thank him for his kind words, and I am pleased that we are at the point where we are on this legislation this week. I look forward to both sides exercising constraint—we cannot let the perfect be the enemy of the good—and pass the good legislation that has been introduced and debated this week, with the understanding the House will accept it and the President will sign it into law.

We heard a fair amount already about the ills of class action lawsuits. Class action lawsuits, in and of themselves, are not a bad thing. Class action lawsuits give little people who are harmed, in some cases by companies, the opportunity—maybe not harmed in a way that the consumers, the little people, lose their eye, arm, leg, or life, but they suffer some kind of harm.

The idea behind class action lawsuits is to say when little people are harmed by big companies or others that those people can band together and present their grievances to an appropriate court, State or Federal, and for the people who are harmed to be made whole.

At the same time, it is important that when the plaintiffs are bringing a class action lawsuit against a defendant from another State, that the case be heard in a court where both sides can get a fair shake, the plaintiffs as well as the defendant.

If we go back over a couple hundred centuries in this country, we ended up with a law that the Congress passed that said if we have a defendant from one State and plaintiffs from another State, it is not fair to the defendant to have the case necessarily heard in the home of the plaintiffs. Someone may have dragged the defendant in across the State lines and put them in a courthouse or courtroom where there is a bias toward the local plaintiffs who brought the case against the defendant from another State, and in an effort to try to make sure that we are fair to both parties, those who are bringing the accusations and those who are defending against them, we have the Federal courts which were established in many cases to resolve those kinds of issues.

Unfortunately, we have seen an abuse of some class action lawsuits in recent years which led the Congress to begin debating this issue and considering legislation to address these abuses starting in, I want to say 1997, 7 years ago. The original problem that was discovered or was pointed out is this: There seems to be a growing prevalence of plaintiffs' attorneys who are forum shopping in State or local courts where the plaintiff class may have an inordinate advantage against the defendant. I will not go into the examples today, but there are any number of instances where one can see forum shopping has gone on, a State or a county courthouse has certified a class, agreed to hear a case, and it sets up a situation where the defendant company or the defendant knows they are going to have a hard time getting a fair shake in that courthouse. As a result, the defendant will agree to a settlement with the plaintiffs' attorneys. The settlement may richly reward the plaintiffs' attorneys for bringing the case, the defendant may cut their losses, but the folks on whose behalf the litigation was brought in the first place, those who allegedly are harmed, in many instances get little or nothing for their harm. That is not a fair situation. It is not fair to the little people on whose behalf the case has been brought. It is arguably not fair to the defendant because they are in a courtroom where they do not have a fair chance to defend themselves. It can be fixed, and it ought to be fixed.

The legislation before us today will not end the practice of class action lawsuits being litigated and decided in State courts. I believe the majority of class action lawsuits, even if this legislation is passed, which I am encouraged that it will, will still continue to be held in State courts, and they should be. We will have the opportunity to explain why that is true later on.

Before my 5 minutes expires, I conclude with this: There are any number of people on both sides of the aisle who would like to offer amendments to this bill. We have been working for 7 years to try to pass something that the House, the Senate, and the President will agree to. The time has come. To the extent that we make a change, whether it is in a Republican amendment or a Democratic amendment that might be offered, if we make a change, we invite the other side to retaliate and to offer their amendments and perhaps to adopt their amendments. For those of us who want to see this bill passed, I believe this legislation is about the fairest balance we are going to get, and I would encourage us to support it. We should consider and debate the amendments but in the end turn those amendments down.

I look forward to debating each of those amendments, and I hope in the end we can accomplish three things with this legislation: No. 1, make sure that where small people are harmed in a modest way, they have the opportunity to be made whole; No. 2, make sure that the defendants who are pulled into court on these class action lawsuits have a reasonable chance of getting a fair shake; and lastly, I am not interested in overburdening Federal judges. I think most of this litigation should remain in State court. I believe the compromise we have struck will do that. Those are our three goals, and I look forward to the debate that is going to follow.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:34 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

CLASS ACTION FAIRNESS ACT OF 2005—Resumed

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, it had been announced earlier that the Senator from Illinois, Mr. DURBIN, would be offering an amendment on class action, so we will await his arrival. In the interim, I will yield to my distinguished colleague from Utah, Senator HATCH, who has some comments and who will be managing the bill this afternoon.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what is the parliamentary state of affairs?

The PRESIDING OFFICER. S. 5 is before the Senate.

Mr. HATCH. Have no amendments been presented?

The PRESIDING OFFICER. Not yet.

Mr. HATCH. I ask the distinguished Senator from Massachusetts if he is prepared to submit an amendment. If he is, I would be happy to yield to him instead of making my comments.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I am going to send an amendment to the desk.

Mr. President, it is wrong to include civil rights in wage-and-hour cases in this bill. Families across the country are struggling to make ends meet. They work hard, play by the rules, and expect fair treatment in return, but they often don't get it.

Unfair discrimination can lead to the loss of a job or the denial of a job. It can keep them from having health insurance or obtaining decent housing. It can deprive their children of a good education. We can't turn a blind eye to that enormous problem. Those who engage in illegal discrimination must be held accountable.

That is why I am offering this amendment—to protect working families and victims of discrimination. Hard-working Americans deserve a fair day in court. Class actions protect us all by preventing systematic discrimination.

Attorneys general from 15 States—California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, and West Virginia—oppose the inclusion of civil rights in wage-and-hour cases in the bill. The problems that supporters of the bill say they want to fix don't even rise in civil rights and labor cases. No one has cited any civil rights or labor cases as an example of abuses in class action cases under the current law.

During the discussion of this bill in the Judiciary Committee and on the floor last year and during the committee's discussion last week, no one identified any need to fix civil rights or labor class actions. ''If it ain't broke, Congress shouldn't try to fix it.''

There is no good reason to include these cases in this bill, but there is an

excellent reason not to include them. This bill will harm victims of civil rights and labor law abuses by delaying their cases and making it much more difficult and much more expensive for them to obtain the justice they deserve. It may even discourage many from seeking any relief at all.

That is not what this bill was meant to do. We were told this bill was about cases in which individuals from across the country receive relief in State courts for relatively minor violations—sometimes getting just a coupon or a few dollars in a case they didn't even know about while a few elite attorneys receive more megadollar fees. Civil rights and wage-and-hour class action suits are not about minor violations. They are about serious, sometimes devastating harm to people who have been treated unfairly and are seeking their day in court; people such as Mary Singleton, a long-term employee at a scientific laboratory in California who joined a gender discrimination class action after her employer refused to give her and other female employees equal pay for equal work. Ms. Singleton and her coworkers filed their case in State court because State law provided greater protection against gender discrimination and retaliation and because the Federal court rules would have placed additional limits on discovery.

This bill would also harm people such as Georgie Hartwig who spent 6 years working at a national discount retailer in Colville, WA. For years, Ms. Hartwig and her fellow workers were forced to work off the clock, skipping breaks and lunch, but not being paid for their time. Now she is fighting, along with 40,000 coworkers, to get the wages they have earned. This bill was not supposed to make it harder for people such as Ms. Hartwig to get justice.

We were also told this bill would not shift cases to Federal courts unless they truly involve national issues, while State cases would remain in State court. The bill's actual effects are quite different. It does not just affect cases where the events affect people in multiple States; under this bill, a corporate defendant with headquarters outside the State can move State class action cases, including civil rights cases and worker right cases, into Federal court, even if all the underlying facts in the case happened in a single State. Think about that. If 100 workers in Alabama sue their employer under Alabama law for job discrimination that occurred in Alabama, this bill says the employer can drag their case into Federal court if the employer happens to be incorporated in Delaware. That makes no sense.

The bill would also apply to cases that seek justice for other strictly local events such as environmental damage. That is not what this amendment is about. This problem, which is affecting us now in Massachusetts, illustrates the fact that this bill is not just about truly national cases, as supporters keep insisting.

A case now pending in a Massachusetts State court illustrates how the bill deprives local citizens of access to their own State courts when they become innocent victims of widespread pollution occurring in their hometowns.

In April 2003 an oil barge ran aground on Buzzard's Bay off the coast of New Bedford, MA, spilling 98,000 gallons of oil into the bay and polluting almost 90 miles of beaches and sensitive tidal marshes in the area. Homeowners filed a class action suit in State court asking for compensation for the damage to their property. One of the defendants, Bouchard Transportation Company, has already been convicted of criminal negligence in causing the spill. The defendant companies are from out of State. Even though the case occurred entirely under Massachusetts laws, if the current bill, the proposed bill, had been in effect when the case was filed, this case could be removed to Federal court even though all the victims are full-time Massachusetts residents and seeking relief in Massachusetts courts under Massachusetts laws.

Because this bill is not retroactive, the case will not be affected by this bill, but with the passage of this act, similar future cases, properly brought in the courts of the State where the harm occurs, can be removed to the Federal courts. As a result, the victims will often be confronted by class action certification procedures more onerous than those in their State courts. They will face delays from congested Federal dockets. They will have to travel greater distances from their homes to the courthouse. The procedural changes in this bill seem abstract, but they will have a devastating consequence for real people.

First and foremost, it reduces each State's power to protect its own citizens and enforce its own laws. Moving these cases to Federal court will often end them for all practical purposes. Federal courts may decide they do not meet the Federal rules for class certification. Even if the cases are not dismissed, plaintiffs forced into Federal court on State law claims have the decks stacked against them in Federal court because Federal courts take the narrowest possible view in interpreting State laws. The First and Seventh Circuits ruled in interpreting State laws Federal courts must take the view that narrows liability. State judges should be the ones who interpret State laws, not Federal ''big brother.''

Often State laws have greater protections than Federal laws. That is the genius of our Federal system. Many States have stronger minimum wage laws and greater overtime protections than Federal law. Fourteen States and the District of Columbia have a higher minimum wage than the Federal standard. Twenty states have overtime laws that give workers greater protection than the Federal Fair Labor Standards Act. Over 20 States have child labor laws that are more protective than Federal child labor laws.

At a time when the administration is bent on undermining overtime at the Federal level, State law protections are more important than ever.

States are also pioneers in protecting civil rights. Many States, such as California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia, have greater protections for persons with disabilities than the Federal Americans With Disabilities Act. States are also in the forefront of protecting against discrimination based on family status or citizenship.

A majority of States prohibits genetic discrimination in the workplace, a new and troubling form of discrimination where the Federal Government has been too slow to respond. Our proposal, to prohibit genetic discrimination under Federal law, passed 95–0 in the Senate, but it stalled in the House. When States act ahead of the Federal Government to provide greater rights for their citizens, State courts should be allowed to interpret their own laws. State courts, not Federal courts, have the expertise in exerting the will of the State legislature and they should have the right to do so.

We all know what is going on. We should call this bill the ''Class Action Hypocrisy Act of 2005.'' Our colleagues love to proclaim States rights when Congress tries to expand the rights of law in all 50 States, but they do not hesitate to override States rights to help their business friends. This bill is a windfall for guilty corporate offenders. It even allows repeat offenders to drag State cases into Federal court and allows them to spend months litigating whether the case belongs there. If the Federal court decides that the case does not fit the narrow rules set by the bill and should be sent back to State court, that will cause another delay because the employer can appeal the decision. Delay is a serious problem today in many Federal trial courts across the country.

