thomas Manger, Montgomery County Police Dept. (MD); Chief Burnham E. Matthews, Alameda Police Dept. (CA); Chief Michael T. Matulavich, Akron Police Dept. (OH).

Chief Randall C. McCoy, Ravenna Police Dept. (OH); Sergeant Michael McGuire, Essex County Sheriff's Dept. (NJ); Chief William P. McManus, Minneapolis Police Dept. (MN); Chief Roy Meisner, Berkley Police Dept. (CA); Sheriff Al Myers, Delaware County Sheriff's Office (OH); Chief Albert Najera, Sacramento Police Dept. (CA); Detective Michael Palladino, Executive Vice President, National Association of Police Organizations, President, Detectives' Endowment Association of New York City; Chief Mark S. Paresi, North Las Vegas Police Dept. (NY); President Thomas R. Percich, St. Louis Police Leadership Organization, St. Louis Police Dept. (MO); Sheriff Charles C. Plummer, Alameda County Sheriffs 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); Robert M. Schwartz, Executive Director, Maine Police Dept. (ME); Chief Ronald C. Sloan, Arvada Police Dept. (CO); Chief William Taylor, Rice University Police Dept. (TX); Asst. Chief Lee Roy Villareal, Bexar County Sheriffs 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 (DC); 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 enforcement 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 record in Congress or other evidence to contradict the fact that the State courts are handling their responsibilities competently in this area of the law.

So all those people who believe in States rights are taking States rights away for the National Rifle Association.

The American Bar Association also says:

There is no data of any kind to support claims made by the industry that it is incurring extraordinary costs due to litigation, that it faces a significant number of suits, or that current State law is in any way inadequate. The Senate has not examined the underlying 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.

That is amazing to me. It continues:

Proponents of this legislation cannot, in fact, point to a single court decision, final judgment, or award that has been paid out that supports their claims of a crisis. All evidence points to the conclusion that State legislatures and State courts have been and are actively exercising their responsibilities in this area of law with little apparent difficulty.

This letter goes on and again concludes this is going to be the only industry in the United States with this kind of immunity. There is no crisis that merits this. There is no hearing record that documents the need. This really worries me.

Maybe I am biased because I have been a mayor, because I have seen what happens on the streets. I have seen how guns are misused. I have seen the threats that criminals with a firearm can be. I have watched, over the years, as firearms have grown much more sophisticated. Their killing power is greatly enhanced. The copycat, or the civilian version, of the 16—the .50 caliber weapon now that is out there—can send a bullet as large as my hand from Arlington Cemetery into the Capitol. Don't you think how those weapons are

sold and distributed should prevent negligence? I do.

I guess in all my years in this body I have never been more disillusioned about how we proceed or why we proceed. We have the PATRIOT Act that is ready to come to the floor, and we are doing this. We have an asbestos bill that is ready to come to the floor, and we are doing this. I am ranking on Military Construction appropriations. We have passed out a military construction bill with \$70 billion in it for veterans benefits, and we are doing this. There are a number of other appropriations bills that are ready for floor action. The conference on the Energy bill just concluded, and we are doing this. The Calendar of Business contains 100 items ready for Senate floor action, and we are doing this. There is no hearing record for the previous two 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 know we are going to lose on the motion to proceed. The latest is that we are not even going to have a vote. It will be voice-voted because it is so ironclad that this bill is going to swim through. And then we will watch them try to stop us from putting any amendments on the bill. It is a sad day in the Senate. It is a regretful day. It is an extraordinarily disillusioning day.

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

As Justice Ginsburg has noted:

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

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

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

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

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

The only side that a judge should be on is on the side of the law. Indeed, that is the oath that each of them take when they are sworn into office. Sometimes corporations should 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 Su-

preme 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 for the session set to begin 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 State buildings 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 can force 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 at least some of the 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 probed by the Senator as well.

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 which one of them 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 U.S. 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 want all nine Justices on the Supreme Court 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 would be compromised. That is in 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 clerk will call the roll.

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. We will do it with asbestos reform, an issue that has for the last 10, 15, 20 years unfairly resulted in the trial lawyers doing very well, but the patient with cancer, mesothelioma, not being compensated, the victims not being compensated. We will be addressing medical liability at some point in time, hopefully in this Congress, and then gun liability, the Protection of Lawful Commerce in Arms Act, which is being addressed today and tomorrow and possibly the next day.

