in which between one-third and two-thirds of the proposed class members and all primary defendants are citizens of the same state.

The compromise provides for broader discretion by authorizing federal courts to consider any ''distinct'' nexus between (a) the forum where the action was brought and (b) the class members, the alleged harm, or the defendants. The proposal also limits a court's authority to base federal jurisdiction on the existence of similar class actions filed in other states by disallowing consideration of other cases that are more than three years old.

The Compromise Expands the Local Class Action Exception

S. 1751 established an exception to prevent removal of a class action to federal court when 2/3 of the plaintiffs are from the state where the action was brought and the ''primary defendants'' are also from that state (the Feinstein formula). The compromise retains the Feinstein formula and creates a second exception that allows cases to remain in state court if: (1) more than 2/3 of class members are citizens of the forum state; (2) there is at least one in-state defendant from whom significant relief is sought and who contributed significantly to the alleged harm; (3) the principal injuries happened within the state where the action was filed; and (4) no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding three years.

The Compromise Creates a Bright Line for Determining Class Composition

S. 1751 was silent on when class composition could be measured and arguably would have allowed class composition to be challenged at any time during the life of the case. The compromise clarifies that citizenship of proposed class members is to be determined on the date plaintiffs filed the original complaint, or if there is no federal jurisdiction over the first complaint, when plaintiffs serve an amended complaint or other paper indicating the existence of federal jurisdiction.

The Compromise Eliminates the ''Merry-Go-Round'' Problem

S. 1751 would have required federal courts to dismiss class actions if the court determined that the case did not meet Rule 23 requirements. The compromise eliminates the dismissal requirement, giving federal courts discretion to handle Rule 23-ineligible cases appropriately. Potentially meritorious suits will thus not be automatically dismissed simply because they fail to comply with the class certification requirements of Rule 23.

The Compromise Improve Treatment of Mass Actions

S. 1751 would have treated all mass actions involving over 100 claimants as if they were class actions. The compromise makes several changes to treat mass actions more like individual cases than like class actions when appropriate.

The compromise changes the jurisdictional amount requirement. Federal jurisdiction shall only exist over those persons whose claims satisfy the normal diversity jurisdictional amount requirement for individual actions under current law (presently $75,000).

The compromise expands the ''single sudden accident'' exception so that federal jurisdiction shall not exist over mass actions in which all claims arise from any ''event or occurrence'' that happened in the state where the action was filed and that allegedly resulted in injuries in that state or in a contiguous state. The proposal also added a provision clarifying that there is no federal jurisdiction under the mass action provision for claims that have been consolidated solely for pretrial purposes.

The Compromise Eliminates the Potential for Abusive Plaintiff Class Removals

S. 1751 would have changed current law by allowing any plaintiff class member to remove a case to federal court even if all other class members wanted the case to remain in state court. The compromise retains current law—allowing individual plaintiffs to opt out of class actions, but not allowing them to force entire classes into federal court.

The Compromise Eliminates the Potential for Abusive Appeals of Remand Orders

S. 1751 would have allowed defendants to seek unlimited appellate review of federal court orders remanding cases to state courts. If a defendant requested an appeal, the federal courts would have been required to hear the appeal and the appeals could have taken months or even years to complete.

The compromise makes two improvements: (1) grants the federal courts discretion to refuse to hear an appeal if the appeal is not in the interest of justice; (2) Establishes tight deadlines for completion of any appeals so that no case can be delayed more than 77 days, unless all parties agree to a longer period.

The Compromise Preserves the Rulemaking Authority of Supreme Court and Judicial Conference

The compromise clarifies that nothing in the bill restricts the authority of the Judicial Conference and Supreme Court to implement new rules relating to class actions.

The Compromise is Not Retroactive

Unlike the House Bill, the compromise will not retroactively change the rules governing jurisdiction over class actions.

HONORING OUR ARMED FORCES

TRIBUTE TO SPECIALIST AARON J. SISSEL

Mr. GRASSLEY. Mr. President, I rise today to pay tribute to a fellow Iowan and a great patriot, Iowa National Guard Specialist Aaron J. ''George'' Sissel. Specialist Sissel gave his life in service to his country on November 29, 2003 in support of Operation Iraqi Freedom when the convoy in which he was traveling came under enemy fire. This brave young man was only 22 years old at the time of his death.

I ask my colleagues in the Senate, my fellow Iowans, and all Americans to join me today in paying tribute to Specialist Sissel for his dedication to the cause of freedom and for his sacrifice in defense of the liberties we all so dearly prize. He selflessly served his Nation, sacrificing his life for the great principles that underpin both our way of life and the hopes and dreams of all humankind—the principles of liberty, justice, and equality. In a statement released following his death, Specialist Sissel's family offered the following words about their son and brother: ''Aaron 'George' died doing what he loved and believed in. We are very proud of him.''

