eliminates the provisions Senator SPECTER offered with respect to RICO. It heavily imbalances the sanctions that are imposed against lawyers who file frivolous lawsuits by making the burden whole and entire on plaintiffs but not so with defendants. It enhances the pleading requirements, which makes it much more difficult to bring. It fails to address the statute of limitations issue. It fails to correct the deficiency in the law which allows aiders and abettors to go home free. It reverses hundreds of years of judicial precedent in common law in limiting the right of recovery balance between an innocent investor and those whose conduct was reckless. It says under the proportionate liability that only the proportionate responsibility shall be made payable to that innocent investor, when the actual perpetrator is judgment proof or without money to respond.

Finally, let me say that the conference report even diminishes that ability to recover even further. I thank the Chair.

Mr. President, I am just informed that the distinguished Senator from Illinois wants to speak as in morning business for 2 minutes. I do not have any objection.

I ask unanimous consent that she may speak for 2 minutes as in morning business.

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

CONGRATULATIONS TO THE NORTHWESTERN UNIVERSITY FOOTBALL TEAM

Ms. MOSELEY-BRAUN. Mr. President, I wanted to take a moment to congratulate Northwestern University's football team, the Wildcats, who, in Senate resolution 197, offered by Senator SIMON and me, are being honored and congratulated for one of the greatest underdog-to-champion stories in the history of sports. The Northwestern team is now being called ''the miracle on Central Street.'' What they have done here is to celebrate their first conference championship in some 60 years.

Coach Barnett has taken this team from really a very low profile in the conference to being a top contender, now in the Rose Bowl. They are going to go to Pasadena. He fulfilled his pledge to take the Purple to Pasadena. That rallying cry has taken this team to a 10–1 season, a No. 3 national ranking, and with defeats over Notre Dame, Penn State and Michigan, a feat which has, frankly, not been accomplished by any one team in over 30 years.

Northwestern really proved that it is possible to produce a football champion as well as Nobel Prize winners and Pulitzer Prize winners and academicians throughout the world. They have captured, by their actions, the hearts of fans all over the country. They have made all of us from Illinois very proud of them. If nothing else, the football team, in their perseverance, hard work, and dedication, have proved once again in this Christmas season that miracles do happen.

I thank my colleagues for their time.

Mr. BRYAN. Mr. President, I join in congratulating Northwestern. I was 11 the last time they went to Pasadena. So it is time for the Purple not only to go to Pasadena but to win in Pasadena.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I rise today to oppose, in the strongest terms possible, H.R. 1058—inappropriately titled the ''Private Securities Litigation Reform Act of 1995.'' This bill has nothing to do with reform in the normal sense of the term. Rather, the bill is about protection from liability for fraud—pure and simple. The bill is the worst kind of special interest legislation that the American public is sick and tired of.

It will give corporations a license to lie to investors and will severely restrict the ability of defrauded investors to recover their hard-earned dollars from the unscrupulous and reckless individuals and corporations who swindled them.

Six months ago, I stood on the Senate floor and urged my colleagues to oppose this bill in its earlier incarnation because—put simply—it was a bad bill. Because it was a bad bill, every major consumer group, State attorneys general, State and county treasurers, mayors, finance officers, labor unions, the American Association of Retired Persons, the National League of Cities, educators, and hundreds of other nations, State, and local organizations, opposed the bill.

It is easy to understand why when you consider that a city like San Francisco has over $8 billion in pension funds and other investments and when more than 60 State and local governments nationwide have lost more than $3.6 billion in securities markets, partly due to derivative investments.

Despite the tremendous opposition to H.R. 1058, which was a bad bill in June, it is a worse bill now. Therefore, I strongly urge my colleagues to oppose it.

What is most disturbing about this bill is the impact that it will have on what are often the forgotten Americans—that is, average middle-class Americans.

At a time when job and wage insecurity are at all-time highs, and family budgets are straining at the seams, middle-class Americans have begun investing their hard-earned dollars in stocks in record numbers. In fact, as the Washington Post reported just a few days ago, securities have supplanted real estate as the No. 1 source of family nest eggs.

Middle-class Americans believe they must invest because there may not be a decent pension when they retire—either they will be let go too soon because of corporate down-sizing or their company, to which they have been loyal, will not be there 20 or 30, or even 10 years from now.

Middle-class Americans also want to invest for the future because they aren't sure that Social Security or Medicare will be there for them in their later years when they are most vulnerable.

Last, middle-class Americans believe they must invest to ensure that their children are able to receive an education that provides them with the essential skills to enable them to become productive and integral participants in what will be an extremely competitive and global work force in the 21st century.

Because middle-class Americans recognize the need to secure and protect their financial futures, they have entered to stock market directly—or through mutual funds—to such a degree that the most significant asset held by American families today is not their home, but their 401(k) plan. Today, assets in 401(k) plans total more than $500 billion. Assets in investment retirement accounts total more than $1 trillion. The majority of these funds are in stocks.

Under these circumstances, this Nation's two primary securities laws—the Securities Act of 1933 and the Securities and Exchange Act of 1934—have become even more, not less, important.

The principal philosophy governing these two laws—enacted more than 60 years ago after the stock market crash of 1929, caused largely by a crisis of confidence due to unregulated fraudulent stock promotion—is that investors and prospective investors should have access to all material information about corporations that offer securities so that the public can make informed investment decisions and that honest markets should be maintained by strong antifraud enforcement.

At a time when middle-class Americans are investing in record numbers because they believe they must, the U.S. Congress should be strengthening the most fundamental protections for investors in our securities laws, not gutting them. Yet, gutting these laws is exactly what this bill does.

This bill strikes a severe blow to the heart of the middle class. Let me tell you about just a few of the devastating provisions in this bill.