Paul Jones, an employee of Goodyear Tire Company in Ohio, found that out the hard way. He and other workers in their fifties filed an age discrimination case in the State court in Akron. All they wanted was to be judged by their ability, not their age. His attorney said, We file our class action lawsuits in the Ohio State court system because it is our experience these cases move much more rapidly in the State court than they would if filed in the Federal court system. The difference in the amount of time it takes to adjudicate a State court age discrimination case compared to a Federal court case may be as much as 2 years. No wonder the corporate defendants are salivating over this opportunity to escape the liability for their wrongs.

Paul Jones had a State law claim in State court, but his employer tried to have it dismissed based on Federal court rulings that certain types of arguments in age discriminations were invalid. The State court rejected that argument. It held that Mr. Jones could

proceed with his claim based on the disparate impact analysis, something Ohio's Federal courts did not allow. But a Federal court would have been much more likely to go along with the idea because Federal courts read the State law narrowly.

The delay from moving State cases to Federal court would be particularly harmful for low-wage workers who have no resources to fall back on when litigation expenses start to mount.

A letter by David Luna, Flora Gonzales, and dozens of coworkers who were housekeepers, cooks, and waiters at two luxury hotels in Los Angeles, makes the point. Their heavy workloads forced them to work through their meals and breaks.

They write:

[A]s cooks we . . . struggle to meet the hotel's 30 minute room service guarantee, yet we work through our own 30 minute meal breaks on an almost daily basis.

These workers are working to recover wages they own, but the corporate defendants have been trying to slow down the case by removing it to Federal court. The harm of such delays is very real to these workers, as they so poignantly described:

For some, delays in getting your day in court may be only an inconvenience. But we are modestly paid workers with physically demanding jobs. For us, delays mean that we must continue to work without breaks, our work days are harder than they should be, and we must wait longer to be paid the extra wages we have earned.

If this bill passes, big corporations will have free rein to use procedural maneuvers to delay these cases and deny these workers their day in court. Why should we make it harder for those workers to get their claims decided?

Abuses by large companies are widespread. Right now, class action cases are proceeding in State courts in Massachusetts, Minnesota, and California for hundreds of thousands of low-wage workers who were required by Wal-Mart to work extra hours ''off the clock'' without being paid for their extra time. It is wrong for Congress to side with the big guy.

These men and women deserve to recover their lost wages to pay their rent, pay their medical bills, and put food on the table. The longer they wait for justice, the heavier the burden on these workers and their families. And the Senate is about to tell them to take a hike? It is outrageous.

Supporters of the bill talk a lot about fairness. We hear that word again and again. It has even been put into the title of the class action bill. Labeling it ''fair'' does not make it fair.

Fair does not mean punishing those who are mistreated on the job. Fairness does not mean making it harder for honest working men and women to obtain justice when they have been cheated out of their wages. It does not mean denying victims of discrimination their day in court under the laws of their State.

It is wrong for Congress to side with corporate abusers and tell the victims of discrimination and unfair practices they cannot count on their own State courts to give them the justice they deserve. But that is what this bill is all about. At the very least, we should exclude civil rights and labor cases from its harsh provisions. I urge my colleagues on both sides of the aisle to support this amendment to protect these basic civil rights of hard-working Americans in communities across the country.

Mr. President, I received many letters from working Americans and victims of discrimination who support this amendment. I ask unanimous consent to have some of these letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC
Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC

DEAR SENATORS: We are writing to share our concerns about the Class Action Fairness Act, which would force workers with claims under state wage and hour laws to bring their suits in federal courts. Based on our own experience in trying to enforce state law labor protections in a class action lawsuit, we urge you to work to exclude wage and hour class action cases from this bill.

We work at the Century Plaza and the St. Regis Hotels, two luxury hotels in Los Angeles, California. We are housekeepers, cooks, room service waiters, bartenders, servers, mini bar restockers, valets, or work at other hourly jobs. We are employed by Starwood Hotels & Resorts Worldwide, Inc., which manages and operates these hotels.

Under California law, employees must be allowed two paid ten minute rest breaks and one half-hour unpaid meal break every shift. If employees cannot take their break, they are supposed to be paid an extra hour's wages.

At the Century Plaza and the St. Regis, workers are routinely unable to take meal and rest breaks either because no one is scheduled to relieve us or because our workload is so heavy that we cannot take the time off. We believe that Starwood has sought to boost profits by increasing our workloads and by reducing staff, which means we cannot stop working long enough to take our breaks.

For example, cooks in the Century Plaza room service department struggle to meet the hotel's 30 minute room service guarantee, yet we work through our own 30 minute meal breaks on an almost daily basis. Housekeepers at both hotels face quotas of up to 15 luxury rooms per day. Each room must be spotlessly cleaned and restocked, with towels and linens changed, carpeting vacuumed, and bathrooms left sparkling. We spend our entire shifts rushing to meet the hotel's high standards and often cannot rest until the end of our shifts. A Los Angeles Times article concerning the inability of housekeepers to take their breaks is attached for your reference.

Last fall, we filed a class action in California superior court seeking to enforce the state's laws regarding meal and rest breaks. By now, we expected to have completed initial hearings and be well on our way to preparing for our trial. But because our employer has moved our case to federal court and is trying to have it dismissed, we have been forced to endure delays.

For some, delays in getting your day in court may only be an inconvenience. But we are modestly paid workers with physically demanding jobs. For us, delays mean that we must continue to work without breaks, our work days are harder than they should be, and we must wait longer to be paid the extra wages we have earned. As our situation shows, delays are a significant burden to those seeking basic rights and a fair day's wage for a fair day of work. We urge you to work to keep state wage and hour class action cases in state court, where they belong.

Sincerely,

(SIGNED BY 85 EMPLOYEES)

MARY F. SINGLETON,
Truchas, New Mexico, February 2, 2005.

Attn: Judiciary Committee

Re Federal Class Action Legislation

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC

DEAR SENATOR KENNEDY: I am writing because I understand that Congress is considering legislation which might place certain limitations on class action lawsuits and require that many class actions be filed in federal court. As a woman who was the lead plaintiff and class representative in a gender discrimination lawsuit against a major employer in state court, I am concerned that such legislation will limit the ability of victims of discrimination and civil rights violations to adequately redress their grievances. I urge you to do what you can to preserve the rights of state citizens to pursue class action cases in their own state.

As a long term career employee of a large scientific research laboratory in California, I tried for many years to convince management to evaluate its compensation and promotional practices and take steps to correct long-standing and widespread disparities in salaries and promotions between men and women at the institution. When these efforts ultimately proved to be unsuccessful, five colleagues and I reluctantly decided that the only way that the civil rights of women at the organization would ever be addressed was through litigation. We retained counsel and filed a class action in state court, alleging violations of anti-discrimination law on behalf of ourselves and approximately 3,000 female co-workers.

My understanding from our attorneys was that we could have filed our case in federal or state court, since both have laws against employment discrimination. After considering the options, we decided to file in state court because we felt that it would provide a better opportunity to fairly and fully present our case. Among other things, because of the size and nature of the organization, we knew our employer would try to make the case very complicated, and that a considerable amount of ''discovery'' would be necessary, including a number of depositions. Our understanding was that the state court procedures would offer more flexibility in this regard, allowing our attorneys a fair opportunity to obtain the information necessary to present our case on behalf of the class.

In addition, we wanted to include claims based upon state laws because, in some respects, they provide stronger protection against discrimination and retaliation. Although we knew that we could include state law claims in a federal court lawsuit, our understanding is that federal courts may not be as familiar with state laws and may not be willing to interpret state law as opposed to rigidly apply past interpretations.

Yours very truly,

MARY F. SINGLETON

LAW OFFICE OF JOHN C. DAVIS,
Tallahassee, Florida, January 14, 2005.

Re: Proposed Legislation Federalizing Class Actions

Hon. EDWARD M. KENNEDY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: I am a lawyer working in the Florida panhandle doing employment and civil rights cases. I am class counsel along with Wes Pittman of Panama City in a certified class action against the Florida Department of Corrections brought by a class of hard working women who are health care providers and non-security personnel in the corrections systems. They daily serve the citizens of Florida by providing health care and other essential services to inmates. As a condition of their employment they have been subjected to unrelenting sexual harassment by certain male inmates. The Department has known of this for years and can stop the harassment, but has ignored and belittled their plight.

The Circuit Court in Washington County, Florida, certified this case as a class action and the Florida First District Court of Appeal affirmed that certification because they saw the injustice suffered daily by these courageous women. The case is reported at *Rudolph* v. *Department of Corrections*, 2002 WL 32182165, *aff'd*, 855 So.2d 59 (Fla. 1st DCA 2003). The lower court's opinion, which is published on Westlaw, describes in detail the facts of the case.

This case cried out for class action treatment because that is the only way to effect the kinds of change that will get the attention of the Department of Corrections. Individual cases rarely if ever effect change beyond the circumstances of the individual bringing the case. They are usually settled confidentially.

We filed this case is state court, however, because it would have had little chance in the federal court. The federal courts in Florida would not certify the case because of what can only be viewed as a profound hostility to these kinds of cases by the Eleventh Circuit Court of Appeals. Thus, absent a state court class action, there is simply no way that all of the individuals affected by the Department's practices would ever get relief.

Permitting employers to remove class actions like this to the federal courts will effectively deny any opportunity for the kind of systemic relief that results in real change. The irony that the interests driving this ill-conceived legislation are usually states' rights proponents shouldn't be lost on anyone. State courts are as well suited, if not better suited, to adjudicate these controversies.

This legislation will not promote justice and will upset the federal-state balance. If the legislation cannot be defeated in its entirely at the very least an exception to it should be made for civil rights and employment litigation. I strongly urge you to do all you can to defeat the legislation and continue to fight for the rights of working Americans.

Please do not hesitate to call me if I can do anything to help.

Sincerely,

JOHN C. DAVIS.

STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL,
Albany, New York, February 7, 2005

Hon. BILL FRIST,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. HARRY REID, Minority Leader,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER and MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, and West Virginia, we are writing in opposition to S. 5, the so-called ''Class Action Fairness Act,'' which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important ''private attorney general'' supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted effort to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL–CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. Class Actions Should Not Be ''Federalized''

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a ''citizen'' of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

2. Clarification Is Needed That S. 5 Does Not Apply to State Attorney General Actions

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's parens patriae authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the Attorneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator Pryor will be offering an amendment on this issue, and we urge that it be adopted.

3. Many Multi-State Class Actions Cannot Be Brought in Federal Court

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one State's law with sufficient ties to the underlying claims in the case, or by ensuring that a Federal judge does not deny certification on the sole ground that the laws of more than one State would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

4. Civil Rights and Labor Cases Should Be Exempted

Proponents of S. 5 point to allegedly ''collusive'' consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received ''coupons'' towards the purchase of other goods sold by defendants. Accordingly, this ''reform'' should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

5. The Notification Provisions Are Misguided

S. 5 requires that Federal and State regulators, and in many cases State Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against ''collusive'' settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-State defendants over whom subpoena authority may in some circumstances

be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other Federal and State regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our Nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our Federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York.

