about guns, gun control, gun owners, the anti-gun media and what's happening to our freedoms.

I hope you'll read it and use it in your own personal campaign in New York to defend the Constitution. Use Guns, Crime, and Freedom to help you keep the pressure on Congress, write letters to the editor and teach other Americans about the battle we're fighting today. Thanks again for your support and friendship.

NATIONAL RIFLE
ASSOCIATION OF AMERICA,
Fairfax, VA, May 3, 1995.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: While I concede that some of the language in the NRA fundraising letter you refer to might have been rhetorically impassioned—as is most political direct mail—that in no way disparages the NRA, nor diminishes the seriousness of the alleged federal law enforcement abuses to which the letter refers. And it is certainly in no way related to the terrorist bombing in Oklahoma City.

You asked if we can ''honestly justify'' rhetoric decrying such abuses of federal power. That's what we want to find out. In January 1994, the American Civil Liberties Union, the National Rifle Association and others wrote to President Clinton, petitioning him to appoint a commission to investigate 25 documented cases of alleged federal law enforcement abuse. Our request was ignored. So again in January 1995, the ACLU, NRA and others petitioned the President. All we ask is a full, fair and open examination the facts—a request that, so far, has been denied.

This isn't just some petty gripe against the enforcement of anti-gun laws by the Bureau of Alcohol, Tobacco and Firearms. On the contrary, the inquiry we requested was to focus on all 53 federal law enforcement agencies, and on charges ranging from the denial of basic civil rights, to the confiscation and destruction of property, to the improper use of deadly force against unarmed civilians.

I agree, senator, that the partisan posturing and political exploitation of the Oklahoma City tragedy is reprehensible and should stop. But before you condemn NRA's criticism of federal law enforcement abuses as ''totally inappropriate,'' I urge you to help us find out if it really is.

Let's get all the facts out on the table regarding these cases. If the accusations against federal law enforcement are baseless, let's expose them as such and vindicate the officers accused. If, on the other hand, particular officers are operating outside the rule of law, let's find them, remove them and prosecute them for the good of the whole. Whatever the case, let's put the grievances to rest once and for all.

Doing so, I believe, could help reverse the public's documented and growing distrust of federal power. Blaming the rhetoric—whether in a fundraising letter or anywhere else in political discourse—serves only to silence dissent and aggravate that distrust.

Sincerely yours,

THOMAS L. WASHINGTON,
President,
National Rifle Association of America.

Mr. LEVIN. Madam President, I will defend LaPierre's, Mr. Washington's, and the NRA's right to free speech, but I continue to hope that the membership of the NRA and the American public will demand that this patently false statement that the President has authorized the murder of law-abiding citizens be retracted. There is a crucial difference between what someone has a right to say and what it is right to say. This statement in the NRA letter is wrong. It deserves to be condemned, and it should be withdrawn.

Madam President, I believe I have an allotted amount of morning business time, and if so I would yield 3 minutes to my friend from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. CHAFEE. I thank the Chair. I thank the distinguished senior Senator from Michigan for giving me a few minutes.

Madam President, I believe the tactics used by Mr. LaPierre in his recent fundraising letter for the National Rifle Association are just plain wrong. This letter does not contribute to any informed debate. Instead, it is inaccurate and irrational. It borders on the hysterical. And this kind of hysteria only encourages paranoia, which we certainly do not need at this time in our Nation.

Madam President, I know that the Senator from Michigan has touched on some of the quotes from the letter, but I would just like to mention a few that stand out. Here is one paragraph from the letter:

It doesn't matter to them that the semi-auto ban gives jack-booted government thugs more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us.

This is another paragraph:

In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens. Not too long ago, it was unthinkable for Federal agents wearing nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

And another:

They've launched a new wave of brainwashing propaganda aimed at further destroying our Constitutional freedoms.

And on it goes, Madam President.

Now, Madam President, the apocalypse described in this fundraising letter is not familiar to me. The Government described in these pages is not familiar to me. This is not a description of reality. It is a description of terror designed for one purpose: to provoke a visceral reaction against the U.S. Government—and at the end of the day, to raise money.

There are many powerful and ugly words used in this letter. They are insulting to American law enforcement and to American citizens. Why does Mr. LaPierre use them? I suppose in order to tap into the rage that some feel against the U.S. Government, to feed that rage, and to use that rage to gain donations.

In various interviews, Mr. LaPierre has acknowledged the NRA letter went too far. I believe it behooves him and the leadership of the NRA to apologize to the men and women in Federal law enforcement and to the American people for this letter's rhetoric, and to refrain from this kind of inflammatory prose in the future.

I thank the distinguished Senator from Michigan for giving me a few minutes.

Mr. LEVIN. I thank the Senator from Rhode Island for his comments on this letter.