One of the most outrageous provisions in this bill is the safe harbor provision. This provision, by providing broad immunity from liability for fraudulent corporate predictions and projections, essentially gives corporations a license to lie. This provision is much worse than the safe harbor provision in the Senate bill.

The Senate bill language that made knowingly fraudulent defendants ineligible for the safe harbor was eliminated. Now, under this bill, deliberately fraudulent statements, written or oral, as long as they are accompanied by cautionary language, will be immunized from private liability. Let me repeat—this bill protects deliberately fraudulent statements.

Let me give you a frightening but likely scenario that could occur under the safe harbor provision in this bill: In an effort to entice unsuspecting consumers to purchase stock, company X makes a bunch of optimistic and fraudulent predictions about how great a new product will perform and how the company's profits will increase because of the manufacture of this new product. The company gets its lawyers and accountants to vouch for the representations.

Based on these rosy predictions, your uncle, your grandmother, your sister's teacher's union, your church, and the State of California decide to purchase the stock. All of them wind up losing their money when the fraud is exposed. Your grandmother believes the company should not be able to get away with lying to her. The company's lawyers argue, however, that even though there were fraudulent statements, there was a paragraph of cautionary language in some filing at the Securities and Exchange Commission. Under this bill, grandma loses, all the swindled investors lose, and the fraudulent company and its lawyers and accountants win.

This is absolutely outrageous. And it's just one example of the many anti-investor provisions in this bill.

To add insult to injury, this bill also fails to restore traditional aiding and abetting liability for securities fraud in private actions. Thus, lawyers, accountants, and others who turn a blind eye to the fraudulent activity of their clients, or who recklessly aid and abet their clients, will be let off scott free.

The bill also dramatically erodes the doctrine of joint and several liability and moves to a system of proportionate liability. The bottom line for an investor is that under this bill, if a corporate defendant is found guilty of fraud and goes bankrupt, the victim will not be able to recover all of his losses. In essence, what this bill does is determine, as policy matter, that it is more important to protect adjudged wrongdoers from having to pay more than their strict proportion of the harm than it is to protect the innocent victims of fraud.

Another of the troubling provisions in this bill, is the one which adopts a higher pleading standard than was in the Senate bill—higher in fact than the standard adopted by the second circuit—which is currently the highest standard in the land.

As my colleague Senator SPECTER discussed earlier, it was Senator SPECTER who offered an amendment that clarified that the heightened pleading standard in the Senate bill could be satisfied by evidence of a defendant's motive and opportunity to commit securities fraud. The current version of this bill, however, eliminates the language in the Specter amendment.

This bill is also worse than the Senate bill because it imposes a mandatory loser-pays fee shifting penalty under rule 11 of the Federal Rules of Civil Procedure that is harsher on plaintiffs than on defendants.

Under current law, rule 11 gives courts the discretion to impose sanctions for pleadings and motions that are unwarranted, without evidentiary support, or otherwise abusive.

The Senate bill required courts to determine whether any party violated rule 11 and to presume that the appropriate penalty for violating rule 11 is fee shifting. Under the Senate bill, the party who violated rule 11 would have to pay the opposing party's legal fees incurred as a direct result of the violation.

The bill on the floor today is worse than the Senate bill because it unfairly increased the penalty imposed against plaintiffs who are found to have violated rule 11 while not doing so for defendants who are found to have violated rule 11. The presumptive penalty for plaintiffs is have to pay all of the defendant's legal fees and costs incurred in the entire action.

Proponents of this bill claim that the bill is balanced and fair. Is this provision balanced or fair? Not by any stretch of the imagination.

This bill, unlike the Senate bill, also adopts a provision, modeled on the House bill, that may require plaintiffs to post a bond to cover a possible fee-shifting penalty. Moreover, there is no limitation on the amount of the bond. This could be a major obstacle for individual victims or their attorneys in bringing a meritorious action against a large corporation defendant. The bill also fails to restore an adequate statute of limitations for private securities fraud actions, and gives the greatest control in cases to the wealthiest plaintiffs.

Lastly, as someone who has long sought to do what he could to combat crimes of all kind, I also find it incredible that language in the Senate bill concerning the application of our RICO laws in securities fraud cases has been almost eliminated entirely.

Under an amendment I offered, the Senate bill allowed the RICO statute to be used in a securities fraud civil case if at least one person in the civil case has been criminally convicted. Under this bill, RICO could only be used in the civil case against the person who was actually criminally convicted.

The safe harbor, proportionate liability, pleading, aiding and abetting, fee-shifting, and RICO provisions, are bad enough alone, but together, they will actually encourage the kind of conduct our securities laws were designed to eliminate.

I am sure that there is not one Member in this body who does not want to bring an end to all frivolous lawsuits, not just shareholder lawsuits. Yet, the legislation before us today is not the answer—it is far from it.

Indeed, the managing editor of Money magazine, the largest financial publication in the United States, with over 10 million, largely middle-class readers, said it well when he stated, and I quote:

> At a time when massive securities fraud has become one of this country's growth industries, this law would cheat victims out of whatever chance they may have of getting their money back . . . in the final analysis, this legislation . . . would actually be a grand slam for the sleaziest element of the financial industry, at the expense of ordinary citizens.

The president of the Fraternal Order of Police said it best, however, when, in his letter to the President urging him to veto the bill, he stated:

> Mr. President, our 270,000 members stand with you in your commitment to a war on crime; the men and women of the Fraternal Order of Police are the foot soldiers in the war. On their behalf, I urge you to reject a bill which would make it less risky for white collar criminals to steal from police pension funds while the police are risking their lives against violent criminals!

I urge my colleagues to heed these words.

Mr. BRYAN. Mr. President, I thank the distinguished senior Senator for his statement and for his insight.