This 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 1999, 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 hard-working people who are manufacturing guns. I have had the opportunity, as many of our colleagues have, to go to these wonderful facilities with hard-working Americans, typically in rural communities, who are manufacturing and putting together 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 avocation 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 lawyers are “the new arm of government,” replacing the legislative branch “that’s not working anymore.” These trial lawyers 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 have passed laws 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, and thus the least appropriate 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.

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, the prices for firearms, 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 private 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 small company, one 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.

Our sympathies always first and foremost go to crime victims and families, and no one in any way deserves to be harmed by a criminal wielding any kind of a weapon, be it a gun or a knife or anything else. But we have to place the blame where it belongs, not on the people working in that factory I visited that makes these firearms. We need to place it at the feet of the violent criminals themselves, those who commit the crimes and threaten our communities. They are the ones responsible, and they are the ones who should be held accountable. Blaming gun manufacturers misses the real problem. It punishes law-abiding owners and undermines our constitutionally protected rights. Even if litigation managed to bankrupt law-abiding gun manufacturers, it is not going to stop the criminals from getting guns elsewhere.

So I urge my colleagues to help stop frivolous gun litigation. We can accomplish that by allowing this legislation first to come to the floor and then passing this legislation. A vote for reform is a vote for security, and a vote for reform is a vote for common sense.

The PRESIDING OFFICER. The majority whip.

FOLLOWING THE GINSBURG STANDARD

Mr. McCONNELL. Madam President, I rise to speak on the nomination of Judge John Roberts to be the next Justice of the Supreme Court of the United States. As we are beginning to learn, the President has selected one of the foremost legal minds of his generation. Many of my colleagues have already spoken Judge Roberts’ praises on

this floor, and I agree with all of them. Judge Roberts possesses a keen intellect, an open mind, very importantly, a judicious temperament, and a sterling reputation for integrity. He will faithfully apply the Constitution, not legislate from the bench. He should be confirmed in time for the Court to operate at full strength by October 3.

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

But that one simple fact may make all the difference to some of my friends on the other side of the aisle.

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

Both Ruth Bader Ginsburg and Stephen Breyer came to the Senate with a distinguished record and a deserved reputation for a fine legal mind. But Justice Ginsburg also came with a long record of liberal advocacy and thought-provoking, to put it mildly, statements. Yet the Senate handled her nomination in a manner that brought credit to the institution. It followed a respectful process. Indeed, it can be said that "respect"—both for the President and his nominee—was a hallmark of her nomination, and the nomination of Stephen Breyer.

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

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

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

During Justice Ginsburg's tenure as a general counsel and a member of its board, the ACLU, for example, opposed restrictions on pornography. Yet even though her client had adopted 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 by a 96-3 margin, 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 prejudge 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 those questions asked her view of a case that had already been decided, *Roe v. Wade*; and in explaining her position, she said:

I feel it is improper for me to endorse or criticize a decision which may well come back before the Court in one form or another and indeed appears to be coming back with some regularity in a variety of contexts. I do not think we have seen the end of that issue or that holding and that 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. . . . There are two real reasons. The first real reason is how often it is when we express ourselves casually or express ourselves without thorough briefing and thorough thought about a matter 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 cases 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 preview 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.

For example, Justice Ginsburg was asked how she would have ruled in *Rust v. Sullivan*, an abortion case that had already been decided. She declined to answer, explaining her position with a metaphor of the slippery slope:

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

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

That is a lot of “ifs” she declined to answer and yet was confirmed overwhelmingly.

Both Justices Ginsburg and Breyer were reported out of the committee promptly; Republicans did not try to delay the committee vote. Nor did Republicans try to deny these nominees the courtesy of an up-or-down vote on the Senate floor.

As I mentioned, Justice Ginsburg was confirmed 96–3 after 2 days of debate. Justice Breyer was confirmed 87–9 after only a single day of debate. By giving these nominees up-or-down votes, the Senate continued the practice it had followed with even contested Supreme Court nominees, like Robert Bork and Clarence Thomas. The average time for Senate consideration of the Ginsburg and Breyer nominations was 58 days. For Justice Ginsburg’s nomination, the entire process lasted only 42 days from nomination to confirmation.

It troubles us on this side of the aisle, and it should trouble all Americans, when different standards are applied to different people for no valid reason. Unfortunately, this already appears to be happening with respect to the nomination of Judge John Roberts.

Judge Roberts will no doubt be as forthcoming as he properly can be when he testifies. However, as with all nominees, there are some questions that he will not be able to answer. His decision ought to be respected as were the decisions of Justice Ginsburg and Justice Breyer.

