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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable LINCOLN CHAFEE, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, who has given us the rich heritage of this good land, You know our needs for this day better than we do. Help us to listen to the quiet direction of Your Spirit. Consecrate our speech to Your service, that we may not sin with our tongues.

Keep us free from all untrue and unkind words. Remove from us all anxiety, and give us moral and physical courage for the living of these days.

As Your Senators today seek to do what is right, make Your way clear to them. Strengthen them to face the pressures that come with working for freedom. When their day's work is done, may they feel Your smile and hear Your whisper of "well done." And, Lord, bless our military men and women. Let them this day feel Your presence. We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LINCOLN CHAFEE led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 3, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LINCOLN CHAFEE, a Senator from the State of Rhode Island, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. CHAFEE thereupon assumed the Chair as Acting President pro tempore.

The ACTING PRESIDENT pro tempore. In my capacity as a Senator from Rhode Island, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

ORDER OF PROCEDURE

Mr. SESSIONS. Mr. President, I ask unanimous consent I be permitted to speak for up to 15 minutes in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

CLASS ACTION LAWSUITS

Mr. SESSIONS. Mr. President, I will discuss this morning a very important issue of legal reform that is needed in the United States. I have been a practicing lawyer for most of my adult life

and have litigated in quite a number of different forums. I believe in the legal system. It is critical for America's vitality. There is no doubt in my mind the strength of this American democracy, the power of our economy, our ability to maintain freedom and progress is directly dependent on the superb legal system of which we are a part.

We have a magnificent number of lawyers around this country. Some have been criticized, and rightly so, but for the most part they are good, aggressive attorneys utilizing the laws that are available.

This Congress passes laws involving litigation in America. It is incumbent upon us as the years and centuries go by to periodically review what is happening in our courts. We ask ourselves, are the results that are occurring effective? Are they furthering our national policy, correcting wrongs, punishing wrongdoers, generating compensation for those who suffer losses in a fair and objective way?

Anyone who knows much about the system today knows there are some problems. Lawyers are utilizing principles of law that enhance the problem. There are court decisions that allow them to go further than they have before. As a result, everyone is paying huge amounts of money for insurance. Americans buy a homeowner's policy with an umbrella in case someone sues them. Americans in business review their insurance and liability policies on a regular basis, frequently calling insurance companies and asking for more coverage, more protection. Without even asking for more coverage and more protection, the rates are going up all over America.

One matter we need to talk about and act on is class action lawsuits. A bill to reform class action lawsuits has been considered for a number of years in this body. It was considered in the Senate Judiciary Committee of which I am a member. After several years of

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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discussion we voted it out this year by a 12-7 vote, a bipartisan vote. Several Democrats and all Republicans voted for it. It is a bill that is responsible. It is restrained. It will do the job in many of the cases where abuses are occurring. It is the right thing to do. It can help balance the scales a bit in litigation. It will help fulfill the responsibility of this Congress to monitor how our laws are working in the real world. As a result, we can fix the problems out there.

What is a class action? A class action is a litigation filed by a plaintiff's attorney on behalf of not just one alleged wrong person, but on a class or a group. The lawyer files the case in a court against a defendant, or maybe more than one defendant, on behalf of a large group of plaintiffs who he alleges suffered similar losses and therefore the case should be tried in one forum, a verdict rendered, and each plaintiff then told what they ought to get as compensation for the losses they have incurred.

A class action is good. Some people have been so upset about class action abuses they think we ought to throw the baby out with the bath water. That is not true. A good class action is good for everyone. For example, if a national company made a defective product and shipped it all over America and they were negligent in doing so, they ought to be responsible for the damages that product has caused in America. For every person, maybe hundreds of thousands, even millions to file a lawsuit in every circuit court in America makes no sense. We have a vehicle by which it can be brought in a single court, and it can go forward from that point.

Where can you file? You can file, amazingly, in almost any venue in America. The plaintiff can search this country over to select the single most favorable forum for his lawsuit and the single most favorable district in America. That is a lot to choose from. That is one of the problems we have with class actions.

There are a number of other problems. Lawyers are alert to this. Some specialize in this kind of litigation. They identify something they think is wrong. Maybe no victim has even complained about it. They identify the victim and talk them into filing the lawsuit. They pay little attention to the plaintiff they name as the lead plaintiff in a lawsuit.