Mr. COHEN. Mr. President, I am well aware of the hazards of abusive class action lawsuits and unethical attorney conduct.

Just before Thanksgiving there was an article on the front page of the New York Times about a constituent of mine who received a benefit of $2.91 from a class action suit concerning overcharges in mortgage escrow accounts, but had $91.00 removed from his account to pay the attorney's fees of class counsel. I will soon be introducing legislation to protect consumers from these types of abuses.

There are undoubtedly abusive securities class actions as well. But the key to reforming this area of the law, like all litigation reform, is to devise remedies that will weed out the frivolous lawsuits while allowing the meritorious ones to go forward.

The conference report under consideration contains a number of necessary and well-crafted reforms. It requires that class members receive intelligible notices explaining the terms of class action settlements, prohibits secret settlement agreements, and promotes enforcement of rules sanctioning attorneys for unethical behavior.

Unfortunately, the conference report also contains provisions that will prevent potentially meritorious cases from being pursued. In some instances, those who knowingly and intentionally mislead investors will be fully immunized from liability. Consequently, I will vote against this conference bill as I did when it was first considered by the Senate.

I am especially concerned about the consequences that the bill will have on

the elderly. The Special Committee on Aging, which I chair, has held a series of hearings on fraud against small, unsophisticated investors.

The committee's investigation revealed that in an era of low interest rates, when retirees are seeking out higher yield investments, the elderly are particularly vulnerable to securities scams. Fraud against the elderly is particularly odious because their savings cannot be replaced by new earnings—losses resulting from fraud can affect middle-income seniors' standard of living for the rest of their lives.

The safe-harbor contained in the conference report shields issuers of securities, or those working on their behalf, from lawsuits based on predictive statements they make about the future performance of a stock. The immunity is absolute, so long as the predictions are accompanied with cautionary statements indicating that actual results may differ from those predicted.

The effect of this safe harbor is that corporate officials are immune from suit even if they make factual statements that they know to be false and that are intended to mislead investors. At least under the Senate bill, knowing and intentionally misleading statements would have been actionable. I am disappointed that the conference committee chose to broaden, rather than narrow, this provision.

I am also concerned about the cumulative effect of some of the procedural changes made to the bill.

The bill requires that before initiating a suit a plaintiff must be able to allege specific facts giving rise to a strong inference of the defendants' state of mind. A Senate amendment clarifying how plaintiffs could meet this burden was dropped by the conference. In addition, the bill prohibits plaintiffs from taking any discovery before it must defend a motion to dismiss the lawsuit.

Together, the pleading standard and the bar on discovery will make it extraordinarily difficult to maintain a lawsuit because it is virtually impossible to prove the state of mind of a party until you have an opportunity to conduct interviews and examine documents.

These and other provisions will not only deter frivolous lawsuits, but will create roadblocks and obstacles to suits that seek recoveries for genuine victims of fraud. For decades these private class action lawsuits have provided a necessary supplement to the enforcement efforts of the Securities and Exchange Commission.

Enforcement of the securities laws and the confidence in our markets that these laws have engendered have contributed to making our stock markets the most robust in the world. The benefits this legislation is intended to achieve—the deterrence of abusive litigation—does not justify the potential costs of weakening an enforcement scheme that has effectively protected our markets for many years.

Mr. GRAMS. Mr. President, I rise in support of the conference report.

I am proud to say that I served on the conference committee which produced this report. As a freshman Senator, I was particularly honored to play a role in crafting legislation which will benefit so many Americans who find themselves victimized by the social costs of frivolous litigation.

The legislation before us today, H.R. 1058, is entitled the ''Private Securities Litigation Reform Act of 1995.'' In my opinion, a better title would have been the ''Investors, Workers and Consumers Legal Protection Act.'' After all, this legislation is designed to protect those very people—investors, workers and consumers—from the high cost of meritless and abusive litigation.

Today, we have an opportunity to make some modest and reasonable changes which will help weed out the most abusive lawsuits in the field of securities litigation while at the same time, preserving the right of action for shareholders who are truly victimized by securities fraud.

I am particularly pleased with a number of the provisions in this bill, including:

Mandatory sanctions against attorneys who file abusive lawsuits;

Codification of the pleading standard adopted by the second circuit court of appeals;

Elimination of bounty payments to named plaintiff, plaintiff referral fees, and undeserved windfall damages;

A safe harbor for forward-looking statements to encourage companies to voluntarily disclose information to help investors make better decisions; and

A reduction in the level of liability for secondary defendants who do not knowingly engage in securities fraud.

In addition, I am pleased that this legislation does not extend the current statute of limitations established by the U.S. Supreme Court in the 1991 Lampf decision. That's one year from the date the plaintiff knew of the alleged violation and 3 years from the date the alleged violation occurred.

While some critics of this legislation have seized upon the statute of limitations as a wedge to defeat this important bill, they have failed to present a convincing case for why this period should be extended.

They have tried to suggest that the current statute of limitations has curbed the number of meritorious cases filed in the courts, but the evidence proves otherwise.

According to the administrative office of the U.S. courts, during the 4 years prior to the Lampf decision, the average number of cases filed was 162 per year. In the 4-year period since Lampf, the average number of cases filed has risen to 278 per year, an increase of nearly 72 percent.

Contrary to the claims of the bill's opponents, securities litigation has increased under Lampf, not decreased. This should not be surprising, given the fact that many of these claims can now be filed within days, even hours, after a movement in the market.

There are a number of other reasons why the current statute of limitations should be preserved.

A longer period would simply allow speculators too much time to wait and see how their decisions to buy or sell securities turned out, permitting them to abuse our legal system to cover their losses in the market.

