

I am very concerned about this bill, very concerned about this bill. I have to say, I think it is an offense to the names of the groups that I read here to say that these people have somehow been hoodwinked—that was not my friend's word; I tried to write down what he said—riled up, made to believe that this is a bad bill when really it is a good bill for them.

I know some groups. You try to tell the Hollywood Women's Political Committee what is good for them and they will show you the door because they are going to figure out what is good for them. I have tried it on things on which they do not agree with me. They are not going to believe me in the American Trial Lawyers or the American Bar Association. They are going to look and they are going to decide. They have a very simple idea in their mind: They are going to oppose legislation that hurts people. That is what they believe. Do not blame it on the fact that they are so naive that they will follow the lawyers.

I do not know whether my friend knows it, but lawyers are not that well thought of these days. I happen to like lawyers. I am married to one. My father was one and my son is one. If you ask the average person, they are not going to follow lawyers, they are going to make up their own minds. If they agree with the lawyers, they will follow them. But to say some of these groups would follow blindly, I find that insulting on behalf of these groups. How about the YWCA, the Young Women's Christian Association? They oppose certain liability reform. I do not think they did it because they follow the lawyers.

In any event, there is going to be a lot more debate. I am going to close and again thank my friend for engaging me in this dialog.

I want to remind my colleagues of a few people: 14-year-old Shannon Fair, of Kentucky, in 1988, was in a school bus and it was hit by a drunk driver. No one was hurt by the collision itself, but the entire bus was engulfed in flames because the manufacturer decided against installing a metal safety cage for the fuel tank. Reckless frugality. Sixty-four children and four adults lost their lives. And we are going to cap, in this bill, the punishment to a company like that? We ought to be ashamed of ourselves.

Let us remember people like James Hoscheit of Minnesota, who at age 14 lost both of his arms when they were caught in a forage blower. If the piece of farm equipment had a simple safety guard, which cost the company \$1, James Hoscheit would have his arms. And we are going to say, in our great wisdom, from Washington, DC, in the U.S. Senate, that we know better what kind of award James Hoscheit should get? I would rather leave that up to the people on the jury. Maybe they will find he should get \$100,000. Maybe they will find he should get \$200,000 or \$1 million, because he lost both of his arms. I am not going to say what that

should be. I think anyone who votes to do that is not fair to the future victims.

Don Taylor, Moreno Valley, CA, was driving his morning commute—and it could be any one of us—when another car cut him off. The Ford Bronco he was driving rolled three times and the roof caved in. The seat belts failed to retract. He was paralyzed from the shoulders down. Ford had notice of the defective seat belts, and he was still driving with the defective seat belt, and he is permanently paralyzed. Am I going to tell the jury from here what that is worth to him and his family? Not this Senator. I am going to fight against that.

Punitive damages are meant to punish and discourage flagrant or wanton conduct. And, as I said, punitive damages are awarded only rarely in product liability cases, and that is what we want. We want them used rarely—this is an important point, I say to my friends—because if they are used rarely, it means punitive damages are working because their very existence shapes up these companies, makes them think twice and three times and 10 times and 100 times before they put a potentially dangerous product into the hands of American consumers.

That is what we want. We want these punitive damages set on an individual basis, but we do not really want them at all. If everyone produces safe products, we will not have these awards. Why mess with a system that is deterring dangerous products?

You know, these caps they are talking about here are going to hurt women because they do not earn as much as men do. If you have a woman and a man and in the same bus and you have the exact same injury, but the man has a top-level job. You know, 95 percent of all of the top jobs in this country are held by men; it is just true.

It is just true. We women have a long way to go. We are getting there. However, it is slow.

If you have a woman and a man in the same bus, and they suffer the same injury, under this bill—under this bill—the man is going to receive more punitive damage awards because we will figure if he was not paralyzed, he would have earned so much more money, and he will be rewarded, and he will get a higher award. And the woman, who may not have been working at the time or worked at a lower job, will get less.

