The well-targeted veto of the President can force this bill back on the right track. Proponents and opponents of this legislation recognize that our first priority must be to protect investors. Families, senior citizens, and working people need to feel secure when they invest. They need to be encouraged to save and invest for their health care, their retirement, and their education.

But such investors will only have confidence in the market if they consider them to be fair. They must expect that they will be protected if they are defrauded. They need to know that the law will continue to protect small investors, pension funds, and taxpayers against another Charles Keating. Yet, under this bill, when the next Charles Keating appears, and one will, victims will recover almost none of their losses. The victims of the Keating fraud recovered over $260 million. Future victims will get a mere fraction of that. The lawyers who sued Keating say they would only have recovered $16 million under the new bill—$16 million—a fraction of the $260 million under the current law they have received.

The President indicated in his veto message that he would be willing to sign this bill if improvements were made. By sustaining his veto, we can address real problems raised by frivolous lawsuits, while avoiding the overly broad language that is now in the bill.

The President's veto message focuses on three problems with the conference report.

First, the bill allows corporate insiders to make false statements, so long as they are accompanied by ''cautionary language.''

Second, it raises the bar so high on pleading standards that victims of fraud cannot get into court.

Finally, it forces victims to risk paying legal fees of wealthy defendants if they want their day in court.

Each of these problems should be addressed before this bill becomes law. Because the President's concerns are drawn very narrowly, a new bill with revisions to address these shortcomings can be written and approved. We can craft a better approach that protects investors while ending frivolous lawsuits. That should be the goal of this legislative exercise.

Mr. President, let me commend the distinguished Senator from Nevada, the Senator from Maryland, and others, who have laid out in a much more elaborate fashion over the last couple of days many of the same reservations that I just expressed this morning. We need to join them in sustaining the President's veto.

I yield the floor. I suggest the absence of a quorum.

Mr. President, I withhold that request.

SECURITIES LITIGATION REFORM ACT—VETO

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, the Senate will resume consideration of the veto message with respect to H.R. 1058, the securities litigation bill. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

The Senate resumed the reconsideration of the bill.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York [Mr. D'AMATO] is recognized.

Mr. D'AMATO. Mr. President, I urge my colleagues to see to it that the much-needed reform in the area of securities litigation is undertaken. By overriding the President's veto, that reform would be ensured.

I have notes here, comprehensive notes that detail the reasons why we have to change this system—one reform the bill makes is to bar professional plaintiffs, people who have little interest in a corporation who might own 10 shares of stock who are literally hired by the lawyers to bring these suits. That is wrong, but that is what is going on.

The legislation makes all kinds of improvements, but let me put my notes aside and refer to this morning's Washington Post. In its lead editorial, the Washington Post says quite clearly: ''Override the Securities Bill Veto.''

Let me refer to just one part of it:

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness.

Mr. President, that is exactly what this legislation does. It corrects the law to protect investors. It gives to those people who are defrauded the opportunity, for the first time, to see to it that lawyers who will really represent their interests lead the case, as opposed to having a lawyer in charge who says, ''I have the best practice in the world because I have no clients.''

Imagine this attorney who, by the way, has contributed millions of dollars to a political party and who is exerting incredible pressure, who has paid millions of dollars for people to take out ads, phony groups, little startup groups, groups that then say, ''Protect the investors, protect the investors''. He has spent millions of dollars to oppose this bill—millions of dollars, and he brags about the fact that he makes his living—a very comfortable one of millions of dollars—because he has no clients. ''I have no clients. That's the best kind of practice to have.''

We have to put those lawyers out of business. Let me say, when it comes to protecting the interests of attorneys and litigants and seeing to it that claims can and should be sustained where there is merit, this Senator has been there with his support every time. I am not suggesting to you that this bill is perfect. I am not suggesting to you that there may not be some areas in which we will have to reform this legislation, but to suggest that we are now going to permit fraud is as wrong as it is to suggest that what is taking place now is preferable to reform. It is not and this legislation is not going to permit fraud.

This practice is wrong. This is bilking the system. This is bilking the small investor. This system as it stands is encouraging the kind of operation that hurts small investors and makes no sense; this legislation is long overdue.

I ask unanimous consent that the full text of the Washington Post editorial that appeared today be printed in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers' lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and

shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There are two things to be said about that. This bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

Mr. D'AMATO. I yield the floor.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 9 minutes 4 seconds. The Senator from New York has 8 minutes 20 seconds.

Mr. SARBANES. Mr. President, I yield myself 3 minutes and ask the Chair to let me know when the 3 minutes have been used.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. SARBANES. Mr. President, I rise to urge my colleagues to support the veto. We have a number of public interest groups that are in strong support of this veto. The North American Securities Administrators Association and the Association of the States Securities Regulators have written to Members of the Senate to urge us ''to sustain President Clinton's veto.''

They go on to say—and this is a very important point that we have continually emphasized during the debate:

> While everyone agrees on the need for constructive improvement in the Federal securities litigation process, the reality is that the major provisions of H.R. 1058 go well beyond curbing frivolous lawsuits and will work to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.

That is the whole point. This legislation goes well beyond the purpose of curbing frivolous lawsuits. The examples that are always cited on the other side are examples with which we do not take issue. We would like to curb those kinds of examples, but we do not want to go beyond that, as the North American Securities Administrators say, ''to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.''

I will ask unanimous consent that this letter be printed in the RECORD at the conclusion of my remarks, along with a letter from the National League of Cities, the National Association of Counties, the National Association of County Treasurers and Finance Officers, U.S. Conference of Mayors, Government Finance Officers Association, the Municipal Treasuries Association, which also states that those organizations support ending frivolous lawsuits, but pointing out that they are major investors of public pension funds and taxpayer moneys, who want to ensure that litigation reform is balanced and does not harm investors. They go on to say, unfortunately, H.R. 1058 is a bill that is special-interest excess masquerading as reform, and it makes a mockery of our world-renowned system of investor protection.

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

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

(See exhibit 1.)

Mr. SARBANES. This is not only State regulators and local government officials, whom I just cited, but consumer groups and legal experts.

Money magazine has editorialized on this issue, and I ask unanimous consent that it be printed in the RECORD.

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

[From Money magazine, December 1995]

NOW ONLY CLINTON CAN STOP CONGRESS FROM HURTING SMALL INVESTORS LIKE YOU

(By Frank Lalli)

The debate over Congress' reckless securities litigation reform has come down to this question: Will President Clinton decide to protect investors, or will he give companies a license to defraud shareholders?

Late in October, Republican congressional staffers agreed on a so-called compromise version of the misguided House and Senate bills. Unfortunately, the new bill jeopardizes small investors in several ways. Yet it will likely soon be sent to Clinton for his signature. The President should not sign it. He should veto it. Here's why:

The bill helps executives get away with lying. Essentially, lying executives get two escape hatches. The bill protects them if, say, they simply call their phony earnings forecast a forward-looking statement and add some cautionary boiler-plate language. In addition, if they fail to do that and an investor sues, the plaintiffs still have to prove the executives actually knew the statement was untrue when they issued it, an extremely difficult standard of proof. Furthermore, if executives later learn that their original forecast was false, the bill specifically says they have no obligation to retract or correct it.

High-tech executives, particularly those in California's Silicon Valley, have lobbied relentlessly for this broad protection. As one congressional source told Money's Washington, D.C. bureau chief Teresa Tritch: ''High-tech execs want immunity from liability when they lie.'' Keep that point in mind the next time your broker calls pitching some high-tech stock based on the corporation's optimistic predictions.