In addition, a longer period of limitations would make it more difficult for innocent defendants to protect themselves in court. Forcing companies to keep track of every rise and fall of their stock value for 5 years and allowing strike suit attorneys to attack job creators well after the memory of a reasonable person would have faded would only lead to more frivolous litigation, more exorbitant settlements, and more pain for investors, workers and consumers.

Under current law, plaintiffs with meritorious claims have more than enough time to file their suits; unfortunately, so too do strike suit attorneys. Even with the enactment of this bill, some meritless claims will survive. If our intent is to reverse the current litigation explosion, why would we want to invite more frivolous lawsuits by extending the statute of limitations?

In June, when this legislation was debated on the Senate floor, 52 of our colleagues wisely decided to retain the current statute of limitations. That was the right decision in June and it is the right decision today, and I am pleased that this conference report preserves current law.

Finally, I'd like to say something about how this legislation will benefit everyday Americans. Securities litigation reform is not a subject discussed every morning around the kitchen table, but its results will have a major and beneficial impact on most Americans.

It will protect the worker who worries about being laid off because his employer had to pay attorneys' fees instead of his salary.

It will help the consumer who has to pay higher prices for products today because of the hidden cost of frivolous litigation.

It will pay off for the legitimate investors and pensioners whose life savings are being jeopardized by strike suit attorneys.

And finally, it will benefit the thousands of honest, hard-working attorneys who have watched the public image of their profession being tarnished by a few greedy quick change artists.

It is for the sake of these Americans that we have put in long hours of hard work to craft this balanced and reasonable bill.

None of us are totally satisfied with this legislation. There are some supporters who feel that certain provisions in the conference report go too far.

There are others like me who would like to see this legislation go further. But I think we can all agree that this conference report does what it's supposed to do: protect legitimate investors, save jobs, and preserve the right of actions for true victims of securities fraud.

When I think of this bill, I am reminded of a quote by one of the strike suit attorneys who testified on this subject before the Senate Banking Committee. In a moment of honesty, this prominent and wealthy securities action lawsuit attorney said: ''I have the best practice of law in the world. I have no clients.''

In my opinion, these words best illustrate the problem that this legislation is designed to address.

I commend the managers of the conference, Senator D'AMATO and Congressman BLILEY, for crafting this report, as well as our colleagues, Senators DOMENICI and DODD for pushing this issue for so many years.

As a conferee, I am proud to have played a role in this legislation and urge my colleagues to adopt the conference report.

Mr. BRYAN. Mr. President, I ask unanimous consent I be allowed to use a portion of the time of the senior Senator from Minnesota as he will not be on the floor.

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

Mr. BRYAN. Mr. President, if I may, there has been some discussion as to the position of the Securities and Exchange Commission on this piece of legislation. I have in my possession a letter dated November 22, signed by Arthur Levitt, the Chairman of the Securities and Exchange Commission, who has written to the Los Angeles Times, the editor, Mr. Coffey. I am just going to read a portion of his statement: ''I am concerned and disappointed with several major points in today's Los Angeles Times article entitled 'SEC Chief Shift on Investor Bill is Linked to Senate Pressure.' '' The Chairman goes on to say, ''The article is wrong in reporting that I now support the litigation reform bill.''

I think that needs to be said. The Chairman of the SEC has not and does not support the legislation in the current form.

I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, November 22, 1995.

SHELBY COFFEY III,
Editor, Los Angeles Times, Times Mirror Square, Los Angeles, CA.

DEAR MR. COFFEY: I am concerned and disappointed with several major points in today's Los Angeles Times article entitled ''SEC Chief Shift on Investor Bill Is Linked to Senate Pressure.''

The article is wrong in reporting that I now support the litigation reform bill.

The article is wrong in reporting that I've reversed my position.

The article is wrong in reporting that my position was influenced by political pressure.

In the sub-heading and again in the lead sentence of the article, I am represented to ''back'' and ''support'' the proposed legislation. This is simply not the case. This point was repeatedly stressed to the reporter.

Secondly, the position outlined in the SEC's letter in no way can be construed as a reversal of the SEC's position. The article fails to describe the significant changes that were made in the most recent draft of the legislation that precipitated our letter. To do so would have made it clear that our letter did not represent any ''reversal.''

Finally, my staff repeatedly and unequivocally expressed to Mr. Paltrow that it was simply not true to say that the SEC responded to political pressure in issuing our letter. The letter represents the Commission's position arrived at thoughtfully, independently and deliberately. To suggest anything less is an insult. To build an entire story about political influence around one quote from one Senate staff member opining about the motivations of the SEC is, at best, unfair; especially when you consider that the two SEC Commissioners who signed the letter—the only people in any position to accurately describe the circumstances surrounding it—unambiguously denied that they did so in response to political pressures.

I hope you will correct these misstatements.

Sincerely,

ARTHUR LEVITT, *Chairman.*

Mr. BRYAN. Mr. President, I realize it is very easy to demonize lawyers. Some of my colleague who have taken the opportunity this afternoon and this morning to do so would not be the first to do that. Dating back to the time of Shakespeare, ''The first thing we ought to do,'' Shakespeare said, ''is kill all the lawyers.''

I believe this is not a warm, cuddly group that is easy to love. Having once practiced law, I share some of that antipathy to lawyers, when lawyers get out of line, as they from time to time do.

As I indicated, I fully support the provisions that deal with the frivolous lawsuits, and my colleague from Minnesota itemized a number of those.

Let me try to turn this to a broader perspective: Over 150 editorials and columns that have appeared in newspapers across the United States, in every region, newspapers whose philosophies are conservative, liberal, middle of the road. Overwhelmingly, the informed judgment and opinion by these editorial writers is in strong opposition to the bill—not because they do not recognize, as I, and I think all of my colleagues do, that we need to make some changes with respect to the frivolous lawsuits, but because this bill goes far beyond that.

