the consumer who brings a dispute. These costs can be much higher than bringing the matter to small claims court and paying a court filing fee. Or, the fees could very well be greater than the consumer's claim. So as a result, a consumer's claim is not necessarily resolved more efficiently with arbitration. It is resolved either at greater cost to the consumer or not at all, if the consumer cannot afford the costs, or the costs outweigh the amount in dispute.

In December 2000, in Green Tree Financial Corp. Alabama et. al. v. Randolph, the U.S. Supreme Court found that an arbitration clause that is silent as to the costs and fees of arbitration is enforceable. It, however, left unanswered the question of whether large arbitration costs, which effectively preclude a litigant from vindicating federal statutory rights in the arbitral forum, render the arbitration clause unenforceable.

Another significant problem with mandatory, binding arbitration is that the lender gets to decide in advance who the arbitrator will be. In the case of American Express and First USA, they have chosen the National Arbitration Forum. All credit card disputes with consumers involving American Express or First USA are handled by that entity. There would seem to be a significant danger that this would result in an advantage for the lenders who are ''repeat players.'' After all, if the National Arbitration Forum develops a pattern of reaching decisions that favor cardholders, American Express or First USA may very well decide to take their arbitration business elsewhere. A system where the arbitrator has a financial interest in reaching an outcome that favors the credit card company is not a fair alternative dispute resolution system.

At least one state court has found that mandatory arbitration provisions in credit card bill stuffers are unenforceable. A suit filed in California state court arose out of a mandatory arbitration provision announced in mailings by Bank of America to its credit card and deposit account holders. In 1998, the California Court of Appeals ruled that the mandatory arbitration clauses unilaterally imposed on the Bank's customers were invalid and unenforceable. The California Supreme Court refused to review the decision of the lower court. As a result, credit card companies in California cannot invoke mandatory arbitration in their disputes with customers. In fact, the American Express bill stuffer notes that the mandatory, binding arbitration provision will not apply to California residents until further notice from the company. The California appellate court decision was wise and well-reasoned, but consumers in other states cannot be sure that all courts will reach the same conclusion.

My bill extends the wisdom of the California appellate decision to every credit cardholder and consumer loan borrower. It amends the Federal Arbitration Act to invalidate mandatory, binding arbitration provisions in consumer credit agreements. Now, let me be clear. I believe that arbitration can be a fair and efficient way to settle disputes. I agree we ought to encourage alternative dispute resolution. But I also believe that arbitration is a fair way to settle disputes between consumers and lenders only when it is entered into knowingly and voluntarily by both parties to the dispute after the dispute has arisen. Pre-dispute agreements to take disputes to arbitration cannot be voluntary and knowing in the consumer lending context because the bargaining power of the parties is so unequal. My bill does not prohibit arbitration of consumer credit transactions. It merely prohibits mandatory, binding arbitration provisions in consumer credit agreements.

Credit card companies and consumer credit lenders are increasingly slamming the courthouse doors shut on consumers, often unbeknownst to them. This is grossly unjust. We need to restore fairness to the resolution of consumer credit disputes. I urge my colleagues to support the Consumer Credit Fair Dispute Resolution Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my statement.

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

S. 192

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Consumer Credit Fair Dispute Resolution Act of 2001''.

SEC. 2. CONSUMER CREDIT TRANSACTIONS.

(a) DEFINITIONS.—Section 1 of title 9, United States Code, is amended—

(1) in the section heading, by striking ''**AND 'COMMERCE' DEFINED**'' and inserting ''**, 'COMMERCE', 'CONSUMER CREDIT TRANSACTION', AND 'CONSUMER CREDIT CONTRACT' DEFINED**''; and

(2) by inserting before the period at the end the following: ''; 'consumer credit transaction', as herein defined, means the right granted to a natural person to incur debt and defer its payment, where the credit is intended primarily for personal, family, or household purposes; and 'consumer credit contract', as herein defined, means any contract between the parties to a consumer credit transaction.''.

(b) AGREEMENTS TO ARBITRATE.—Section 2 of title 9, United States Code, is amended—

(1) by striking ''A written'' and inserting ''(a) IN GENERAL.—A written''; and

(2) by adding at the end the following:

''(b) CONSUMER CREDIT CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding the preceding sentence, a written provision in any consumer credit contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of the contract, or the refusal to perform the whole or any part thereof, shall not be valid or enforceable.

''(2) LIMITATION.—Nothing in this section shall prohibit the enforcement of any written agreement to settle by arbitration a controversy arising out of a consumer credit contract, if such written agreement has been entered into by the parties to the consumer credit contract after the controversy has arisen.''.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. HAGEL, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 22, a bill to amend the Federal Election Campaign Act of 1971 to provide meaningful campaign finance reform through requiring better reporting, decreasing the role of soft money, and increasing individual contribution limits, and for other purposes.

S. 27

At the request of Mr. FEINGOLD, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 27, a bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

S. 35

At the request of Mr. GRAMM, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 35, a bill to provide relief to America's working families and to promote continued economic growth by returning a portion of the tax surplus to those who created it.

S. 37

At the request of Mr. LUGAR, the names of the Senator from Missouri (Mr. BOND), the Senator from Michigan (Mr. LEVIN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 37, a bill to amend the Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory.

S. 39

At the request of Mr. STEVENS, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above and beyond the call of duty, and for other purposes.

S. 60

At the request of Mr. BYRD, the names of the Senator from Kentucky (Mr. MCCONNELL), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Nevada (Mr. REID), the Senator from North Dakota (Mr. DORGAN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 60, a bill to authorize the Department of Energy programs to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help

meet the growing need of the United States for the generation of reliable and affordable electricity.