Madam President, on another matter, we have a bill pending before us which I would like to briefly address as part of my time.

THE PRODUCT LIABILITY FAIRNESS ACT

Mr. LEVIN. Madam President, the bill that we will be voting on later this morning is called the Product Liability Fairness Act of 1995. One of the arguments for it is that we need uniformity in a tort system. As a matter of fact, Madam President, the bill is carefully structured to authorize States to diverge from these standards in order to provide more favorable treatment to defendants than the bill provides, but the bill prohibits States from providing more favorable treatment to plaintiffs.

In other words, this bill does not provide us with uniformity. When we look down the provisions in the bill, we will see in a moment that the bill does not assure that there will be a uniform application of these provisions to all plaintiffs and all defendants. The bill prohibits a State law attempting to provide more favorable treatment to those who have been injured, but it allows State laws that are more favorable to those who allegedly cause the injury.

Now there is a reasonable argument for uniformity in product liability law, since many products are sold across State lines. But, this bill does not provide that uniformity. States can be more restrictive than the so-called national standards in the bill. A patchwork of State laws is still permitted, provided that the divergences are in the direction of greater restriction on the injured party.

For instance, the bill contains a so-called statute of repose barring any product liability action against a manufacturer of a product that is more than 20 years old. This provision prohibits States from providing a longer period for those who are injured. But the bill expressly authorizes States to adopt a shorter and more restrictive period in order to benefit defendants.

Similarly, the bill contains standards for the imposition of punitive damages, but the provision by its own terms only applies to the extent that punitive damages are permitted by State law. The committee report states that:

It is not the committee's intention that this act preempt State legislation or any other rule of State law that provides for defenses or places limitations on the amount of damages that may be recovered.

In other words, if a State has more lenient standards for the award of punitive damages, the bill overrides those

standards—States cannot do that—but if a State has more restrictive standards, lower caps, additional limitations, or even bars punitive damages altogether, that is allowed by this bill.

While I am on the topic of punitive damages, I would like to point out that the so-called fix adopted by the Gorton-Rockefeller substitute is, in fact, no fix at all. Punitive damages would be capped under the substitute as they are capped by the underlying bill. The substitute limits the punitive damages that maybe awarded by a jury at two times compensatory damages, or $250,000, whichever is greater. The substitute then purports to authorize judges to increase punitive damages in cases where a jury award is ''insufficient to punish the egregious conduct of the defendant.''

But, Madam President, the authority under this substitute we will be voting on, which is given to the judge, is an illusion. Because if the defendant objects to the increased damages, he or she is entitled to a new trial on the subject of punitive damages. Judgment is not entered on liability or damages until the completion of the new trial. So the plaintiff cannot get a dime until after the new trial is completed.

Nothing in the substitute indicates that the judge's decision to increase the punitive damages award may be considered at this new trial. Nothing in the substitute indicates that the caps on punitive damages would be waived at the new trial. So it even appears that the same old caps may apply.

Under these circumstances, what defendant would not insist on a new trial on punitive damages? And what plaintiff would be willing to forego all compensatory damages while awaiting a new trial on the subject of punitive damages?

Those of my colleagues who favor punitive damage caps should feel very comfortable indeed voting for cloture on this substitute. But those who oppose caps should be forewarned. The caps in this substitute are every bit as real as the caps in the underlying bill.

Back to the uniformity issue. These are one-way limits.

This chart shows which State laws would be prohibited and which would be allowed. Categories of State laws that would be prohibited are shown in red. Categories of State laws that would be allowed are shown in green. In the left-hand column, we see that every single type of State law that would be more favorable to the injured party is prohibited. Every State law that would vary from the so-called standard in order to benefit a plaintiff in any of the areas covered by this bill is prohibited by the bill; it is preempted. But in the right-hand column, we see that, with one exception, State law provisions that are more favorable to defendants are allowed.

We have heard a lot of talk about the need for national standards for product liability. But what this chart shows is that where the bill provides true national standards, it is only where plaintiffs are prohibited from gaining the benefit of any State law that varies from the so-called standard. But with one exception, State laws are allowed to vary from the so-called standard and to have more restrictive rules that benefit the defendant.

These are not national standards. These are one-way rules that limit only plaintiffs, and if defendants are able to get more restrictive laws passed by the States, they will not restrict defendants.

Let us look at one example of how this one-way preemption provision would work. The bill would override State laws that provide joint and several liability for noneconomic damages. Joint and several liability is the doctrine under which any one defendant may be held responsible for 100 percent of the damages in a case, even if other wrongdoers also contributed to the injury.

The sponsors of this bill, and this amendment, have pointed out that there are problems with joint and several liability. In some cases, a defendant who has only a marginal role in causing the damage ends up holding the bag for all of the damages. That does not seem fair.