It is really a Trojan horse in which those who seek to minimize or immunize themselves from liability have entered into the courtyard under this frivolous lawsuit flag, when in point of fact they are trying to protect themselves from liability after their misconduct has been adjudicated.

Among those organizations that have expressed their opposition are the National League of Cities, the National Association of Counties, the Government Finance Officers Association, the U.S. Conference of Mayors, the Municipal Treasurers Association. I do not know what the political affiliation is of all of these people, but I daresay if you examine it you would find Republicans and Democrats alike that hold these offices, all essentially reaching the same conclusion, that they and their constituent interests, namely, the people who live in these various communities, are at risk in terms of being protected in the event that investor fraud causes them to lose money in any of the portfolios they hold in behalf of the public, as members of counties or cities, municipal officers, and others.

I suspect that this group is about as neutral and objective as any that you might find. I think it is instructive that virtually all have expressed their strong opposition. They are extremely concerned that they might be the next Orange County. It could happen in their State, in their county, in their city to their university investment portfolio, and they know that they would be irreparably damaged if we do not take corrective action to balance this piece of legislation.

In recent weeks, well over 1,000 State and local officials and opinion leaders have written the Congress and the President to express their strong opposition. Among those letters, Mr. President, is a letter signed by 99 California government officials, including the Mayors of San Francisco and San Jose and officials in 43 of the State's 58 counties; a letter signed by 34 county treasurers in Arkansas; a letter signed by 24 opinion leaders in Iowa, including the State's Attorney General Tom Miller; a letter signed by 51 public officials in Georgia; a letter signed by 51 Maine opinion leaders, including State Treasurer Sam Shapiro and 9 State legislators; a letter signed by 60 public officials in Massachusetts, including the Massachusetts Association of County Commissioners; a letter signed by 33 opinion leaders in Montana, including Attorney General Joseph Mazurek and State Auditor Mark O'Keefe; a letter signed by 39 officials in New Jersey, including the New Jersey Conference of Mayors and the New Jersey League of Municipalities; a letter signed by 27 Ohio public officials, including the mayor of Cincinnati and the Ohio County Treasurers Association; a letter signed by 27 Vermont opinion leaders.

My point is that this spans the continent, from east to west, from north to south. Whether one is liberal, conservative, or middle of the road, virtually all have concluded that this legislation overreaches and clearly places those persons in their communities and their States at risk as a consequence of this legislation.

Mr. President, I reserve whatever time I have remaining and note the presence on the floor of my distinguished friend and colleague, the Senator from Alabama, Senator SHELBY.

The PRESIDING OFFICER. The Senator from Alabama has 7 minutes.

Mr. SHELBY. Mr. President, I am disappointed to say that the conference report before us today is not a balanced bill. It was not a balanced bill when it left the Senate several months ago, and it has not improved by any measure in conference.

Plain and simple, Mr. President, it remains unbalanced against the defrauded investor.

I am disappointed, as I was when the Senate passed S. 240, because I believe that there are some worthy provisions in this bill that would go far in reducing frivolous suits without compromising the rights of victims of fraud.

These few, worthy provisions, however, are insufficient to overcome the unbalanced nature of this bill.

While I support efforts to reduce frivolous litigation, I simply cannot support the approach taken here today.

This past year I have actively sought alternatives that would seek a middle ground between weeding out meritless litigation and preserving legitimate claims.

I have actively sought alternatives that would seek a middle ground between eliminating economic incentives to pursue frivolous litigation and protecting the rights of the defrauded investor.

And, I have actively sought alternatives that would seek a middle ground between opportunistic strike suits and preserving the powerful check of private litigation on professional misconduct.

Earlier this year, I joined Senator BRYAN in introducing a securities litigation reform bill that, I believe, struck the proper balance between protecting investors and reducing meritless litigation.

Our bill contained some of the same worthy provisions also incorporated in this conference report, like the ban on referral fees and the payment of attorney fees from the SEC disgorgement fund, increasing fraud detection and enforcement and ensuring adequate disclosure of settlement terms.

In addition, however, our bill sought balance by including several provisions to protect the rights of the defrauded investor.

It restored aiding and abetting liability; extended the statute of limitations for private fraud actions to the earlier of 5 years after the violation or 2 years after discovery, and ensured that the victim of fraud was made whole in the case of an insolvent joint and several defendant.

When S. 240 came before the Senate I, again, sought to improve the balance of the bill by offering an amendment on proportionate liability.

My amendment would have ensured that the insolvency of the defendant does not prevent the innocent victim from obtaining a full recovery by making proportionate defendants liable for the remaining uncollectible amount of an insolvent joint and several defendant.

Again, this provision would have weighted in favor of the victim of the fraud over the perpetrator of the fraud—a balance which is still missing from the conference report before us today.

Mr. President, these provisions are crucial, in my view, to ensuring that rights of defrauded investors are not unfairly impaired in an effort to reduce litigation—meritorious or meritless.

Mr. President, the conference report fails to do what S. 240 failed to do—and I, therefore, cannot support it.

The conference report, put simply, fails to ensure adequate protection of the rights of the innocent victim of securities fraud, and, in fact, makes it harder for the small investor to gain access to the courts and obtain a full recovery for securities fraud.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, let me express my appreciation to the Senator from Alabama for his comments and for his balance. I believe he would agree with me that there are abuses that need to be corrected. None of us who oppose this legislation are arguing the status quo is what we favor. Indeed, he is a cosponsor with me of the legislation that would have dealt with a number of those things. The Senator will recall that incorporated in that we had provisions to eliminate bonus payments being paid to brokers. That is dead wrong. He and I agree on that.

