giving persons who are injured in the same manner by the same defendants the ability to hold the wrongdoers accountable. This sort of collective action gives ordinary citizens the ability to level the playing field with powerful defendants. For example, by allowing groups of citizens to band together and demand a safe and healthy environment, class actions often result in courts requiring companies to stop poisoning our neighborhoods and our water. Without the class action tool, it would often be impossible for ordinary citizens to take on powerful defendants when they damage the environment and cause illness.

Class actions are also essential to the enforcement of our Nation's civil rights law. They are, in fact, often the only means by which individuals can challenge and obtain relief from systemic discrimination. Class actions have on important occasions served as a primary vehicle for civil rights litigation seeking broad equitable relief.

In far too many cases, justice delayed is justice denied. No one recognizes this better than the manufacturers and the polluters, who would prefer these cases to be in the Federal court system, where there is a tremendous judicial backlog.

Overloading these courts will inevitably delay the resolution of all cases in Federal courts. Indeed, the Judicial Conference of the United States, headed by Chief Justice Rehnquist—not someone with whom I often agree, I might add—has told Congress that the Federal courts are not equipped to handle all these cases. That is why he opposes this bill.

The delays caused by clogged courts would be particularly damaging in cases where civil rights plaintiffs are seeking immediate injunctive relief to prohibit discriminatory practices—such as racial profiling or predatory lending.

In addition to the above concerns, I was very distressed to learn that the manager's amendment slips mass torts back into this bill, greatly expanding the scope of the bill. This change makes the bill even more extreme, and, by federalizing individual tort suits, will flood the Federal courts with cases involving questions of State tort law.

By sending a majority of mass tort actions—cases involving products liability and environmental damages—to Federal courts, the bill would completely jam the already overburdened Federal courts and delay justice to hundreds, perhaps thousands, of people injured by defective drugs and medical devices, like the Dalkon Shield, and environmental contamination.

Class actions are an important tool for ordinary citizens to level the playing field and vindicate their rights. They promote safety, protect our health and environment, and are essential to enforcement of our civil rights laws.

The legislation before us would impose new and substantial limitations on access to the courts for victims of discrimination, mass torts, consumer fraud, and other misconduct. This is not a balanced, fair approach. I urge my colleagues to reject it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORZINE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

## HEALTHY FORESTS

Mr. BINGAMAN. Mr. President, I rise to speak for just a few minutes about the need for the so-called Healthy Forests initiative that was discussed earlier this week.

Earlier this week, there was a unanimous consent request made to proceed to H.R. 1904, the so-called Healthy Forests initiative. The unanimous consent request sought to limit debate on the bill to a specified list of amendments to be offered by particular Senators.

Included in that list were two amendments that were purported to be offered or suggested to be offered by me. I have never spoken to anybody about my intent with regard to offering amendments. And I certainly have not agreed to any particular amendments that I wanted to offer. Therefore, I have real concerns with that unanimous consent request because the proposed unanimous consent request would have limited me to offering certain amendments that I had not previously heard about. Obviously, I would have objected had not other Senators done so.

This is an important issue that the Senate needs to try to address this year. I do not favor delaying that consideration. There is always a threat that we have seen in the West, particularly in recent years, of unnatural, intense, catastrophic wildfire. That is a threat to many of our communities, to millions of acres of public land and forests in the West.

It was alleged early this week by some who were supporting moving ahead with that unanimous consent request that those who did not favor the unanimous consent request did not favor active management of the national forests. I want to be clear in my statement this morning that I certainly do not fall in that category.

I do not think we should just let nature take its course. I do think we should pursue active management. What I want to be sure of is that the bill we finally enact provides meaningful new authority to our land managers; that it is focused on the communities that are most threatened by wildfire; and that it does not unduly restrict the public's right to participate and have oversight in the management of these lands.

I am aware that a deal of some sort has been developed by certain of the Senators who are concerned on the issue. I was not involved in that set of negotiations that led to that deal. The provisions, as I understand them, that have come out of that are complicated, complex.