Investors who sue and lose could be forced to pay the winner's court costs. The idea is to discourage frivolous lawsuits. But this bill is overkill. For example, if a judge ruled that just one of many counts in your complaint was baseless, you could have to pay the defendant firm's entire legal costs. In addition, the judge can require plaintiffs in a class action to put up a bond at any time covering the defendant's legal fees just in case they eventually lose. The result: Legitimize lawsuits will not get filed.

Even accountants who okay fraudulent books will get protection. Accountants who are reckless, as opposed to being co-conspirators, would face only limited liability. What's more, new language opens the way for the U.S Supreme Court to let such practitioners off the hook entirely. If such a lax standard became the law of the land, the accounting profession's fiduciary responsibility to investors and clients alike would be reduced to a sick joke.

Moreover, the bill fails to re-establish an investor's right to sue hired guns, such as accountants, lawyers and bankers, who assist dishonest companies. And it neglects to lengthen the tight three-year time limit investors now have to discover a fraud and sue.

Knowledgeable sources say the White House is weighing the bill's political consequences, and business interests are pressing him hard to sign it. ''The President wants the good will of Silicon Valley,'' says one source. ''Without California, Clinton is nowhere.''

We think the President should focus on a higher concern. Our readers sent more than 1,500 letters in support of our past three editorials denouncing this legislation. As that mail attests, this bill will undermine the public's confidence in our financial markets. And without that confidence, this country is nowhere.

Mr. SARBANES. They conclude by saying: ''This bill will undermine the public's confidence in our financial markets and, without that confidence, this country is nowhere.''

I am fearful that that is the price we will pay for this legislation.

Finally, I ask unanimous consent to have printed in the RECORD a letter from Prof. Arthur Miller at the Harvard Law School.

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

HARVARD LAW SCHOOL,
Cambridge, MA, December 19, 1995.

Hon. WILLIAM J. CLINTON,
President of the United States, The White House, Washington, DC. 20500.

DEAR MR. PRESIDENT: On December 12 I wrote to you concerning the so called ''securities reform'' legislation, then embodied in Senate Bill 240. I urged you to oppose that legislation because (1) it was based on a totally erroneous assumption that there had been a sharp increase in securities litigation in the recent past, which is completely belied by every statistical measure available, (2) the federal courts, exploiting a variety of procedural tools such as pretrial management, summary judgment motions, sanctions, and enhanced pleading requirements, were achieving many of the goals of the so called reformists, most particularly the deterrence of ''frivolous'' litigation; (3) recent history suggests that the same vigilance is needed today to guard against market fraud as was needed during the superheated activity in the securities business in the mid–1900's; and (4) the SEC simply is unable to perform the necessary prophylaxis to safeguard the nation's investors, and private enforcement is an absolutely integral part of policing the nation's marketplaces.

I am writing again because the latest version of the legislation, H.R. 1058, contains provisions regarding pleading in securities cases and sanction procedures that, if anything, make the legislation even more draconian and access-barring than Senate Bill 240. It simply is perverse to consider it a ''reform'' measure.

I have always taken great pride in the fact that the words ''equal justice under law'' are engraved on the portico of the United States Supreme Court. I fear, however, that if the proposed legislation is signed into law, access to the federal courts for those who have been victimized by illicit practices in our securities markets will be foreclosed, effectively discriminating against millions of Americans who entrust their earnings to the securities markets. As difficult as the existing Federal Rules of Civil Procedure already make it to plead a claim for securities fraud sufficient to survive a motion to dismiss, especially given existing judicial attitudes toward these cases, the passage in House Bill 1058 requiring that the plaintiff ''state with particularity facts giving rise to a strong inference'' that the defendant acted with scienter, in conjunction with the automatic stay of discovery pending adjudication of dismissal motions, effectively will destroy the private enforcement capacities that have been given to investors to police our nation's marketplace. Despite misleading statements in the Statement of Managers that this provision is designed to make the legislation consistent with existing Federal Rule 9, the truth is diametrically the opposite, since the existing Rule clearly provides that matters relating to state of mind need not be pleaded with particularity. Indeed, it would be more accurate to describe the proposal as a reversion to Nineteenth Century notions of procedure. The proposed legislation also does considerable damage to notions of privilege and confidence by demanding that allegations on information and belief must be accompanied by a particularization of ''all facts on which that belief is formed.''

The situation is compounded by the proposed fee shifting and bond provisions that relate to the enhanced sanction language in the legislation. It is inconceivable that any citizen, even one with considerable wealth and a strong case on the merits, could undertake securities fraud litigation in the face of the risks created by these provisions. As the person who was the Reporter to the Federal Rules Advisory Committee during the formulation and promulgation of the 1983 revision of Federal Rule 11, the primary sanction provision in these Rules, I can assure you that no one on that distinguished committee would have possibly supported what is now so cavalierly inserted into the legislation.

I use the word ''cavalierly'' intentionally, because, as I indicated to you in my earlier letter, there is not one whit of empiric research that justifies any of the procedural aspects of this so called ''reform'' legislation. Not only does every piece of statistical evidence available belie the notion that there is any upsurge in securities fraud cases, but these proposals, with their devastating impact on our nation's investors, have completely bypassed the carefully crafted structure established in the 1930's for procedural revision that has enabled the Federal Rules to maintain their stature as the model for procedural fairness and currency. Thus, the proposed legislation represents a mortal blow both to the policies that support the private enforcement of major federal regulatory legislation and to the orderly consideration and evaluation of all proposals for the modification of the Federal Rules. From my perspective, which is that of a practitioner in the federal courts, a teacher of civil procedure for almost thirty-five years, and a co-author of the standard work on federal practice and procedure, I fear that all of that is extremely regrettable.

I hope you will give serious consideration to vetoing the legislation. If I can be of any further assistance to you or your staff in considering these and related matters, please do not hesitate to inquire. My telephone number is 617/495–4111.

My very best to you and your family during this wonderful holiday season.

Sincerely yours,

ARTHUR R. MILLER,
Bruce Bromley Professor of Law.

Mr. SARBANES. Professor Miller says in the course of this letter,

I have always taken great pride in the fact that the words 'equal justice under law' are engraved on the portico of the Supreme Court. I fear, however, that if the proposed legislation is signed into law, access to the Federal courts for those who have been victimized by illicit practices in our securities markets will be foreclosed, effectively discriminating against millions of Americans who entrust their earnings to the securities markets.

Do not make the mistake of exposing our investors to the pitfalls that the public officials, State security regulators, and these distinguished academics have pointed out. I urge sustaining the veto.

EXHIBIT 1

[Letter from National League of Cities (NLC), National Association of Counties (NACo), National Association of County Treasurers and Finance Officers (NACTFO), U.S. Conferences of Mayors (USCM), Government Finance Officers Association (GFOA), and Municipal Treasurers' Association (MTA), Dec. 21, 1995]

Hon. BOB DOLE,
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: On behalf of the state and local government officials we represent, we urge you to vote to sustain President Clinton's veto of the Private Securities Litigation Reform Act of 1995 (H.R. 1058) and support legislation in Congress that truly accomplishes the goal of reducing frivolous litigation. Our organizations all support ending frivolous lawsuits because as issuers of municipal securities, we too may be sued, especially in light of the new Securities and Exchange Commission requirement for issuers to disclose annual financial information. On the other hand, we also are major investors of public pension funds and taxpayer monies who want to ensure that litigation reform is balanced and does not harm investors. Unfortunately, H.R. 1058 is a bill that is special interest excess masquerading as reform and it makes a mockery of our world-renowned system of investor protection. The over 1,000 letters from state and local government officials from all over the country that have been sent to Congress in the last few weeks attest to our deep conviction that this bill should not become law.

