

being asked about his deeply held religious beliefs as somehow a disqualifier; somehow if you hold beliefs deeply you are no longer eligible to hold a position of public trust in the judiciary.

I argue this country was founded on religious pluralism; that is, people with shallowly held religious beliefs, deeply held religious beliefs, no religious beliefs, all are eligible and welcome to serve in this country in positions of importance, whether it is in the judiciary, whether in the legislature, or in the Executive Office.

We are finding a litmus test that should be very disturbing to people of faith, to people of no faith. It has no place in the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Massachusetts.

Mr. KENNEDY. I thank the Republican leader and Senator MURKOWSKI and Senator BENNETT as well for their courtesy this morning.

CLOTURE VOTE ON CLASS ACTION

Mr. KENNEDY. Mr. President, what we are being asked to do on this class action bill is a travesty. We are not only being asked to throw the baby out with the bathwater; we are being asked to throw out the bathtub and buy a new one that no sensible parents would even want to put the baby in.

We all know what is going on here. Corporate giants and giant insurance companies do not want to be held accountable in class action cases, and they want to make it as hard as possible for injured citizens to obtain relief. They are powerful special interests. They know that the heavier the burden they impose on the courts, on consumers, and on those with legitimate civil rights and environmental claims, the less likely they are to be held accountable.

All of us agree that class action procedures are far from satisfactory, especially in large nationwide cases, and reasonable reforms are long overdue.

If we vote for cloture today we are giving a blank check to those who would like class actions to disappear entirely, so that injured citizens do not have to be paid at all. If we vote against cloture, we will give new leverage and needed time to those who are serious about reforming class actions and just as serious about protecting citizens' rights.

Today we are presented, virtually on a take it or leave it basis, with what can only be called a radical shift in Federal law, a bill that calls itself the Class Action Reform Act. If we want truth in labeling, we should call it the Class Action Destruction and Federal Court Disruption Act.

In its present form, this bill is a shoddy patchwork of different ideas and different approaches grafted together with no concern for its overall impact, as long as it shields defendants. Key provisions have never been

the subject of any hearings or any careful analysis by impartial experts in the field.

Yet the bill makes massive changes in the basic rules of the road on jurisdiction of the courts.

It suddenly abandons 200 years of evolutionary change in Federal jurisdiction and substitutes a totally new road that no one has traveled and no one can map. It does so in the interest of purported problems that, if they exist at all, are not emergencies and certainly are not so urgent that we need to move ahead so blindly.

If we enact this bill, we will have confusion and conflict in the Nation's courts for years, as they wrestle to untangle the mess which this law produces. Its most visible initial impact will be to add an entire new layer of legal jousting, litigation burden and higher costs to already complex cases.

If the hopes of its sponsors are realized at all, the law will force a very large number of complex and important cases off the dockets of tens of thousands of State judges and onto the dockets of less than 2,000 Federal judges, who already face massive backlogs.

We can also expect that the law as now proposed will do serious harm to the ability of citizens in civil rights cases to obtain the relief they are entitled to under State law.

There are no legitimate complaints about class actions on civil rights. Yet this bill would severely and adversely affect such cases.

The bill will make the most pressing and legitimate class action cases more burdensome and more expensive. It will reduce the ability of courts to improve the efficiency of justice by dealing with large numbers of small but similar cases in groups, instead of one at a time.

To the extent that plaintiffs need additional safeguards for the class plaintiffs in class actions, this legislation promises a "Bill of Rights," but it does not produce what it promises. It does not seriously address the problem of worthless and collusive settlements, which produce substantial benefits for attorneys and defendants, but little or nothing for injured plaintiffs.

The basic purpose of court actions in general, and class actions in particular, is to enable injured people to get relief—sometimes monetary relief and sometimes other relief such as injunctions against discrimination or restoration of employment.

If citizens know that reliable relief is possible at reasonable expense and within a reasonable time, they will initiate the court actions that our judicial system allows them to bring.

That kind of relief tells those who might discriminate: don't discriminate. It tells those who might bring hazardous products to markets: don't hurt consumers. It tells those who might harm the environment: even if no individual person is harmed enough to be able to sue, you will be brought to justice, so stop polluting.