Bill Lockyer, Attorney General of the State of California.

Tom Miller, Attorney General of the State of Iowa.

G. Steven Rowe, Attorney General of the State of Maine.

Tom Reilly, Attorney General of the State of Massachusetts.

Patricia A. Madrid, Attorney General of the State of New Mexico.

W.A. Drew Edmondson, Attorney General of the State of Oklahoma.

Lisa Madigan, Attorney General of the State of Illinois.

Gregory D. Stumbo, Attorney General of the State of Kentucky.

J. Joseph Curran, Jr., Attorney General of the State of Maryland.

Mike Hatch, Attorney General of the State of Minnesota.

Hardy Myers, Attorney General of the State of Oregon.

William H. Sorrell, Attorney General of the State of Vermont.

Darrell McGraw, Attorney General of the State of West Virginia.

Mr. KENNEDY. Mr. President, I would like to anticipate some of the arguments that may be made by those who question whether cases based on truly local events would really be affected by the class action bill. Some have claimed that the bill will bring only national multi-State cases into Federal court, where they belong. They say it doesn't affect purely State cases, because it keeps class actions in State court if plaintiffs live in the same State as the defendant.

But in reality, the bill will move many State law cases to Federal court even if the people bringing the suit all live in the same State, and were hurt by a company doing business in that State. This is because the bill lets a case stay in State court only if the defendant is a ''citizen'' of the same State as the plaintiffs who brought the case, and companies are citizens of the State where they were incorporated, regardless of where they do business. As a result, plaintiffs who live in one State who file a case against a company with many offices in that State, would not be able to keep their case in State court if the company is incorporated somewhere else.

To show the scale of this problem, let's look at the figures. More than 308,000 companies are incorporated in Delaware, including 60 percent of Fortune 500 firms and 50 percent of the corporations listed on the New York Stock Exchange. Most of these companies also do business in many other States. But plaintiffs in those other States will not be able to file State cases against these companies without being dragged into Federal court. That violates the principle of simple fairness.

The bill lets corporations stay in State court when it's to their advantage. Businesses will still have their day in State court. But corporate employees whose civil or labor rights have been violated will be denied the same access.

Some have suggested that my amendment is not necessary because Federal courts have traditionally been protectors of civil rights.

It is true that our Federal courts perform the important job of protecting rights under Federal law and the U.S. Constitution. And my amendment will still allow those claims to be heard in Federal court. But in cases involving State civil rights or wage and hour laws, State courts should make these decisions. When States step ahead of the Federal government to give their citizens greater protection than Federal law—as several States have done in the area of genetic discrimination of discrimination based on marital status—State, not Federal courts, should interpret those laws. That is what my amendment would ensure.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened carefully to my friend and colleague from Massachusetts, and I do think he has a few things wrong. For instance, if the vast majority of the people bringing the suit are Massachusetts citizens, under this bill they have a right to bring it in State court, if they want to, although most civil rights cases are brought in Federal court because these are 14th amendment cases.

I remember years ago arguing on this floor on these issues, and, of course, the distinguished Senator from Massachusetts and others wanted these cases brought to the Federal courts because they were so afraid some of the State courts would not do justice in civil rights cases. They were right. They wanted them in Federal court. I do not blame them.

The Federal courts are made up of judges who are nominated and confirmed for life. Because of that, they should not have any political forces that would take them away from doing justice. In all honesty, nothing in this bill would stop Massachusetts classes made up wholly of Massachusetts citizens or even a majority of Massachusetts citizens from bringing these cases in State court, if they want.

One reason the Federal courts are so clogged is because of a wide variety of cases that are now being brought in Federal court, partly caused by people on both sides of the aisle. But there is no question Federal courts are not only good courts, by and large they are basically fair courts. And by and large they are basically very sophisticated courts. And by and large they apply, in these particular cases, the laws of the States in which the suits are brought—I might add, unless there are reasons from the Federal standpoint in applying otherwise.

Now, there is nothing in this bill that stops legitimate cases from proceeding. There is nothing in this bill that takes consumer rights away. There is nothing in this bill that will not give consumers or those who are injured a day in court. There is a lot in this bill to prevent some of the phony approaches that are taken by some in the legal profession who should be ashamed of themselves. This bill corrects those kinds of injustices, those kinds of excesses, those kinds of problems.

I urge my colleagues to vote against this carve-out amendment offered by my distinguished friend from Massachusetts, Senator KENNEDY.

This amendment excludes from the bill's existing jurisdictional provisions those class actions involving civil rights violations and class actions involving wage-hour disputes. But before I address the imprudence of carving out these types of cases, I would like to make it perfectly clear, as I think I have up to now, that S. 5 in no way impairs the substantive rights of litigants to bring, among other claims, civil rights and wage-hour claims. Some opponents of this bill seem ready to conveniently gloss over this critical fact in their efforts to pass bad information about what this bill does.

S. 5 is procedural in nature and simply moves larger interstate class actions to the appropriate forum where they belong in the first place: in Federal court. These class actions often involve the most money, parties from different States, and issues that transcend State lines. Yet by the same token, the bill preserves States rights to adjudicate truly local disputes on behalf of their citizens.

Now, those are facts. This bill does not take any rights away from anybody. But what we are trying to do is stop the forum shopping; in other words, finding jurisdictions that will render outrageous verdicts that basically benefit the attorneys, the lawyers, not the people for whom they are suing.

Well, let me say, first, an affirmative exclusion of civil rights cases from Federal jurisdiction runs counter to the bedrock principles of encouraging our Federal courts to adjudicate civil rights disputes. I remember, in days gone by, there was a demand that these cases be in Federal court because they are courts of primary jurisdiction under the Constitution and because, as a general rule, more justice was done.

I think this principle speaks for itself when you look at the plethora of Federal civil rights statutes extending protections against employment, housing, race, and gender discrimination. That is just to name a few. Indeed, the Federal courts' involvement with civil rights is so pervasive that Federal courts routinely hear claims brought under State civil rights laws. This is not unusual.

The Federal judiciary's extensive involvement in civil rights matters has also led to favorable results for civil rights litigants. Honest litigants are not going to lose in Federal court. It is just that simple. And they are probably more greatly protected because there is naturally less politics in Federal court.

Federal courts have a long record of certifying discrimination class actions and approving generous settlements in most of these cases.

Take, for instance, the recent Home Depot gender discrimination settlement which paid class members somewhere in the neighborhood of $65 million or the $192 million Coca-Cola race discrimination settlement in which each class member was guaranteed a recovery of at least $38,000 in cold hard cash. And, of course, there is the recent Federal court certification of the largest civil rights class action in U.S. history involving 1.6 million former and current female employees of Wal-Mart.

These are successful, proven results that belie any claim that Federal courts are somehow hostile to civil rights actions. In fact, it is laughable to now say that we have to have these in State courts when all these years we have been working hard to get these cases to Federal court so they would be adjudicated more fairly.

Some of those who support a civil rights carve-out also contend the Federal courts are overworked and incapable of handling such matters, that the State courts are better equipped. Give me a break. We have heard this concern raised repeatedly from opponents of this bill who apparently believe that if they say it enough times, the proposition may somehow turn out to be true and, at the very least, to minimize the significant deficiencies in our State courts. These critics claim that it takes 5 years to get a class action to trial in Federal courts. But do they have the raw data to back these claims? Of course, they don't.

In reality, the median time for final disposition of a civil claim filed in Federal court is 9.3 months, and the median time to trial in a civil matter in Federal court is 22.5 months. Moreover, what some of the critics hide is the fact that the State courts have experienced a much more rapid growth in civil filings than have the Federal courts. Civil filings in State trial courts of general jurisdiction have increased 21 percent since 1984, and there are delays in many State courts on civil actions that are longer than they are in Federal court.

As for filings in some of the more notable magnet State court jurisdictions, let's look at some of the figures. Just look at this chart. The number of class actions filed in State courts have skyrocketed in State courts under current law. Take Palm Beach County, FL. It has gone up 35 percent between 1998 and 2000. In Jefferson County, TX, a notorious jackpot jurisdiction, it has gone up 82 percent. In Madison County, IL, another notorious jackpot jurisdiction—in other words, a jurisdiction where defendants don't have a chance because of politics and moneys donated to judges from the trial lawyers in that particular jurisdiction, primarily—over 5,000 percent between 1998 and 2003. Why? Because it is a county that is out of whack. If the plaintiffs' attorneys can get cases in Madison County, they are going to get big verdicts, outrageous verdicts for people who aren't even sick, people who don't even have problems in some cases.

The overall increase in State courts is 1,315 percent. So don't use that argument. If you add the fact that State courts are almost always courts of general jurisdiction where they hear matters ranging from traffic violations to domestic disputes, I think you get a pretty clear picture of what our State courts are faced with in terms of workload.

As a final point, I would like to note that the Judiciary Committee soundly defeated this very amendment of the distinguished Senator from Massachusetts during markup last Congress. We reported the bill in a bipartisan 13-to-5 vote in this Congress. The committee voted against the civil rights carve-out on a solid bipartisan basis and understood the inherent problems with this amendment. This amendment lost footing in committee and should not gain traction here.

The second carve-out excludes wage and hour or timesharing claims from the bill. These are actions brought by employees against their employers for violating wage and hour restrictions imposed under applicable labor laws. While these actions are certainly important for working Americans, there is no principled basis to exclude them from this bill, not one principled reason.

Again, let me be clear about S. 5. This bill in no way affects the substantive rights of these workers to seek redress for these wage and hour claims. In other words, employees who bring wage and hour claims against their employers will still have the exact same rights they do now if this bill is enacted. The only way the bill could possibly affect these cases is by moving them to Federal court. But what the proponents of this amendment overlook is that if a wage and hour case meets the interstate criteria of the bill, then there is absolutely no reason to exclude them from Federal court. It makes no difference if the case involves a defective product, a false advertising claim, or a breach of warranty. If the class action lawsuit involves parties from different States and involves a large amount in controversy, regardless of whether the claims are predicated on State law, then the case should be heard in Federal court. This is why we have diversity jurisdiction in the first place, and it is certainly what the Founding Fathers had in mind when they drafted our Constitution.

I urge my colleagues to vote against this amendment. It establishes bad policy and is nothing more than yet another attempt to weaken the bill. This amendment, including all other carve-outs, for that matter, also flies in the face of the bipartisan compromise that is now embodied in S. 5. I intend to honor this compromise and encourage my colleagues to do the same.

Let me just say, it is unseemly to claim that the Federal courts are not as good as the State courts. And it is even worse to claim that the Federal courts should not have jurisdiction in these matters. The fact is, we have provided through the Feinstein amendment language that permits certain cases to be in State courts. But when they get to the size of the 100 or more in a class and over $5 million, these cases have to be brought in Federal court. And the reason is because of these jackpot jurisdictions that I have been pointing out that really do not do justice and are not fair.

