

case has begun, goes a lot further than eliminating frivolous suits. What it will do is have an adverse and potentially detrimental effect on legitimate cases as well.

The fee-shifting provisions of this bill will actually establish a harsher consequence for plaintiffs than for defendants who violate the Federal rules.

As Ed Huck, the director of the Alliance of Cities, in the Wisconsin State Journal, said:

Imagine city or county officials being swindled out of millions of taxpayer dollars—and learning that they'll have to risk millions more if they want to pursue a lawsuit. That's what the "loser-pays" provision of this legislation means—And, in a word, that's "intimidation" of crime payers.

Mr. President, we should be wary of any legislation that has the effect of intimidating victims of fraud.

In short, Mr. President, this bill is unbalanced, misguided, and will harm thousands of Americans who bear no relation to the frivolous lawsuits that this bill is supposed to target.

There is no doubt that frivolous litigation, in any area of the law, is detrimental to our system of justice and to the society at large. However, the answer to these types of suits is not to foreclose the ability of legitimate plaintiffs to protect themselves against fraud, nor is it to deprive them of the right to seek recovery in court when they are defrauded.

In my opinion, the negative consequences of this unbalanced bill will be significant and far reaching.

Mr. President, I note that the report that accompanied the original S. 240 pointed out the simple, but important, goal of American securities law, and that is to promote investor confidence in the securities market. Sadly, the provisions of this bill fall very short of attaining that fundamental goal.

We must be vigilant in our efforts to seek out and eliminate frivolous litigation. However, equally as important is our obligation not to lose sight of the average American investor, the person investing for retirement or to put children through college or simply to have a little better quality of life.

In our zeal to reform, it is protection of these people which must guide and inform our efforts.

So it is unfortunate that the provisions of this bill provide little more than hollow comfort to the American investor, but such is the case with H.R. 1058. In my opinion, the bill offers its alleged reform at a price that cannot be justified. Protecting the American investor should not be sacrificed in the misapplied name of "reform."

The securities laws of this Nation are essential to hard-working men and women all across America. Given that this conference report fails to uphold the tradition of protecting these hard-working men and women, I simply cannot support it. I intend to vote against this conference report.

I thank the Senator from Nevada for his strong leadership on this issue. I

yield back the remainder of my time and yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I understand that under the previous order, we now stand in recess for lunch?

The PRESIDING OFFICER. We stand in recess until 2:15.

UNANIMOUS-CONSENT AGREEMENT

Mr. BENNETT. Mr. President, prior to that action, I ask unanimous consent that following Senator HATCH's presentation this afternoon, that the senior Senator from South Carolina, Senator THURMOND, be recognized for 15 minutes on a nongermane matter. This, I might note, is the senior Senator's 93d birthday, and he has asked for this time. I think anyone who lives to that age and retains the faculties that the senior Senator from South Carolina has ought to be given whatever it is he asks for on his birthday.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Mr. President, I have no objection, but I would further like to amend the unanimous-consent request that following the 15 minutes of the distinguished senior Senator from South Carolina, to put Senator BOXER for 30 minutes, I am told, although it is not on our time. And I just seek to clarify, Senator REID has sought time.

Mr. BENNETT. I ask unanimous consent to include Senator REID for 15 minutes following Senator BOXER.

The PRESIDING OFFICER. The Chair inquires, is the time of Senator BOXER and Senator REID to be charged against—

Mr. BRYAN. Senator BOXER's time will be charged to the Senator from Nevada; Senator REID's time, as I understand, will be charged to the Senator from Utah.

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

Mr. BENNETT. I ask the Chair, how much time remains on each side?

The PRESIDING OFFICER. There are 2 hours and 24 minutes remaining for the Senator from Utah; 2 hours and 13 minutes remaining for the Senator from Nevada.

Mr. BENNETT. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 1:03 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KEMPTHORNE).

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont [Mr. LEAHY] is recognized for up to 6 minutes.