The following are the major concerns state and local governments have with the bill and the major reasons we supported a veto:

Safe Harbor for Forward-Looking Statements—The safe-harbor provision relating to forward-looking statements would allow false predictions to be made as long as they are accompanied by cautionary language. Municipal bond issuers take great care to provide full and accurate disclosure related to their finances and operations and cannot countenance a lesser standard for corporate issuers under any circumstances. No issuer, whether governmental or corporate, should be able to mislead potential investors. In addition, these provisions will be particularly harmful to state and local government pension funds, which rely on corporate information to assist in their investment decisions and would be denied recovery under this section.

Aiding and Abetting Liability—There is no language in the bill making aiders and abettors liable for fraud. If aiders and abettors of fraud are immune from civil liability, state and local governments, as issuers of securities, would become the ''deep pockets'' in a lawsuit and, as investors, we would be limited in our ability to recover losses. Our confidence in consultants who assist us in complex municipal bond transactions and in investing public funds is diminished by this bill because these consulting professionals have been granted immunity from responsibility. It is not reasonable to hold out the hope that this important issue can be dealt with in a subsequent bill. It must be dealt with as part of this reform effort or the opportunity will have been lost.

Statute of Limitations—It is equally important that the statute of limitations be extended. Otherwise, investors will be harmed by wrongdoers who are able to conceal fraud beyond the allowable period. Again, we do not believe this important change will be given serious consideration in the future if H.R. 1058 is passed in its present form.

Loser-Pays Provision—Finally, under the bill, fraud victims would face a potential ''loser-pays'' sanction and possible bond posting requirement at the beginning of a case. We are sure you are aware of the difficulty public officials would have in justifying proceeding with an investor lawsuit if there was also the risk that the injured government investor would have to pay the legal fees of a Wall Street investment banking firm, which is a defendant in a securities lawsuit. To us, this is an unacceptable and unfair approach to investor protection.

We urge you to support the President on this important issue. We are not asking you to support frivolous litigation. To the contrary, we want you to support legislation that stops the deplorable strike suits that are the target of securities litigation reform. However, a new law can be fashioned that deals with lawsuit abuses without jeopardizing our most basic and essential investor protections. Our groups pledge to work with the President and members of Congress so that a new law can be fashioned that deals with these concerns.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, December 20, 1995.

Re securities litigation reform.

ALL MEMBERS,
U.S. Senate, Washington, DC.

DEAR SENATOR: I am writing today on behalf of the North American Securities Administrators Association (NASAA) to urge you to sustain President Clinton's veto of H.R. 1058, the ''Securities Litigation Reform Act.'' In the U.S., NASAA is the national organization of the 50 state securities agencies.

While everyone agrees on the need for constructive improvement in the federal securities litigation process, the reality is that the major provisions of H.R. 1058 go well beyond curbing frivolous lawsuits and will work to shield some of the most egregious wrongdoers from legitimate lawsuits brought by defrauded investors.

NASAA supports reform measures that achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may unfairly find themselves the target of frivolous lawsuits. Unfortunately, H.R. 1058 does not achieve this balance. NASAA's

concerns with H.R. 1058 go beyond those articulated by President Clinton in his veto message. In sum, NASAA has the following concerns with H.R. 1058;

The bill fails to incorporate a meaningful statute of limitations. This single omission means that all but the most obvious frauds likely will be shielded from civil liability.

The bill's safe harbor lowers the standard for assuring the truthfulness of predictive statements about future performance. While we believe that information flow to the marketplace is a vital component of strong markets, we also believe that we should take prudent and reasonable steps to ensure that the information is reasonably reliable. However, rather than assuring the reliability of the forward-looking statement, the bill instead focuses on cautionary statements. Indeed, these cautionary statements likely will become the vaccine to immunize a host of intentional wrongdoing.

The bill fails to include aiding and abetting liability for those who participate in fraudulent activity. Failure to include such a provision makes recovery for investors doubtful in cases where the principal defendant is bankrupt, as was true in the notorious Keating/Lincoln Savings and Loan case. The result is that professionals who assisted, and perhaps could have prevented the fraud, would be virtually unreachable in civil actions. Since the bill proposes a proportionate liability system, rather than joint liability, it makes sense to require aiders and abettors of securities fraud to pay their fair share.

A provision of the bill's proportionate liability section is unworkable and disfavors older Americans. Under current law, a successful plaintiff may recover judgment from one or more of the defendants responsible. Under H.R. 1058, each defendant will be liable only for his or her proportionate share of the harm. Congress did make an exception in cases where a plaintiff can prove that his or her net worth is less than $200,000. This presents two problems. First, the provision is entirely unworkable in a class action involving hundreds of plaintiffs; because each plaintiff must meet the net worth test, proving individual net worth for hundreds of plaintiffs would not justify the effort for the meager rewards provided for in the bill. Second, the provision specifies that the value of a personal residence must be included in the net worth calculation. This provision will work against older Americans who usually have paid for their homes, although their annual income may be relatively modest. Consequently, if personal residence is not removed from the net worth calculation, these seniors likely will be unable to avail themselves of this provision, even though seniors as a group are more devastated by fraud because many live on fixed incomes and what little they get from investment of their savings.

NASAA's view from the outset has been that it is possible to curb frivolous lawsuits without making it equally difficult to pursue rightful claims against those who commit securities fraud. NASAA respectfully urges you to sustain the President's veto and to draft a balanced reform measure that does not harm our system of saving for retirement and preserves the rights of defrauded investors to bring suit under federal securities law.

Sincerely,

MARK J. GRIFFIN,
NASAA President-elect.

WHY SUPPORT THE SECURITIES LITIGATION REFORM CONFERENCE REPORT?

Mr. BRADLEY. Mr. President, when the Senate considered its version of securities litigation reform, I supported a number of amendments to it and eventually voted for the bill. I did so because it is my belief that that the bill stuck the best available balance between protecting investors from fraud perpetuated by unscrupulous issuers and shielding growing businesses seeking investment capital from frivolous and costly lawsuits.

Currently, frivolous lawsuits act as a damper on economic growth—imposing additional costs to growth and expansion that are both unwarranted and unnecessary. Lawyers can now tie up businesses in years of seemingly endless discovery and litigation—thus creating incentives for innocent issuers to settle rather than go through a protracted legal battle. There is little doubt that these suits impose a burden on the economy and should be stopped.

At the same time, individual investors need to be able to rely on the information that they receive about potential products and they need to know that the legal system is there to protect them in the case of an unscrupulous issuer.

As it has emerged from conference, the bill has been modified in a number of ways. Much attention has been directed to the pleading standard, the safe harbor, and the fee shifting provisions among other issues. The President identified these three area of concern in his veto message.

I have carefully reviewed the conference report and weighed the arguments on both sides. My conclusion is that the conference report would, on balance, achieve the goals of I sought when I voted for the Senate-passed bill—stemming the tide of meritless litigation while at the same time putting in place certain pro-investor measures. How does the bill do this?

First, it ensures that lawsuit must have merit by setting forth pleading standards which require that plaintiffs must have a basis for their case before they are allowed to proceed. Many times, a case is brought with little evidence and legal fishing expedition ensues through the defendant's files. In some cases, firms will settle the suit in order to save themselves the long-run costs associated with discovery and litigation of the case.

