

You can have a view either for or against that amendment, but Professor Laurence Tribe from Harvard and Professor Paul Cassell from the University of Utah are the two legal professors, constitutional scholars, who have helped us most. They may represent different points on the political spectrum perhaps, but in terms of their legal scholarship and their ability to work together in helping us to craft this amendment, they have performed a magnificent service.

Again, whatever one thinks of the particular amendment, you cannot deny that these two professors have contributed significantly to the work of the Senate and, therefore, to the American people as a result of their work.

Let me just tell you a little bit about Professor Cassell first and then talk about his work on behalf of victims of crime. As I say, that is one of the primary reasons I am so supportive of him.

As I said, he is a member of the faculty at the University of Utah College of Law where he teaches criminal procedure and evidence and some other courses as well.

He has published over 25 Law Review articles, as well as major op-eds and various periodicals.

Before entering academia, Professor Cassell served as an assistant U.S. attorney in the Eastern District of Virginia and as Associate Deputy Attorney General at our Department of Justice.

He clerked for then-Judge Antonin Scalia in the U.S. Court of Appeals for the D.C. Circuit and then for Chief Justice Warren Burger of the U.S. Supreme Court.

Those of us familiar with these facts know if you are able to clerk for both a member of the D.C. Circuit Court of Appeals and then for the Chief Justice of the U.S. Supreme Court, you are a law student graduate with something on the ball. Certainly, Professor Cassell fits that category.

He received his J.D. in 1984 from Stanford University, where he was Order of the Coif and president of the Stanford Law Review.

So his academic credentials and his postacademic career have been outstanding.

He tried a number of cases when he was assistant U.S. attorney. As a matter of fact, he prosecuted 17 felony jury trials, and some of them were very famous cases. I will let others talk about those cases. But one of the most interesting things to me that Professor Cassell did—purely without pay; as a volunteer—was to represent the victims of the Oklahoma City bombing case.

You may ask, why did the victims in the Oklahoma City bombing case need representation? You can imagine, having as many victims as there were in that case—people who were either injured in the bombing or the families of people who were killed, all wanting to

be involved or participate in some way in that case, including even just the ability to be in the courtroom—it was a major battle.

As a matter of fact, the judge in that case—not once but twice—ruled that the families of the victims did not have a right to be in the courtroom during the trial. This was not because there were so many people that they could not all fit into the courtroom, although that was another issue, but the reason the court ruled that way was that the defense had argued it would be prejudicial to the defense, to the defendants, if the victims or their families were actually in the courtroom during the trial. Never mind that a judge always has the ability to say: Everybody will be motionless, will show no emotion, will behave themselves; and if they do not, then I will toss them out of the courtroom. That was not good enough in this case.

We in Congress passed a law saying: You have to let the people who were victims of the Oklahoma City bombing case sit in the courtroom. The case went back to the judge, and again the judge said no. One of the reasons he said no had to do with the reason for the victims' rights constitutional amendment, which I will not go into now, but basically he said the defendants' rights are in the U.S. Constitution, and the mere statute of Congress cannot override that. So these victims are going to have to have special rights. They are going to have to be in the Constitution. That is another argument, as I said.

But Paul Cassell, out of the goodness of his heart, represented all the victims in that case. I think the victims I have talked to would tell you, to a person, they were extraordinarily indebted to Paul Cassell for his service to them in that case.

There is much more I could say about this individual. Paul Cassell is a decent person who believes very strongly in the rights of both defendants and victims in the courtroom. He has served as a prosecutor for the United States of America and, therefore, has represented our Government in many cases against some truly bad felons. He has experience on the criminal side and on the civil side and has experience as a law professor, teaching not only constitutional law but evidence. That makes him uniquely qualified to go from where he is now to the bench.

It is not often that we find people who have this wide array of experience willing to serve on the Federal district court. It is much too easy in today's world for lawyers to make good money in the practice of law. But it is obvious that Paul Cassell has never been interested in just making money. He has wanted to serve, first, the people of the United States of America as an assistant U.S. attorney and then through his professorship to serve victims of crime and others on a purely pro bono basis.

We have a unique person who not only is extraordinarily well qualified

from his academic experience and the breadth of his practice experience but who also has demonstrated a desire to serve the people. For a person as young to have that kind of commitment and to be willing to go on the Federal district court is unique and certainly should cause us to vote for his confirmation.