TELECOMMUNICATIONS CONFERENCE PROPOSALS FOR REGULATING SPEECH ON THE INTERNET

Mr. LEAHY. Mr. President, in some ways parody is becoming reality. I

refer to the debate that is going on in the telecommunications conference over how we are to impose Government regulation over constitutionally protected speech on the Internet.

Last year, the magazine PC Computing published an April Fool's parody. Let me tell you a little bit about it. It said that I introduced a bill, No. 040194—for April 1, 1994—to ban drinking on the information superhighway. According to the article, this bill that I supposedly introduced would prohibit anybody from using a public computer network while intoxicated. They also said there was a rider on this bill to make it "a felony to discuss sexual matters on any public access network, including the Internet, America Online, and CompuServe." Senators were chided for thinking there is a physical highway and that a permit was required to "drive" a modem on the information highway. The article noted that complaints about the imaginary bill are "getting nowhere" because "who wants to come out and support drunkenness and computer sex?"

The parody concludes on a gloomy note, with the following words:

There is nothing to stop this bill from becoming law. You can register your protests with your Congressperson or Ms. Lirpa Sloof in the Senate Legislative Analyst's Office. Her name spelled backwards says it all.

I enjoy using a computer, as a lot of us do, but sometimes some who use them do not have a tremendous sense of humor, just as some Members of Congress do not. They did not notice that the name spelled backward is "April fools." The bill number was April 1, 1994. It should have told somebody something. But some actually thought this was real, and I started getting calls over the phone and messages over the Internet to my office saying, "What are you doing about this drunk driving on the information superhighway bill?" But that was then, and that was a joke. Today, unfortunately for all Internet users, the debate taking place in the telecommunications conference about imposing far-reaching new crimes for indecent speech over the Internet is not a parody but very real.

The conferees have been meeting and going over this enormous task determining how parts of telecommunications would work, how you regulate cable operators, wireless systems, and how you protect universal service. You would think they would not have time to look at something like cyberporn, but that seems to be one major consideration they have. Even though there are no members of the Senate Judiciary Committee at that conference, they are trying to figure out how to make new Federal crimes as part of the telecommunications bill.

The Senate, of course, passed the Exon-Coats Communications Decency Act, which would punish with a 2-year jail term any Internet user who posted a message with indecent language or used a four-letter word in a message to

a minor. As originally written, it would make it illegal to receive indecent material whether or not the user knew the material was indecent at the time he downloaded it. Service providers would also risk criminal liability and fines for their subscribers' use of indecent language.

Now, we have to ask ourselves if this makes such sense. We saw what happened in Vermont last week. A Vermonter from Underhill, VT, found that her personal profile on America Online had been deleted. She asked why it was deleted and was told it was because vulgar words were used on it. So she checked to see what was the vulgar word. The word "breast" was used. Why? Because she was a breast cancer survivor and was using America Online to correspond with other breast cancer survivors. So, this word came up and because of hypersensitivity over Congress being worried about words used on the Internet, she was yanked off. This is ridiculous in this day and age.

One wonders if, in the future, recipes for chicken cacciatore sent online will only call for dark meat to avoid using the "B-" word.

We should understand there are plenty of laws on the books that apply to the Internet by banning obscenity, child pornography and threats from being a distributed. What we are talking about is regulating constitutionally protected speech. One proposal under consideration by the conference would impose penalties on anybody who transmits protected speech if it is considered indecent.

In addition to effectively banning indecent speech, the conference is considering proposals to impose criminal liability on both the speakers of indecent content as well as online service providers. The result would be to draft the service providers into the role of Net police. Service providers like America Online and Prodigy, telephone companies providing modem connections, and libraries and schools hooking our Nation's children up to this brilliant new medium would face the risk of being fined and even jailed.

To avoid liability, service providers, libraries, and schools would bear the onus of asserting complicated defenses to prosecution. The implications of being hauled into court in the first place—especially for schools and libraries—should not go unnoticed. Many providers will seek to avoid the risk of litigation altogether by censoring all online speech to that appropriate for kindergarten children, or refusing to serve children at all.