Now much has been made of the exact specifications surrounding the pleading standard in the bill. A number of critics contend that it goes beyond the already stringent standards of the second circuit—and would have the effect of closing the courthouse door for many small plaintiffs. Ambiguities in the statement of managers have served only to heighten these criticisms. In fact, the language of the bill does codify the second circuit standard in part—and the statement of managers says so.

But even within the second circuit, there are varying interpretations of the standard. That is why the conference report deliberately rejects a complete codification of the second circuit and adopts language which is substantially similar to the language in the Senate-passed bill and its report language. The major change, the substitution of the words ''state with particularity'' for ''specifically allege,'' was made at the request of the Judicial Conference and therefore does not substantially modify the language as passed by the Senate.

For investors, the bill would also ensure much greater accuracy in the statements made by issuers of debt and, at the same time, encourage them to disclose more fully, relevant information. The bill achieves this end by creating a workable safe harbor for so-called forward-looking statements—i.e. predictions about the future of a particular security. In essence, issuers are required to accompany their predictions by ''meaningful cautionary'' language—language that should serve as ample warning to potential investors about the risks that the particular security may entail. This safe harbor has been endorsed by the chairman of the SEC.

But the SEC has a further role to play to ensure the fairness of the safe harbor. Many critics contend that it will create a ''license to lie'' and lead to the duping of unwary investors by unscrupulous issuers. There is a strong need for the SEC to add content to the regulations written to interpret this bill. Specifically, it will need to set out in a clear, rigorous and responsible manner, the facts that should be included in forward-looking statements so that they are truly ''meaningful and cautionary''. In addition, the Commission needs to make clear which part of the second circuit pleading standard is to be enforced and how. The SEC has a role in making this bill work, and its involvement in the process will be critical to achieving the goals the underlie the conference report.

The bill also creates incentives against filing meritless litigation by bolstering the use of rule 11—which provides sanctions for filing frivolous lawsuits. Though it exists in current law, rule 11 is rarely used. The conference report requires a judge to make a finding as to whether rule 11 has been violated and then to impose sanctions subject to the discretion of the court. In addition, the report sets forth circumstances under which the sanctions under rule 11 could be mitigated.

The bill also contains a number of other provisions designed to first reduce the pressure to settle frivolous claims by reforming the liability system, second, produce meaningful information about the fairness of a settlement by requiring accurate disclosure of settlement terms, and third make it easier for participants in a class action to understand how lawyers are being compensated and to challenge attorney's fees by reforming the way in which attorney's fees may be calculated in these suits.

Finally, some critics have contended that the bill will truly mean that the small investor will not have access to the judicial system. I believe that this

is not the case. I have already discussed may of the major issues of concern above. There is one additional area that gives me pause. The conference report includes a discretionary bonding requirement that was not in the Senate bill. Opponents claim that the possibility of requiring a bond is yet another impediment to small investor access to the judicial system. In fact, the bonding provision is at the discretion of the judge. Similar bonding options exist in other parts of the securities law and have not proven to be particularly burdensome. Of course, should the bonding provision prove unworkable or a true bar to the courthouse, it should be revisited, as should any other portion of this bill which becomes problematic. I certainly stand ready to reconsider this bill should it not achieve the goals which I have set out, but on balance I think its advantages outweigh its disadvantages.

Mr. DOMENICI. Mr. President, there is an old gypsy curse that goes like this: May you be the innocent defendant in a frivolous law suit.

It is a curse stopping companies from creating good, high paying jobs. It is the curse of our economy, of Silicon Valley, our high tech biotech and high-growth companies.

Frivolous law suits are the curse of our capital markets.

These companies have volitile stock prices. But stock volitility is not stock fraud, yet it is the basis for multi-million lawsuits that yield investors pennies on the dollars for their losses and millions for a handful of strike suit lawyers.

This legislation had 182 cosponsors in the House and 51 cosponsors in the Senate. It is legislation that was cosponsored by a bipartisan group of Senators spanning the ideological spectrum—Senator HELMS and Senator MIKULSKI.

We had 12 days of hearings, hundreds of submissions. Countless meetings and negotiating sessions.

The major reforms—the safe harbor and the proportionate liability provisions were not mentioned in the President's veto message. The SEC supports the current safe harbor and its principle concerns have been met regarding the rest of the bill.

The President objected to the pleading standard. Yet it is the Second Circuit's pleading standard. It is written to the specifications of SEC Chairman Arthur Levitt.

The only difference between the Senate Banking Committee pleading standard and the standard the administration endorsed in June is three words.

The Senate Banking Committee provision provided that the complaint must specifically allege facts giving rise to a strong inference.

The conference report states that the complaint must ''state with particularity fact . . .''

There is no difference between these two statements of the law. The change was made at the request of the Judicial Conference.

The President objected to rule 11 attorney sanctions.

The sanctions provide greater protections to plaintiffs than defendants.

First, a complaint must have substantially violated rule 11 before the attorneys' fees sanctions would be imposed on plaintiffs. Defendants can be sanctioned for mere violations of rule 11.

Also, the bill gives courts discretion not to award fees in cases where an award would be unjust or would impose an unreasonable burden on a party. Providing extraordinary protection to plaintiffs litigating against corporate defendants.

It is one of the only bipartisan attempts at enacting legislation this Congress.

I ask unanimous consent that today's Washington Post editorial be printed in the RECORD as well as the letter from the National Association of Investors Corporation representing 360,000 investors calling for veto override. I also ask that a summary of the bill also be printed in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

NATIONAL ASSOCIATION OF INVESTORS CORP.,
Royal Oak, MI, December 21, 1995.

Hon. CHRISTOPHER DODD,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: On behalf of the more than 360,000 individual members and 18,000 investment clubs belonging to the National Association of Investors Corporation, I am writing to commend your efforts to override the misguided presidential veto of H.R. 1058, the Securities Litigation Reform Bill of 1995. Founded in 1951, NAIC is by far the largest membership organization of investors in the United States.

H.R. 1058 is an investor protection bill. It strengthens the government's tools for fighting corporate securities fraud, while it imposes long-awaited curbs on ''strike suits''—fraudulent lawsuits that cheat investors while pretending to help them. We urge you to work your hardest to override the veto and give investors relief from meritless litigation.

Sincerely,

KENNETH S. JANKE,
President & CEO.

SELECTED BILL PROVISIONS OF THE CONFERENCE REPORT TO H.R. 1058/S. 240

The federal securities laws provide a comprehensive legal framework designed to protect investors in the securities markets, to provide ground rules for companies seeking to raise money in our capital markets and to encourage disclosure of more, and accurate information about publicly traded companies. This bill updates our securities laws to better achieve these objectives in a balanced way. It restores integrity to securities class action litigation by filtering out abusive, frivolous class action lawsuits that harm investors and only benefit class action attorneys.

Adequate plaintiff standard.—Same as Senate-passed bill, with minor technical changes.

The objective: To provide a mechanism for ''plaintiff empowerment.'' To diminish the likelihood that these cases will be class action attorney-driven in the future. To allow real clients with real financial interests to be appropriately in charge of the lawsuit. To restore to real clients traditional control over their entrepreneurial counsel.

Under the private rights of action provisions of our securities laws, investors may sue to recover damages they incur as a result of the actions of corporations and other firms who violate the federal securities laws. These private lawsuits should serve a dual role. First, they should provide a means for investors to obtain recovery for damages caused by fraudulent activity. Second, they should serve as an important adjunct to the SEC's enforcement efforts.