But our colleague Senator SCHUMER has declared that for this nomination—forget all the prior nominees—“Every

question is a legitimate question, period.” And he plans on asking Judge Roberts some 70 questions. These include specific issues that will likely come before the Court. In addition, he wants Judge Roberts to discuss how he would have voted in specific cases, such as *New York Times v. Sullivan* and *United States v. Lopez*.

If our friend from New York insists that Judge Roberts answers these types of questions, it will be a radical departure from the practice that the committee followed with Justice O’Connor, Justice Breyer, Justice Ginsburg and other Supreme Court nominees. These nominees were given discretion in not answering questions on issues that might come before the Court. It was agreed that it would be improper for a potential justice to pre-commit on a matter.

We on this side of the aisle are not asking the Senate to change its practices or standards. We are not asking that this President be treated better than his immediate predecessor. We are asking for equal treatment. In short, we are simply asking that the Senate follow the Ginsburg standard, not a double standard.

I am hopeful that the courtesy and respect the Senate showed President Clinton’s nominees, and prior Supreme Court nominees, will continue with Judge Roberts. After all, it’s only fair.

I yield the floor.

Mr. HATCH. It is my understanding the Senator from South Carolina would like to take 2 minutes. If I can be recognized after that, I would appreciate it.

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

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 intentionally committed a crime with it, was irresponsible in its use. I believe everybody should have their day in court for a legitimate grievance. But it is not legitimate, in my opinion, to sue someone who makes a gun lawfully, that is not defective, and that person is held responsible in court because some other person who bought the gun decides to misuse it, to commit a crime with it. That would ruin our economy. It would fundamentally change personal responsibility in America. 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 will destroy 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 America noncompetitive 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 they 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 and we are not dependent on 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.

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 they continue to be unsound.

These lawsuits claim that sellers give the false impression that gun ownership enhances personal safety or that sellers should know that certain guns will be used illegally. That is pure bunk. Let’s look at the truth.

The fact is that none of these lawsuits are aimed at the actual wrongdoer who kills or injures another with a gun—none. Instead, the lawsuits are focused on legitimate, law-abiding businesses.

It is this kind of rampant, race-to-sue mentality, that fuels our tort-happy, litigious culture. It has to stop.

In its Statement of Administration Policy, the White House has urged us to pass a clean bill, in order to ensure enactment of the legislation this year. Amendments that would delay enactment beyond this year are simply unacceptable.

The administration knows what we also know: This is a modest bill to help prevent the gun industry from a tidal wave of baseless lawsuits.

It is also highly relevant, I believe, that the leading suppliers of small

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 them 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 for S. 397 with no anti-gun amendments. 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 lawsuit protection, including light aircraft manufacturers, food donors, charitable 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 bottom line is that this 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 sale laws, or those based on traditional grounds including negligent entrustment or breach of contract.

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

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

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

These abusive gun liability actions usurp the authority of the Congress and of State legislators. They are an 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 colleague from Utah for relinquishing the rest of the time, and I join my colleague in strong support of S. 397, the gun liability bill. But I also wanted to address a topic that continues to draw much heat and discussion here on this floor and in the media. In the heat of political rhetoric over Iraq and the administration’s prosecution of the global war on terror, much has been lost and not all the facts are being presented in the matter. Unfortunately, some are quick to exploit the situation in Iraq and the global war on terror and, by extension, the brave men and women prosecuting these conflicts as cannon fodder in their attacks on the President from the media and others. These folks hope to undermine the administration’s credibility with a keen eye on gaining political advantage. However, in the end, those efforts serve only to undermine the noble efforts of our Armed Forces, the men and women of our intelligence 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 when these warriors’ 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 sacrifice so much 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 emboldens 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 a 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 Afghanistan 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-Qaida 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. True meaning.

Instead, the terrorists wish to distort Islam’s true meaning, wage an unholy war against Iraq’s Shi’i, 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. The battle is one of hearts and minds; a battle, however, that the Iraqi people are determined to win, along with our assistance, as demonstrated

by the 58-percent voter turnout in January, where they elected a new national government, and also by the continuing willingness of Iraqis—to face the danger of terrorist suicide attacks—to sign up to serve to keep the peace.

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

When asked about Iraq's al-Qaida 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 is very close to bin Laden puts at rest, in fairly dramatic terms, that there is at least substantial connection between Saddam and al-Qaida."