The Senator would agree with me, I am sure, that payments that would be made as bonus payments to certain plaintiffs are wrong as well. The referral fees—we clearly agree that before a settlement should be effected, the lawyers on behalf of the plaintiffs need to make a full disclosure as to what the terms of the settlement are to be. And we fully agreed that, if there are frivolous lawsuits, the courts need to be very aggressive in imposing sanctions.

I note my friend wants to respond. I will not purport to speak for him.

Mr. SHELBY. If the Senator from Nevada will yield just for a few brief comments?

Mr. BRYAN. I will be happy to.

Mr. SHELBY. I believe in any piece of legislation we need balance. We need balance for the people who are the issuers of stock in the public domain. But, on the other hand, we need some safeguards for the investor. If you do not have balance in a situation, you are going to have trouble later.

I believe this bill is not a panacea. This bill is fraught with danger. I think it is a bad bill the way it is constructed today, but it could have been a good bill if we had stayed with the basics and if we were able to work out a bipartisan approach to a very serious thing, and that is excessive litigation.

No one, I believe, in his right mind could do anything but agree that a lot of litigation is out of control in America. But how do you balance that? I believe we have that responsibility and obligation, to make sure it is balanced, especially when you are dealing with people who probably are not going to be as sophisticated about the marketplace as people who come to the marketplace, but will invest their life savings and will invest everything they have. And what remedy will they have in the future as victims? I think this is what some of this is about.

Mr. BRYAN. Mr. President, I note the distinguished Senator from New Mexico is on the floor, and he previously had some time. I would be willing to offer him some time and ask unanimous consent that we split the remainder of the time.

Mr. DOMENICI. How much time does the Senator have?

Mr. BRYAN. I think we have about 5 minutes.

Mr. DOMENICI. I do not need that time. I will take 2 of the 5. It is very generous of the Senator to split it with me.

Mr. BRYAN. Three.

Mr. DOMENICI. I do not really need that much, but I will accept it.

Mr. President, I would have stopped the distinguished Senator from Nevada had I had a chance and asked a question. I did not do that because I just did not get in the right position with reference to his speech.

He mentioned a lot of organizations, institutions, and editorial writers who are opposed to this bill. I guess if I had a chance to ask those associations, institutions, and editorial writers a question, I would just ask one. Let us assume in addressing them that I am saying, ''Mr. Jones,''—that addresses all of them—''did you know that the investors' share of what is collected in a lawsuit of the type we are concerned about, out of every dollar collected, that 14 cents goes to the investor?'' That is that poor stockholder that everybody is talking about being sorry for. Fourteen cents goes to that person, and the balance, if my arithmetic is correct, 86 cents goes to the lawyers, court costs, deposition costs, and the other things.

That is why the program needs to be fixed. There is no doubt about it. This part of the American judicial system and litigation system is not working. It is not worth the consequences to the enterprises being affected that normal litigation brings to the marketplace of American capitalism. It is sort of part of the system that has gone eccentric, that lawyers have found a bird's nest on the ground, and this is the result—settlements all over the place, deep pocket lawsuits, and even with all of that available to the lawyers of this country, 14 cents goes to that little investor whom everybody is trying to protect.

I would like to close by saying I am very pleased that the oldest and largest investment group around that takes care of small stockholders, the National Association of Investors Corp., which has a letter to the President saying protect their stockholders, endorses this.

There is a long list here of investors who say to the President, ''We want

your support.'' There is a huge list from the American Business Conference to the public trading companies, maybe 30 of them.

I ask unanimous consent that all of these be printed in the RECORD in support of the cause that this bill contains.

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

NATIONAL ASSOCIATION OF INVESTORS CORPORATION,
Royal Oak, MI, October 25, 1995.

The PRESIDENT,
The White House,
Washington, DC.

MR. PRESIDENT: I am writing as chairman of America's oldest and largest organization of small investors—the lifeblood of our nation's capital markets. NAIC is a prime mover behind the popular trend of investment clubs, where investors share information and expertise while reducing risks. The number of investment clubs affiliated with NAIC has grown to 17,000, representing more than 325,000 individual investors.

Mr. President, America's small investors urgently want reform of our broken system of securities litigation.

We pride ourselves in making our own investment decisions, based on information in the marketplace. But because of the current legal system, we have been getting less and less access to voluntary information from publicly traded companies. Companies balk at disclosing useful information for fear of frivolous class-action securities lawsuits. To make matters worse, meritless securities lawsuits unjustly take money from the pockets of small investors by driving down the value of growth companies in which we invest. In the past four years alone, class-action securities suits have milked more than $2.5 billion from American companies. Plaintiff's lawyers have pocketed approximately one-third—$825 million—of these funds that otherwise could have gone to more productive use.

We want to be able to recover our investments in cases where we have been defrauded. Just as important, we want protection from unscrupulous ''strike suit'' attorneys who file baseless suits that coerce companies into spending our investment capital on settlement and defense costs.

That is why NAIC members support securities litigation reform legislation that cracks down on frivolous securities lawsuits while strengthening effective protection against real fraud. The bill's strong new fraud prevention provision would require public auditors to identify and report illegal activities as soon as discovered. This reform bill stops the abusive practice of using ''professional plaintiffs'' who buy small amounts of stock in many companies simply to gain the right to sue. It gives real investors more power to direct securities lawsuits.

Mr. President, on behalf of small investors across the nation, I urge you to work with Congress to enact securities litigation reform into law this year.

Sincerely yours,

THOMAS E. O'HARA.

INVESTORS AND THOSE WHO PROTECT INVESTORS HAVE SPOKEN OUT IN FAVOR OF SECURITIES LITIGATION REFORM

National Association of Investors Corporation, the largest individual shareowners organization in the United States.