Class actions should protect the public and compensate the injured. Increasingly, however, private securities class action litigation has become dominated by entrepreneurial attorneys who decide which companies to sue, when to sue and when and for how much to settle. Investors play an insignificant role in these multi-million dollar lawsuits. The situation is best illustrated by one prominent securities class action lawyer declaring: ''I have the best practice of law in the world:

I have no clients.'' This provision reasserts plaintiffs' role by: allowing any party who receives notice of the suit to come forward within 60 days of the filing of the suit to petition the court to act as lead plaintiff; creating a presumption that the ''most adequate plaintiff'' is the party with the greatest financial interest in the outcome of the litigation; allowing the ''most adequate plaintiff'' to exercise traditional plaintiff functions, including selecting lead counsel and negotiating counsel's fees; allowing ''most adequate plaintiff'' to make decisions regarding settlements; replacing the ''plaintiff steering committee'' and ''guardian ad litem'' provisions in the original S. 240.

Second circuit pleading standard becomes the uniform rule.—Same as Senate-passed bill; Senator Specter's amendment deleted from conference report.

The objective: To provide a filter at the earliest stage (the pleading stage) to screen out lawsuits that have no factual basis. To provide a clearer statement of plaintiffs' claims and scope of the case. To encourage attorneys to use greater care in drafting their complaints. To make it easier for innocent defendants to get cases against them dismissed early in the process. To eliminate the split among circuits dealing with pleading requirements for scienter. To codify the requirements in the 2nd Circuit.

A complaint should outline the facts supporting the lawsuit. Too often, complaints consist of boilerplate legalese and conclusions. An alleged Rule 10(b) or 10b–5 violation is a very serious charge. Asserting simply that ''the defendant acted with intent to defraud'' is a conclusion that should be insufficient to start a multi-million dollar lawsuit. Under the Conference Agreement, the complaint must set forth the facts supporting each of the alleged misstatements or omissions and must include facts that give rise to a ''strong inference'' of scienter or intent. If the complaint does not meet these requirements, the lawsuit will be terminated. This is a codification of the 2nd Circuit rule.

Too often, securities class action suits are characterized by the ''sue them all and let the judge sort it out'' mentality. But before the judge can sort it out, innocent defendants are required to spend a great deal of time and money to defend against specious claims. This bill corrects that problem by requiring plaintiffs to specify the statements alleged to have been misleading. This conforms securities actions with Rule 9(b) of the Federal Rules of Civil Procedure.

Safe harbor for predictive statements.—New provision; Changes address concerns raised by the SEC and during the floor debate.

The objective: To encourage disclosure of information by companies. To provide a procedural mechanism for responsibly-acting companies who make predictive statements to be protected from frivolous litigation if their prediction does not materialize. To provide judges with additional procedural tools to deal with frivolous cases involving predictive statements.

A central principle underlying our securities laws is that investors should receive accurate and timely information about publicly traded companies. By its definition, a forward-looking statement is a prediction about the future. Earnings projections, growth rate projections, dividend projections, and expected order rates are examples of forward-looking statements.

Forward-looking information is of significant value to investors in making informed investment decisions. It is this forward-looking information that allows efficient allocation of resources, ensuring that the market prices of publicly traded securities best reflect their intrinsic value. The SEC Rule 175 permits issuers to make forward looking statements about certain categories of information provided that the prediction is made in ''good faith'' with a ''reasonable basis.'' Currently, this SEC ''safe harbor'' rule actually discourages issuers from voluntary disclosing this information. To quote the SEC:

''Some have suggested that companies that makes voluntary disclosure of forward-looking information subject themselves to a significantly increased risk of securities antifraud class actions.'' As such, ''contrary to the Commission's original intent, the safe harbor is currently invoked on a very limited basis in the litigation context.'' Critics state that the safe harbor is ineffective in ensuring quick and inexpensive dismissal of frivolous private lawsuits.'' (SEC Securities Act of 1993 Release No. 7101, October 1994)

An American Stock Exchange survey supports that conclusion. It found that 75 percent of corporate CEOs limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit.

As the SEC has realized, forward-looking statements are predictions—not promises. This Conference Report creates a statutory ''safe harbor'' which:

Provides a clear definition of ''forward looking statement'' for both the '33 and '34 Acts.

Permits greater flexibity by creating a bifurcated safe harbor.

The safe harbor's first prong expands upon the judicially created ''bespeaks caution'' doctrine. This safe harbor:

1. Protects a written or oral statement that is identified as forward-looking.

2. Requires that the predictive statement contain a meaningful cautionary statement which identifies business factors describing why the prediction may not come true.

3. Focuses on the statement and how it was made.

4. Does not allow an inquiry into the state of mind of the speaker.

The safe harbor's second prong provides an alternative analysis if the statement is not made in a way consistent with the warning requirements of the bespeaks caution test. This prong:

1. Applies to written and oral statements.

2. Focuses on the speaker's state of mind.

3. Protects companies from liability unless the prediction was made with actual knowledge that it was false.

4. Protects companies from liability unless the prediction was made or ratified by an executive officer with actual knowledge that it was false.

5. Gives no safe harbor protection for ''knowingly false or misleading'' statements. This addresses Senator Sarbanes concern that the safe harbor would permit corporate executives to mislead investors. There is no so-called ''license to lie''.

The Conference Report also creates a new safe harbor for oral statements which requires that the oral statement warn listeners that the statement is a prediction, that the prediction may not come true, and tell investors where they can find additional information about the prediction in SEC filings or press releases.

Both safe harbors protect statements made by issuers, persons acting on their behalf such as officers, directors, employees, outside reviewers retained by the issuer and underwriters with respect to information they receive from issuers. Accounting and law firms are eligible for the safe harbor, brokers and dealers are not.

The safe harbor provides no protection for certain transactions and parties, like initial public offerings (IPOs), penny stocks, roll-up transactions, going private transactions, tender offers, partnerships, limited liability corporations or direct participation investments and issuers who have violated the securities laws. Also, the safe harbor does not protect forward-looking statements included in financial statements.

Conference report drops the provision authorizing the SEC to sue for damages on behalf of investors in predictive statement cases. (Senate-passed bill provision).

Encourages SEC to review the need for additional safe harbors.

Litigation cost containment provisions—Discovery Stay.—Same as Senate-passed bill.

The objective: To limit the in terrorem nature of defending a frivolous class action securities lawsuit. To require the judge to determine whether the case has any merit prior to subjecting the defendants to the time and expense of turning over the company's records. To provide for a ''stay of discovery'' pending a motion to dismiss. This ''stay'' provides the defendants with the opportunity to have a motion for a dismissal considered prior to the plaintiffs' lawyers beginning ''discovery.'' This discovery usually consists of requests for voluminous documents and time consuming depositions of company CEOs and other key employees.

A typical tactic of plaintiff lawyers is to request an extensive list of documents and to schedule an ambitious agenda of depositions that often distract the company CEO and other key officers and directors. Discovery costs comprise eighty percent of the expense of defending a securities class action lawsuit. To minimize the in terroem impact of the frivolous cases, the Conference Report:

Requires the court to suspend discovery during the pendency of any motion to dismiss unless discovery is needed to preserve evidence or prevent undue prejudice. A stay of discovery puts such requests for documents and deposition schedules on hold until the judge rules on whether the case should be kicked out of court.

Prohibits parties in securities fraud cases to destroy or alter documents.

Attorney sanctions for filing frivolous securities fraud suits—enhanced rule 11.—Same as Senate-passed bill, with technical changes.