This is discriminatory on its face. Take the case of the Copper-7 IUD, intrauterine device. My friend and I talked a lot about these devices. The manufacturer knew for more than 10 years that their product could cause loss of fertility, serious infection, and the need to remove reproductive organs. The manufacturer continued to produce the Copper-7 IUD.

Now, the jury awarded one \$7 million punitive damage award for this intentional misrepresentation of its birth control device. Under this bill, it would

have been \$250,000, or three times the plaintiff's economic damages. This is not a good bill.

I say to my friends, we should put a human face on this issue. We should remember the people who have suffered. However, they were able to go to court and be made whole because the law allowed that to happen. We should not jump in and preempt 50 States on this. We should allow the jury system to work.

I hope that after long debate—and I think we will have long debate on this; we already have had several days of debate—our colleagues will realize a couple of things. They will realize there is no explosion in this area of the law, no explosion of litigation. And they will realize that, by having a good, strong product liability law in all the various States that we have, that acts as a deterrent against unsafe products.

We have had our fill of the DES problem, of the silicone breast implant problem, of the Copper-7 IUD problem, of trucks and cars that explode. We should protect the people we were sent to represent, and we should not approve this bill. I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Wisconsin.

Mr. KOHL. I ask unanimous consent, and with permission from the Senators ROCKEFELLER and GORTON, I be allowed to speak as in morning business for a brief period.

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

SUPREME COURT DECISION STRIKES BIPARTISAN LAW

Mr. KOHL. Mr. President, I am quite disappointed and even puzzled today by the Supreme Court's decision in the United States versus Lopez case. Usually, the courts speak with one voice, but today the majority of the court spoke for several separate opinions.

By a slim 5 to 4 margin, the court struck down the bipartisan Gun-Free School Zones Act, a law that prohibits possession of firearms within 1,000 feet of a school.

In my judgment, this is a classic example of judicial activism, and it ignores the safety of our American children.

I will briefly say something about the facts that the court today ignored. Each day in our country more than 100,000 students bring guns into our schools. One-fifth of urban high school students have been threatened with firearms, and several hundred thousand schoolchildren are victims of violent crimes in or near their schools every year. Moreover, the problem of youth violence is rapidly escalating. In 1984, a total of 1,134 juveniles were arrested for murder; by 1993, that figure had more than doubled. According to the Justice Department, the vast majority

of these murders were committed with firearms and many with handguns.

Democrats and Republicans in Congress, together, tried to do something about this disturbing trend when we enacted the gun-free school zones legislation in 1990. Today, a slim majority of the court has shot Congress down, and in so doing, put America's children at greater risk.

Now, because we reenacted and perfected the Gun-Free School Act last year as part of the crime bill, the current law may still be constitutional. Indeed, we may yet be able to ensure the constitutionality of the law with a technical amendment, and I plan to introduce a bill to do that next week.

Broadly interpreted, however, the reasoning of the majority in this case could have far-reaching consequences that may undermine a variety of crucial Federal laws, like the Drug-Free School Zones Act on which the Gun-Free School Zones Act was based, or the bans on cop-killer bullets, or our Federal wetlands laws, and many of our civil rights statutes.

Mr. President, I agree with the strong dissent by Judge Souter, joined by Justices Ginsburg, Stevens, and Breyer, who labeled this ruling today by the Supreme Court a step backward.

I again want to express my disappointment with today's decision.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. FEINGOLD. Mr. President, I rise today to express my strong opposition to S. 565, the Product Liability Fairness Act of 1995. It is because I really see it as the worst of both worlds.

First, I think it is a bill that has been shown to have little, if any, demonstrated need; second, I think it will have drastic and undue effects on some of our most vulnerable citizens in this country.

Those who support this legislation have stated over and over that the bill is to everyone's benefit. It supposedly will benefit manufacturers, investors, business owners, workers, and consumers, they say.

Yet, I have still not heard of a single major U.S. consumer organization that has endorsed this legislation. The legislation is, in fact, opposed by virtually every group in the country representing working people, consumers, children, and the elderly.