I know him personally. We couldn't do better than to confirm Paul Cassell to serve on the Federal district court in the State of Utah. I commend my colleagues to support his confirmation when we vote in a little over an hour.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FAST TRACK TRADE AUTHORITY

Mr. BYRD. Mr. President, the Bush administration continues its push for fast track trade authority under the fictitious term "trade promotion authority." This is legislation that would enable the President to negotiate trade agreements without full congressional input. With fast track authority, there would be only limited Senate debate. With fast track authority the full Senate will have no opportunity to amend. Most Members of Congress will have no opportunity to protect the interests of the people, the communities, and the industries of their particular States, including ensuring the protection of the standard of living of our workers and their families within those States and communities.

Although the Constitution clearly gives Congress the duty—and the power, it gives Congress the power—"to regulate commerce with foreign nations," with fast track authority the Congress will simply applaud a presidential trade-negotiating effort by approving a trade agreement, or boo the effort by disapproving it. That is pretty unlikely, that it would be disapproved.

Members of Congress should never allow our options to be so restricted. We were sent here to promote and to protect the interests of our States as well as the national good, and those goals are best served by debate and amendment, particularly with regard to trade deals.

The workers of this Nation are losing ground, in large part, due to poor trade agreements. For Congress to abdicate its constitutional authority here is to, in my view, turn its back on millions of American workers—the workers who are the backbone of this Nation, and who deserve more than a cursory, neglectful wink and nod.

Let us focus for a moment on just one sector of our economy, manufacturing. There is no question that manufacturing has continued to grow during the past several decades. For example, real, inflation adjusted, manufacturing sales as a percentage of GDP continue to increase.

And there is no question that certain manufacturing industries such as those involved in high-technology products—for example, electronic equipment, industrial machinery, and chemicals—have prospered.

United States production of electronic equipment rose by nearly 400 percent—to be precise, 393.5 percent—while industrial machinery increased by 155 percent. Even fabricated metal products and motor vehicles have experienced an increase in real output since 1990.

There is also no question that in recent decades a number of our vital industries could be placed on an endangered species list. Beginning in the 1970s and continuing through the 1990s, for too many American industries the story of American manufacturing has been a tragic story of bankruptcies, consolidations, plant closings, plant shutdowns, and movement overseas. These industries missed the economic boom of the 1990s because they have been drowning in a flood of cheap imports.

Since 1997, 33 steel companies have filed for bankruptcy, affecting 73,000 workers.

During the 1990s, 352 paper mills and paper converting plants permanently closed. Last year alone, 36 mills closed, and 15 more are slated for closing this year.

The American textile industry is suffering its worst crisis since the Great Depression of the 1930s. During the past year, more than 10 American textile mills have closed, and industrial giants such as Burlington Industries, Malden Mills, and Guilford Mills have sought bankruptcy protection.

Between 1989 and 2000, the real dollar value of apparel industry output failed by nearly 20 percent—19.6 percent to be exact. There was a 27.9-percent decline in the instruments industry and a 3.7-percent decline in the real output of the paper products industry.

According to the Congressional Research Service, at least 18 American industries experienced negative or slow output growth between the years 1980 and 2000—so much so that each one could be added to the endangered industries list.

The decline in these industries is reflected, to some extent, in the decline in employment in the manufacturing industries. In 1970, approximately one-third of the private sector workforce was engaged in manufacturing. By 2000, it had fallen to 17 percent.

So from 1970 to 2000, employment in the manufacturing industries fell from one-third of the private sector workforce to 17 percent—half—from 33 percent to 17 percent. Cut in half. That is

like the wisest man of all time threatening to cut the baby in half.

According to the Congressional Research Service, at least 19 industries—nearly all in manufacturing—experienced the loss of one-third or more jobs since 1980. There was a 52-percent decrease in machine tools, a 67-percent decrease in employment in blast furnaces and steel mills, and an 83-percent decrease in employment in nonrubber footwear. Read it and weep.

I realize that a substantial portion of this decline in manufacturing employment is due to increased productivity. Millions of workers are losing their jobs because of technological progress, more efficient management of resources, and because productivity has grown faster than sales. Nevertheless, there is no question but that certain sectors of our economy—especially those in the industries I have mentioned—are being clobbered by imports.

Between 1994 and 2000, the U.S. trade deficit of \$182 billion increased 141.6 percent to \$439 billion— inflation adjusted 2000 dollars. This soaring trade deficit has taken an incredible toll on American jobs. Between 1994 and 2000, according to an analysis by the Economic Policy Institute, trade deficits eliminated a net total of 3 million actual and potential jobs from the U.S. economy.