Earlier, the distinguished Senator from Illinois was talking about how few cases are filed in Madison County, IL. What he doesn't tell you is that the minute the lawyers start talking about a class action and they send a demand letter, the companies know they are dead if the case is brought in Madison County, IL. No matter how right they may be, they are dead because the judges in that particular jurisdiction are in the pockets of the local lawyers with whom the out-of-State lawyers who have these class actions align themselves in order to go in there and get these outrageous verdicts that would not be obtained in any fair court of law.

So what do the companies do? They have no choice. They will settle for what they estimate the defense costs to be because why should they take a chance on jackpot justice? And it then becomes, in the eyes of many, a broken system of extortion, extortion by attorneys, extortion by the judges over companies that probably have little or nothing to do with Madison County, IL, but because of the current system, wind up there, either getting staggered with unjust judgments or doing what prudence tells them they have to do, and that is paying whatever they estimate the defense costs to be to get rid of the lawyers. It comes as close to legal extortion as anything I have seen.

That is what we are trying to solve here. It doesn't take away anybody's rights. It just means they will have to prove their case in Federal courts. And Federal courts are very competent courts. Judges are appointed for life. They are less political, although every

once in a while you see some politicization of Federal court, but nothing like these jackpot justice jurisdictions that are constantly used by some of these unscrupulous lawyers to get outrageous verdicts so they can collect great big fees.

Yesterday, we talked about coupon settlements—the lawyers get huge fees and the person winds up with a $5 coupon that is meaningless. That doesn't mean that some of these cases are not valid, but they could just as easily be won in Federal court, if they are valid, as they can in State courts, but not as easily as in these jackpot justice jurisdictions where justice is denied. We can throw around big corporations all we want, but businesses in this country are not all big and, even if they are, they deserve to be treated justly.

That is what our court system should be doing. It should not discriminate against them because they are large corporations. If they are fair and right, they should be treated just as fairly and rightly as anybody else.

We have come close on this bill now a number of times, very close. In November of 2003, we struck a deal that gave the Class Action Fairness Act the requisite number of votes to pass even if the bill was filibustered. We got the votes, guaranteed up to 62. It was a bipartisan compromise that allowed us to reach this commonsense agreement. Believe me, this compromise does not satisfy everybody or, for that matter, doesn't satisfy anybody.

The fact is, it is what it is—a bipartisan compromise. If I would be permitted to write the bill the way I think it should be done, I think it would be perfect, and others in this body would feel the same way. But we have worked out this bipartisan compromise and we need to stick with it.

Senator CORNYN explained this morning why he believes the bill should go further in correcting abuses in the current system, and he explained how he would fix some of these problems legally. He is not wrong, by the way. He also said he would not advance these amendments at this time because he understands the complex dynamics in arriving at the compromise bill. We have been at this for the last 6 years. That is how long we have tried to get this bill through. This bill is not perfect, by any stretch of the imagination. No bill is around here, because we have to work with 535 Members of Congress. Depending on your perspective, this bill either gave away too much or not enough.

The fact is, this bill is just about right and it is time to get it done. We know we should get it done. A supermajority of those in this body should get it done. But nearly a year and a half after we struck a deal to get it done, a series of amendments are still being offered that would scuttle this bill and, unfortunately, the amendment by the Senator from Massachusetts happens to be one of them. Let us get down to the brass tacks. It is rug-cutting time. If any amendments upset the essential compromises that have been negotiated over a long period of time, this bill will not become law. The purpose of these amendments is not to improve the bill but to destroy it. The House of Representatives will not agree—they have made it super clear—to a bill that includes amendments that gut this bill's modest and reasonable reforms. I have to say I don't blame them. They have seen this process for the last 6 years. The American people have waited for this reform for far too long. I should remind my colleagues that if we fail our constituents at this time, the memory of the American people is a long one.

I will speak today about a number of amendments that will likely be offered. In my opinion, and in the opinion of those most familiar with the bill, these amendments are poison pills, and everybody knows it. These amendments were not part of our discussions with Senators SCHUMER, DODD, and LANDRIEU that resulted in the current bipartisan legislation. I don't mean to limit it to them. There were a whole raft of Senators on both sides of the aisle.

I will repeat that for emphasis. We had a deal. None of these amendments were part of this deal. What happened to the days when a deal was a deal? These amendments are quite literally being offered at the eleventh hour and I think for a purpose other than to improve the bill.

Let's be honest about it. Consumers, plaintiffs, and others who have rights are not going to be foreclosed from vindicating their right in a court of law. It is just that they are not going to be able to take these cases—and certainly outrageous cases—to these jackpot justice jurisdictions where justice is denied any longer—except under some loophole exceptions in this bill. But the vast majority of the problems should be solved by this bill. There are a lot of people out there who have been very badly mistreated because of the current broken tort process, who are praying we will be able to get this bill through.

Let me make this clear. If we add one of these amendments, I think the bill is dead again, even though it has had 62 prime sponsors—people who will automatically vote for this bill and who understand the game here is to get a bill out that will do some justice in this country and stop some of the jackpot justice that has been going on.

I don't mean to denigrate anybody's amendment, but let's be fair and make it clear that this bill does not take away rights. This bill enhances rights for both sides, and not just for plaintiffs but also for defendants. So fairness in the tort system will be brought back to the forefront. In the case of civil rights and wage-and-hour disputes, look, for years we have argued they should be in Federal court. Now, all of a sudden, they don't want them in Federal court. All you can do is surmise: why is that? I think everybody knows why.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, it is always a pleasure for me to hear Senator HATCH discuss legal issues. He has had great experience with them over the years, in the long time he has served on the Judiciary Committee and as a lawyer in his own right. I think he summed up the situation we are in and I thank him for doing so.

Actually, I believe that those who are seeking class action reform have been very generous in reaching out to people who had some doubts to try to gain their votes in support, to make sure no one is hurt in any unfair way through the passing of this legislation. We are now at a point where the time has come for us to pass class action reform.

I do not believe, and have never believed, we should be in the business of eliminating class actions. They are not a bad thing in themselves. Class actions, in fact, serve an important purpose. In many instances, they are the only viable form of relief, where an individual has claims that are so small it would not be economically feasible for an attorney to take an individual's case; but maybe thousands of people have been unfairly treated in the same manner and an attorney can bring one case and everybody can be compensated and the system can work very effectively. That is the whole theory behind class actions. It has always been a good process under certain circumstances, but we have always known it could also be abused. For the most part, I think Federal courts have done a good job handling those cases. Many State courts have done a good job of handling those cases, but is now a pattern by which some attorneys have learned to pick and choose States, even counties, where there may be only one judge, and they know how that judge thinks about these cases, and they file the class action lawsuit there. The fact is that most nationwide class actions can be filed anyplace in America—it makes sense that lawyers, therefore, chose to find the most favorable forum they can find in the entire United States. That is selective choice of forum. There are other problems that arise with class actions, problems which have been around for a long time. We have come to understand them and we need to do something about it. We can do something about it. It is the right thing to do. It will improve our system of justice.

The Class Action Fairness Act does not close doors to class action plaintiffs; rather it opens doors to fairness in this entire process. I agree with those who have said that the bill does not go far enough. I think there are going to be many opportunities for clever attorneys to draft complaints and conduct their litigation in a way that would avoid being covered by this

act, when in fact they ought to be covered by this act. Senator CORNYN has made a number of those suggestions, and I have made some of those suggestions. But the perfect, as they say, can be the enemy of the good.

An agreement has been reached that people feel comfortable with. I have been prepared not to offer a lot of amendments so we can get this bill to final passage and quick approval and end the years and years and years of debate on this matter that we know we ought to deal with.

As you look about and review what you hear and see who is making comments on it, some of the things your read on the issue appeal to you. Let me tell you about a Washington Post editorial I read a few years ago that summed it up the class action issue quite well. Politically, the Washington Post is a Democratic paper, a liberal newspaper. But their editorial writers made some very important points that I agree with. They said this:

Congress' first priority in the world of civil lawsuits should be to change the rules of class actions.

In other words, of all of the problems we have in litigation, the one this Congress ought to deal with first is class action lawsuits.

When working properly, class actions are an important component of the American legal system, one that allows efficient court consideration of numerous identical claims against the same defendant.

In practice, no component of the legal system is more prone to abuse.

Their analysis is that there is no component of the American legal system more prone to abuse than class actions.

For unlike normal lawyers who are retained by people who actually feel wronged, class counsel, having alleged that a product deficiency caused some small monetary damage to some discernible group of people, largely appoint themselves.

In other words, a lot of people have difficulties, and the class action lawyer may discover what he thinks is a wrong. Then he appoints himself to be the righter of that wrong. Then he goes out and identifies a class. He does not talk to the individual clients, as lawyers do in a normal situation; he appoints himself to take on these cases.

The clients may not even be dissatisfied with the goods and services they bought.

They may not be unhappy at all.

But unless they opt out of a class whose existence they may be unaware, they become plaintiffs anyway.

I heard a Senator recently say he was involved in a class action, and the person who was being sued was a friend, and he did not even know he was involved.

Continuing to quote:

Class actions present almost infinite venue shopping.

Infinite venue shopping, that is what I was saying. We have had lawsuits filed in Alabama. We have seen identical lawsuits filed in Mississippi. We have seen them filed in Madison County, IL. Why? Because a plaintiff in a large action that involves people throughout the United States under current law can choose their place to file the lawsuit. When they get an appeal, it goes to the State of Illinois, Mississippi, or Alabama's appellate courts, their supreme court, for final review. That is a legitimate concern and a matter that impacts people throughout the United States.

National class actions can be filed just about anywhere, and they are disproportionately brought in a handful of State courts whose judges get elected with lawyers' money.

This is the Washington Post I am quoting. It is the same thing Senator HATCH indicated earlier. It is the reality, unfortunately.

These judges effectively become regulators of the products and services produced elsewhere—

Not even in their county or State—

and sold throughout the Nation. And when cases are settled, the clients get token payments while the lawyers get enormous fees.

I am continuing to quote from the Washington Post:

This is not justice. It is an extortion racket that only Congress can fix.

That is, unfortunately, the sad truth too often.

Some years later now, Senator FRIST has made this Class Action Fairness Act his first civil lawsuit priority. I know there are some who see this bill as a moving train and they would like to add this or that provision as a caboose to that train, but I hope we will exercise restraint and pass a clean bill without amendments.

I know some have legitimate concerns and others want to put on poison pills. They want to adopt amendments that will cause so much controversy that it can end up killing the entire bill. In my view, anything that does not make this bill stronger is a poison pill. We do not need to, and must not, weaken this bill in any way. I have seen very few amendments that are being offered that will make it stronger.

I believe in America's legal system. The Senator from Florida, the Presiding Officer, believes in our legal system. He believes in the right of people to sue in court and have redress for all and has given a lot of his professional life to that cause. But for the most part, we do have outstanding judges on Federal and State benches. They manage their dockets well and rule justly. There are some problems, however, that Congress must resolve. The class action problem is certainly one of them.