I have a number of questions about the ramifications of some of those provisions, especially the ones dealing with administrative appeals, judicial review, and such issues.

I think there should be a hearing. That would be the right way to proceed. We have new legislative language. The right way to proceed would be to have a hearing where we can get testimony on these provisions and better understand them. I have asked for such a hearing. I hope that will occur.

I believe having a clearer understanding of what the amendment means and encouraging constructive suggestions would be a preferable course for us to pursue.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be given an additional 2 minutes.

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

Mr. BINGAMAN. Mr. President, to conclude my statement, I do think there are serious questions regarding this new language. It differs substantially from the bill that was reported by the Agriculture Committee. Some of the major issues raised by the amendment include a lack of any new funding to reduce hazardous fuels; failure to eliminate the harmful agency policy of borrowing from proactive forest restoration accounts to pay for firefighting; the curtailment of public participation in the management and oversight of public lands, including the establishment of a new so-called predecisional review process, which I do not, frankly, understand; and also, of course, as I mentioned before, limitations on judicial review.

It also appears to create some new standards for injunctions that might be issued by the Federal court, both preliminary and permanent injunctions. There is no protection that I can see for national monuments and roadless areas and other environmentally sensitive areas in the bill.

I am not aware how some of these issues have been adequately addressed in the proposed amendment. For that reason I think we need to have an opportunity to offer amendments.

I hope the Senate can consider this forest health legislation this year. As do many Senators, especially those from Western States who have suffered in recent years from catastrophic wildfire, I very much want to see us resolve these issues as best we can. But we should do so under conditions that allow for amendments and allow for full debate. And that is my purpose at this stage.

So I hope we can proceed and do so in a way that all of us get to participate in the process.

With that, Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## REGULATION BY LITIGATION

Mr. McCONNELL. Mr. President, I rise to speak in support of the class action bill that will be before the Senate later this morning.

A few years ago during the debate on lawsuits against tobacco companies, gun manufacturers, and lead paint companies, the satirical publication, the Onion, wrote a spoof piece entitled ''Hershey's Ordered to Pay Obese Americans $135 billion.'' This was a tongue-in-cheek article which everyone found quite amusing at that time.

It began:

In one of the largest product-liability rulings in U.S. history, the Hershey Foods Corporation was ordered by a Pennsylvania jury to pay $135 billion in restitution to 900,000 obese Americans who for years consumed the company's fattening snack foods.

The spoof went on:

''Let this verdict send a clear message to 'Big Chocolate,''' said Pennsylvania['s] Attorney General . . . addressing reporters following the historic ruling. ''If you knowingly sell products that cause obesity, you will pay.''

The article continued:

The five-state class action suit accused Hershey's of ''knowingly and willfully marketing rich, fatty candy bars containing chocolate and other ingredients of negligible nutritional value.'' The company was also charged with publishing nutritional information only under pressure from the government, marketing products to children, and artificially ''spiking'' their products with such substances as peanuts, crisped rice, and caramel to increase consumer appeal.

The article went on to discuss the use of class action litigation to force chocolate manufacturers to adopt policies preferred by the plaintiffs.

It concluded by saying:

Whatever the outcome of Hershey's appeal, the chocolate industry has been irrevocably changed as a result of [the] verdict.

When I read this piece in the Onion a few years ago, I thought it was quite creative. I thought it illustrated the disturbing misuse of class actions, using class actions to circumvent legislative decisions with respect to setting policy. I was not the only one who thought so. Former Secretary of Labor under President Clinton, Robert Reich, wrote that:

The era of big government may be over, but the era of regulation through litigation has just begun.

It turns out that the Onion was not merely creative, it was, in fact, prescient. A few months ago, I read another article, this one a real news story, not a spoof, entitled ''Ailing Man Sues Fast Food Firms.'' The article began:

Want a class action lawsuit with that burger?

It reports that a lawyer ''has filed suit against the four big fast-food corporations, saying their fatty foods are responsible for his client's obesity and health-related problems.''