I know of one case in Alabama where the defendant died, and was dead for quite some time, and the lawsuit just went right on as if nothing had ever happened. There was not even a named plaintiff living as the central plaintiff in the lawsuit.

But that points out to me that the case becomes, after a period of time, driven by the plaintiff's lawyer and driven by the interests of the defendant. And if it is filed in a smaller rural circuit court, the judge could be overwhelmed with a huge amount of litigation and want it off his docket.

So really the abuse occurs like this: The plaintiff is in a situation where each victim is only entitled to a little bit of money. I will talk about some of those cases in a little bit as to what kind of verdicts get rendered. So they get a little bit for 200,000 plaintiffs, and then they get their fee—multimillion-dollar fees.

The judge is happy because this case could have gone on for years and clogged up his busy circuit court docket in rural Illinois or Alabama or Texas. He is glad to have it gone.

The defendant wants the case gone. The defendant has no responsibility to the individual plaintiffs in the class. The defendant wants the case gone. So what does he do? He will agree to pay the attorneys very high fees and the plaintiffs themselves small amounts of compensation to get rid of the case. And it goes off the docket which is completely wiped clean.

So there are some problems that are out there, and it is not healthy. We have had a string of those cases that have occurred around the country that have not been becoming of the legal system.

The lawyers' primary interest should be to their clients. Courts should have a primary interest in seeing that justice is done. Defendants ought to pay for what they are required to pay and the losses that have occurred. But defendants ought not to be intimidated or coerced or extorted really by the threat of a major lawsuit going on for years in which their company is abused and abused in court for some minor wrong they are willing to pay to correct and willing to compensate the victims for.

So they are in court, and they are willing to pay. They want to fix it, but, no, no, that is not enough. They want punitive damages and more litigation time. And just to get rid of it, defendants agree to pay, and they agree to compensate. Oftentimes—and there are quite a number of cases that show this—the lawyers are the ones who really get the compensation, and not the victims.

In many of the cases, the liability is very dubious, but the companies feel obliged to pay something to get out of the lawsuit, anyway. The damages are very speculative. Sometimes damages have never even really been proven.

I want to mention one more thing about the venue. Let's assume a major automobile company designed an automobile—and they have had cases of this kind—and the seatbelt is defective, and maybe it poses a risk or maybe, when you put it on, it bruises your hand and causes a blister or otherwise is designed in a way that is not as fine as it should have been designed.

Let's say someone wants to file a lawsuit against one of the major manufacturers in Detroit. They do not have to file that lawsuit in Detroit. They can go all over America and find somebody who was damaged by that seatbelt. And there will be that kind of ve-

hicle in every county in America, no doubt about it. They can go to counties in which there is only one sitting circuit judge who they happen to know who perhaps is favorable to plaintiffs' cases. They can pick the county in America they think has the most favorable jury for these kinds of cases, and they can then file their suit there and begin this kind of action we have seen here. Not only can they do that, they do that.

There is a county, I believe in southern Illinois, where routinely cases of this kind are chosen to be filed out of the whole United States because they believe it is favorable. The same has been true—"60 Minutes," I believe, or one of the shows on television has shown this to have occurred in Mississippi. They named the county and interviewed the people there, and they talked about the verdicts that are rendered there. And it is not healthy.

They have done it in Alabama, my home State. We passed some tort reform, and Alabama laws have improved, but there are still cases being filed there and in other States. They choose the most favorable forum. This is not what our Founders had in mind.

Let me read from the Constitution, the part of the Constitution that is relevant to this issue. It is article III, section 2, dealing with the courts. It talks about the power of the Federal courts and what their jurisdiction is. It says:

The judicial Power [of the United States] shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . .

And it goes on to say:

to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States; . . .

Now our Founding Fathers had thought about this issue, and the issue is: If you have a lawsuit filed between a person from Alabama and a defendant from Massachusetts, maybe at the time of the founding of our country and even to this very day, the person in Massachusetts might not be comfortable having his case tried in Alabama or vice versa. So they say: What do you do if you have a lawsuit between two States? The home-State plaintiff, for example, can choose the forum. He can have a friendly court. Maybe he knows all the jurors on the jury in the jury box. Maybe the judge goes to church with him. Maybe they are best friends and play golf together. And he is going to sue a fellow way off there, who has a lot of money, and he will just have a little friendly help for his local constituents.

