First, the proposal apparently limits prospective relief to cases involving a judicial finding of a violation of a federal right. This could create a very substantial impediment to the settlement of prison conditions suits—even, if all interested parties are fully satisfied with the proposed resolution—because the defendants might effectively have to concede that they have caused or tolerated unconstitutional conditions in their facilities in order to secure judicial approval of the settlement. This would result in litigation that no one wants, if the defendants were unwilling to make such a damaging admission, and could require judicial resolution of matters that would otherwise be more promptly resolved by the parties in a mutually agreeable manner.

Second, we are concerned about the provision that would automatically terminate any prospective relief after two years. In some cases the unconstitutional conditions on which relief is premised will not be corrected within this timeframe, resulting in a need for further prison conditions litigation. The Justice Department and other plaintiffs, would have to refile cases in order to achieve the objectives of the original order, and defendants would have the burden of responding to these new suits. Both for reasons of judicial economy, and for the effective protection of constitutional rights, we should aim at the resolution of disputes without unnecessary litigation and periodic disruptions of ongoing remedial efforts. This point applies with particular force where the new litigation will revisit matters that have already been adjudicated and resolved in an earlier judgment.

Existing law, in 18 U.S.C. 3626(c), already requires that any order of consent decree seeking to remedy an Eighth Amendment violation be reopened at the behest of a defendant for recommended modification at a minimum of two year intervals. This provision could be strengthened to give eligible intervenors under the STOP proposal, including prosecutors, the same right to periodic reconsideration of prison conditions orders and consent decrees. This would be a more reasonable approach to guarding against the unnecessary continuation of orders than imposition of an unqualified, automatic time limit on all orders of this type.

Mr. HATFIELD. Mr. President, for the better part of an hour we have notified Members through the communication system that we are ready to go to third reading and finalize, first of all, the managers' package—for the better part of an hour. And I think it has now reached a reasonable period of time to bring this to a halt.

So I want to say that at 5:05—in 15 minutes—I will ask for the lifting of the quorum and the Chair will put the question. So that will mean we have waited for an hour and 10 minutes for anyone to exercise their parliamentary right. I think that is a fairly good test of knowing if anyone is interested in doing so. Then we will move to the third reading following the adoption of the managers' package.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator is recognized.

COMMON SENSE PRODUCT LIABILITY REFORM ACT

Mr. FAIRCLOTH. Mr. President, I rise in strong support of the conference report on H.R. 956, the Common Sense Product Liability Reform Act.

The legislation is modest in its reach, but it includes long-overdue changes, and it pulls together commonsense reforms that command broad support in this Congress.

Nonetheless, President Clinton announced that he will veto the bill and if, indeed, he does veto this legislation, he will line up with the special interests—the trial lawyers—rather than the American people.

The President refused to buck the trial lawyers last year, also, and he vetoed securities litigation reform. His veto was overridden by a bipartisan vote. The senior Senator from Connecticut, Senator DODD, brought strong support from the other side of the aisle, and we overrode the veto. It was not a radical bill. It was a balanced bill, modest reform. But the trial lawyers handed him the veto pen, and, political considerations at the forefront, he signed on the dotted line to veto securities reform.

Likewise, the Product Liability Reform Act is not radical legislation, as Presidential campaign aides insist. It addresses some of the principal abuses—our efforts to pass an expansive bill failed—and it, too, has a broad base of support. Just look at the bipartisan leadership on this bill. But despite the consensus for the bill, President Clinton again will do the trial lawyers' bidding, and he insists that he will veto yet another reform measure.

The argument that this legislation goes too far just does not hold up. The conference report was hammered out with the 60 votes for cloture in mind. It is, by definition, a consensus bill. So, let the facts be clear, this veto is not about consumer protection—the trial lawyers are worried about changes to a legal racket that took them years to build—it is about political considerations in an election year.