On the other hand, there are good reasons for the doctrine of joint and several liability. Cause and effect often cannot be assigned on a percentage basis with accuracy. There may be many causes of an event, the absence of any one of which would have prevented the event from occurring. Because the injury would not have occurred without each of these so-called but-for causes, each is, in a very real sense, 100 percent responsible for the resulting injury.

This bill, however, does not recognize that in the real world, multiple wrongdoers may each be a cause of the same injury. It insists that responsibility be portioned out, with damages divided up into pieces, and the liability of each defendant limited to a single piece. Under this approach, the more causes the event can be attributed to, the less each defendant will have to pay.

Unless the person who has been injured can successfully sue all parties who contributed to the injury, he or she will not be compensated for his entire loss. The real world result is that most plaintiffs will not be made whole, even if they manage to overcome the burdens of our legal system and prevail in court. Would it not be more fair to say that the wrongdoers, each of whom caused the injury, should bear the risk that one or more of them might not be able to pay its share than it is for the injured party to be only partially compensated for his or her loss?

The bill before us completely ignores the complexity of this issue with its one-way approach to Federal preemption. States which are more favorable to defendants are allowed to retain their laws. But State laws that try to reach a balanced approach between plaintiffs and defendants would be preempted.

Roughly half the States choose to protect the injured party through the doctrine of joint and several liability. Another half dozen States have adopted creative approaches to joint and several liability, seeking to balance the rights of plaintiffs and defendants.

Let me give you a few examples.

Louisiana law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages; there is no joint and several liability at all in cases where the plaintiff's contributory fault was greater than the defendant's fault.

Mississippi law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages, and for any defendant who actively took part in the wrongdoing.

New Jersey law provides joint and several liability in the case of defendants who are 60 percent or more responsible for the harm; joint and several liability for economic loss only in the case of defendants who are 20 to 60 percent responsible; and no joint and several liability at all for defendants who are less than 20 percent responsible.

New York law provides joint and several liability for defendants who are more than 50 percent responsible for the harm; joint and several liability is limited to economic loss in the case of defendants who are less than 50 percent responsible.

South Dakota law provides that a defendant that is less than 50 percent responsible for the harm caused to the claimant may not be liable for more than twice the percentage of fault assigned to it.

Texas law provides joint and several liability only for defendants who are more than 20 percent responsible for the harm caused to the claimant.

All of these State laws are efforts to address a complex problem in a balanced manner, with full recognition of factors unique to the State. Because they are all more favorable to the injured party than the approach adopted in this bill, however, they would all be prohibited.

Perhaps this is one reason why the National Conference of State Legislatures opposes this bill. As the NCSL explains:

> Tort law traditionally has been a state responsibility, and the imposition of federal products standards into the complex context of state tort law would create confusion in state courts. Without imposing one-size-fits-all federal standards, states may act on their own initiative to reform product liability law in ways that are tailored to meet their particular needs and that fit into the context of existing state law.
>
> The proponents of S. 565 want Washington to dictate the legal standards and evidentiary rules that fifty state court systems use to adjudicate injury disputes involving allegedly defective products. There is no precedent for such congressional imposition of federal rules by which state courts will be forced to decide civil disputes.

For NCSL, the question is not which tort reforms are appropriate, but who makes that decision. The issue is who has responsibility for state civil justice. This is a federalism issue of major consequence. It should not be ignored.

Madam President, what kind of national standard is it that prohibits State laws only when they are more favorable to plaintiffs than Federal law and not when they vary from Federal law to favor defendants? What kind of fairness bill is it that contains such a blatant double standard?

Madam President, the bill before us is called the Product Liability Fairness Act of 1995. If you read the title, it sounds pretty good. Who could be against bringing greater fairness to our product liability system, or to our legal system in general?

There is a list of problems in our legal system that we could all go through. Going to court takes too much time and it costs too much money. There are many stories of plaintiffs winning what seem like absurdly high verdicts or, on the other hand, being denied a day in court by defendants with deep pockets who engage in such hard-ball tactics as investigations into the private lives of plaintiffs, grueling depositions, unreasonable requests for medical and psychological histories of plaintiffs, and multiple motions to dismiss.

As Senator GORTON, one of the lead authors of the bill before us, explained at the outset of this debate:

[T]he victims of this system are very often the claimants, the plaintiffs themselves, who suffer by the actual negligence of a product manufacturer, and frequently are unable to afford to undertake the high cost of legal fees over an extended period of time. Frequently, they are forced into settlements that are inadequate because they lack resources to pay for their immediate needs, their medical and rehabilitation expenses, their actual out-of-pocket costs.