S. 127

At the request of Mr. MCCAIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 127, a bill to give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

S. 148

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes notwithstanding the previous order.

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

MOVING FROM POLITICS TO POLICY: THE PRESIDENT'S CHALLENGE ON NATIONAL MISSILE DEFENSE

Mr. BIDEN. Mr. President, last weekend the nation inaugurated a new President, President George W. Bush. With the change of power now complete, the President and Congress must now get down to the hard business of governing.

After eight years of Democratic leadership, it is obvious that a Bush Administration will propose policy changes on several fronts. One of the most important and complex issues for President Bush will be how to implement his national missile defense policy in a manner that contributes to our national security, rather than putting it at risk.

For six solid years, Republicans have used national missile defense as a ''big stick''—a stick employed not against America's enemies, but against those who thought we did not need a national missile defense. Republicans repeatedly criticized the Clinton administration for its approach to national missile defense, and in the last two presidential campaigns, the promise of a ''robust'' national missile defense figured prominently in the Republican Party's platform and foreign policy speeches.

Although it is always difficult to get into the minds of the American people, it does appear that, for the most part, the public has ignored this debate. The missile defense issue has commanded the attention of only a tiny minority of the American people. In a recent survey by the Pew Charitable Trust of priorities for the new administration, Americans rated missile defense in eighteenth place among twenty issues.

Whether missile defense was on voters' minds or not, however, George W. Bush is now our President. He and his team are committed to a national missile defense that will be, in the President's words, ''effective,'' ''based on the best available options,'' deployed ''at the earliest possible date'' and ''designed to protect all 50 states and our friends and allies and deployed forces overseas from missile attacks by rogue nations, or accidental launches.''

That mantra will suffice for a campaign, but not for policy. Presidential campaigns bear little relation to actually being President, and campaign slogans are but the shadows of flesh and blood policy somewhat related to it, but lacking in both detail and substance.

In short, the real test of President Bush on national missile defense is just beginning. It is to take those campaign slogans and turn them into coherent policies and strategies.

The challenge for the President and his team is this: to pursue their dream of a ''robust'' national missile defense with:

Full attention to the technological challenges;

Full attention to the potential consequences for arms control;

Full attention to the potential impact on strategic stability; and

Full attention to its possible effect on America's relations with our allies.

As our former colleague and Armed Services Committee chairman Sam Nunn said recently, ''I would hope the new administration would approach this subject as a technology, not a theology.''

Let me outline some of the key questions that I believe the Administration must consider.

A national missile defense policy for the new administration will specify system objectives. Whom shall the system protect, against what level of attack, and with what level of success—or, on the other hand, allowing what rate of failure?

As I noted earlier, then-Governor Bush set his initial objectives last May: ''to protect all 50 states and our friends and allies and deployed forces overseas from missile attacks by rogue nations, or accidental launches.''

That's a very tall order, Mr. President. Can current technology support its achievement any time soon, or at an affordable cost? I have my doubts.

Taken literally, protection ''from . . . accidental launches'' requires an ability to intercept at least a small number of advanced Russian warheads, rather than just simple warheads from the so-called ''rogue states'' of North Korea, Iran or Iraq. And protecting ''our friends and allies and deployed forces overseas'' would require either multiple defenses against ICBM's or else a world-wide system like the space-based laser of Ronald Reagan's ''Star Wars.''

A serious national missile defense policy will give careful attention to possible Russian reactions to our actions. It is not enough to say, as President Bush did during the campaign, that ''I will offer Russia the necessary amendments to the ABM Treaty'' and that, ''if Russia refuses the changes we propose, I will give prompt notice'' of our intent to withdraw from the Treaty.

What will happen if the President does what he proposed during the campaign? Will Russia suspend its compliance with other arms control agreements, such as the START Treaty and the Intermediate Nuclear Forces Treaty? Will future arms reductions occur without agreed means of verification? Indeed, will Russia try to rebuild its nuclear forces, instead of reducing them?

Will Russia ally itself more closely with China or—worse yet—with anti-American ''rogue states'' that seek weapons of mass destruction? Will our allies question America's leadership? Will our allies lose faith in the nuclear non-proliferation regime that we put in place?

A serious national missile defense policy cannot wish away these risks. Rather, it must consider them and include a strategy for dealing with them.

Let us suppose, however, that Russia agrees to work out an accommodation with the United States—which is another possible outcome. What sort of agreement should the President propose?

Is there an agreement that would permit the sort of defense that the President seeks, while still being reliably limited? Would it be verifiable by Russia? How would it safeguard Russia against a U.S. ''breakout'' from its limitations?

How shall a ''robust'' national missile defense be fielded at the same time that Russia and the United States are substantially reducing their nuclear forces, which is another stated goal of the new administration? Missile defense advocates argue that Russia has nothing to fear from a limited defense, because it has so many strategic warheads.

But what happens as those numbers go down? How can mutual deterrence of full-scale war be maintained? How can Russia accept a system that undermines that deterrence?

Does it make sense to establish a combined limit on offensive and defensive systems, as some experts have proposed both here and in Russia? Is it possible, at very low numbers of strategic forces or by adopting sweeping ''de-alerting'' measures as well, to deny either side the ability to mount a disabling first strike? If so, would each side then have to target its remaining missiles on the other side's cities—as China does today—in order to maintain a residual capability to cause unacceptable damage to a country?

How would a U.S.-Russian agreement allowing a ''robust'' national missile defense affect U.S.-Russian strategic stability across the whole range of possible conflicts? If a system were good enough to guard against accidental Russian launches, then it could also