The objective: To deter plaintiffs' attorneys from filing meritless securities class actions. To make attorneys, not investors, bear responsibility of filing frivolous cases. To require judges to review the conduct of attorneys and to discipline those who file frivolous law suits and abuse our judicial system. To encourage attorneys to use greater care in drafting complaints and create a speed bump to slow the ''race to the courthouse.''

Frivolous securities suits filed with little or no research into their merits can cost companies hundreds of thousands of dollars in legal fees and company time. According to a sample of cases provided by the National Association of Securities and Commercial Law Attorneys (NASCAT), 21 percent of the class action securities cases were filed within 48 hours of a triggering event such as a missed earnings projection announcement.

Innocent companies pay millions of dollars defending these frivolous cases. Even when firms are exonerated they have large defense attorney's bills to pay. Our current system is a ''winner pays'' system.

Attorneys should be required to exercise due diligence before they file these expensive lawsuits and they should be sanctioned if they fail to exercise proper care. Accordingly, this Conference Agreement:

Requires the judge, upon final disposition of the case, to make specific findings regarding whether the complaint, responsive pleadings and dispositive motions complied with the requirements of Rule 11(b) of the Federal

Rules of Civil Procedures. Rule 11 provides sanctions for filing frivolous lawsuits. (This differs from the Senate-passed bill, which required judges to review the entire record; judges felt that this was too burdensome given the voluminous record in these class actions.)

Requires the judge to discipline lawyers if the judge finds that the lawyer violated the rule. Under the Conference Agreement, the judge would require an offending attorney to pay the reasonable attorneys' fees and costs of the innocent party as the punishment for filing a frivolous lawsuit. This is a rebuttable presumption.

A party may rebut the presumption with proof that the award of fees and costs will impose an undue burden on the violator, provided that the failure to impose fees and costs does not impose a greater burden on the victim of the violation. Also, may rebut the presumption with proof that the Rule 11 violation was de minimis.

Does not create a ''loser pays'' rule. It merely adds teeth to existing Rule 11.

Attorney fee reform: Limits the use of the lodestar method of calculating attorneys' fees, and replaces it with a more easily understood disclosure of attorneys' fees.—Same as Senate-passed bill.

The objective: To closer align the interests of the plaintiffs with their entrepreneurial lawyers. To make it easier for the class to understand how the lawyers are being compensated and to challenge attorneys' fees. To ensure that attorneys' fees do not unnecessarily conflict with the interests of the plaintiffs.

Plaintiffs' attorneys fees are often calculate by the ''lodestar method.'' Under this calculation, a lodestar amount is determined by multiplying the attorney's hours worked by a reasonable hourly fee, adjusted by a multiplier to reflect the risk of litigation and other factors. It encourages abuses, (like performance of unjustified work), which protracts the litigation. From the judiciary's point of view, lodestar adds inefficiency to the process. From the investors' point of view, it is difficult to figure out what the lawyer did and how much they are getting paid for doing it.

This Conference Report limits attorney's fees in a class action to an easy to understand percentage of the amount actually recovered as a result of the attorney's efforts—rather than allowing attorneys to recover their fees without regard to how well the class does. This gives lawyers an incentive to get higher recoveries for investors, not just bill more hours. This is extremely important in ensuring that the attorneys' incentives coincide with those of the class. This bill also provides the class members with the information they need to make an informed judgment on attorneys' fees and settlement offers. The provision provides better disclosure to the injured parties so they can determined whether they may want to challenge their attorneys' claim to the settlement fund.

Disclosure of settlement terms.—Same as Senate-passed bill.

The objective: to replace meaningless legalese and boilerplate conclusions with meaningful information about the per share amount a proposed settlement would provide. To provide information about the fairness of the settlement and an evaluation of whether more could be obtained if the case went to trial.

The Conference Agreement would provide class members with information about the proposed settlement, including the total amount of the settlement, and the total amount of attorneys' fees sought from the settlement fund. If the parties cannot agree upon the amount of damages which would be recoverable, the disclosure of the settlement offer must state the reasons why the parties disagree.

Proportionate liability.—Same as Senate-passed bill, with technical changes.

The objective: To reduce the pressure to settle frivolous claims. To provide a two-tier liability system which retains joint and several liability for those participants who ''knowingly'' engage in a fraudulent scheme and proportionate liability for those participants who are only incidentally involved (those who are ''less than knowing in their conduct.'')

The Conference Agreement ensures that those primarily responsible for the plaintiffs' loss bear the primary burden in making the plaintiffs whole. Under current law, co-defendants each have ''joint and several'' liability for 100 percent of the damages—irrespective of their role in a fraudulent scheme. This has caused ''deep pockets'' such as law firms, accounting firms, and securities firms to be named as defendants merely to extract a settlement from them.

The Conference Report requires that each co-defendant pay for his share of the damages caused. Provisions protect investors in the event a co-defendant is insolvent. The National Association of Securities and Commercial Law Attorneys (NASCAT) submission suggested that of the 66 cases they provided us with information on, 25 percent had an insolvent co-defendant. The bill contains provisions to ensure that investors are compensated in cases where there is an insolvent co-defendant. Specifically, the Conference Report—

Requires the courts to determine who has committed a ''knowing securities violation'', and holds them jointly and severally liable for the plaintiff's damages. All others are held proportionately liable.

Protects plaintiffs from insolvent co-defendants. Provides that when plaintiffs are unable to collect a portion of their damages from an invovlent co-defendant, the proportionately liable defendants would chip in additional funds. Proportionally liable co-defandants could be required to pay up to 150% of their share of the damages.

Provides special protection for small investors by holdings all defendants jointly and severally liable for the uncollectible shares of insolvent co-defendants for certain plaintiffs whose damages are more than 10% of their net worth, and if their net worth is less than $200,000.

Contribution reform.—Same as Senate-passed bill, with minor change involving indemnification agreements.

The objective: To provide uniformity among the circuits. To ensure that defendants are not unfairly required to pay more than their fair share of damages.

If a plaintiff is unable to recover damages from a defendant, the Conference Report requires the remaining defendants to make up at least a portion of that difference. Those co-defendants may then recover contributions from any other person who would have been liable for the same damages. Contribution claims will be based upon the percentage of responsibility of the claimant and the parties against whom contribution is sought. Further, the Conference Report:

Encourages settlement by discharging from liability any defendant who enters into a good faith settlement with the plaintiff before a verdict or judgment.

Allows parties to take advantage of indemnification agreements with issuers and recover fees and costs associated with the action as long as the defendant prevails at trial.

Fraud detection and disclosure.—Same as Senate-passed bill.

The objective: To exposure fraud before investors lose money.

The Conference Agreement establishes a clear and immediate duty on the part of auditors to inform company management of any material illegal acts they uncover in their audit. If the auditors fail to take appropriate action promptly they are subject to a civil penalty.

This is a Kerry-Wyden bill and the conferees believe it belongs in the package or reforms. It is very important for the accounting profession to be vigilant in their public watchdog role.

Other provisions retained in the conference agreement.—Same as Senate-passed bill, except for minor change to RICO provision.

Makes sure all shareholders are treated equally by greatly restricting lawyers' ability to negotiate bonus payments for their ''pet plaintiffs'' or ''professional plaintiffs'' who let the lawyers use their names to file lawsuits.

Prohibits brokers and dealers from receiving referral fees for giving names of clients to class action attorneys.

Requires a court to determine whether an attorney who own stock in the company he is suing constitutes a conflict of interest that should disqualify him from action as counsel.

Prohibits the payment of SEC disgorgement funds to plaintiffs' lawyers.