That is what the Founding Fathers thought about. In football we call it home cooking, or in baseball, if you get adverse opinions by the umpire against a visiting team. So it is home cooking. They prevented that. They put it in the Constitution. They would go to Federal court where judges are not elected judges but they are lifetime-appointed

judges. Any appeal from their ruling goes to the U.S. Supreme Court in Washington, DC. Why? Because that would be a more objective, fair forum.

Now, good and clever plaintiff lawyers have learned if they sue General Motors or Ford or Chrysler, who are headquartered maybe in Detroit, on behalf of an Alabama or an Illinois citizen—then that case is going to be in Federal court, right? That is what the Constitution says—but, no, they will also add the local Ford dealership in Illinois or Alabama or Mississippi or Colorado, wherever they file the lawsuit that they choose is the best place. They will name one defendant, at least, who is in that same State, and it breaks diversity under case law, and the case gets tried in the local State.

So the principle there is important. In a case involving a class action, in which you are involving hundreds of thousands of plaintiffs all over America in every State in America, and the prime defendant, the central, responsible defendant is an out-of-State corporation, our Founding Fathers, I have no doubt, believed that should be in Federal court.

So I say to my friends who are concerned about federalizing litigation—and they believe States ought to be able to set their own rules for litigation—I really, truly say to you, this is not one of those cases in which the Federal Government is taking over things they should not take over. The Constitution contemplated those kinds of cases would be in Federal court, where you have a lifetime-appointed Federal judge, whose appeal will be to a court of appeals of a whole region, and whose final appeal will be to the United States Supreme Court, the Court that sits over the entire country.

So that is why I think we have had so much success in gaining support for this reform. I believe we can do that. And for a whole lot of reasons, under the Federal laws we are able to pass, and under the leadership or jurisdiction of a Federal judge, we will have far fewer bad verdicts. We will reduce the ability of the plaintiff to choose the most favorable forum in the whole United States in which to file a lawsuit.

Let me mention to you some of the cases. There are a lot of them that have been out there that caused difficulties and have caused an uproar and a concern.

The Toshiba case, *Shaw versus Toshiba Information Systems*, was a class action filed in Texas complaining of an entirely theoretical defect in the floppy disk controllers of Toshiba laptops. They are sold all over America. Why did they choose a county in Texas to file a lawsuit? They were able to do that in a State court, even though the asserted defect had never resulted in injury to any user of the defendant's product. Not a single one of the customers had ever reported a problem due to this defect. Facing a potential liability of \$10 billion, what the plain-

tiffs claimed, Toshiba felt they needed to settle the claim, and they did.

This was the result: The class members received between \$200 and \$400. In cash? No; \$200 and \$400 off any future purchases they may make from Toshiba. They received no compensation. The two named plaintiffs in the lawsuit, individuals who bought this Toshiba laptop, received \$25,000 each. And the attorneys, what did they receive? One hundred forty-seven point five million dollars. Tell me that is legitimate. Not so.

Here is one with Blockbuster. A class action suit was filed in Texas—another Texas case—which alleged Blockbuster had unfairly charged for overdue movie rentals. They had overcharged people when they were late turning in their video rentals. They were faced with 23 lawsuits in 13 other jurisdictions around the country. This was a class action lawsuit. They decided they better settle the case. In the settlement, the trial lawyers received \$9.25 million in fees and expenses. The individual plaintiffs who were alleged to have been wronged received two free movie rentals and \$1 off coupons for future movie rentals. They got nothing, no money paid out of pocket directly of the \$9.25 million. I suspect some of those plaintiffs didn't even know they were being named as a plaintiff in the case. They got a \$1 coupon, threw it in the trash can, just like you throw them in the trash can that come out of your newspaper. You don't have time to fool with them.

Here is one with Sony Pictures. Typical of how these things can develop. In advertising for their films, Sony wrongfully created a fictional film reviewer. This fictional film reviewer fabricated some quotes. Despite Sony's numerous apologies and offer to pay \$350,000 to settle the inquiry by a State attorney, a class action was filed. Sony was willing to pay. They knew they had messed up. They were willing to pay. That is so often the case in these matters. The lawyers then went out and found two moviegoers to head the class of plaintiffs. They claimed they were jostled into seeing "A Knight's Tale," the movie, by ads quoting this fictional reviewer calling the films lead actor the year's hottest new star.

It was all bogus, which most of us know those ads are bogus anyway. The attorney originally sought refunds on the ticket prices but later demanded \$4.5 million to settle the case.

There is a host of other cases. I could go on.