However, long before Zarqawi descended upon Iraq, Abu Nidal, the secular Palestinian 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 373 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 and the Emir of Kuwait. Kuwait 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 mixing the chemicals in the bomb that exploded beneath the World Trade Center in 1993, arrived in Baghdad during July of 1994. Upon his arrival, Yasin traveled freely and received both a house and a monthly stipend from the Iraqi Government during his stay.

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 during the inspection made Iraq a more dangerous place potentially than in fact we 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 Iraqi 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 likelihood at some point in the future of a seller and a buyer meeting up would have made Iraq a far more dangerous country than even we 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 cabinet 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.

History teaches us that the first casualty of war is truth. The first casualty of political battles can often be the men and women fighting the real bat-

tles while executing our Nation's policies. Let us not debase the memories of those who have laid such a sacrifice on the altar of freedom with meaningless finger-pointing exercises. Let's speak with truth about the issues and facts at hand.

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

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

EXHIBIT 1

HANDING OVER THE MIC TROOPS TALK FROM IRAQ (By Michael Graham)

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

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

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

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

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

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

These soldiers weren't stooges from Public Affairs or handpicked flag wavers foist on me by media handlers. I found some in the mess hall, others working security checkpoints; others sought me out because they have family living in the D.C. area where my radio show is broadcast. The least fortunate were the soldiers in Humvees stuck with "tourist duty," four friendly but serious young men who got stuck with a couple of bonehead radio hosts riding along on patrol.

In all, I spoke to more than 100 soldiers, sailors, airmen, and Marines, with different ranks and different duties at their FOBs (forward operating base), and yet they overwhelmingly had the same things to say about the war in Iraq:

"We believe in the mission."

"We're making progress."

"The Iraqis are making progress, too."

And, perhaps most important of all: "We're going to win."

I expected to hear this sort of positive assessment from General George Casey, commander of operations in Iraq, when I interviewed him at his headquarters deep inside the International Zone. When he pointed out that, one year ago, there was just one standing battalion in the Iraqi army, but there are

107 battalions today, he was doing his job of supporting the war. And I expected it from Lt. General Steve Whitcomb, commanding general of the 3rd Army, as he talked about successfully moving more than one million gallons of fuel across Iraq every day, despite the best efforts of the insurgents.

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

But I heard the same, positive assessments from 23-year-old sergeants from New Iberia, La., and from PFCs from Wisconsin and Alabama. I heard it from Lieutenant Li, whose Humvee had been hit by IEDs so many times he'd lost count. I heard it from Airman Truong, who was born in Vietnam and had recently returned to his native country to marry. Two weeks after "I do," Airman Truong was headed back to Kuwait to do his duty for his adopted country.

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

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-supporting, troop-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? No edits or filters or editorial meetings. Just the young men in the hot desert telling what they've seen, what they've heard, and what they now believe based on those experiences.

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

I'm proud to say that, for a week, the soldiers had their say. If I were the editor of a major daily newspaper or a national network, I would be concerned that what they said is so 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 I—and the New York Times editorial page—do not.

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

The Senator from Minnesota.

Mr. DAYTON. Mr. President, I am one Member, along with a number of my colleagues, who believes we should be debating not this gun liability bill but the Department of Defense authorization bill for the coming fiscal year. I serve on that committee. It was a good bipartisan effort. I was planning to offer an amendment to add \$120 million for childcare and family support for the families of reservists and National Guard men and women who are

called to active duty. Others had amendments, including one regarding BRAC, of particular note to me and others in Minnesota affected by that process.

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

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

Nor is the constitutional amendment to prohibit the burning or desecration of the American flag, of which I am a proud cosponsor, brought to the Senate. In my 4½ years in the Senate, not once has the leader brought that measure to 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 around here, no matter how unnecessary, unfair, or ill advised it is, this bill will soon become the law of the land.

One of its findings is:

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation and hundreds of years of common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of rights, privileges and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

It goes on to say one of the purposes is to preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, something I certainly support.

It goes on to say the purpose is to protect the right under the first amendment of the Constitution of manufacturers, distributors, dealers,

and importers of firearms or ammunition products, and trade associations to speak freely, to assemble peacefully, and to petition the Government for redress of their grievances.

This legislation is supposedly necessary to protect the first amendment rights of people in the lawful business of manufacturing, distributing, or selling firearm and buying the same.

In the manufactured hysteria of this fabricated crisis, the Government or a maverick judicial officer or a petit jury evidently is threatening to violate the first amendment, the second amendment, and the 14th amendment rights of all gun manufacturers, distributors, and dealers in the United States of America. What utter nonsense. But if the National Rifle Association says the sky is green and the grass is blue, the majority of Congress will run for the paint.