Managers of public and private pension funds, including: New York City Pension Funds, Connecticut Retirement and Trust Funds, Oregon Public Employees' Retirement System, State Universities Retirement System of Illinois, Teachers Retirement System of Texas, State of Wisconsin Investment Board, Washington State Investment Board, Eastman Kodak Retirement Plan.

State treasurers and state officials responsible for state securities laws and pension funds, including: Treasurer, Commonwealth of Massachusetts, Treasurer, State of Ohio, Treasurer, State of Illinois, Commissioner of Corporations, California, Treasurer, State of North Carolina, Treasurer, State of South Carolina, Treasurer, State of Delaware, Treasurer, State of Colorado.

Senior citizen investors spoke out in a recent poll in favor of legal reforms to curb lawsuit abuse.

SUPPORTERS OF SECURITIES LITIGATION REFORM

American Business Conference.—Members of the American Business Conference include 100 chief executive officers of high-growth companies with revenues over $25 million. ABC serves as the voice of the midsize, high-growth job creating sector of the economy.

American Electronics Association.—The American Electronics Association represents some 3,000 companies in 44 states that span the breadth of the electronics industry, from silicon to software, to all levels of computers and communication networks, and systems integration.

American Financial Services Association.—The American Financial Services Association is a national trade association for financial service firms and small business. Its 360 members include consumer and auto finance companies, credit card issuers, and diversified financial services firms.

American Institute of Certified Public Accountants.—The American Institute of Certified Public Accountants is the national professional organization of over 310,000 CPAs in public practice, industry, government, and academia.

Association for Investment Management and Research.—The Association for Management and Research is an international nonprofit membership organization of investment practitioners and educators with more than 40,000 members and candidates.

Association of Private Pension and Welfare Plans.—The Association of Private Pension and Welfare Plans membership represents the entire spectrum of the private pension and employee benefits community: Fortune 500 companies, banks, insurance companies, law, accounting, consulting, investment and actuarial firms. APPWP members either sponsor directly or administer employee benefit plans covering more than 100 million Americans.

Association of Publicly Traded Companies.—The Association of Publicly Traded Companies has an active membership of over 500 corporations consisting of a broad cross section of publicly traded companies, especially those traded on the NASDAQ national market.

BIOCOM/San Diego (Formerly the Biomedical Industry Council).—BIOCOM/San Diego is a business association representing over 60 biotechnology and medical device companies in San Diego, CA.

Biotechnology Industry Organization.—The Biotechnology Industry Organization represents more than 525 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agriculture and environmental biotechnology products.

Business Software Alliance.—The Business Software Alliance promotes the contained growth of the software industry through its international public policy, education and enforcement programs in more than 60 countries, including the U.S., throughout North America, Asia, Europe and Latin America. BSA represents leading publishers of software for personal computers.

Information Technology Association of America.—The Information Technology Association is a major trade association representing over 5,700 direct and affiliated member companies which provide worldwide computer software, consulting and information processing services.

National Association of Investors Corporation.—The National Association of Investors Corporation is the largest individual shareowners organizations in the United States. NAIC has a dues-paid membership of investment clubs and other groups totalling more than 273,000 individual investors.

National Association of Manufacturers.—The National Association of Manufacturers is the nation's oldest voluntary business association, comprised of more than 13,000 member companies and subsidiaries, large and small, located in every state. Its members range in size from the very large to the more than 9,000 small members that have fewer than 500 employees each. NAM member companies employ 85% of all workers in manufacturing and produce more than 80% of the nation's manufactured goods.

National Investor Relations Institute.—The National Investor Relations Institute, now in its 25th year, is a professional association of 2,300 corporate officers and investor relations consultants responsible for communication between corporate management, shareholders, security analysts and other financial publics.

National Venture Capital Association.—The National Venture Capital Association is made up of 200 professional venture capital organizations NVCA's affiliate, the American Entrepreneurs for Economic Growth, represents 6,600 CEOs who run emerging growth companies that employ over 760,000 people.

Public Securities Association.—The Public Securities Association is the international trade association of banks and brokerage firms which deal in municipal securities, mortgages and other asset-based securities, U.S. government and federal agency securities, and money market instruments.

Securities Industry Association.—The Securities Industry Association is the securities industry's trade association representing the business interests of more than 700 securities firms in North America which collectively account for about 90% of securities firm revenue in the U.S.

Semiconductor Industry Association.—The Semiconductor Industry Association represents the $43 billion U.S. semiconductor industry on public policy and industry affairs. The industry invests 11% of sales on R&D and 15% of sales on new plant and equipment—more than a quarter of its revenue reinvested in the future—and thus seeks to improve America's equity capital markets.

Software Publishers Association.—The Software Publishers Association is the principal trade association of the personal computer software industry, with a membership of over 1,000 companies, representing 90% of U.S. software publishers. SPA members range from all of the well-known industry leaders to hundreds of smaller companies; all of which develop and market business, consumer, and education software. SPA members sold more than $30 billion of software in 1992, accounting for more than half of total worldwide software sales.

MANAGERS OF PRIVATE OR PUBLIC PENSION FUNDS

Champion International Pension Plan.—Champion International Pension Plan controls over $1.8 billion in total assets.

Connecticut Retirement and Trust Fund.—The Connecticut Retirement and Trust Fund invests over $11 billion on behalf of over 140,000 employees and beneficiaries.

Eastman Kodak Retirement Plan.—Eastman Kodak Retirement Plan manages over $10.9 billion in total assets and is ranked as one of the largest 60 pension plans in the U.S.

Massachusetts Bay Transportation Association.—With over 12,000 participants, the Massachusetts Bay Transportation Association controls over $772 million in total assets.

New York City Pension Funds.—Over $49 billion have been invested in the fund to insure the retirement security of 227,000 retirees and 138,000 vested employees.