So, despite all the White House rhetoric about wages and growth, the President will take a stand for growth, but it will not be for growth in jobs. No, it will be for continued growth in the frivolous lawsuits that swell court dockets and cost American jobs.

The American tort system is far and away the most expensive of any industrialized country. It cost $152 billion in 1994. This is equivalent to 2.2 percent of the gross domestic product. This has serious economic implications, and, in fact, it is estimated that the legal system keeps the growth of our gross domestic product approximately 10 percent below its potential.

We have heard a lot of discussion about economic growth, but I believe that a good legal reform bill is, in effect, a growth bill.

The costs of these baseless lawsuits are profound—lost jobs, good products withdrawn from the market, medical research discontinued, and limited economic growth—all because our tort system is far too expensive.

We do not have the votes for general legal reform in this Chamber. I wish we did. However, we do have the votes for limited product liability reform, and we now have a bill that addresses the principal abuses.

President Clinton will be forced to choose sides on this bill. I hope he will reconsider his announcement and line up with the American workers rather than the trial lawyers. This bill will reduce the costs of frivolous lawsuits—the cases that compel companies to settle rather than risk ruin in the hands of juries run amok—and it will boost capital investment in our factories. Consequently, this legislation will generate jobs—manufacturing jobs—and strengthen our industrial base. This is good economics, and, Mr. President, it is good for the working people of this country.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, for the better part of an hour we have notified Members through the communication system that we are ready to go to third reading and finalize, first of all, the managers' package—for the better part of an hour. And I think it has now reached a reasonable period of time to bring this to a halt.

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Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, may I proceed for 5 minutes?

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

Mr. HOLLINGS. Mr. President, in response to my distinguished friend from North Carolina—and I know North Carolina very well—I would challenge the distinguished Senator to name the industry that refused to come to North Carolina, or to Tennessee, on account of product liability. Specifically, the State of North Carolina, as well as my State of South Carolina, has foreign industry galore. They talk about the international competition, and within that international competition we just located, with respect to investment Hoffman LaRoche from Switzerland, the finest medical-pharmaceutical facility that you could possibly imagine; with respect to the matter of photographic papers, Fuji has a beautiful new plant there; and we have Hitachi, a coil roller bearings, and we have over 40 industries from Japan and 100 from Germany. The distinguished Presiding

Officer has 98 Japanese plants in Tennessee. In my 35 years dealing with industry and bringing industry into South Carolina, they have yet to mention product liability.

Now, let us get to the trial lawyers. Bless them, because if there is a lazy crowd of bums, it is the corporate lawyers that sit downtown here and infest this particular democratic body with billable hours—billable hours. All they have to do is get up and see a Senator, and they send a bill. All they have to do is sit down and say something, and it is $200, $300, $400, or $500 an hour—the whole crowd up here in Washington. They have hardly ever tried a case in court.

Let us go right to the particular product liability cases. The American trial bar association—the American Bar Association—is opposed to this measure. The Senator from North Carolina should know that. The Association of State Legislators have opposed it. The Association of State Supreme Court Judges have opposed it. The attorneys general have come here and law professors from all around the country have come here to oppose it. The reason they have come is that this is the most dastardly measure you could possibly imagine.

Talk about balancing how they got together, why not apply this bill to the manufacturing? It is all applied to the injured parties who have difficulty getting a lawyer in the first instance. You have to have a chance to get in court, not just your day in court. But to get to court, you have to be willing to take on the expenses—not billable hours, but the risk of winning or losing. Under the contingency arrangement unless 12 jurors find in their behalf and the courts of appeal affirm that particular finding, you don't get paid. So it is not willy-nilly.

They mention a coffee case—they have anecdotal nonsense—the coffee case in New Mexico where the lady dropped the hot coffee. She got third-degree burns. She went to the hospital for an extended period of time. But the trial judge cut back on that particular award. They never mentioned that. We have a good judiciary there in the State of New Mexico.