I strongly support the second amendment of the U.S. Constitution. I am a gun owner myself and a hunter. 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 handguns 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 \$78.7 million, an 8-percent increase over 2004, and the chief executive stated firearm unit shipments in the second quarter increased 11 percent 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 and dealers are not the 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 dues, the second amendment is 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 and even 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 exemption from consumer product safety laws and regulations, and now almost complete immunity for lawsuits from negligence or product malfunctions. All other businesses and industries in America are in discount 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 that hopefully will prevent 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 the dealer who sold the gun, along with 11 other handguns in a cash sale to a straw buyer for a gun trafficker—after that lawsuit that dealer, as well as two other area pawnshops, agreed to implement safer practices to prevent sales to traffickers, including a policy of ending large-volume sales of handguns.

In 2004 also, Tennille Jefferson, whose 7-year-old son was unintentionally killed by another child with a trafficked gun, won a settlement from a gun dealer that amounted to \$850,000. The handgun was one of many the dealer sold to the trafficker despite clear signs the guns were headed for 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 saying every one of those cases filed against the manufacturers or dealers is proper. Again, that is for the process to determine. But there is no evidence, no evidence at all, that there is anything about the nature of these suits, the outcomes of them, the jury awards relative to the damages that have occurred, that indicates this industry is being prejudiced or plagued by those who they contrive to be doing so, to justify this legislation. If we are going to reform the tort system in this country, let's do it openly and above-board with all industries, all of American businesses affected equally by those changes. To single out one industry, particularly one that manufacturers products, potentially, as dangerous as guns, is just a terrible day for the Senate.

Mr. President, I yield the floor.

THE PRESIDING OFFICER. The Senator from Illinois.

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

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

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

Well, in the estimation of the Republican leader, Senator FRIST, there was one issue that was more important than talking about our men and women in uniform. That issue was providing immunity from liability for one industry in America, to say that of all the businesses in America that provide us

with goods and services, all of the businesses that are currently held responsible for wrongdoing, we will create one exception. We will say, if the gun industry is guilty of wrongdoing, they cannot be sued. That is right. The firearms industry, which sells millions of firearms each year in the United States, should not be held responsible for their bad conduct and wrongdoing.

It is hard to say those words and not shake your head. If personal responsibility is what it means to be an American and an American business man or woman, why in the world would you exempt one industry and say they are special, they are political royalty, they cannot be held liable for their misconduct? And why did we move to this bill and away from the Department of Defense authorization bill to help our soldiers and their families? The answer is too obvious. It is because of the political clout of the National Rifle Association and the gun lobby. It is the only group I can think of which would just go straightforward with the concept they are more important 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, people on U.S. lists of suspected terrorists applied 44 times to buy guns. It is not unheard of. It happens in this country. In only nine instances were they turned down. In the months since the study ended, 12 more suspected terrorists had the green light to buy or carry guns.

FBI Director Bob Mueller—whom 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 the guns recovered in crimes 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 my State of Illinois, 47 percent of guns traced to crimes committed in Illinois originated in other States. One State, Mississippi—the little State of Mississippi—is far and away the per capita leader in selling guns exported from their State and used in crime. Do you know why? Because firearms laws are not really strictly enforced in Mississippi, and some other States.

From 2000 to 2002, Department of Justice prosecutors filed three cases in Mississippi for violations of gun trafficking laws. In contrast, 32 cases were filed in Kentucky, 28 in Tennessee. So we have gun dealers in Mississippi selling trunkloads 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, we are not going to hold them to this same standard that we hold every other business in America to when people buy products.

There are lots of other issues we could talk about, the gun show loophole, and others. But I think one of the most important things we could talk about is why this bill is on the floor today. It is not because gun manufacturers and gun dealers are facing bankruptcy and a lot of litigation. I read into the RECORD yesterday—and will not repeat—the major gun manufacturers in this country have no problems in terms of profitability. In fact, one of the leading companies, Smith & Wesson, said:

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

Mr. President, \$4,500—does that sound like a business crisis that would move a gun immunity bill to the front of the calendar in front of the Department of Defense authorization bill? What it comes down to is this gun lobby has a lot of clout, and they are pushing for this sweeping immunity.

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

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

Federal investigators traced the gun. It was a "Saturday night special," one of those cheap guns just used for crime. They traced it to Lou's Jewelry and Pawn store in Upper Darby, PA. From 1996 to the year 2000, this pawnshop in Pennsylvania sold 441 guns traced to crime. It ranks as the No. 1 dealer in Pennsylvania in selling guns to criminals and 43rd in the Nation among all gun dealers.