Aetna, a Federal judge awarded \$24 million in attorney's fees out of an \$82 million settlement in a class action against Aetna. There was one against *Golf Digest*, *Cell Phones*. The Bank of Boston case, which involved my State of Alabama, was pretty egregious also. A class action was filed by a Chicago attorney against the Bank of Boston, and they decided to file it in Mobile County, AL. That is odd, is it not? The case alleged that the bank did not

promptly post interest to real estate escrow accounts. The settlement limited the maximum recovery for the class members to \$9. After the State approved the settlement, the bank disbursed more than \$8 million to the class action attorney in legal fees, and credited most of the accounts of the victims with paltry sums. The legal fees, equal to 5.3 percent of the balance in each account, were debited to those accounts. So the attorney's legal fees were taken out of the bank accounts of the class victims. A lot of these people did not even know a class action had been filed, let alone that they owed an attorney a fee for the \$9 in recovery he had received for them.

What is even worse is that for a number of accounts, the debit to their account exceeded the credit they obtained in the settlement, meaning that the attorney's fees that came out of their account exceeded the \$9 benefit they had received from the class action settlement.

For example, Dexter Kamowitz of Maine, who did not initiate the lawsuit against the Bank of Boston and probably knew little about it, received a credit of \$2.19 under the class action settlement. At the same time the class action attorney debited his account for \$91.33 for legal fees, producing a net loss of \$89.14. Such results, as might be expected, produced outrage from class members in other States around the country. Judge Frank Easterbrook, Circuit Judge of the Seventh Circuit, asked this question: What right does Alabama have to instruct financial institutions headquartered in Florida to debit the account of citizens in Maine and other States?

That is a good question. How can a circuit court in Alabama order a bank headquartered in Florida to debit the account of a victim in Maine? That is bizarre. That is the kind of thing we are dealing with.

This bill has received great scrutiny. It is not going to end class actions. It is going to end the abuses of class actions. It will take only the biggest, clearly interstate cases of class actions. It will allow them to be tried before a more neutral forum of a Federal court. It will provide some controls in the way these cases are handled, the way attorney's fees are set. It will control the abuses of coupon-type settlements. It will do a lot of things that are very healthy and proper and appropriate and overdue.

That is what we need to do in this matter. Class actions will continue. They can continue in State court, if it is primarily a State class. They can continue in Federal court, if it is primarily a Federal class. That is the right thing for us to do.

We need to bring it up in the Senate before this session is over. If we do that, we will have served our constituents well. We will have monitored the legal system that we set up, control, and regulate by the laws we pass. We will have responded to abuses and created a system that is fair and more

just for the plaintiffs, the defendants, and the particular plan.

I thank the Chair, and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mr. GREGG. What is the regular order?

The ACTING PRESIDENT pro tempore. The regular order would be to lay the bill before the Senate.

Mr. GREGG. I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR IRAQ AND AFGHANISTAN SECURITY AND RECONSTRUCTION ACT, 2004

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1689, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1689) making emergency appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

Pending:

Byrd amendment No. 1818, to impose a limitation on the use of sums appropriated for the Iraq Relief and Reconstruction Fund.

Byrd/Durbin amendment No. 1819, to prohibit the use of Iraq Relief and Reconstruction Funds for low priority activities that should not be the responsibility of U.S. taxpayers, and shift \$600 million from the Iraq Relief and Reconstruction Fund to Defense Operations and Maintenance, Army, for significantly improving efforts to secure and destroy conventional weapons, such as bombs, bomb materials, small arms, rocket propelled grenades, and shoulder-launched missiles, in Iraq.

Reid (for Stabenow) amendment No. 1823, to provide emergency relief for veterans healthcare, school construction, healthcare and transportation needs in the United States, and to create 95,000 new jobs.

Mr. GREGG. Mr. President, I wish to speak briefly. I understand the Senator from North Dakota is also going to speak. I want to talk on this piece of legislation but, more importantly, on the overall approach we take toward fighting terrorism as a nation.

First off, as to this bill, which is obviously an extraordinarily expensive bill—over \$80 billion, much of which goes to support our forces in Iraq, which is absolutely critical, and some of which goes to assisting in the rebuilding of Iraq—many of my colleagues and others have questioned the dollars going to the rebuilding of Iraq and whether that is an appropriate way to spend American tax dollars. I think, however, we have to look at this issue not from the standpoint of whether it is benefiting Iraq but whether it is benefiting us, the American people.