So we can go into these cases. But to come here, as I heard one particular statement just earlier this afternoon, that the President of the United States was threatening a veto because he was bankrolled by the trial lawyers—I wish every one would look up and see the Senator who made that statement. He is an expert in bankrolling.

That is all I can say.

I yield the floor.

Mr. DOMENICI. Mr. President, I want to say to my friend, Senator HOLLINGS, that he mentioned New Mexico and the McDonald case. I do not know how this story will strike you, but about 10 days after that event—and the paper was full of the stories—I pulled into a McDonald's in downtown Albuquerque on my way to Santa Fe in the car. And we pulled up to the drive-in window to get coffee, and in the process talking to the nice lady working for McDonald's, we asked for the coffee. She had it ready. Just as we started to leave, I was sitting in the front seat with one of my staff men right here. We were looking at her, and she was smiling heavily—almost laughing. I said, ''What is the matter, ma'am?'' We had been talking about the case before. She said, ''Well, last night a truck came by here and the man in the driver's seat sitting right here close to me said, 'Don't bother with the cup. Just pour it in my lap.' '' [Laughter.]

Mr. CHAFEE. Mr. President, I ask that I might proceed for 3 minutes as if in morning business.

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

Mr. CHAFEE. Mr. President, I want to take a moment of the Senate to discuss further the matter that the distinguished Senator from North Carolina brought up, namely, the product liability reform conference report.

I want to take a moment to discuss an important matter that today or tomorrow will come before the Senate: namely, the product liability reform conference report. I must say that I was sorely disappointed to read over the weekend that the President has issued a veto threat for this carefully balanced, carefully drafted, well-thought-out measure. I find it hard to believe the President's advisors could come up with a credible basis for objecting to this commonsense bill. I strongly urge the President to reconsider.

SENATE HISTORY RE PRODUCT LIABILITY REFORM

This issue is not a new one, and this legislation was not drafted in a hasty or casual manner. Indeed, it is the cumulation of more than a decade's worth of hard work. Let me outline the enormous time and energy that has been expended on behalf of this bill by its Senate sponsors:

I would like to just briefly outline what is going into this bill. No one can suggest that this is a will-o'-the-wisp piece of legislation that just suddenly came out of nowhere. In 1981, legislation was introduced similar to the bill that was finally approved and comes from the conference today or this week. It was introduced in 1981.

In the 97th Congress (1981–82), S. 2631 was introduced by Senator Kasten and others. It was reported by the Commerce Committee but never taken up by the Senate. In the 98th Congress (1983–84), Senators Kasten, Percy, and GORTON again introduced product liability legislation (S. 44), and again it was reported by Commerce. And again it saw no further action.

In the 99th Congress (1985–86), Senator Kasten introduced a revised version of his product liability reform proposal (S. 100). This bill was defeated on a tie vote in Committee. However, a host of freestanding amendments were considered during hearings. Eventually an original Committee bill (S. 2760) was sent to the floor, where the Senate voted overwhelmingly to consider it. Yet notwithstanding the strong votes, the bill was returned to the calendar and the Senate recessed for the year.

In every Congress we have worked on this particular piece of legislation.

In the 100th Congress (1987–88), Senators Kasten, PRESSLER, ROCKEFELLER, and Danforth, soldiering on, introduced two more revised bills (S. 666, S. 711), neither of which was taken up by the Committee or the Senate. In the 101st Congress (1989–90), ever hopeful, Senators Kasten, GORTON, PRESSLER, and ROCKEFELLER introduced their bill. S. 1400 won Committee approval, but was blocked from Senate consideration.

In the 102d Congress (1991–92), Senators Kasten and ROCKEFELLER led a bipartisan group in introducing S. 640. The bill was favorably reported, but was stalled for 7 months by liability reform opponents. To force floor action, S. 640 was offered as an amendment to the then-pending motor-voter bill. But cloture failed, and subsequently the amendment was sent to Judiciary for further hearings. However, proponents were able to win a commitment from the Democratic leader to bring the bill up later. That fall, the Senate witnessed an extraordinary effort by bill opponents to stymie the bill by forcing the Senate to hold three back-to-back cloture votes, each of which fell at least 2 votes short of the 60 needed. The end result? That bill also died.