In 2003, the last year for which we have statistics, Lou's sold 178 guns traced to crime. That year, less than 1 percent of the more than 3,000 dealers in Pennsylvania sold even one gun 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 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 brings his girlfriend in, and while he is standing there picking out the guns, 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 into the hands of a felon, 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 when it comes to those questions of liability. We are taking that matter out of the hands of American citizens. We are putting it in the hands of a handful of Senators.

The gun that killed Anthony was sold in 2003 by Lou's to a trafficker who had purchased six guns in a very short period. They bought multiple guns, including many "Saturday night spe-

ials," 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 once should have been a 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 lawsuit 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 on 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 several 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 the door with them. He took 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.

Fifty 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 could see 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 of Danny Guzman against that arms manufacturer if we pass this bill? It is immediately removed. They have no rights in court to pursue that. Why? Why would we say to a person who owns a company that makes guns that you are held to a lesser standard than a person who owns a company that makes toys? That is what it boils down to. You are doing it because the gun lobby insists on it. They want this immunity.

The case that has brought many policemen 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, that we are going to hold a gun dealer responsible if they should have known that? Wouldn't we hold a gun manufacturer responsible if they were involved in supplying guns to Lou's Pawnshop, which ranks one of the highest in the Nation of turning guns over to criminals? So we asked for an exception for law enforcement. It was defeated. All the people here who talk about law and order and how much they love policemen in uniform defending our communities and neighborhoods with their lives voted against them when they had a chance to put that exception in the law.

Let me give you a specific example. On January 12, 2001, police officers in Orange, NJ, were performing undercover surveillance at a gas station that had been robbed repeatedly. Someone acting suspiciously walked up to the gas station and then turned away. When Detective David Lemongello approached the man a few blocks away to question him, he responded by turning and opening fire. Detective Lemongello was hit in the chest and left arm, and the suspect fled. When additional officers, including Kenneth McGuire, found the man hiding beneath some bushes, the man started shooting again. Officer McGuire was hit in the abdomen and right leg. McGuire and two other officers returned fire and killed the man, even though they had been shot. Although Detective 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, a pawnshop in South Charleston, WV, and Songer acted as a "straw purchaser" by buying the gun for Gray who couldn't purchase it himself be-

cause 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.

They returned 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? I think so. Reasonable 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—which 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 in terms of underground 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 in the world have we 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 the policemen who risk 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 drive-by 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 William 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 White House counsel under 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 over the last couple 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 after the hearings and not before them or arrive so close to the time of the hearings, there would be no time to review them. I trust there will be those at the White House who would understand this would be the wrong way to proceed and would actually in the long run end up adding more time to the process.

The third category of files is from Mr. Roberts' work when he was a political appointee in the Justice Department's Office of the Solicitor General. He served as Kenneth Starr's principal deputy during the prior Bush administration. The reason I say these are important, the President said that his work at this time was one of the reasons 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 our responsibilities, it is appropriate that the Senate 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 seek. 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 bipartisan request for a selected group of those files.

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

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 26, 2005.
Hon. GEORGE W. BUSH,
The White House,
Washington, DC.

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

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

It is our hope that the confirmation process moves swiftly and smoothly over the coming weeks. We can assure you that no Senator is attempting to unduly delay the proceedings. We intend to work with Chairman Specter if and when further requests for documents or information appear appropriate. But in the meantime, we believe that judgment should be withheld on which and how many documents regarding this nominee might be released to the Senate. The history of past nominations is varied but clear—each confirmation process is different, and the type and number of documents shared between the White House and the Senate has depended on the nature of the debate, the needs of the Committee, and a cooperative negotiation between the Senate and the White House. A blanket statement that entire groups of documents are off limits is both premature and ill advised.

Finally, it is our understanding that many more publicly available documents will soon be sorted and delivered to the Committee. In the interests of speeding up the process, we have attached a list of the document areas within that group we feel would be most helpful to the Committee. To the extent your staff can assist in expediting the delivery of those documents, we would be grateful.

Sincerely,

PATRICK LEAHY.
DICK DURBIN.
JOE BIDEN.
EDWARD M. KENNEDY.
CHARLES SCHUMER.
DIANNE FEINSTEIN.
RUSSELL D. FEINGOLD.
HERB KOHL.