Oregon Public Employees' Retirement System.—Assets controlled by the fund total over $17.2 billion. The Oregon Public Employees' Retirement System is ranked among the largest 30 pension plans in the U.S.

State of Wisconsin Investment Board.—One of the 10 largest pension funds in the United States, the State of Wisconsin Investment Board manages over $33 billion contributed by the State's public employees.

State Universities Retirement System of Illinois.—The State Universities Retirement System is ranked as one of the country's 100 largest pension funds with total assets of $5.3 billion.

Teachers Retirement System of Texas.—The Teachers Retirement System of Texas controls over $36.5 billion in total assets on behalf of its 700,000 members.

Washington State Investment Board.—With assets totaling over $19.7 billion, the Washington State Investment Board is ranked in the largest 25 pension funds.

Mr. DOMENICI. I yield the floor.

I thank my friend for the time.

Mr. BRYAN. Mr. President, let me compliment my friend from New Mexico. I know he is sincere. He has been laboring in the vineyards for a good many years on this legislation. Let me say by way of rebuttal that, if this legislation was about how we could increase that 14 cents that the investors currently receive according to the information provided, I would like to work with him. In point of fact, the concern is that this legislation will, in many cases, reduce the recovery to zero and in no instance is there a provision in this bill that would enhance the recovery beyond the 14 cents even if recovery is possible.

Finally, let me say by way of winding it up, our friend, the distinguished chairman of the Select Committee on Aging, has certainly provided a number of insights in terms of who really gets hurt in this legislation. He points out cogently and definitively that the seniors in America are going to be among its principal victims.

Mr. President, I note that our time is up. If there is any remainder of time, I yield it.

Have the yeas and nays been asked for?

The PRESIDING OFFICER (Mr. SANTORUM). They have not.

Mr. BRYAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report to accompany H.R. 1058, the Private Securities Litigation Reform Act of 1995.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Delaware [Mr. ROTH] are necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. ABRAHAM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 30, as follows:

[Rollcall Vote No. 589 Leg.]

YEAS—65

Abraham	Frist	Mack
Ashcroft	Gorton	McConnell
Baucus	Grams	Mikulski
Bennett	Grassley	Moseley-Braun
Bingaman	Gregg	Murkowski
Brown	Harkin	Murray
Burns	Hatch	Nickles
Campbell	Hatfield	Pell
Chafee	Helms	Pressler
Coats	Hutchison	Reid
Cochran	Inhofe	Robb
Coverdell	Jeffords	Rockefeller
Craig	Johnston	Santorum
D'Amato	Kassebaum	Simpson
DeWine	Kempthorne	Smith
Dodd	Kennedy	Snowe
Dole	Kerry	Stevens
Domenici	Kohl	Thomas
Exon	Kyl	Thompson
Faircloth	Lieberman	Thurmond
Feinstein	Lott	Warner
Ford	Lugar	

NAYS—30

Akaka	Dorgan	Levin
Biden	Feingold	McCain
Boxer	Glenn	Moynihan
Breaux	Graham	Nunn
Bryan	Heflin	Pryor
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Cohen	Kerrey	Simon
Conrad	Lautenberg	Specter
Daschle	Leahy	Wellstone

"ANSWERED PRESENT"—1

Bond

NOT VOTING—3

Bradley	Gramm	Roth

So, the conference report was agreed to.

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 1833) to amend Title 18 U.S. Code to ban partial-birth abortions.

The Senate resumed consideration of the bill.

MORNING BUSINESS

Mr. SMITH. Mr. President, I ask unanimous consent that there be a period for morning business until 5:30.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object. I want to know what the intention is as far as going to the late-term abortion ban.

Mr. SMITH. The intention is to go to it at about 5:30.

Mrs. BOXER. How long does my colleague wish to continue the debate?

Mr. SMITH. I do not have any information on that at this time. I have no intention to delay the debate, I say to the Senator from California.

Mrs. BOXER. I know there are some people here who wish to speak, and they are here because it is their understanding that we were moving to it immediately. Is there any reason in delaying going to this bill?

Mr. SMITH. Only that Senator THOMAS asked me for time to give a tribute to Senator SIMPSON. That is the only reason.

Mrs. BOXER. Thank you. I do not object.

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

The Senator is recognized to speak as in morning business.

TRIBUTE TO ALAN SIMPSON

Mr. THOMAS. Mr. President, I appreciate the opportunity to come to the floor to talk about a friend, to talk about a man whom I respect as a friend, whom I respect as a public servant, a man—to quote a phrase he uses—"who is a friend to his friends," ALAN SIMPSON.

As you all know, AL SIMPSON indicated in Cody, WY, last Saturday that he would not seek another term in the U.S. Senate and would end his career at 18 years. ALAN SIMPSON is a special guy, a unique U.S. Senator. There are none other like him. He can be outspoken, very candid, very frank, and very kind.

This Cody boy is an outstanding Senator and my lifelong friend, a good and gracious man. I know that so many of you have known him well and also call him a friend. We are lucky in that way. Both he and Ann have given grace and style in their personal relationships as well as in their political life. All of us in Wyoming have been very proud of his representation in the Senate and his and Ann's representation as Wyomingites in the Nation's Capital.

I have had the privilege to serve as a part of a team with AL on the Wyoming delegation for 5 years, when I was in the House and he and Malcolm Wallop were here. This one very special year, ALAN SIMPSON and I have had the opportunity to serve together. There will be more accolades, tributes, and reactions, of course, to their decision. Many are surprised, certainly, and many are saddened by AL SIMPSON's decision not to run. I defend it because I know it was truly their decision and they are at peace with it and look forward to life beyond these Chambers, as we all know there is. I am sure that life will be centered in Cody, WY.

I know that AL could have done anything he chose to. People in Wyoming