The manufacturing sector has shouldered the burden of this increased deficit, as the manufacturing trade deficit rose by 158.5 percent. Of the 3 million trade-related job losses between 1994 and 2000, 1.9 million were in manufacturing. This means that nearly two of every three lost jobs were in manufacturing. In other words, 1.9 million jobs out of 3 million jobs were in manufacturing. That is, manufacturing constituted 65 percent of all trade-related job losses.

These trade-related job losses happened as increased globalization encouraged American industries to pack up and seek other lands where labor is cheaper and where industries do not have to comply with the environmental and safety standards in the United States. The International Trade Commission has reported that roughly half of the total productive capacity in the apparel industry has shifted from developed countries to less developed countries over the past three decades, where workers earn far less than their American counterparts.

What are we doing? What are we doing in our trade agreements to protect American jobs? The answer has to be: Not enough.

Globalization has also left our industries more vulnerable to the unfair predatory trade practices of foreign countries. Look at the American steel industry, which has been absolutely devastated by the dumping of cheap foreign steel and of government-subsidized, imported steel. Last October, the U.S. International Trade Commission ruled that imports of foreign steel have indeed caused serious injury to

American steelmakers. The Commission reported that imported steel has seriously hurt domestic steelmakers in about half of 33 product lines examined, covering about 80 percent of what steel companies produce in America.

“Fifty years of foreign government intervention in the global steel market”—someone said last month in announcing tariffs on imported steel—“has resulted in bankruptcies, serious dislocation, and job loss.” Who was that someone? The President of the United States, President Bush.

NAFTA, which was enacted under fast-track authority, and which I voted against, was supposed to eliminate most of these causes of the American trade deficit and lessen the foreign assaults upon American industries. Instead, the increased globalization unleashed under NAFTA and the World Trade Organization has exacerbated the problem, not solved it. I have been on the right side in both instances; I have opposed both. Since 1994, when NAFTA created the free trade zone, North Carolina has lost more than 125,500 jobs in the textile and apparel industries, or 47 percent of the workforce.

The Mississippi Business Journal reports that the garment industry in Mississippi has virtually disappeared in the post-NAFTA era. We gave it away.

This decline in American manufacturing has meant a declining standard of living, not just for the affected workers and their families but for their communities and their States.

Workers have been forced out of higher wage, industrial jobs into low-paying service jobs. In 1980, private-sector service employment constituted 65 percent of the American private sector workforce; by the year 2000, the percentage had soared to 77 percent.

Service jobs are notoriously low-skill, low-paying jobs that offer limited opportunities for advancement because there are relatively few management positions. Look at South Carolina, a State that is near the top of the job creation list in the 1990s but it ranks 35th in average wages—\$25,493. A study of a 5-year period, 1992 to 1997, in that State indicated the creation of 94,572 service jobs, a 40.6-percent increase in a sector that pays lower than the statewide average. The higher paying manufacturing sector, the traditional mainstay of South Carolina’s economy, lost nearly 1,000 jobs during the 5-year period. In 1997, the State’s service employees earned an average \$22,693, compared to the average of \$29,820 for employees in the State’s manufacturing jobs. Economists in the State of South Carolina point out that even with the growth in the service industries, South Carolina’s per capita income is among the Nation’s lowest.

Unfortunately, the holders of these service jobs are often thought to be students looking for summer work, or marginal workers seeking spending money, or people simply in need of a quick stopover job while on their way

to a better paying career. In other words, service jobs are presented as great jobs for people who do not really need them, in many instances. The truth is, people do need these jobs, and many of the holders of these jobs are adults who depend on that paycheck to pay rent or child care. Many are former industrial workers simply trying to exist in the new economy.

Studies of counties in Colorado, Missouri, and Mississippi found a declining standard of living for workers and their communities as they moved from manufacturing jobs to service jobs.

Martha Burt of the Urban Institute found that the growth of homelessness in the United States in the 1980s was not, as commonly supposed, the result of drug addiction, or the deinstitutionalization of the mentally ill, nor the cutbacks in social programs during the Reagan administration, but the shift from an industrial economy to a service economy. With the decline in manufacturing jobs in the 1970s, she explains, huge numbers of former full-time factory workers earning union wages were replaced with part-time workers in retail stores, restaurants, and other service jobs, where wages are too low to enable them to afford the price of housing.