The Chief Justice of the United States has told us not to pass this bill. The National Association of State Chief Justices has told us not to pass this bill. Dozens of organizations with no interest to protect except the right of people to obtain a remedy when they are wronged, have pleaded with us not to pass this bill.

A vote for cloture is a vote to deprive our constituents of an important and realistic remedy for the vindication of their rights. When we deprive the people of remedies, we deprive them of their rights.

That is not what they sent us here to do. That is not what the founders created the Senate to do. We offend our people and we offend our history if we fail them today.

The ACTING PRESIDENT pro tempore. The Senator from the great State of Utah.

IRAQ

Mr. BENNETT. Mr. President, we have a continual drumbeat going on in this Chamber. It came to a crescendo during the debate over the Iraq supplemental, but it goes on even when there is no legislation on the floor dealing with Iraq. There are several themes of this drumbeat that I would like to address this morning.

The first theme we hear over and over and over again is the theme of faulty intelligence. How could the President have been so stupid as to have acted on faulty intelligence? Occasionally, the enthusiasm for this theme gets carried away to levels that are inappropriate, as we have the accusation that the President was not just misled by faulty intelligence, he deliberately lied. We hear this again and again, particularly in the media: The President is a liar; he deliberately misled the country.

I would like to address that theme for a moment and then another theme we hear over and over which is that the President has made a terrible mistake when he has endorsed the concept of preemptive war. We have these two themes: No. 1, the President is either stupid or a liar because he mishandled the intelligence; and No. 2, he has embraced a historically repugnant doctrine, the doctrine of preemptive war.

On the issue of intelligence, let us understand something about intelligence. It is never hard and fast. It is always an estimate. It is also a guess. It is also the best view of the people who are making intelligence decisions and assessments. And it is often wrong.

Let me give you an example of a President who acted on intelligence that turned out to be wrong. No, let me back away from that, not necessarily a President who acted, a commander who acted on intelligence that turned out to be wrong that had significant international effect.

I was traveling in China with the then-senior Senator from Texas, Phil Gramm, and we met with the Prime

Minister of China, not long after the Americans, under the command of GEN Wesley Clark, had bombed the Chinese Embassy in Serbia. The Chinese were understandably very concerned about that.

We said: It was a mistake. It was an error. And the Chinese Ambassador, with whom we were talking at the time, said: You have the best intelligence in the world. You must have known that was the Chinese Embassy. That was not a hidden fact. That was not a secret. You have the most accurate military in the world. You did that deliberately.

Then he pointed out to us that was not just the Chinese Embassy; that was, in fact, the headquarters of the Chinese intelligence operation throughout Central Europe. So we bombed an embassy and we took out their intelligence capability. They said: You did that deliberately. We said: No; it was a mistake.

I remember Senator SHELBY saying: The proof of the fact that it is a mistake is that nobody would have been stupid enough to do that deliberately. Then the Chinese Ambassador said: If it was a mistake, why hasn't somebody been fired? And for that, we had no particular answer.

Checking into it, we found the reason that happened is because GEN Wesley Clark, the commander of NATO, was demanding targets: I need more targets. I'm running out of targets. And under the pressure of those demands from that commanding general, the CIA came up with targets, and they came up with an old target with bad information, under the pressure from a commander who was anxious to keep bombing even though he had run out of legitimate targets. In that pressure, a tragic mistake was made, and America's relationship with China was seriously damaged in that situation.

So intelligence is not always perfect. But in the postmortem of 9/11, we have seen how people want to have it both ways. They look at the intelligence that was available pre-9/11, and they say: How can you have missed this clue? You should have taken action, Bush administration, on the basis of this clue.

Then, when we have information with respect to Iraq that turns out not to be exactly accurate, we are told: How could you have been so misled? How could you have interpreted this way?

One CIA official said: If we had not acted on the basis of the information that we had prior to the war in Iraq, if we had not warned the President in the way we did, we would have been held in violation of our duty, particularly if something had happened.

Then the naysayers, who are saying, "How could you be misled by this intelligence," would be saying, "How could you have missed this clue?" They attempt to put the President and this administration in a no-win situation. No matter what the President does, he is

attacked by the people on the other side of the aisle.