In 1989, a General Accounting Office study found that on average, cases take 2½ to 3 years to be resolved, and even longer when there is an appeal. One case studied by the GAO took 9½ years to move through our court system. In one of many hearings held on this issue over the years, University of Virginia law professor Jeffrey O'Connell explained, and I quote him: ''If you are badly injured in our society by a product and you go to the highly skilled lawyer, in all honesty the lawyer cannot tell you what you will be paid, when you will be paid or, indeed, if you will be paid.''

Senator GORTON concluded his thought as follows:

Uncertainty in the present system is a reason for change. Plaintiffs, those injured by faulty products, need quicker, more certain recovery—recovery that fully compensates them for their genuine losses. Defendants, those who produced the products, need greater certainty as to the scope of their liability.

I agree with Senator GORTON that there is unfairness in our current legal system. There is unfairness to defendants in some cases, and there is unfairness to plaintiffs. However, this bill does not address the problems faced by plaintiffs at all. There is virtually nothing in this bill to assist those who have been hurt by defective products and face the difficult burdens of trying to recover damages through our legal system.

For instance, this bill does nothing to address the hardball litigation tactics used by some defendants in product liability cases, such as excessive investigations, depositions, and motions practice that often mars such litigation. It does nothing to help bring to public light documents revealing defendants' knowledge of product defects, or to shorten the time required to litigate these cases and obtain relief.

Instead this bill would limit the money that can be recovered by plaintiffs who manage to navigate the hazards of our legal system and provide in court that they were hurt by defective products. The bill contains any number of provisions addressing compensation to plaintiffs which is too high, but not a single provision addressing the cases in which, as the sponsors themselves acknowledge, compensation is too low.

This bill is not balanced, it is not uniform, and I cannot support it.

Madam President, if I have any additional time remaining, I will be happy to yield to the Senator from Alabama.

Mr. HEFLIN. Madam President, I only want to speak briefly right now relative to this matter. I think the Senator from Michigan has covered the issue on additur very adequately.

In the case of Dimick versus Schiedt, a 1935 Supreme Court case, the High Court ruled that the district court lacked the power to deny a plaintiff a new trial, sought on the ground that the jury award of damages was too low, when the trial court judge proposed to increase the damages and the defendant had consented in order to avoid a new trial. The Supreme Court held that the power to increase a damage award, known as an additur, was a violation of the right of trial by jury. According to the Court, the amount of damages must be determined by juries, not judges, in the Federal court, subject to the right of courts to set aside jury awards that are clearly excessive. Some State courts have held that additur violates their State's constitution as well.

That is the major point that I want to make on this issue. Senator LEVIN mentioned this matter pertaining to the lack of uniformity.

I want to also point out that all State courts under the bill and the substitute—any of the substitutes—are to accept as binding precedents in the construing act, the decision of a Federal court of appeals covering this mandate.

This mandate, in my judgment, is clearly unconstitutional and contrary to article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, which has always been construed to mean that State courts must follow the decisions of the Supreme Court and not the lower Federal courts.

With the addition of the punitive damage additur provision in the substitute, there is an expansion by Congress of an extraordinary nature to encroach on the power of the State courts. Rules concerning the use of additur and remittitur have always been left to the State courts, as have also every other State rule of civil procedure.

I just wanted to mention that. I think there are others who are desiring to speak. I yield the floor at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized to speak up to 10 minutes.

Mr. GLENN. Parliamentary inquiry. Is there a 5-minute limit on speeches this morning?

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania has been allocated 10 minutes to speak, after which there is a 10:30 a.m. vote.

Mr. GLENN. I thank the Chair.

Mr. SANTORUM. Madam President, I yield 5 minutes of my time to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

STOP THE DEMAGOGING

Mr. INHOFE. Madam President, I thank the Senator from Pennsylvania for yielding a portion of his time. I do not think I will take the 5 minutes.

After the trauma and the tragedy that we have gone through in Oklahoma, it has diverted our attention from many of the other significant things that are taking place in this body. I think the most significant thing, second only to that tragedy in Oklahoma, is the tragedy, the revelation that was recently discovered of what is going to happen to Medicare in America and the demagoging that is taking place in this and other bodies concerning that trauma.

Specifically, a report was released by the Medicare trustees that has come to the incontrovertible conclusion that our Medicare system, in absence of change, is going to go broke in the year 2002, approximately 6½ years from now.

I think it is important to look and see who was it who looked at the data, who studied the actuarial reports and came to that conclusion.

There are six members of the Board of Trustees of Medicare. They are Robert Rubin, the Secretary of the Treasury, who was appointed by President Clinton; Robert Reich, Secretary of Labor, appointed by President Clinton; Donna Shalala, Secretary of HHS, appointed by President Clinton; Shirley Carter, Commissioner of Social Security, appointed by President Clinton; and Stanford Ross and David Walker.

Four of the six members are appointments and work in the Clinton administration, and they have come up with the conclusion that Medicare will, in