The facts are, as the Stearns Trustee Professor of Political Economy at Northeastern University, Barry Bluestone, emphasizes, even workers who retain manufacturing jobs also face a bleak future, a future of a declining standard of living, if we do not revise our trade policies and insist upon effective labor and environmental standards in our trade agreements. This is because competition from countries which lack, or do not enforce, labor and environmental standards, continues to have a large, negative impact on employment in key sectors of our economy, and on American wages and living standards across the board.

With the rise of international competition and the shift to lower wage service jobs in the United States, real wages have stagnated, making life much more difficult for all American workers. Real average weekly earnings peaked in 1972 at \$315.44. Today, even with some recovery in real wages due to the rapid growth in the economy in the 1990s, the average weekly wage is nearly 12 percent less than at its peak.

This decline in real wages is forcing American workers to work longer hours than ever before in order to maintain their living standards. They are running in place—sweating on a treadmill operated by the hyper zealots of free trade regardless of consequences. In fact, the United States is the only major developed country that has experienced an increase in the average workweek and the average work year. Since 1982, the average workweek among prime-age workers in the United States has increased from 39.6 hours to 41.3 in 2000.

This means that the average work year has increased from around 1,840

hours to over 2,020. Put simply, stagnating wages are forcing Americans to work longer and longer hours just to maintain their standard of living. They are not getting ahead. They are simply maintaining what they have worked so hard for, if, indeed, they are even maintaining that.

This is why the Congress must protect and exercise its right to amend trade agreements. Why do we give away Congress' power to amend trade agreements?

We must insist on establishing universal labor and environmental standards. We must insist on protecting American industries from even more devastation by unfair competition from firms operating abroad, exploiting cheap labor pools, and tolerating working conditions which are unacceptably harsh, and environmental standards which are nonexistent.

These essential universal labor and environmental standards can be extracted only through our trade agreements.

In the 1930s, the United States instituted a range of laws and regulations to protect workers and the environment. We did this at the Federal level so that individual States could not take unfair advantage of other States by lowering their minimum wages, permitting child and prison labor, ignoring occupational and safety provisions, eliminating or reducing unemployment benefits, or disregarding environmental standards. We leveled the playing field domestically. No one could manipulate for advantage.

Now we must level the playing field in international competition, where American workers are too often forced to play by the rules in a rigged game. In our new, globalized economy, we run the risk of undermining our own hard won labor and environmental standards if other countries choose to have none of their own or refuse to enforce reasonable requirements. Congress, which has the constitutional power, and therefore the duty “to regulate commerce with foreign nations,” must have the means to insist on reasonable labor and environmental standards as part of any and all trade agreements. This is to the benefit not only of American workers, but also of workers, both children and adults, who are laboring under oppressive, unsafe, and unhealthy conditions in other lands.

Over the years, I have seen administrations—Republican and Democratic—repeatedly negotiate trade agreements that reflected priorities other than those of the American people. I say that with a background of 50 years in Congress, the House of Representatives and the Senate, so let me say it again. I have seen administrations—Republican and Democratic—repeatedly negotiate trade agreements that reflected priorities other than those of the American people. I have seen this Nation genuflect at the altar of big business interests. I have witnessed the holy battle cry of “free trade” become

a club by which to beat into submission any voice that expressed an argument for balance and fairness. That is understandably the outcome of trade talks that ignore the constitutional role of the Congress in international commerce.

While it is not surprising that Republican and Democratic administrations would attempt to enter into trade agreements that reflect their own priorities, it is absolutely distressing—it is extremely puzzling to this Senator—that the Members of Congress would willingly give up their right to shape trade agreements that reflect the priorities of the American people, and the best interests of the United States. It just demonstrates how cowed and how intimidating we in public life have become by the absolute terror of bumper sticker politics. Free trade is the battle cry. Don't complicate it with real world concerns.

As a U.S. Senator from West Virginia, I am always—first, last, and all the time—for the protection of the interests of this country, of this Nation's workers, and this country's manufacturing industries and I am going to continue being that way by opposing the granting of blanket fast track authority for this or any other President.

Call it trade promotion authority, if you will—it is still fast track—to give away American interests when it comes to trade.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. CAPER). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF PAUL G. CASSELL, OF UTAH, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF UTAH

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 815, which the clerk will report.

The legislative clerk read the nomination of Paul G. Cassell, of Utah, to be United States District Judge for the District of Utah.

The PRESIDING OFFICER. Under the previous order, the time until 6 p.m. will be for debate on the nomination, equally divided between the