Prohibits keeping settlement terms a secret by greatly limiting the use of settlements under seal.

Eliminates private actions for securities fraud under the ''civil RICO'' (the Racketeer Influenced and Corrupt Organization Act), except against those previously criminally convicted of securities fraud. (this is the minor change).

Requires the court to submit to the jury a written interrogatory (question) on the issue of each defendant's state of mind at the time of the alleged violation to make it less likely that individuals only accidentally involved in the scheme are held liable.

Mr. DOLE. Mr. President, I was very surprised and disappointed yesterday when I heard that President Clinton had vetoed the Private Securities Litigation Reform Act of 1995. Two weeks ago the Senate passed this bill by a bipartisan vote of 65 to 30 and until 30 minutes before the deadline Tuesday night, President Clinton indicated that he would support this bill.

As I pointed out when the Senate was debating the conference report to this bill, President Clinton had a clear choice. If he supported this bill, he supported creating jobs for Americans by reducing frivolous, costly lawsuits on businesses. If he opposed it, he only supported enriching the pockets of wealthy trial lawyers at the expense of consumers and investors. It's too bad he chose the latter.

President Clinton talks a lot about being concerned about middle-class Americans. It is my understanding that he invited some wealthy trial lawyers over for dinner the other night to thank them for a million dollar contribution. It's unfortunate that he decided to come down on their side, instead of the side of ordinary working Americans and small investors.

These wealthy trial lawyers devote their professional lives to gaming the system by filing ''strike'' suits alleging violations of the Federal securities laws—all in the hope that the defendant will settle quickly in order to avoid the expense of drawn-out litigation.

Of course, these strike suits are often baseless. If a stock price falls, these lawyers will file a class-action suit claiming that the company was too optimistic in their projections. If the stock price soars, these same lawyers will file suit saying that the company withheld information that caused shareholders to sell too early. In effect, the lawsuits act as a litigation tax that raises the cost of capital and chills disclosure of important corporate information to shareholders.

The high-tech, high-growth companies of Silicon Valley, CA are particularly vulnerable to these fraudulent and abusive lawsuits because of the volatility of their stock prices. Over 50 percent of the top 100 businesses in Silicon Valley have been sued at least once. And the $500 million in so-called damages, the majority of which goes to the wealthy trial lawyers, is money that could have been used to create jobs and pay higher salaries to the working-class in the high-tech industry.

Mr. President, the Senate has been working for years in a bipartisan manner to pass legislation on this issue. Yesterday, the House, in an overwhelmingly bipartisan fashion, voted 319 to 100 to override President Clinton's veto. This is a good and fair bill, and I urge my colleagues on both sides of the aisle to do likewise and support it.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I yield 5 minutes to Senator DODD.

Mr. DODD. Mr. President, I thank my colleague from New York. Let me start where I did yesterday, Mr. President. It is no great pleasure that I stand here this morning urging my colleagues to override President Clinton's veto of this bill. This is not something that I sought or welcome at all. I regret that it has come to this, particularly since about 98 percent of this legislation the President endorsed. It is on about 2 percent, on technical points, over 11 words—there are 12,000 words, roughly, in this legislation, and 11 words out of the 12,000, we were informed after all the negotiations, would be a problem.

Therefore, I regret deeply that we are in this situation, after 4 years, 12 congressional hearings, over 100 witnesses, 5,000 pages of testimony, and committee reports, and truly a bipartisan effort, going back to 1991. It has come down to a pleading standards disappointment and a disagreement over rule 11. Consider all of the other things that have been accomplished with this legislation dealing with proportionate liability and safe harbor, the lead plaintiff issues—they were all major, major efforts that involved a tremendous amount of work.

I will point out, as my colleague from New York has, this morning's lead editorial in the Washington Post. I ask unanimous consent that it be printed at this point in the RECORD.

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

[From the Washington Post, Dec. 22, 1995]

OVERRIDE THE SECURITIES BILL VETO

President Clinton was wrong to veto the securities bill. He caved to the trial lawyers' lobby, big contributors to the Democratic Party, in a dark-of-night action. Congress should override him. The House of Representatives voted the other day to do just that, with 89 Democrats joining the Republicans. Now it's up to the Senate.

This bill would correct important flaws in the securities laws that are being systematically exploited by lawyers in ways that have nothing to do with fairness. When the price of a company's stock drops sharply, the present law invites suits on the questionable grounds that the company's past expressions of hope for its future misled innocent stockholders.

This kind of suit has turned out to be a special danger to new companies, particularly high-technology ventures with volatile stock prices. The country has a strong interest in encouraging these companies and shielding them from a style of legal assault that is not far from extortion. The bill would protect companies' forecasts as long as they did not omit significant facts.

Under present law, the first lawyer to file one of these strike suits controls the litigation regardless of who else might sue on the same grounds later. Frequently the lawyers who specialize in this work settle their suits on terms that bring trivial benefits to the shareholders but fat fees to the lawyers themselves. The bill that Mr. Clinton vetoed would instead give the judge the authority to pick the lead plaintiff—usually the plaintiff with the biggest stake in the outcome. Plaintiffs would then choose their own lawyers and make their own decisions on whether and how to settle. That is clearly a desirable reform and a major improvement in shareholders' rights.

Mr. Clinton vetoed the bill because, he said, it would make too many difficulties for shareholders with legitimate grievances. There are two things to be said about that. This bill has been under intense debate and negotiation between the two parties for nearly a year, and if these defects are as significant as the president suggests, it's strange that the administration did not make an issue of them earlier.

More broadly, Mr. Clinton speaks of future injustices that he believes this bill might create but has little to say about the real and substantial injustices that the present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

Mr. DODD. Mr. President, just reading the last paragraph:

More broadly, Mr. Clinton speaks of future injustices that he believes the bill might create but has little to say about the real and substantial injustices that present law is creating. Overriding his veto will end an egregious misuse of securities laws in ways that harm both companies and shareholders.

That is the thrust of all of this. The present system is fatally flawed and broken. It is costing billions of dollars each year to maintain the present system. That we all know.

As I said yesterday, if in the pleading standards—which we adopted, by the way, and the administration last June endorsed the language in the bill, calling them sensible and workable—we adopted the language as recommended by the Judicial Conference, not proponents or opponents of the legislation, but the Judicial Conference, who represents the Federal judiciary, the judges in this country. They recommended the language we included in the bill.

Therefore, I am mystified why one would object to the language that the judges who sit and preside over these matters have recommended. Rule 11 is a very simple matter. Rule 11 exists in order to penalize the attorneys who bring frivolous lawsuits. We put some teeth in it. If you bring a frivolous lawsuit and you cause a defendant tremendous economic harm through attorney's fees, as we saw in one case where a $15,000 contract that one company entered into cost them $7 million in legal fees, that the case was thrown out of court. The people who pay that $7 million are usually not the chief executive officers of those companies, but the employees, shareholders, investors, and others who bear the financial burden. It is estimated that some $32 billion each year is put in play as a result of these strike suits. We hoped that we would be able to have a Presidential signature confirming the bipartisan effort in this area.

Mr. President, it is with a deep sense of regret that I am on the opposite side of my President on this issue. But I believe that the override is the proper course to follow here. For those reasons, I urge my colleagues to continue to support this legislation, as many have over the last 4 years, in committee votes, votes here on the floor of the U.S. Senate and, of course, in the conference report, as well, that has come back from the House and the Senate after the negotiations.