To the extent possible, I believe that the courts have reached a limit on what they can do through judicial interpretations to resolve the issue. There was a time when ''drive-by'' class action certifications were par for the course, and class actions were certified without notice being given to the defendant even. Those times, have been eliminated for the most part by judicial ruling, in part, I believe, because of the Supreme Court decision in the Amchem case where the Court made clear that even in conditional certifications, rigorous analysis is required to certify a class and must be conducted.

This ruling had far-reaching implications and limited the ability of plaintiff lawyers and the defendant companies to engage in collusion to the detriment of whom? The class. Don't you think in these odd cases where the lawyer does not even know the members of the class he represents that ethical concerns are implicated? The situation simply is this: You sue a big company, you allege lots of problems, you talk with their lawyers, and a wink and a nod occurs and you say: We will give coupons to the people I am alleging to be victims, but you have to compensate me as a lawyer for all this time I have spent in it; how about $10 million?

The defendants go back and say: If we pay the lawyer $10 million and we pay the coupons to these people—most of them will never use them—this will get us out of the lawsuit. Yes, it is too much money to pay the lawyer, but we will get it over with. Let's do it.

Who is looking out for the class members, the people in whose name the lawsuit was brought? The answer is no one.

These problems, unfortunately, are not currently subject to being settled by the courts or handled by the courts. I believe this legislation will take a strong step toward fixing that kind of problem.

There are some who will argue that reform is not needed and this legislation is even unfair. Let me ask this: Is it fair to be a member of a lawsuit of which you are unaware and do not even know you are a party to it? Is it fair to receive a coupon settlement that basically requires you to do business with a company that presumably cheated you in the first place? Is it fair to lose money even though you prevail in the underlying lawsuit? And there have been instances—cases such as the infamous Bank of Boston case—where plaintiffs, not even knowing they are a member of the lawsuit, have had their bank accounts debited to pay for their portion of the attorney's fees—sometimes their portion of the attorney's fees is much more than the small coupon or monetary amount they received as part of the settlement. That is simply not right.

These questions of fairness represent the current status of many class action lawsuits. In my view, there is nothing fair about the answers we just mentioned. When we approved modifications to rule 23 not too long ago, one of the primary goals was to ''assure adequate representation of class members who have not participated in shaping the settlement.'' After all, if the settlement is going to bind the class member, it would seem they should not only be adequately represented, but they

would be aware of the terms of that settlement and the compromises that were involved in making the settlement. We can achieve fairness and several other logical goals such as that with this Class Action Fairness Act.

That class actions are beneficial is not in doubt. They serve to the benefit of America by limiting the number of times you have to try the same issues in separate places, in differ courts with different judges.

They serve the interests of consistency and finality by avoiding inconsistent outcomes in separate trials where the cases revolve around identical claims. They are to serve the interests of the class members, however, but that is, in fact, not the outcome of too many of these cases and therefore we need to reform this system.

So what we would strive to do with this legislation is to make the plaintiffs the real beneficiaries of such a lawsuit. It will provide protections to class members, such as limiting the ability to award coupon settlements and preventing class members from being harmed twice, once by the defendant company, and the second time by class action settlement.

I believe we can make some great progress with this legislation if we keep it clean. I hope we can exercise restraint and that we can do just that.

Some have said Federal Government has no business with these lawsuits. As a person who does believe that States have constitutional rights and they have presumptions that cause us in Congress to be reluctant to violate either explicit constitutional requirements or to violate maybe presumptions or indications or contemplations of the Constitution, I am extremely cautious about expanding federal jurisdiction in Constitutionally questionable ways. But I do not believe this bill expands federal jurisdiction in any way that is Constitutionally questionable. I would like to read what the Constitution says about diversity and where a case of this kind should be tried. Article III, section 2 of the Constitution, talks about the power of Federal courts and what their jurisdiction is. This is the power given to Federal courts by the U.S. Constitution at the beginning of our Republic. It states: ''The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution''—disputes of the Constitution—''the Laws of the United States . . .''—involving laws that we passed explicitly in Congress 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 . . .''

So our Founding Fathers thought seriously about this and stated in the Constitution that if there is a lawsuit filed between people from different States, there needs to be a neutral forum in which to try the case. If there is a person from Alabama and a person from Massachusetts suing one another, the person from Massachusetts might not feel comfortable being tried in Alabama, and the person from Alabama might not feel comfortable being tried in Massachusetts. That is what they put it in there for.

The home State plaintiff would always want to choose a more favorable forum. Perhaps he would choose his own State, would he not? That is what our Founding Fathers were concerned about.

In football, we call it ''home cooking.'' The Founders sought to prevent ''home cooking'' of lawsuits by putting Federal jurisdictional rules into the Constitution for these kinds of cases. Cases involving citizens of different States were intended from the beginning to be tried in Federal court where judges are not elected but serve lifetime appointments and are answerable to the U.S. Supreme Court, not to any one State court. That is the theory and it is important.

There are counties in Alabama where I personally know all the judges. I go to church with some of them. So if I am going to sue somebody, I am likely to choose a place where I would have the man who is in my church supper club try my case. Well, maybe they will strike him for cause, but what about his brother, who could also be a judge? My friend who is a judge might say to his brother: Jeff is a good boy, make sure you give him a fair trial. Whether we like it or not, these kinds of things are reality, and that is what the Founders had in mind when they wrote the Constitution. That is why when there is a group of plaintiffs being represented by a lawyer that may not even know their names, this lawyer is going to look around and try to file the case where he thinks he can have the best chance of success.

As a matter of fact, I do not even dispute him or her making that choice. That is what lawyers are paid to do, to find the best place to file the lawsuit.

That is taught in law school. They ask, well, where do you want to file a lawsuit?

Well, I think it would be better to file in Federal court.

Then one is taught to study the case and justify filing it in Federal court. Or maybe a lawyer thinks it is better for his client to file it in State court. Lawyers are taught they should file the case where it is best for their client. I do not blame the lawyers. They are using the law as we have now configured it.

I say it is our responsibility to look at the judicial system. If we love it and care about it, respect it, and want it to be better, we will continue to look at the legal system, and if the legal system has a problem, it is our duty to examine how to fix it.

We have spent years now determining how to fix class action problems. We have a bipartisan coalition in this Senate that has come together and is prepared to support this legislation. I say let us do it. Let us observe how the system is working. From that observation, we can realize that it can be made better. Let us step up to the plate and fix it.

I thank the Chair and the Senator from Utah. It is a pleasure to work with him, Senator GRASSLEY, and Senator SPECTER, who have all worked so hard on this legislation.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I notice the distinguished Senator from Wisconsin is in the Chamber, but I would like to make a few more remarks if he does not feel too badly about it.

I support this bill. I have been working on it for 6 years. It is a grand compromise. We have Democrats and Republicans. It is bipartisan. It is not perfect, but it is as good as we can do and it will do an awful lot of good.

The evidence is clear and undeniable; the well-documented abuse of the class action litigation device too often ends up victimizing plaintiffs, the very people that class actions are supposed to benefit.

These abuses cheat millions of consumers who unwittingly have their legal rights adjudicated in local courts thousands of miles away. They deny the due process rights of defendants who are relentlessly hauled into a handful of small county courts where the playing field is unfairly tilted in favor of the personal injury bar, the plaintiffs' bar.

If that were not enough, class action abuses are eroding public confidence in our civil justice system. When abuses do occur in the class action system, the public can ultimately pay dearly through spiraling prices, lost jobs, and even bankrupt companies.

I have been listening to arguments from the other side, but to give the class action problem some perspective, I want to consider just the effect of this litigation in one locale, Madison County, IL. There we find a case study in rampant misconduct within the class action system, its corrupting effect on the courts, and the desperate need for reform.

This small county in the southwestern part of that State provides all the evidence necessary to convince anyone that the legal system is currently being exploited by shameless and self-seeking plaintiffs' lawyers. Madison County, IL is a rural county. I imagine it is the type of county where maybe Abraham Lincoln first got his start as a young lawyer and an advocate for justice.

In some notes perhaps taken in preparation for a law lecture around 1850, Lincoln set the ideal for his profession, a profession practiced by many in this Chamber, including myself.

No. 1, ''Discourage litigation . . . Point out how . . . the nominal winner is often a real loser—in fees, expenses, and waste of time.''

No. 2, ''Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more

nearly a fiend than he who habitually overhauls the register of deeds in search of defective titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it.''

And No. 3, ''An exorbitant fee should never be claimed.''

These words were uttered during a time when being a lawyer automatically carried with it a title of honor, integrity, and trust.

Unfortunately, Lincoln's words no longer carry much meaning for some of the lawyers who have descended on Madison County. In the land of Lincoln, the rule of law has too often been corrupted almost beyond recognition by self-interested plaintiffs' lawyers and seemingly pliant public officials. Some unscrupulous personal injury attorneys go forum shopping to find friendly jurisdictions. Certainly Madison County, IL is one of them.

Then some judges in those jurisdictions, some of whom are compromised by campaign contributions from the very same law firms arguing in their courtrooms, sometimes certify these cases with the proverbial rubber stamp, even though they are not worthy of being certified.

Finally, sympathetic local juries trying out-of-State corporations have sometimes bestowed unjustified and sometimes outrageous awards. This pattern of behavior is not only an affront to the due process rights of defendants, but it breeds disrespect for the rule of law itself.

I have heard colleagues on the other side of the aisle say, 'Well, these are big corporations.' First, they aren't all big corporations, and second, even if they were, they still deserve fair treatment, due process, and an impartial justice system.

And make no mistake about it. These suits are not free. We all pay for them. The American consumer pays for the costs of these class actions.

The courthouse in Madison County, IL is what scholars now describe as a magnet court. Always on the lookout to find suitable venues for enriching themselves, entrepreneurial plaintiffs' attorneys—many of whom practice in the field of personal injury—are sucked into its orbit. The numbers alone tell the story. Over the last 5 years the number of class actions filed in the county has increased by 5,000 percent.

Let me repeat that so that astronomical figure can sink in. A 5,000-percent increase. It almost defies logic that so many national class actions are being brought in this small rural county.

In 1998, there were only two class actions filed in this county. In 2000, that number rose to 39. In 2001, there were 43 new class actions. One year later, the bridges leading to the riches of Madison County were clogged with carpetbagging lawyers as word hit the street that the local court there was giving away money as though it was Christmas morning. Enterprising plaintiffs' lawyers looking to make a quick buck knew Madison County was the place for business.

In 2004, 77 class action suits were filed. In 2003, there were another 106. Between 1998 and 2003, the number of class actions in the county rose from 2 to 106 per year. In the last 4 years, the lawyers who flocked to Madison County succeeded in having the following cases certified.

All Sprint customers in the entire Nation who have ever been disconnected on a cell phone call. That is a class action in Madison County.

Every Roto-Rooter customer in the country whose drains might have been repaired by a nonlicensed plumber.

All consumers who purchased limited edition Barbie dolls that were later allegedly offered for a lower price elsewhere.