How about the 103d Congress? Anything better? Not much. S. 687 was introduced in March 1993 with Senators ROCKEFELLER and GORTON again bravely leading the charge. After a hearing and the strongest committee vote yet, 16 to 4, the bill went to the floor, but again the opponents stopped its momentum with two cloture votes, and that killed the bill for the rest of the 103d.

Now we come to the 104th Congress, some 15 years after the first Kasten bill was presented. Prospects seemed pretty good. Supporters had gained new adherents on both sides of the aisle. Product liability and tort reform had caught the public's attention and support. The legislation in itself had plenty of time to ripen. After all, there had been countless hearings and enormous opportunity for public comment.

To their credit, the sponsors continued to take all legitimate concerns into account and came up with reasonable responses to those questions raised.

Will this be the year of product liability reform? Well, let us see. S. 565 was introduced in March 1995, a year ago, by Senators GORTON, ROCKEFELLER, PRESSLER, LIEBERMAN, and others, and a large bipartisan coalition. The bill was reported in April. The committee took up the bill in late April and began voting on amendments. A total of four cloture votes were held on or in relation to the bill, with the fourth vote in this grueling

procession being ultimately successful. On May 10, with bipartisan support, the bill as amended passed the Senate, 61–37. Now the conference report is finally before us. But now we learn that all this work is for naught—for notwithstanding the views of some of his advisors and the strong support of many Democrats, the President has decided to veto this bill.

Frankly, I believe this bill has seen more roadblocks in the last decade than practically any other bill we have seen. I venture to guess that product liability has been subject to more cloture votes than any other bill: two in 1986, three in 1992, two in 1993, and four in 1995.

Yet, it seemed we were close to beating that gridlock with this new Congress. The drafting of the bill was bipartisan from Day One. The White House was well aware of what was going on, watching closely as the Senate took up the bill and began adding amendments. Indeed, I understand from the key Republican and Democratic sponsors of the bill that it was the administration that, during the Senate debate in May, quite helpfully suggested the addition of the so-called additur provision to the final version of the Senate bill—the provision that helped the bill win final approval by that 61 to 37 margin.

THE VETO THREAT

What, then, happened to change the White House attitude? Did the bill change drastically in conference? The answer is no, hardly at all. It was clear to all that the House broader tort reform bill would not win administration approval. Therefore, to their credit, the conferees were careful to stick closely to the Senate version. The bill that we will vote on is virtually identical to the Senate-passed bill that won such strong approval.

What, then, has caused the President to issue the veto threat? I cannot believe he is personally opposed to a Federal liability law, for as Governor he sat on the National Governors' Association Committee that drafted the NGA's first resolution favoring Federal liability reform.

Here in my hand I have the letter to Senator DOLE stating the veto threat. The reasons for the veto are couched very carefully but do not stand up to close scrutiny. First, we are told the bill is an ''unwarranted intrusion on state authority''—yet in this case, the need for a uniform product liability law—not 50 separate laws—is so warranted that the NGA enthusiastically supports this measure. Second, we are told the bill would ''encourage wrongful conduct'' because it abolishes joint liability. But that deduction stretches credibility; moreover, joint and several liability remains for economic damages. Third, the letter accuses the bill of ''increas[ing] the incentive to engage in the egregious misconduct of knowingly manufacturing and selling defective products—a charge that makes no sense—and then goes on to say that the additur provision the White House itself asked for does not take care of this alleged problem.

None of these three statements accurately represents what this balanced, bipartisan conference report would do. They are merely there for cover, to allow a veto to proceed. That is a shame. I am inclined to agree with my friend from West Virginia, who has worked so long on this bill, when he says with regret that ''special interest and obvious, raw political considerations in the White House are overriding sound and reasonable policy judgment.''