These extreme proposals on the table in the telecommunications conference would leave online communications in a severely disadvantaged position in our society. While Newsweek magazine's recent cover story trumpeted the vision of the computer mogul Bill Gates, the U.S. Congress is simultaneously poised to shut down this new medium and vastly change the landscape of the information age. We must stop being paternalistic Luddites and

embrace our new communications potential.

Because indecency means very different things to different people, an unimaginable amount of valuable political, artistic, scientific and other speech will disappear in this new medium. What about, for example, the university health service that posts information online about birth control and protections against the spread of AIDS? With many students in college under 18, this information would likely disappear under threat of prosecution.

I understand that Representative WHITE will make an alternative proposal to the telecommunications conference tomorrow. His proposal avoids regulating constitutionally protected speech, and limits any regulation to materials harmful to minors. This is a step in the right direction, but still leaves Internet users guessing at what may be considered harmful to minors in different areas of this diverse country.

The Internet and other computer networks hold enormous promise for enhancing our lives in ways that would have been unthinkable only a brief decade ago. But the growth of this network will no doubt be chilled if users fear that they risk criminal liability by using particular words that might, in some jurisdictions, be considered indecent. Or, if service providers simply refuse to provide Internet access to children under 18 years of age, due to the risk of criminal liability.

I have written, along with several other Members, to the chairman and ranking member of the Senate Commerce Committee urging the conferees to appreciate the implications that these proposals will have for the Internet. They should not rush consideration of these weighty issues. This is a great new communications medium and the conference should deliberate carefully before it gives its blessing to new crimes for saying things that some people, some where in this country, may deem to be indecent for children.

We should all be concerned lest the parody becomes reality.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

CENSORING THE INTERNET

Mr. FEINGOLD. Mr. President, I am pleased to be able to follow the Senator from Vermont who spent a few minutes to address a matter which was reported by the news media throughout the country this weekend in which the Senator from Vermont referred to and has a great relevance to legislation which the Senate passed this summer and will consider soon again.

The telecommunications conferees may within the next 24 hours decide whether this Congress is going to take the unwise step of censoring the Internet.

I am speaking of the Communications Decency Act which passed the Senate overwhelmingly as an amend-

ment to the telecommunications deregulation bill in June. The Communications Decency Act contained criminal penalties for the transmission of constitutionally protected speech over computer networks. The penalty for transmitting indecent speech which might be accessed by a minor was up to 2 years in prison and fines of up to \$100,000. Indecency, unlike obscenity, is constitutionally protected. Indecent language has thus far, only been defined by the FCC in regard to the time, place, and manner in which it may be transmitted. The definition includes the so-called seven-dirty words including what some might call mild profanity.

When this legislation was offered as an amendment in the Senate, I objected for a number of reasons. My fundamental concern was, and continues to be, that prohibitions on speech labeled indecent are unconstitutional. While courts have upheld restrictions on indecency to minors on other some forms of media, the Communications Decency Act would restrict communications between adults as well. The legislation, as passed by the Senate, could subject consenting adults communicating over a public USENET group to criminal penalties if their conversation took place in a forum that was accessed by a minor. I believe that not only is that unacceptable, it is also unconstitutional. Adults should not have to self-censor their words over public information forums. A profane exchange between two adults on a street corner which is overheard by a child would not subject those adults to criminal sanctions. However, if that exchange occurred on a public forum over the Internet and a child accessed that forum, those same adults could land in jail.

During the floor debate, I raised serious concerns that the Communications Decency Act would have a chilling effect on computer networks, forcing adults to self-censor their words to what is appropriate for the youngest of children in the most conservative communities in the country. I, along with my colleague from Vermont, Senator LEAHY, suggested that this type of censorship would also have a chilling effect on the many socially valuable forums that exist via the Internet. There exist currently many on-line support groups for child abuse victims, rape victims, victims of disease, for those coping with AIDS, and other social issues. In addition, there exist chat groups, bulletin boards and USENET groups to discuss presumably adult topics which might contain the seven dirty words or other adult language. I suggested that the Communications Decency Act would suppress those types of forums, limit the content of the discussions within those forums, and ultimately result in their termination.