These are just three examples of the abuses that are going on.

I know my friend from Illinois, the minority whip, Senator DURBIN, is understandably protective about the state of affairs in Madison County. He points out that while many class actions are filed in Madison County, few are certified. It does not take a lot of cases like the ones I talked about to create an environment that encourages cases that are marginal at best. Through their increased filings, class action attorneys tell us a great deal of what we need to know about Madison County. That many of these cases are settled upon filing or even before they are filed tells us a lot. A demand letter from a class action attorney with a Madison County address is a dreaded piece of correspondence for any company or any defendant. If these types of cases were not such a drain on our economy, it would almost be easy to laugh at some of these cases.

We question the efficiency and fairness of a small county courthouse in Illinois adjudicating cases against national companies involving various State and Federal regulations and involving millions, if not billions, of dollars in settlements where neither the majority of plaintiffs nor the defendants are typically residents of the county. These locally elected judges, with the close assistance of interested plaintiffs' attorneys, in effect set policy for the entire Nation, defying the principles of self-government on which our Federal system is based.

This situation is a colossal mess, and a few plaintiffs' lawyers are exploiting it to the hilt, and giving all of us who love the practice of law a bad name.

The same five firms appeared as counsel in 45 of all cases filed between 1999 and 2000. Of the 66 firms appearing in these cases, 56 of them—85 percent—had office addresses outside of Madison County.

In this small county, with a population of only 259,000, there are somehow more mesothelioma claims from asbestos exposure than in all of New York City with its population of better than 8 million. One nine-member firm with an office in Madison County claims to handle more mesothelioma cases than any firm in the country.

Who benefits from all of this litigation? One Madison County judge approved a $350 million settlement against AT&T and Lucent for allegedly billing customers who leased telephones at an unfair rate. What did the lawyers get? Forty-four lawyers from four firms will split $80 million for legal fees and $4 million for expenses. And the customers? They actually lost money. After their legal fees, the average class member got hit for $6.49.

Think about that.

Lincoln's principles are a distant memory in Madison County. The Washington Post succinctly described the situation. ''Having invented a client, the lawyers also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country.''

And those lawyers often pick Madison County. They are picking it because it is what some call a magic jurisdiction.

Let me refer to this chart, called ''Magic Jurisdictions.'' This is Dickie Scruggs, one of the best plaintiffs' lawyers in the country, a man I have great respect for. But in a luncheon talk on the asbestos situation at a panel discussion at the Prudential Securities Financial Research and Regulatory Conference on May 9, 2002, he had this to say. This is Dickie Scruggs. You can believe him. This man understands the litigation field. He is a billionaire from practicing law. He said:

> What I call the ''Magic Jurisdictions'' is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected. They are State court judges. They are populists. They have large populations of voters who are in on the deal. They are getting their piece, in many cases. And so it's a political force in their jurisdiction and it's almost impossible to get a fair trial if you are a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money. The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is.

That is one of the leading plaintiffs' lawyers in the country. He was honest enough to call it the way it is in Madison County. Madison County is not the only jackpot jurisdiction, but I am concentrating on it since the distinguished Senator from Illinois has focused his remarks on our criticism of this jurisdiction.

Dickie Scruggs is a fine lawyer. I have said that. I worked with him on the tobacco settlement. He and Mississippi Attorney General Mike Moore did a good job for their clients and the American public. I am very familiar with what they did. I am familiar with the Castano Group as well, which

risked millions of dollars to bring the tobacco suits. They had an entire multifloor building filled with documents they accumulated at the cost of millions of dollars to make their case in the tobacco suits.

Dickie Scruggs is a fine lawyer. So is Mike Moore. So are the Castano Group lawyers.

Having said that, there is a reason the Super Bowl is held at a neutral site. It is clear that Madison County is not a neutral site. When it comes to class action defendants trying a class action case in Madison County, it is like shooting fish in a barrel.

Dickie Scruggs is simply too good of a lawyer to need any unfair advantage and that goes for the vast majority of plaintiffs' attorneys in our country. But there are a minority of lawyers who are causing the vast majority of our problems.

What makes for a magical jurisdiction? In a magic jurisdiction, the supposedly objective judges and jury, all stand to gain from a settlement. Madison County, as the Chicago Tribune notes, is a jackpot jurisdiction where local newspapers ''sport advertisements looking for the local plaintiff that can provide a convenient excuse to file.''

Some have concluded that this choice of venue might have something to do with the fact that in recent years the elected judges of the circuit court of Madison County have received at least three-quarters of their campaign funding from the lawyers who appear before them in these class action suits. In a simpler time, the State court would only certify a class if there was a substantial local connection. Some of the judges in Madison County have created an environment where a lifelong resident of Washington State, who worked in Washington, was allegedly exposed to asbestos in Washington, never received medical treatment in Illinois, and had no witnesses in Illinois to testify in his behalf, actually thought it was worth a shot to bring suit in a strange town halfway across the country. What was his connection to Madison County? He vacationed in Illinois for 10 days with his family nearly 50 years ago.

In this case, the court did the right thing and refused to certify this man's claim. But that a lawyer would even consider bringing it shows how far gone Madison County is. So far, the Illinois Supreme Court has taken the extraordinary step of rebuking it. As legal ethics professor Susan Koniak of Boston University School of Law explains:

> Madison County judges are infamous for approving anything put before them, however unfair to the class or suggestive of collusion that is.

This is not justice. This is a travesty. The St. Louis Post-Dispatch, one of this Nation's great newspapers, has followed this epidemic of litigation closely. They describe the run on the Madison County courthouse as resembling ''gleeful shoppers mobbing a going out of business sale.''

Due process itself is corrupted by this circus. What is going on in Madison County too closely resembles legalized extortion in the eyes of many observers. The deck is stacked against these companies hauled to Illinois to answer these charges. The cases are sometimes heard on an expedited basis. Under these pressures they are typically given an offer they cannot refuse. Once the class is certified, they feel compelled to settle, regardless of the merits of the case. The risk of loss is simply too high. They do not even have to wait until the class is certified. They know that in most cases the class will be certified by the judges of Madison County. A simple demand causes many companies to say, 'let's buy out of this for the lowest price we can, even though we do not owe them a dime. We will just settle for the attorney's fees.' These settlements are to the detriment of legitimate claims.

The class never has to be certified. No self-respecting lawyer will want to try a case in a county where the deck is totally stacked against his client. And so they settle.

Let us be clear, these are not truly local disputes.

S. 5 does nothing to remove local disputes from local courts. The suits we are talking about in Madison County and other jackpot jurisdictions are on behalf of nationwide classes of clients against corporations that do business in every State. Madison County is not chosen as the venue because of its quaint scenery. It is chosen because defendants in these class actions often do not get a fair shake in Madison County.

This is not a triumph of federalism and local decisionmaking. It is the evisceration of federalism and fairness. A bedrock principle of our federal system is that states are largely free to regulate their own particular affairs. To allow one State, in effect, to legislate for another is to violate an important principle of self-government that this country is built upon. Madison County has been flooded with class action claims and now the Nation is drowning in them. This is a classic case for Federal intervention. In fact, this is a case study for the type of intervention in Federal affairs the Constitution was meant to allow.

What happens in Madison County affects the whole country. The overwhelming majority of class actions filed in Madison County are nationwide lawsuits in which 99 percent of the class members live outside the county. As a result, decisions reached in Madison County courts affect consumers all over the country and the county's elected judges effectively set national policies on important commercial issues.

There is a place for personal injury law in the American justice system. I understand that. I am an attorney. I have tried many cases. I know that there is a legitimate and honest place for personal injury suits in our civil justice system. Americans have a sacred right to take their case to court when they are harmed by a person or product. Yet this right is seriously undermined by a seriously compromised class action regime. To help rescue it, we need to enact this reform. Today's lawyers do not take cases that come to them. They invent cases. They behave more like entrepreneurs than counsel, trying to find an issue and income stream before they find a plaintiff. They act like businessmen—the CEOs of Trial Lawyers, Incorporated.

The problem is that their business plan makes hash out of our system of impartial justice. It simply defies belief that county courts are the proper venue for multijurisdictional litigation. Some of the plaintiffs' bar have put a ''pay the lawyer first'' business model in motion in Madison County. First, find sympathetic judges. Then bankroll their campaigns. And to seal the deal, move the case through the system so fast that the defendants do not always get a fair opportunity to fully investigate the claim. Justice does demand fairness, but our system of decentralized class action litigation is fundamentally unfair to defendants, plaintiffs, and the average American who ends up footing the bill for the unjustified billion-dollar settlements.

If this were a board game, it would be ''Class Action Monopoly.'' Start at 'Go', and come up with an idea for a lawsuit. Find a named plaintiff to pay off. Make allegations, no proof needed. Get out of rule 23, the Federal rule 23, free. Convince your magnet State court judge to certify the ''class.'' File copycat lawsuits in State courts all over the country. Sue as many companies in as many States possible even if they have no connection to the State.

Who gets the money? In the Columbia House case, $5 million for lawyers, discount coupons for plaintiffs. In the Blockbuster case, $9.25 million for lawyers, free movie coupons for plaintiffs. In the Bank of Boston case, $8.5 million for lawyers; some claimants even had to pay themselves.

But ''What happens to me?'' Your employer takes a hit, maybe lays you off. Your health and car insurance premiums go up. And we are all familiar with that. The lawyers win, you lose. This game gets pretty old, pretty quick. But this is this jackpot monopoly system we have in Madison County, and a whole bunch of jackpot jurisdictions in this country.

Now, the Class Action Fairness Act is an important but modest reform. It does not deprive substantive legal rights to any American. All it does is make it easier to put these national cases where they belong, and that is in our Federal courts.

According to one study, 98 of the 113 class actions filed in Madison County from 1998 to early 2002 could have been moved to Federal court under this legislation. Justice demands that we act. We cannot play around with this any more. Those who are injured will get

their day in court, but it will be Federal court, with sophisticated judges who are appointed for life, who have no reason to be unfair. By voting for S. 5, we will help make sure they get it in a court where justice can be dispensed.

I yield the floor to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I thank the Senator from Utah.

Mr. President, I oppose the Class Action Fairness Act, S. 5. Notwithstanding its title, I do not think this bill is fair. I do not think it is fair to citizens who are injured by corporate wrongdoers and are entitled to prompt and fair resolution of their claims in a court of law. I do not think it is fair to our State courts, which are treated by this bill as if they cannot be trusted to issue fair judgments in cases brought before them. And I do not think it is fair to State legislatures, which are entitled to have the laws that they pass to protect their citizens interpreted and applied by their own courts. This bill is not only misnamed, it is bad policy, and I do think it should be defeated.

Make no mistake, by loosening the requirements for Federal diversity jurisdiction over class actions, S. 5 will result in nearly all class actions being removed to Federal court. This is a radical change in our Federal system of justice. We have 50 States in this country, each with its own laws and courts. State courts are an integral part of our system of justice. They have worked well for our entire history. It is hard to imagine why this Senate, which includes many professed defenders of federalism and the prerogatives of State courts and State lawmakers, would support such a wholesale stripping of jurisdiction from the States over class actions. By removing these actions from State court, Congress would shift adjudication away from State lawmakers and State judges towards Federal judges, who are often not as familiar with the nuances of State law. In my opinion, the need for such a radical step has not been demonstrated.