We can all be very proud of men like Specialist Sissel. Our Nation's history is distinguished by the presence of extraordinary men and women willing to risk their lives in defense of our country, but also by families who sacrifice those they love for the sake of the great principles of American life. While we share the pride felt by Specialist Sissel's family, we also share their grief. My deepest sympathy goes out to the members of Specialist Sissel's family, to his friends, and to all those who have been touched by his untimely passing. May his mother, Jo, his father and stepmother, Kirk and Cindy, his sister, Shanna, and his fiancee, Kari Prellwitz, be comforted with the knowledge that they are in the thoughts and prayers of many Americans, and that they have the eternal gratitude of an entire nation.

Specialist Sissel did not die in vain; rather, he died in defense of the Nation he loved and the principles in which he believed. Indeed, Specialist Aaron J. ''George'' Sissel has entered the ranks of our Nation's greatest patriots, and his courage, his dedication, and his sacrifice are all testaments to his status as a true American hero.

SP4 DAVID J. GOLDBERG, U.S. ARMY

Mr. HATCH. Mr. President, my heart is heavy. Utah has once again given one of her sons to the cause of liberty.

Any loss of our fine young men or women is a tragedy. However, I believe this is particularly so with the loss of SP4 David J. Goldberg. He was a fine young man, loved dearly by his parents and wife. Though of a young age, he had already accepted the responsibilities of a man and had volunteered to serve his Nation during a time of war. This sense of responsibility, especially to his fellow soldiers, was one of the defining characteristics of his life. I have learned from the many who knew him and loved him that the specialist was always there for his fellow soldiers, frequently volunteering for extra assignments when others were not available. He will be greatly missed.

And so, another name has been added to Utah's List of Honor: SP4 David J. Goldberg. He joins an illustrious list that includes CPT Nathan S. Dalley, West Point graduate and a member of the Army's 1st Armored Division, SSG James W. Cawley, U.S. Marine Corps Reserve; SSG Nino D. Livaudais of the Army's Ranger Regiment; Randall S. Rehn, of the Army's 3rd Infantry Division; SGT Mason D. Whetstone of the U.S. Army and former Special Forces soldier Brett Thorpe.

Their names and the service they performed is something that I shall never forget. I shall always honor them and their families.

CPT NATHAN S. DALLEY, U.S. ARMY

Mr. President, on November 17, God called home one of our best and brightest, CPT Nathan S. Dalley. At the young age of 27, Captain Dalley entered the hallowed list of those sons and daughters of Utah who have given their lives for their country.

Captain Dalley epitomized what a soldier should be: a born leader, mindful of his responsibilities, and eager to help and encourage others. He was exceptional in many ways, yet a decent man that treated everyone with respect. You see, I had the honor of

knowing Captain Dalley. I was proud to nominate him to the United States Naval Academy; however, he decided to pursue his career in public service with the Army and attended West Point. It should also be noted that he was also accepted to the Air Force Academy; remarkable achievements by any standard.

While preparing these remarks, I went through my files and found these words from this young man's Advanced Placement History teacher, who wrote a nomination recommendation:

As impressive as [Nathan Dalley's] academic qualities are, I find his personal qualities to be even more impressive . . . His kindness and friendliness to everyone set him apart in the classroom, and in the larger school setting. In my class he was a remarkably effective cooperative learner and peer tutor. Nate understands that his contributions to the community as a whole are as important as his personal academic success, and I have every confidence that he will be successful in his future pursuits.

Captain Dalley not only met these high expectations, but exceeded them.

To his mother, his sisters and his fiancee, I would like to say that, although I have no words to minimize your grief, I hope there is some comfort in knowing that all who knew your son respected him and knew him to be a good friend.

I will never forget Nathan Dalley or the others from Utah's list of honor. Their sacrifice will make a difference, their will be freedom in Iraq, and those who would destroy liberty will be brought to justice. So today we add CPT Nathan S. Dalley to this illustrious list that includes SSG James W. Cawley, United States Marine Corps Reserve; SSG Nino D. Livaudais of the Army's Ranger Regiment; Randall S. Rehn, of the Army's 3rd Infantry Division; SGT Mason D. Whetstone of the United States Army; SP4 David J. Goldberg of the Utah-based 395th Finance Battalion, Army Reserve and former Special Forces soldier Brett Thorpe.

We will honor them always and stand fast behind their families.

PATENT CHALLENGE PROVISIONS OF THE MEDICARE REFORM BILL

Mr. HATCH. Mr. President, I rise to make a few comments about the historic Medicare legislation that President Bush signed into law yesterday.

I will center my remarks today on the provisions of the bill that amend the Drug Price Competition and Patent Term Restoration Act of 1984. I am a coauthor of the 1984 law and it is of particular interest to me. This law, often referred to as the Waxman-Hatch Act or Hatch Waxman, is of great importance to my fellow Utahns and the rest of the American public as it saves an estimated $8 to $10 billion for consumers each year.