I don't think there is any question but that it benefits the American people. Our purpose here is to defeat terrorism. Our purpose here is to undermine the capacity of those people who would use violence against Americans

and against our system and against our Nation. We learned from 9/11, regrettably, that there are, unfortunately, groups out there who subscribe to what is known as Muslim fundamentalism, who are willing to pervert the Muslim faith, and who wish to pursue actions of violence against us as a nation, and against Americans as people, simply because we exist. For whatever reasons, they see us as their enemies, and there are a variety of reasons, which I will not go into. They obviously have the capacity and have shown their willingness to do us damage and harm. We have to respond to that.

Fortunately, we have a President who understands this—understands it in a way that I think many of us don't fully appreciate. I happen to, however, greatly admire it. The fact is, in President Bush we have someone who is very focused on the issue of protecting the United States and all Americans, defeating the threat of terrorism, and finding terrorists and bringing them to justice before they can do us harm. As part of that effort, there is a philosophy that I think is very appropriate that we are pursuing as a nation, which is that we will go out and find the terrorists before they can find us. We will kick over the rocks under which they hide and bring them to justice in whatever manner is appropriate—before they can get out from underneath the rocks under which they hide and plan to attack us. The basic theory is to cause the terrorists to worry about where they are going to sleep tonight rather than to be thinking about whom they are going to attack tomorrow.

It requires an aggressive international policy, but it is a policy directed at protecting us, Americans, across our Nation, giving us a better opportunity of avoid another 9/11, another attack on our country on our soil. As part of that effort, we have replaced a dictatorial, repressive, genocidal, maniacal regime in Iraq, a regime which clearly represented a threat to its neighbors and was a breeding ground for terrorists and a potential, if not real, supporter of those who would do us harm in the United States.

The strategy of the war was brilliantly executed by our military, our men and women. We have to admire their courage, their expertise, and the manner in which they comported themselves in Iraq. Their success militarily is in large part due to the fact that we are willing to spend our national treasury to support them, and we must continue to do that. That is what this supplemental is about.

So supporting our troops with the dollars they need and the equipment they require is a given. There is no one in this body who would question that.

The second part is the rebuilding of Iraq. Why is that important to us as a nation? Well, if we are going to undermine the fundamentalist Muslim terrorist threat, we must undermine their breeding ground, where they are able to recruit, and their philosophy for recruitment.

We have been extremely successful as a nation so far, I believe, in pursuing a tactical war against terrorists, and we can continue this tactical war and we will probably have to continue it for years to come. By that I mean finding the terrorists, following the dollars, tracking them down, using our expertise, our intelligence capability, and our military to neutralize their ability to attack us—whether it is in Afghanistan, Iraq, Buffalo, or Seattle—finding them before they can do us harm, eliminating their resources and sources of resources, and working an international coalition of law enforcement agencies and military forces that is capable of doing them physical harm before they can do us physical harm.

That is a tactical approach. It is one that is being pursued with great aggressiveness at all sorts of different levels—internationally, of course, and obviously in Iraq and Iran, but across the globe, such as in the Philippines and India and Pakistan, and domestically with the creation of the Homeland Security Department and the restructuring of our own domestic law enforcement community.

But that is tactical. That means you find the individual or the cell, you find the group of fundamentalist terrorists who are gathered together, you get the information on where they are, you disrupt them and, if you can bring them to justice, you do. That is tactical. That is not going to resolve the problem for us because, regrettably, no matter how you look at this, if you are honest about it, there is a cultural and a religious issue involved.

There are a billion people in this world who subscribe to the Muslim faith. It is a strong and good faith with an incredible history. But if only 1 percent of those billion people are attracted to the perversion of that faith and follow a Muslim fundamentalist view of the world—terrorist view of the world—that is 10 million people. That is potentially 10 million people who want to do us physical harm. Hopefully, it is not that high.

So if we are to pursue a lasting resolution of this issue, a tactical approach will keep us, hopefully, safer, but it will not resolve the underlying problem. We need much more of a strategic approach, something that looks at the forces which create the threat and undermines those forces. That is where the issue of addressing the reconstruction of Iraq comes in. There are a variety of ways we can address people who are members of the Muslim faith, especially in the Middle East and show them that we, as a nation, are not a threat to them but are actually an avenue of opportunity. But today those options don't really exist in the Middle East.

If we can prove to people who subscribe to the Muslim faith and might