This is a very important issue, Mr. President. It sends a very important signal. We have these new startup, high-technology companies that represent, I think, the future of employment for this country for the 21st century. These companies where a stock fluctuates a few points and there is complaint filed against them, covering millions of dollars in settlement fees, is something that ought to be changed.

We have put together a good, strong bill that I think addresses the major concerns that people raised over the years about this issue. I am pleased so many of my colleagues—almost 70 of them here, as well as in excess of 300 in the House—have supported this effort. I regret, again, that the President decided to veto the legislation. We can correct that this morning by overriding this veto, adopting this legislation, and getting about the other business of this body.

Mr. President, I withhold the remainder of my time.

Mr. SARBANES. I yield the remainder of our time to the distinguished Senator from Nevada.

Mr. BRYAN. I thank the distinguished Senator from Maryland.

Mr. President, this vote is on an important piece of legislation, but it also

sends a message about what this Congress is all about and what its Members stand for. First, I would like to compliment the proponents of this legislation. They have done an artful and a masterful job in framing the issue in the context of the lawyers, and this is lawyer bashing. No one loves lawyers, and no would fails to acknowledge that there is clearly some abuse on the part of some lawyers, but if we listen to the arguments the proponents have advanced this morning, you would think that a relatively small group of lawyers, who specialize in representing consumers and small investors in class actions, who have been swindled as a result of investor fraud, would be responsible for all of the ills that confront modern civilization, from the Federal deficit that we wrestle with today, to the spread of communism in the 1950's, 1960's, 1970's, and 1980's.

At the same time, the proponents of this legislation have obscured the fact that troubles me most, and that is that this legislation will affect a lot of innocent people who have lost money as a result of investor fraud.

Somehow, the voices of seniors and consumers, small investors, firefighters, policemen, attorneys general, mayors and securities regulators, State treasurers, local government treasurers, treasurers involved with universities and colleges, somehow their concerns which have been advanced and articulated have been ignored.

If I impart nothing else to my colleagues today, I would like everyone who is listening to this debate to know that this bill will, in fact, adversely affect meritorious lawsuits and small investors who find it much more difficult to recover their savings. There is no doubt that this bill will address frivolous lawsuits. But that could have been done, Mr. President—nobody disagrees with the need to correct those abuses. We could have crafted a narrow piece of legislation that would have addressed that issue and yet, at the same time, protected small investors.

What will the impact be of precluding countless meritorious suits being filed? Nobody knows, but it is safe to say crooks will be emboldened, investor confidence in our markets will go down, and defrauded investors will not be compensated. The integrity of America's security markets, the envy of the world, will suffer as a consequence.

As some indication as to how overreaching this piece of legislation is, how one-sided it is, can anyone tell me what the logic is to say if a plaintiff's lawyer files a frivolous motion the attorney pays the cost of the entire lawsuit, but if a defense lawyer files a frivolous motion, he or she pays only the cost of that motion? It seems to me what is sauce for the goose is sauce for the gander. There ought to be equal sanctions both as to plaintiff's lawyers and defendant's lawyers who act in an irresponsible, frivolous fashion.

I have yet to hear an argument advanced on the floor as to why we do not extend the statute of limitations as has been requested. Why should a crook who disguises his fraud for 3 years be able to avoid the class action penalty? I know of no reason why we should not correct a situation which currently exists that those who aid and abet fraud currently face no liability. What is the logic of that? What does that have to do with frivolous lawsuits?

That, Mr. President, is why I am so deeply troubled by the message that we send today. President Clinton has said he is prepared to sign a good bill. Senator SARBANES, Senator BOXER, and others who have taken the floor to express concerns, we are prepared to support legislation that deals with frivolous lawsuits. But what we have is a piece of legislation that moves to the floor and apparently will now move to be enacted that is not designed solely for frivolous lawsuits but goes much further.

What happens if the President's veto is sustained? The sponsors can come back with a bill that fixes the excesses.

We are going to have securities litigation reform legislation this Congress. President Clinton has said he is prepared to sign a good bill, and there is unanimity that measures to curb abuses should be enacted.

What we are in disagreement over is will we enact balanced, reasonable reforms or will we go overboard in our zeal.

What message are we sending by overrriding the President's veto today? We are saying forget about balance, forget about reasonableness. If you got the votes to crush small investors and consumers, go for it.

I can honestly say this bill is the most one-sided, anticonsumer bill I have seen.

This will be a sad day if we fail to sustain the President's veto. I urge my colleagues to vote ''no'' on this override and let us come back and send the President a balanced bill.

Mr. D'AMATO. Mr. President, I think we have said everything that has to be said. I know we want to commence voting at 11:15, so I yield back. Unless any of my colleagues on the other side want to use the balance of the time, I yield back our time so we can take up the other matter.

PERSONAL RESPONSIBILITY AND WORK ACT OF 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for closing remarks on the conference report accompanying H.R. 4, to be divided in the usual form.

The clerk will report.

The legislative clerk read as follows:

A conference report to accompany H.R. 4 to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

The Senate resumed consideration of the conference report.

Mr. MOYNIHAN. Mr. President, to begin, I ask there be printed in the RECORD an editorial in this morning's Washington Post entitled ''Hard Hearts, Soft Heads.''

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

[From the Washington Post, Dec. 22, 1995]

HARD HEARTS, SOFT HEADS

President Clinton earlier this year gave way too much ground in endorsing one bad welfare bill. Yesterday, he finally took the right stance in announcing that he would veto a successor bill that is even worse. Better late than never, and not a moment too soon.

His announcement came as the House passed this terrible piece of legislation and the Senate prepared to take it up. This time, Mr. Clinton should stick to his position, and the bill's opponent should have the political will to sustain any veto. That would provide the one chance of passing welfare reform that does what it claims—or, failing that, of at least avoiding a dangerous step toward something worse even than the current system.

Advocates of this bill's deep cuts in programs for the poor and its ending of welfare's ''entitlement'' status like to cast themselves as true friends of the poor and foes of ''dependency.'' Their hardheadedness, they insist, grows from warm-heartedness and a desire to promote work.

But the House Ways and Means subcommittee on human resources heard a very different analysis from Lawrence M. Mead, a welfare expert much respected by Republicans and conservatives. Prof. Mead was not at all confident that Congress's welfare proposal would do much to promote work. On the contrary, he said, it imposes theoretical ''work requirements'' that states will have great trouble meeting. He suggested that the states might just dump work requirements entirely and take the modest 5 percent cut in federal aid that the bill proposes. This is ''workfare''?

But hear out Mr. Mead's argument. ''To promote serious reform, it is crucial that Congress manifest that work requirements are serious, and also that it is possible to meet them,'' he said. ''I fear that the new stipulations are not credible as they stand. They call for participation rates never before realized except in a few localities, yet they provide no specific funding or program comparable to JOBS [the Job Opportunities and Basic Skills program] to realize them. The demands made look excessive, but it is also doubtful whether Congress really means to enforce them.'' Imagine that: a bill that claims to be historic whose work requirements are essentially rhetorical.

If Congress wants a welfare ''reform'' that will do little to encourage work while endangering the basic systems of support for poor children, this bill is just the ticket. But that's a strange place for a ''revolutionary'' Congress to end up.

Mr. MOYNIHAN. Mr. President, last evening, I had occasion to remark that persons most specifically critical of the welfare measure before the Senate have been conservative social scientists who understand the extent of the problem we face and the resources needed if we are going to achieve anything.

I mentioned Prof. Lawrence Mead. It turns out he prepared a report for the Republican Caucus in the House saying ''Your bill is a disaster, can't you see that?'' and readers will do so.

Several of those of us who voted against this measure in September are