Actually, the leaders of the Federal and State judiciary agree. I don't know if it has taken a position on this particular bill, but the Judicial Conference of the United States has opposed legislation like S. 5 that would remove most class actions from State to Federal court. Federal judges don't particularly like diversity jurisdiction cases. They certainly are not in favor of legislation that would bring many more large, complicated civil cases brought under State law to their courts. And the Board of Directors of the Conference of State Chief Court Justices expresses quite well the concerns of State judges about this bill. Its letter states:

> Absent hard evidence of the inability of the state judicial systems to hear and fairly decide class actions brought in state courts, we do not believe such a procedure [transfer of class actions to federal court] is warranted. . . . Our position is not new and it is consistent with the position of our counterparts in the federal judicial system.

Class actions are an extremely important tool in our system of justice. They allow plaintiffs with very small claims to band together to seek redress. Lawsuits are expensive. Without the opportunity to pursue a class action, an individual plaintiff often simply cannot afford his or her day in court. But through a class action, justice can be done and compensation for real injuries can be obtained.

Yes, I do agree, there are abuses in some class action suits. Some of the most disturbing have to do with class action settlements that offer only discount coupons to the members of the class and a big payoff to the plaintiffs' lawyers. I am pleased that the issue of discount coupons is addressed in the bill, because the bill we considered in October 2003 did nothing about that problem. The bill now requires that contingency fees in coupon settlements will be based on coupons redeemed, not coupons issued. Attorney's fees will also be determined by reasonable time spent on a case and will be subject to court approval. The bill also allows a court to require that a portion of unclaimed coupons be given to one or more charitable organizations agreed to by the parties. I do agree, these are all good changes, but they do not change my view that the bill, as a whole, unfairly interferes with the States' administration of justice.

I appreciate that the supporters of S. 5 modified the new diversity jurisdiction rules for class actions in an effort to allow plaintiffs in State class actions more opportunities to remain in State court. Under the new bill, a district court must decline jurisdiction if two-thirds of the plaintiffs and the primary defendants are from the State where the action was filed, and there is at least one defendant who is a citizen of that State from whom significant relief is sought and whose alleged conduct forms a significant basis for the claims asserted by the proposed class. In addition, the principal injuries resulting from the alleged conduct of each defendant must have occurred in the State in which the action was originally filed.

These criteria are an improvement on the underlying bill. But the jurisdictional requirements for class actions to remain in State courts are still too burdensome. Under the new language, for example, a class action brought by Wisconsin citizens against a Delaware-based company for selling a bad insurance policy would probably be removed to Federal court even if Wisconsin-based agents were involved in selling the policies.

In addition, the new bill provides that district courts can only decline jurisdiction if during the 3-year period preceding the filing of the action no other similar class action has been filed against any of the defendants even if the case is filed on behalf of other plaintiffs. Thus, the filing of a class action in one State court may lead to the successful removal of a similar case filed in another State on behalf of plaintiffs in that State. If a defendant is engaging in conduct in number of different States that violates the separate laws of those States, why shouldn't that defendant be held accountable in different State courts under different state laws? Do we really need the Federal courts to get involved in these State law cases?

The bottom line is that this bill still sends the majority of class actions to Federal court. The proponents of this bill have chosen a remedy that goes far beyond the alleged problem.

Furthermore, under S. 5, many cases that are not class actions at all are included in the definition of ''mass action,'' a new term coined by this bill. S. 5 simply requires that the plaintiffs be seeking damages of more than $75,000 for the case to be considered a mass action and, therefore, removable to Federal court. This provision unfairly limits State court authority to manage its docket and to consolidate claims in order to more efficiently dispense justice.

A particularly troubling result of this bill will be an increase in the workload of the Federal courts. We all know these courts are already overloaded. In the 2004 Year End Report on the Federal Judiciary, for example, Chief Justice Rehnquist reported that the current budget crisis in the Federal judiciary has forced courts to impose hiring freezes, furloughs, and reductions in force. He noted that there is a dire need for additional federal judgeships to deal with the Federal courts' ever-increasing caseload. The Congress has led the way in bringing more and more litigation to the Federal courts, particularly criminal cases. Criminal cases, of course, take precedence in the Federal courts because of the Speedy Trial Act. So if you look at this bill in the context, the net result of removing virtually all class actions, civil cases, of course, to Federal court will be to delay those cases.

There is an old saying with which everyone is familiar: ''justice delayed is justice denied.'' I hope my colleagues will think about that aphorism before voting for this bill. Let's think about the real world of Federal court litigation and the very real possibility that long procedural delays in overloaded Federal courts will mean that legitimate claims may never be heard. My colleagues who support this bill tend to dismiss these arguments. They say that the Federal courts will offer adequate redress for legitimate claims, that they will faithfully apply State laws. I certainly hope they are right because this bill seems to be headed for enactment. But if they are wrong, citizens and consumers will be the ones who suffer.

One little-noticed aspect of this bill illustrates the possibilities for delay

that the bill provides, even to defendants who are not entitled to have a case removed to Federal court under the bill's relaxed diversity jurisdiction standards.

Under current law, if a Federal court decides that a removed case should be remanded, or returned, to State court, that decision is generally not appealable. It would be different under this bill, if it becomes law. This bill allows defendants to immediately appeal a decision by a Federal district court that a case does not qualify for removal to Federal court and should be remanded to State court.

Fortunately, the revised bill now requires such appeals to be decided promptly. It does not, however, do anything about the fact that the lower court may take months or even years to make a decision on the motion to remand. That means that a plaintiff class that is entitled, even under this bill, to have a case heard by a State court may still have to endure years of delay while its remand motion is pending in the Federal district court. Where is the ''fairness'' in that? I plan to offer an amendment to address that problem, and I certainly hope the bill's sponsors and supporters will give it serious consideration.

When I offered this amendment in the Judiciary Committee, I learned that a number of the supporters of the bill recognize the importance of the issue that my amendment raises. The chairman of the Judiciary Committee indicated that he would take a serious look at it and see if there is an accommodation that can be reached. So I did not seek a vote in committee on the amendment. I stand ready to negotiate on this issue and I hope there will be a serious effort here to reach agreement.

We have heard a lot of talk on this floor about the need to pass this bill without amendment—without any amendment at all—to protect some kind of ''delicate balance'' with the House and with the corporate supporters of the bill like the Chamber of Commerce. I ask my colleagues who support this bill, why would you not support a reasonable amendment that will make this bill fairer to plaintiffs who bring cases that under the bill's own terms should remain in State court? Please don't let this so-called delicate balance override your duty as legislators to do what is right.

It is important to remember that this debate is not about resolving questions of Federal law in the Federal courts. Federal question of jurisdiction already exists for that. Any case involving a Federal statute can be removed to Federal court under current law. This bill takes cases that are brought in State court solely under State laws passed by State legislatures and throws them into Federal court. This bill is about making it more time-consuming and more costly for citizens of a State to get the redress that their elected representatives have decided they are entitled to if the laws of their State are violated.

Diversity jurisdiction in cases between citizens of different States has been with us for our entire history as a nation. Article III, section 2 of the Constitution provides: ''The judicial Power shall extend . . . to Controversies between Citizens of different States.'' This is the constitutional basis for giving the Federal courts diversity jurisdiction over cases that involved only questions of State law.

The very first Judiciary Act, passed in 1789, gave the Federal courts jurisdiction over civil suits between citizens of different States where over $500 was at issue. In 1806, in the case of Strawbridge v. Curtiss, the Supreme Court held that this act required complete diversity between the parties. In all other instances, the Court said, a case based on State law should be heard by the State courts. So this bill before us changes a nearly 200-year-old practice in this country of preserving the Federal courts for cases involving Federal law or where no defendant is from the State of any plaintiff in a case involving only State law.

Why is such a drastic step necessary? Why do we need to prevent State courts from interpreting and applying their own State laws in cases of any size or significance? One frequent argument is that businesses cannot get a fair day in court because of renegade State court judges. Yet, there really is no evidence to back up these claims. Of the 3,141 counties, parishes, and boroughs in the State court systems of the United States, the so-called American Tort Reform Association could only identify nine jurisdictions that they consider ''unfair'' to defendants. Four other jurisdictions were declared as ''dishonorable mentions.'' But, the association only provided data on two of these jurisdictions—Madison County, IL, which the Senator from Utah was talking about, and St. Clair County, IL. The Senator from Utah cited statistics of increases in class action filings up through 2003. Yet in Madison County, the villain in the story told by the Senator from Utah, the number of class action filings has decreased by 30 percent between 2003 and 2004. So defendants have decided that State judges are unfair in two jurisdictions out of 3,000, but how does this constitute a crisis? The answer is simple there isn't one.

Another argument we hear is that the trial lawyers are extracting huge and unjustified settlements in State courts, which has become a drag on the economy. We also hear that plaintiffs' lawyers are taking the lion's share of judgments or settlements to the detriment of consumers. But a recent empirical study contradicts these arguments. Theodore Eisenberg of Cornell Law School and Geoffrey Miller of NYU Law School recently published the first empirical study of class action settlements. Their conclusions, which are based on data from 1993–2002, may surprise some of the supporters of this bill.

First, the study found that attorneys' fees in class action settlements are significantly below the standard 33 percent contingency fee charged in personal injury cases. The average class action attorney's fee is actually 21.9 percent. In addition, the attorneys' fees awarded in class action settlements in Federal court are actually higher than in State court settlements. Attorney fees as a percent of class recovery were found to be between 1 and 6 percentage points higher in Federal court class actions than in State court class actions.

A final finding of the study is that there has been no appreciable increase in either the amount of settlements or the amount of attorneys' fees awarded in class actions over the past 10 years. The study, therefore, indicates that there is no crisis here, no explosion of huge judgments, no huge fleecing of consumers by their lawyers. This bill is a solution in search of a problem. It is a great piece of legislation for wrongdoers who would like to put off their day of reckoning by moving cases to courts that are less convenient, slower, and more expensive for those who have been wronged. It is a bad bill for consumers, for State legislatures, and for State courts.

This bill seems not to be about class action abuses, but about getting cases into Federal court where it takes longer and is more expensive for plaintiffs to get a judgment. The cumulative effect of this bill is to severely limit State court authority and ultimately limit victims' access to prompt justice. Despite improvements made since the last time the Senate considered this bill, the bill will still place significant barriers for consumers who want to have their cases heard in State court. Remand orders are still appealable, and the mass tort definition does not protect State courts' authority to consolidate cases and manage their dockets more efficiently. All the elements outlined in the bill before us will result in the erosion of State court authority and the delay of justice for our citizens. Therefore, I cannot support this unfair ''Class Action Fairness Act'' bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise today in support of the Class Action Fairness Act of 2005. This legislation addresses the continuing problems in class action litigation, particularly unfair and abusive settlements that shortchange consumers across America.