THE 1996 PRODUCT LIABILITY CONFERENCE REPORT

No question about it—this bill is sound and reasonable policy. Let me quickly outline its key provisions.

Under this bill, those who sell, not make, products are liable only if they did not exercise reasonable care; if they offered their own warranty and it was not met; or they engaged in intentional wrongdoing. In other words, they cannot be caught up in a liability suit if they did not do anything wrong. That concept should sound familiar to most Americans.

Also under this bill, if the injured person was under the influence of drugs or alcohol, and that condition was more than 50 percent responsible for the event that led to their injury, the defendant cannot be held liable. Likewise, if the plaintiff misused or altered the product—in violation of instructions or warnings to the contrary, or in violation of just plain common sense—damages must be reduced accordingly. Of all the provisions in the bill, it seems to me these are the ones that are the most obvious. Why on earth should we blame the manufacturer for behavior that everyone knows would place the product user at risk? Is that fair? No. Does that not contradict our notion of an individual's personal responsibility? Yes. This provision goes a long way toward ensuring that freely undertaken behavioral choices are taken into account in liability actions.

Regarding time limits, the bill allows injured persons to file an action up to 2 years after the date they discovered, or should have discovered, the harm and its cause. For durable goods, actions may be filed up to 15 years after the initial delivery of the product. These provisions are fair, providing some certainty with regard to liability exposure while at the same time protecting consumers who have been harmed.

Either party may offer to proceed to voluntary nonbinding alternative dispute resolution. Simple, but again, it makes sense.

Now the most controversial element of the bill: punitive damages. Let me remind my colleagues that these damages are separate and apart from compensatory damages. Compensatory damages are meant to make the injured party whole, by compensating him or her for economic and noneconomic losses; punitives are meant to deter and punish. Under the bill, punitives may be awarded if a ''clear and convincing evidence'' standard proving ''conscious, flagrant indifference to the right of safety of others'' is met. The amount awarded may not exceed two times the amount awarded for compensatory loss, or $250,000—whichever is greater—for small business, whichever is less. At the suggestion of the White House, a further provision was included: If the court finds the award to be insufficient, it may order additional damages.

Again, this compromise seems to make sense. It sets a framework for punitive damage awards in which the level of punitives is tied to the harm actually suffered by the plaintiff, with the ability to go beyond the cap in truly egregious cases. This compromise cap helps resolve the problem of arbitrary and inconsistent awards, while at the same time ensuring that punitive awards will not be meaningless inproportion to the injury suffered. The Washington Post calls this approach an important first step that creates some order and boundaries.

Each of the provisions I have outlined make eminent sense. Each helps provide certainly in an area where there now, notoriously, is none. That is why Senator ROCKEFELLER says the conference report ''delivers fair and reasonable legal reform'' that ''would make American industry and American workers more competitive.'' He is absolutely right.

I pay my compliments to Senators ROCKEFELLER, GORTON, PRESSLER, and LIEBERMAN. They have worked tirelessly for years and years to enact meaningful and fair product liability reform. They have done this Nation a great service. And their work should not be for naught.

Thus, I urge the President to reconsider his position, and join the bipartisan coalition supporting this critically important legislation. I urge him to disregard the powerful political constituencies aligned against this bill. I urge him to sign this bill into law.

Mr. President, I hope that this laborious marathon that we have been engaged in to see product liability reform passed here will finally succeed.

I thank the Chair.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with the consideration of the bill.

Mr. HATFIELD. I thank the Senator from Rhode Island for yielding the floor at this time.

Mr. President, we are about ready to wind this up. I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 3554 TO AMENDMENT NO. 3553

Mr. MCCAIN. Mr. President, I have an amendment in the form of a second-degree amendment at the desk. I call it up at this time.