The Product Liability Fairness Act says that it seeks to set uniform Federal standards for product liability leg-

islation that would override certain existing State laws.

It is not really a bill that provides uniformity at all. Those State laws that are more protective of injured consumers are preempted under this bill while those State laws that go beyond what this bill would do in terms of shielding negligent manufacturers are left intact. They are left the same. It is not a bill that has anything to do, really, with uniformity.

In addition, Mr. President, it establishes a heightened—that is, more difficult—conscious and flagrant standard for the rewarding of punitive damages in product liability cases, and it would arbitrarily cap damage awards for punitive damages at \$250,000, or three times economic damage.

Again, those State laws with higher caps or no caps are preempted. Those States with lower caps or no punitive damages awards are left completely untouched.

The bill would also set a 20-year statute of repose, unless, of course, a State law has a lower statute and is, therefore, left alone and also a 2-year statute of limitation.

Finally, Mr. President, this legislation would eliminate joint liability for noneconomic damages and create new standards for seller liability.

There are several reasons why I oppose this bill. Before I talk about the specific flaws of this legislation, I think it is important to note the larger context that the issue of product liability reform fits into. That is why, as I look at this whole bill, I oppose the whole approach. It is not a question of fixing this and fixing that. I think the whole concept driving this bill is an error and should be defeated.

For the past several months, all of us, Republicans and Democrats, have, of course, been trying to interpret the meaning of the November election. Many of our Republican colleagues have interpreted those elections as being a statement against big, inefficient and bureaucratic government. I disagree with a lot of the statements that have been made about what the November elections have been about. But I think that maybe is one legitimate interpretation of the elections, to say that people have had it with big government. And I think in many cases that is a legitimate complaint that our constituents have, and that they did express on November 8.

It would make no sense to argue that all Government programs should be run by Washington, DC, or that all Government programs should be run by the States. Some programs do address underlying problems that are national in scope, across State borders. But others are more local in nature and are best left to the local and State governments to determine how they can best address problems that they are more familiar with than are the folks that work in Washington, DC.

With regard to this matter I, for one, strongly believe that there are many

issues that should clearly be left to the State and local governments to address. One of the reasons I opposed last year's crime bill was precisely because it shifted power away from our State and local courts and the law enforcement officials there, who have been dealing with crime problems in their own regions and are best equipped with the knowledge and creativity to solve those problems. So that is one reason why I opposed the crime bill, because I did not think we should have an overarching Federal Government controlling all aspects of that issue.

Many on the other side of the aisle have been among the strongest proponents for the so-called States' rights issue. Indeed, our distinguished majority leader has stated repeatedly this year his intention to dust off the 10th amendment and give greater control over local problems to the State governments. It was the Speaker of the other body who stated the following in his address to the Nation on April 7, about the intent of the congressional Republicans in the 104th Congress. He said:

We must restore freedom by ending bureaucratic micromanagement here in Washington. This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters. We've got to return power back to you, to your families, your neighbors, your local and State governments.

Given those statements, how does this square with the legislation we are considering today? What happened to the need to address local problems on the local level? All this talk about States' rights is about to go right out the window, as we usurp over 200 years of State control over their tort systems. It seems a very odd trend indeed.

It should come as no surprise that this legislation is vehemently opposed by the American Bar Association, the National Conference of State Legislators, and the Conference of State Chief Justices. But those who support this legislation do not want to listen to State legislators or State judges or consumer organizations. They do not even want to listen to those individuals who have been tragically maimed or injured by the negligence of a small but powerful group of manufacturers.

Of course, those who support this legislation justify the bill by saying that such drastic action is needed to curb the so-called litigation explosion that has supposedly resulted in a court system totally bogged down in product liability litigation. Let us take a quick look at just how bogged down are our courts with product liability claims. The Department of Justice, using data compiled by the National Center for State Courts, recently released a study of 378,000 State tort cases which apparently represents about half of all tort suits completed between July 1991 and June 1992. According to the study, only 3 percent of all tort claims involve product liability, just 3 percent of all tort claims. The bulk of the tort claims