Over the past 2 years, the Senate has spent considerable time and effort debating refinements to the 1984 law designed to close some loopholes that emerged and were exploited. While I would have preferred a more comprehensive reexamination of the statute with the goal of assessing how the law might be changed to facilitate new biomedical research and how best to disseminate the fruits of this research to the public in a quick and fair fashion, the amendments made to Hatch-Waxman made under the leadership of Senators GREGG, SCHUMER, MCCAIN, KENNEDY, COLLINS, and EDWARDS are very significant.

It has been my position for some time that once the Congress adopts and the President signs, as he did yesterday, Medicare reform legislation that includes a prescription drug benefit, pressure will grow on Congress and the Food and Drug Administration to find new ways to bring new biotechnology products to the public when the patents expire. The Center for Medicare and Medicaid Services will be compelled to look for ways to economize on the purchase of drugs and it seems likely to me that the Department of Health and Human Services will have to explore regulatory measures that can produce saving. The Commissioner of Food and Drugs, Dr. Mark McClellan, has indicated a willingness to examine this issue. Few, if any, of my colleagues in Congress have to date joined in the discussion surrounding whether and, if so, how to create a fast track approval system for biologic products, but I believe the bill signed into law yesterday will encourage this debate. I welcome this debate and recognize that very important public health matters are at its heart. As well, retaining America's worldwide leadership in biomedical research is at stake whenever we consider legislation that affects pharmaceutical related intellectual property.

We must proceed carefully but we must proceed. Critical to the success of this debate is a need to observe the principle of balance contained in the original 1984 law so that both research based firms and generic firms receive new incentives that will allow them to continue to produce and distribute the products that the American public deserves.

As more and more biological products come to the market, the pressures on the Federal Government, State governments, private insurers, and private citizens to pay for these products will result in considerable pressure to create a fast track FDA approval system for off-patent biological products. Such a mechanism was not discussed in the 1984 negotiations that resulted in Hatch-Waxman largely because the biotechnology was still in its infancy. This is not the case today. Few, if any, of my colleagues in Congress have to date joined the discussion surrounding creating a fast track approval for off-patent follow-on biologic products, but I believe the new law signed yesterday will encourage this debate.

As part of an appraisal of the laws relating to the development and approval of pharmaceutical products, I would also hope that my colleagues and the public will examine the full complement of incentives that Senator LIEBERMAN and I have included in our bi-partisan bioterrorism bill, S. 666. These incentives, which include day-to-day patent term restoration and a harmonization of the marketing exclusivity period to the 10-year term employed by the EU and Japan, will be helpful for the development of countermeasures to bioterrorist attacks and they should also be carefully considered with respect to developing new vaccines, diagnostics, and preventive and therapeutic agents for a host of other diseases and conditions.

With respect to the patent challenge provisions of the Medicare bill, I want especially to commend the efforts of Senator GREGG, Chairman of the HELP Committee and the Majority Leader, Senator FRIST, for working so hard to improve this legislation. There can be no doubt that the bill the President signed yesterday is a big improvement compared with the McCain-Schumer bill of last year, S. 812, that passed the Senate.

I must also commend my colleagues in the House including, Commerce Committee Chairman BILLY TAUZIN, Commerce Committee Ranking Democrat JOHN DINGELL, and my colleagues from the House Judiciary Committee, Chairman JIM SENSENBRENNER and Ranking Democrat JOHN CONYERS, and Intellectual Property Subcommittee Chairman LAMAR SMITH for their help in vastly improving the Gregg-Schumer-Kennedy amendments that passed the Senate by a 94–1 vote this summer.

As the sole dissenter in the Senate, I am pleased the conferees were able to work in a bipartisan, bicameral spirit to correct the constitutional flaw in the Senate-passed bill. I commend the Department of Justice for its work that helped dislodge the unconstitutional ''actual controversy'' language from the declaratory judgment provision of the bill.

I am also pleased that the conferees decided to reject the provision of the Senate bill that would have resulted in the so-called parking of exclusivity in cases in which a generic challenger could show that the patents held by a pioneer drug firm were not infringed or were invalid. In order to give an incentive for vigorous patent challenges, the 1984 law granted a 180-day head start over other generic drug firms when the pioneer firm's patents failed or were simply not infringed. As I will explain in some detail, I think there may be a way to improve this language further and to save consumers a considerable sum of money in the process.

The 180-day marketing exclusivity rules were first enacted as part of the Waxman-Hatch Act. The policy behind these provisions is to benefit the public by creating an atmosphere that ensure vigorous challenges of the patents held by innovator drug firms.

The intent of this section of the 1984 law was to award the 180-day head start