PARTICULAR MATTERS OF INTEREST

JGR/Law of War; JGR/Texas Redistricting; JGR/Abortion; JGR/Acid Rain; JGR/Affirmative Action Correspondence; JGR/Appointee Correspondence 1985; JGR/Appointee Memos, Clearance, Announcements, etc.; JGR/Appointments Clause; JGR/Asbestos Legislation; JGR/DC Chadha; JGR/Change in Presidential Term; JGR/Civil Rights Commission; JGR/Comparable Worth; JGR/Conflicts of Interest; JGR/Death Squads Investigation—SSCI; JGR/DOJ Daily Reports; JGR/EECO; and

JGR/Equal Opportunity in Education; JGR/Ethics; JGR/Exclusionary Rule; JGR/First Amendment; JGR/Flag, American; JGR/Independent Counsel; JGR/Iran Emergency; JGR/Jones, Bob—Univ. Decision; JGR/Judges; JGR/Legal Services Corporation; JGR/Par-
dons; JGR/Political Activity; JGR/Pro Bono; JGR/Reagan—Bush Rallies Guidance; JGR/Recess Appointments; JGR/School Prayer; JGR/Supreme Court; and JGR/War Powers.

Mr. LEAHY. When we review the documents volunteered by the White House, obviously, we are going to be asking, Is this more of the old trick of

flooding us with stacks of really unimportant materials in order to divert attention from those that matter the most? I hope the White House will begin to work with us instead of acting unilaterally.

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

So the bottom line is this: The White House is eager to supply documents it selected and certainly provided with great fanfare, but we have yet to receive the documents we have, in fact, requested. It is an unfortunate pattern we have seen too often. Of course, the White House has available to it all the documents. The President has spoken about the designee's work in the Reagan White House and at the Bush Justice Department. But they have yet to share those materials with the Senate.

Other nominations have run into trouble when this White House has decided to let the Senate see only what the White House wants the Senate to see. If the White House's midnight announcement on Monday that was reportedly embargoed to deny Democratic Senators an opportunity to comment is, contrary to appearances, actually intended to begin a dialog about documents, then I welcome it. Of course, if it is intended to unilaterally preempt a discussion about documents the Senate may need and is entitled to, then this is regrettable.

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

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

That takes time, it takes the cooperation of the nominee, and it takes the cooperation of the administration. It means that Republicans, as well as Democrats, have to take our constitutional obligations on behalf of the American people seriously.

Let us remember this is not to see who scores political points. This is to determine how we protect the rights of all Americans—the ultimate check and balance for all Americans. This is somebody who could well serve until the year 2030 or beyond.

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

I yield the floor.

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

MR. 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 we have seen in recent years—the case of the DC snipers, the case of Police Officers Lamongello and McGuire in New Jersey, and the pending case of Kahr Arms in Worcester, MA—would be barred. I don't think that is a mere incidental coincidence. They will be deliberately barred.

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

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

Let's take a look at the Kahr Arms case. It is the case of *Guzman v. Kahr Arms*. It was filed under the wife's name—Hernandez, I believe. It involves Danny Guzman and Kahr Arms. A lawsuit was filed by the family of 26-year-old Danny Guzman of Worcester, MA, who was fatally wounded with a 9 mm handgun that was stolen from the Kahr plant by a drug-addicted employee who had a criminal record. The manufacturer, Kahr Arms, operated the factory without basic security measures to protect against theft, such as metal de-

tectors, 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 before serial 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 what 200 years of legal precedent in Massachusetts or any other State in the country amounts to. This suit should be stricken, taken out, thrown out.

This legislation is sweeping and it is unprecedented. It deals a serious blow to citizens throughout this country, while enhancing dramatically the legal protections for the gun industry. Now, the bill's proponents repeatedly say you cannot hold someone responsible for the criminal actions of another—as my colleagues have said, 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 restatement 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 449:

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 the public. And the duty here 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 Company. In the case of gun dealers, it is the requirement and the obligation to take precautions, to use the standard of care a businessperson would use in the conduct of that business—the standard of care any businessperson would use. Certainly, this standard of care should apply to those who manufacture weapons, who sell weapons, and the trade associations associated with them.

The allegation in all these cases is that they failed to do that—not that they were unwitting, incidental victims of a criminal mind, but that they failed in their duty. Bull's Eye Shooter Supply in Washington State, for example, who supplied the Washington snipers with their sniper weapon, could 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 weapons 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 standard of conduct 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 court and say this dealer didn'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 this country. 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 after 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 have landed in court—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 the family of Conrad Johnson volunteered to be part of a social experiment. I think any suggestion to that effect is offensive. They have been harmed grievously. A wife lost her husband. Children have lost their father. The livelihood of this family is in question. They seek redress, as anybody would. That is not a junk lawsuit.