Now, finally, this issue of preemptive war. I will not take the time to go into a full discussion, but I say, particularly to those Senators who pride themselves on their sense of history, let us look back in history and ask ourselves, what would have happened if Neville Chamberlain, Prime Minister of Great Britain, had adopted the attitude of preemptive war when he went to Munich? What would have happened if he had sat down with Adolph Hitler and done what Winston Churchill was urging him to do, which is the same doctrine that George W. Bush had put forward, and said to Hitler: If you attack Czechoslovakia, there will be war. If you move ahead, there will be war?

Neville Chamberlain and some of the people around him said: Hitler does not represent an imminent threat. Hitler is not talking about bombing London now. If we give him Czechoslovakia, he will feel nice towards us. We need to worry about international opinion. We need to see to it that everybody gets together in the international community. And Czechoslovakia does not affect us.

Chamberlain said: Those are people far away from us with whom we have nothing to do, a speech that could have been made on the floor of this Senate as people talk about Iraq: They are far away from us, people with whom we have nothing to do. And the threat is not imminent.

Churchill was long-headed enough to know that if Hitler got control of Czechoslovakia, he would get control of the finest machine shops in Europe, he would add to his military machine, and he would be prepared to wage world war. If Hitler were denied Czechoslovakia, we now know in history, his own generals would have deposed him for being too risky.

But Neville Chamberlain said: No. We can't wage any kind of preemptive war. We have to wait until he attacks us before we can justify it. And 6 million Jews went to the concentration camps and into the ovens, and countless millions were killed in the Second World War because we did not take preemptive action when we could have. I say "we"—the Western World did not.

Chamberlain was hailed as a hero when he came home, and the motion to support the action that he had taken went through the House of Commons by huge margins. When Winston Churchill stood up and said: We have suffered defeat of the first magnitude, he got only a handful of votes. But history has not been kind to Mr. Chamberlain. History has validated the position that Winston Churchill took, a position which George W. Bush is applying to modern conditions.

Those who value history should read all of history before they stand on the Senate floor and attack the President of the United States for a doctrine that they say is repugnant.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Alaska is recognized under a previous order of the body. There was a previous agreement that was entered into that grants her this slot of time.

The Senator from Alaska.

ENERGY FROM ALASKA: JOBS FOR AMERICA

Ms. MURKOWSKI. Mr. President, I rise this morning to speak about a topic of great importance to our Nation; that is, the subject of jobs.

I know this subject is on the minds of my colleagues, and certainly on the minds of my constituents back home in Alaska, but really Americans throughout the country.

Since 2000, the American economy has been in a slump. In 2000, we were headed toward a recession. The stock market declined and the technology bubble burst. Then came September 11.

When terrorists struck the World Trade Center and the Pentagon, our economy suffered. And as we, as a country, mourned the loss of 3,000 innocent Americans, we again watched that stock market tumble and, really, the economy grind to a halt.

This administration has been working very hard not only to protect American people from terrorism but to revive, to reinvigorate our economy.

The approach that has been taken to cut Federal taxes, as we have done in Congress, the move the Federal Reserve Board has taken in cutting interest rates, those were the right things to do. But we can do so much more. We can and we must take positive steps to create good paying jobs for Americans.

On the floor recently many of my colleagues have been talking about the loss of jobs we have sustained over the last few years. The truth is, we have lost a lot of jobs. But I do not want to talk this morning about those jobs that we have lost. I want to look forward. I want to talk about the many jobs we can and should create for Americans who are out of work.

Currently, we have a House-Senate conference committee crafting a comprehensive Energy bill. In late July, in a show of great bipartisanship, the Senate passed an Energy bill to conference. There were 83 of my colleagues who supported me in this measure. Fourteen Senators voted against the bill.

Attempts have been made by both Republicans and Democrats to enact a national energy policy to reduce our country's dependence on fossil fuels, much of which comes from foreign countries, and to improve the existing energy infrastructure in the U.S.

Most people would agree we need a national energy policy to address our concerns, but there is widespread division as to how we go about it. These divisions can be partisan, they can be ideological, or they can be regional. I encourage the conferees working on