The lawyer filed his lawsuit in State court in the Bronx, ''alleging that McDonald's, Burger King, Wendy's and [Louisville-based] KFC Corporation are irresponsible and deceptive in the posting of their nutritional information, that they need to offer other options on their menus, and that they created a de facto addiction in their consumers, particularly the poor and children.''

The lawyer said:

You don't need nicotine or an illegal drug to create an addiction, you're creating a craving.

The lead plaintiff, a 56-year-old maintenance supervisor, said he ''traced it all back to high fat, grease and salt, all back to McDonald's, Wendy's, Burger King.'' He said:

There was no fast food I didn't eat, and I ate it more often than not because I was single, it was quick, and I'm not a very good cook. It was a necessity, and I think it was killing me, my doctor said it was killing me, and I don't want to die.

The attorney ''aimed to make his case into a class action lawsuit,'' with the ultimate goal ''to force the fast-food industry 'to offer a larger variety to the consumers, including non-meat vegetarian, less grams of fat, and a reduction'' in meal size.

Mr. President, by the way, damages in the case were unspecified. Given the horror stories we have heard of plaintiffs getting the short end of the stick in class action cases, the plaintiffs better hope that class action reform gets enacted before their case is resolved, lest their lawyer bank all the cash while they are stuck with a coupon as a result of a ''drive-by''—or should I say ''drive-through''—settlement. The coupon could probably buy a large french fry. That would be about all it would purchase.

A disturbing thing about lawsuits against ''big fast food'' is that they promote a culture of victimhood and jettison the principle of personal responsibility. I have, in fact, introduced the Commonsense Consumption Act to try to restore sanity to our legal system with respect to these types of cases against the fast food industry.

But an equally disturbing aspect that this high profile case illustrates is the use of class action lawsuits to circumvent legislative decisions and subvert the democratic process. No branch of Government should mandate that Burger King and McDonald's carry veggie burgers for portly patrons. But even if that is something Government should do, it should not be the judicial branch that does it, particularly a State court setting national culinary policy.

Let me give another example with which people might not be as familiar. A national class action lawsuit certified in an Illinois county court has resulted in a determination that car insurance companies violated their contracts by refusing to provide original manufactured parts to policyholders who were involved in accidents. This determination resulted in a $1.8 billion verdict against State Farm.

This case is noteworthy because the county court which certified the class action let the case stand, even though several State insurance commissioners testified that a ruling in favor of the nationwide case would actually contravene the laws of other States. These laws either allowed, or in fact required, the use of generic car parts as a way to keep costs down for consumers.

As the New York Times reported, the result of this State class action was to ''overturn insurance regulations or State laws in New York, Massachusetts, and Hawaii, among other places,'' and ''to make what amounts to a national rule on insurance.''

The concerns with this case were not due to the interests of ''big insurance.'' Ralph Nader's group, Public Citizen, the attorneys general of New York, Massachusetts, Pennsylvania, and Nevada, and the National Association of Insurance Commissioners all filed briefs opposing the Illinois State court's determination because this county court's new national rule on insurance would be bad for consumers—though I suspect the trial lawyers in that case have made out quite handsomely.

It is not only appropriate, but necessary, to use class actions to efficiently provide remedies to large numbers of plaintiffs. But it is inappropriate to use them to circumvent the decisions that belong to other branches of Government and to other States. Maybe Ralph Nader, New York, Massachusetts, Pennsylvania, and other States are wrong and the county judge in Illinois is right, and we should require that original manufacturer parts be used in auto repairs. But that is a decision for the people of the several States to make, not unelected judges.

Mr. President, class action reform will ensure that truly national cases are decided in a national forum, and I hope we can enact this important reform. The Democrat leadership has said their caucus recognizes the need for reform. I think the fact that they are filibustering the motion to proceed questions that notion.

But we will soon have a chance to see if our friends on the other side of the aisle are sincere about trying to solve the problem of class action litigation. If they are serious, then they should support cloture on the motion to proceed and give us a chance to go forward with this important legislation. If we get on the bill, then they can try to improve the flaws they see in it, or maybe even substitute an entirely new proposal, which I understand one of the Democratic Senators advocates. But if