On the contrary, these families have been harmed, in part, because of the negligence of someone, and that someone should pay. The suggestion that this legislation is in response to some avalanche of lawsuits that is devastating the firearms industry is without foundation. The industry is so stressed that they have managed to raise, preemptively, \$100 million to protect themselves—not just in terms of going to court and paying claims, but also in terms of controlling documents and communications between themselves and their attorneys, so they can claim the benefits of the law, attorney-client privilege, at the same time they are trying to take away the benefits of the law from average citizens who have been harmed by guns. That is a stunning hypocrisy.

This is not an industry that seems to be without resources. As my colleagues have said, and as I have said, in some of these annual reports to the SEC, companies have said there were adverse effects because of these suits, but "don't worry, stockholders, we are not losing any money." One company reported out-of-pocket costs of \$4,500 in a period of less than a year for this type of litigation—\$4,500. For that, we are here on this floor to take away rights of Americans they have enjoyed for over 200 years to go to court, to allege 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 cannot stand up 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&K, a German firm, to help develop the next generation of weapons.

Clearly, the Pentagon doesn't believe American manufacturers are so distressed 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 America and the Pentagon away from acquiring American-made weapons is ludicrous.

It is not about preserving our defense. It has nothing to do with our defense. The Pentagon is making decisions to buy foreign weapons because 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 two brave New Jersey 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 have to 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, legislators pass bills. 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 shortly do.

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, after 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 statement has been spread on the RECORD consistently and repeatedly, so there is no need for me to give that speech again.

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

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

The whole purpose of my unanimous consent request is I stay in touch through consultation with the Democratic leader to find the appropriate time.

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

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

Mr. FRIST. Mr. President, it is our intention—and I will be offering an amendment shortly—but we will be in discussions with the leadership and the ranking member and chairman discussing amendments and allowing them to be offered accordingly in the judgment of the chairman and ranking member and the leadership.

Mr. KENNEDY. Mr. President, I am not going to object to the other, but that sounds to me as if—having been around and familiar with the rules of the Senate—they can effectively let what amendments come up that are agreeable to the floor managers and deny other Members the opportunity to

offer amendments. I think the Senate rules provide, when we are dealing with cloture, to be able to offer amendments that are relevant to the underlying bill. I don’t understand why we are not going to be permitted the different options. I am not going to object to the leader being able to go to Defense authorization when he wants to, but it does seem to me we are facing a stacked deck here and denying Members under the Senate rules the opportunity which the rules provide for. It would be simple to say we are going to run consideration of the gun liability according to the Senate rules. That would be the answer most of us would have hoped. I guess there is a different plan ahead for the Senate, but we all want to be fully aware of what that means. That means some Members will be able to get their amendments in and others will not.

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

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

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

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

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will proceed

to a vote on the motion to proceed to the consideration of S. 397.

The question is on agreeing to the motion.

The motion was agreed to.

ORDERS FOR THURSDAY, JUNE 28, 2005

Mr. McCONNELL. Mr. President and colleagues in the Senate, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow, Thursday, July 28. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate begin a period of morning business for 1 hour, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee. I further ask that following morning business, the Senate resume consideration of S. 397, the gun liability bill.

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

PROGRAM

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. McCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:40 p.m., adjourned until Thursday, July 28, at 9:30 a.m.

NOTICE

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

NOMINATIONS

Executive nominations received by the Senate July 27, 2005:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

KEITH E. GOTTFRIED, OF CALIFORNIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VICE RICHARD A. HAUSER, RESIGNED.

DEPARTMENT OF STATE

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

DEPARTMENT OF EDUCATION

MARK S. SCHNEIDER, OF THE DISTRICT OF COLUMBIA, TO BE COMMISSIONER OF EDUCATION STATISTICS FOR A TERM EXPIRING JUNE 21, 2009, VICE ROBERT LERNER.

EXECUTIVE OFFICE OF THE PRESIDENT

BERTHA K. MADRAS, OF MASSACHUSETTS, TO BE DEPUTY DIRECTOR FOR DEMAND REDUCTION, OFFICE OF NATIONAL DRUG CONTROL POLICY, VICE ANDREA G. BARTHWELL.

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. HIGHTOWER, TERM EXPIRED.

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

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 JOAN CHALLINOR, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. ERROL R. SCHWARTZ, 0000