The time for this bill has come. We have worked very closely on a bipartisan basis with Senator GRASSLEY, Senator CARPER, and Senator HATCH for several Congresses and, more recently with Senators FEINSTEIN, DODD, SCHUMER, and LANDRIEU. Without this close cooperation and tremendous effort, we would not be on the verge of passing class action reform. Finally, Senators FRIST and REID deserve praise for crafting a fair process for the consideration of this legislation.

Class action cases are an important part of our justice system because they enable people who have been harmed in similar ways to pursue claims collectively that would otherwise be too expensive to bring individually. When these cases proceed as intended, injured parties are able to successfully pursue lawsuits in cases involving defective products or employment discrimination, or other wrongs, and recover fair damages.

Unfortunately, the system does not always work as it should. In fact, consumers are frequently getting the short end of the stick in class action cases, recovering only coupons or pocket change while their lawyers reap millions. Too often, the class action system is being taken advantage of to the detriment of consumers and others who have been harmed. The Washington Post put it clearly:

No portion of the American civil justice system is more of a mess than the world of class actions.

Our bill addresses the problem in a few straightforward ways. First, the bill helps consumers by guaranteeing that they receive a better understanding of their rights and responsibilities in a class action lawsuit. Our bill includes a class action consumer bill of rights to limit coupon cases and other unfair settlements.

Second, this bill provides that state attorneys general are notified of proposed class action settlements. This encourages a neutral third party to weigh in on whether a settlement is fair for the plaintiffs and to alert the court if they do not believe that it is.

Finally, we allow some class action lawsuits to be removed to Federal court. As we all know, some are concerned about this provision. Yet, moving some class action cases to Federal court is only common sense. When a problem affects people in many States or involves a national problem, it is only fitting that the case be heard in Federal court.

We took special care during the course of our negotiations to ensure that the appropriate courts heard the right cases. This bill has never been an effort to either stop class action cases or send them all to the Federal courts. Rather, those cases that primarily involve people from only one State will remain in that State's court. These changes will ensure that class action cases are handled efficiently and in the appropriate venues and that no case that has merit will be turned away.

Stories of nightmare class action settlements that affect consumers around the country are all too frequent. For example, a suit against Blockbuster video in Texas yielded dollar off coupons for future video rentals for the plaintiffs while their attorneys collected $9.25 million. In California State court, a class of 40 million consumers received $13 rebates on their next purchase of a computer or monitor—in other words they had to purchase hundreds of dollars more of the defendants' product to redeem the coupons. In essence, the plaintiffs received nothing, while their attorneys took almost $6 million in legal fees. We could list many more examples of abuses in State court, but let me discuss just one more case that is almost too strange to believe.

I am speaking about the notorious Bank of Boston class action suit and the outrageous case of Martha Preston from Baraboo, WI. She was an unnamed class member of a lawsuit in Alabama State court against her mortgage company that ended in a settlement. The settlement was a bad joke. She received $4 and change in the lawsuit, while her attorneys pocketed $8 million.

Yet the huge sums that her attorneys received were not the worst of the story. Soon after receiving her $4, Ms. Preston discovered that her lawyers took $80, twenty times her recovery, from her escrow account to help pay their fees. Naturally shocked, she and the other plaintiffs sued the lawyers who quickly turned around and sued her in Alabama, a State she had never visited, for $25 million. Not only was she $75 poorer for her class action experience, but she also had to defend herself against a $25 million suit by the very people who took advantage of her in the first place.

The class action process is clearly in serious need of reform. Comprehensive studies support this position. For example, a study on the class action problem by the Manhattan Institute finds that class action cases are being brought disproportionately in a few State courts so that the plaintiffs' lawyers may take advantage of those specific courts that have relaxed class action rules.

A RAND study offered three primary explanations for why national class action cases should be in Federal court. ''First, Federal judges scrutinize class action allegations more strictly than State judges . . . Second, State judges may not have adequate resources to oversee and manage class actions with a national scope. Finally, if a single judge is to be charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in Federal court than in State court.

Our bill attempts to follow these recommendations and ensure that cases with a national scope are heard in Federal court. All the while, cases that are primarily of a single state interest remain in State court under our bill. Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not deny reasonable fees for class lawyers. We do not cause undue delays for these cases. And we do not mandate that every class action be brought in Federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

Right now, people across the country can be dragged into lawsuits unaware of their rights and unarmed on the legal battlefield. What our bill does is give back to regular people their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that unsuspecting people like Martha Preston don't get ripped off.

Mr. President, we believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. The bill represents a finely crafted compromise. We believe it will make a difference. We urge its passage.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I was on the floor of the Senate earlier preparing to offer an amendment, and I lost my voice. There was cheering in the galleries, but I have decided to soldier on and try to present this amendment again. I will try to abbreviate any remarks to spare the audience from what may be a painful process for them.

We are considering the Class Action Fairness Act of 2005. I have listened to some of the speeches on the Senate floor. Senator LOTT of Mississippi said: Do not be confused. This is not tort reform, this is court reform. I thought that was an interesting comment because there has been some concern over whether this class action change would affect a body of lawsuits known as mass torts—in other words, the types of class actions that relate to physical injuries that are common to mass tort cases.

Section 4(a) of S. 5 talks about ''mass actions,'' a different term altogether. It requires mass actions be treated the same as class actions under the bill. The big question is whether that kind of lawsuit will be taken out of a State court and put into a Federal court. As I mentioned in my earlier remarks, Federal courts are not friendly to class actions. They are very strict in those that they would consider, and then they are very limited in their scope of liabilities. The business interests that are pushing for this change in the law know that if they can get these lawsuits into a Federal court, they are less likely to be found liable. That is what this whole debate is all about.

I have tried to take a close look at the mass actions section of this class action bill and ask how it would apply to a mass tort situation. Mass torts are large-scale personal injury cases resulting from accidents, environmental disasters, or dangerous drugs that are widely sold. The asbestos exposure situation we will be considering this year is another example of a mass tort.

These personal injury claims are usually based on State laws, and almost

every State has established rules of procedure allowing their State courts to customize the needs of their litigants in these complex cases. I am afraid if S. 5 becomes law, the so-called mass action provision will preempt all of these State procedures and take them out of State courts.

The supporters of the bill claim that mass actions are not the same as mass torts and that they have no desire to affect mass tort cases. I know that is their position, but it is not what their bill says. If the goal is to federalize all State personal injury cases, supporters should be open about it and say it publicly.

I am sure the U.S. Chamber of Commerce, the American Tort Reform Association, all the business and insurance groups that support this bill would like to see all cases sent to Federal court. I knew from my years in practice in downstate Illinois, that Federal courts were more conservative than State courts.

But even these groups do not believe they can be that lucky with this bill. Instead, they came to us and said: No, our bill is very narrow, it only deals with class actions and not all cases. When I take a look at section 4, though, I am concerned about it. It sounds an awful lot like mass torts. Here is how they describe it. Section 4(A) defines it:

. . . any civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact . . .

I am sure for anyone who has been patient enough to follow this debate this is a little confusing, so let me try by an example to give an idea of what is at stake in changing this law.

Everybody in America knows that in late September 2004, Merck & Co., a pharmaceutical giant, pulled its blockbuster pain medication Vioxx off the market. The largest prescription drug recall in history occurred as a result of a new study that showed that Vioxx doubled the risk of heart attack and stroke in some patients. With annual sales of $2.5 billion, Vioxx was one of the most successful new drugs ever. It was one of a new class of drugs called COX–2 inhibitors.

Some 20 million Americans took Vioxx in the 5½ years it was sold, but we don't know how many thousands had heart attacks and strokes that could have been attributed to this drug.

Since the discovery of the dangers of Vioxx, hundreds of cases from all over the country have been filed against Merck, and we can anticipate thousands more.

I would say as a former trial lawyer who served as both defense counsel in some cases and plaintiff's counsel in others, this is a pretty serious situation for Merck, and they know it. They have conceded the fact that the drug was dangerous. They took it off the market. Having taken it off the market, it is understandable that some who were injured are going to seek just compensation.

Let us look at a few cases. Let us take the case of Janet Huggins, which is just one of hundreds of similar cases working their way through the court system today.

Mrs. Huggins of Tennessee was a 39-year-old woman who died of a sudden heart attack after taking Vioxx. She was the mother of a 9-year-old son. When she was diagnosed with the early onset of rheumatoid arthritis, Vioxx was prescribed. She had no former cardiac problems or family history. According to her medical records, Mrs. Huggins was in, otherwise, excellent health.

But on September 25, 2004, she died of a sudden heart attack—less than a month after she started taking Vioxx. She was buried on the very day in September that Merck took Vioxx off the market.

On October 28, 2004, her husband Monty filed a claim against Merck in the Superior Court of New Jersey, Atlantic City Division. Why New Jersey? This couple is from Tennessee. Because that is the State where Merck is headquartered.

In an interview on ''60 Minutes,'' Mr. Huggins said: ''I believe my wife would be here'' if Merck had decided to take Vioxx off the market just 1 month earlier.

Then there was Richard ''Dickie'' Irvin of Florida, who was a 53-year-old former football coach, and president of the athletic booster association.

He had received his college football scholarship and was inducted into the school's football hall of fame. He went on to play in the Canadian League Football until suffering a career-ending injury.

In addition to coaching, he worked at a family-owned seafood shop where he was constantly moving crates of seafood. He rarely went to see a doctor and had no major medical problems.

In April 2001, Mr. Irvin was prescribed Vioxx for his football knee injury from years ago. Approximately 23 days after he began taking Vioxx, Mr. Irvin died from a sudden, unexpected heart attack. An autopsy revealed that his heart attack was caused by a sudden blood clot. This is the exact type of injury that has been associated with Vioxx use.

Mr. Irvin and his wife of 31 years had four children and three grandchildren.

John Newton of Texas, father of two, took Vioxx for osteoarthritis. On April 1, 2003, without warning, he began coughing violently and within minutes was coughing up blood. Before emergency medical services could be called, he collapsed in the arms of his 17-year-old son and died.

It was later determined that Mr. Newton died of a blood clot in his lung. He had no prior history of blood clots, or pulmonary disease. The cases go on and on in State after State.

Some of these cases such as the one brought by Mrs. Huggins' family have already been filed against Merck. Others are in the works.

But if the victims of Vioxx file suit in New Jersey, because that is where Merck is headquartered, their cases are automatically sent to the State's special mass torts court.

New Jersey is one of those States where the legislature established specialized courts to handle certain types of cases. The courts in New Jersey have the authority to combine cases. They can consolidate cases. That seems reasonable, when you consider all of the people who will be suing Merck in New Jersey, where they are headquartered, from all over the United States with similar situations as the ones I just described.

What is so outrageous about having a lot of State-based personal injury claims filed separately which are then consolidated as the New Jersey courts can do by their own motion?

But under the mass action language of S. 5, their case and all other similar Vioxx cases will be taken out of the New Jersey special court and removed to a Federal court to be treated like a class action.

Why? If you take a look at the language in S. 5, the fact pattern fits nicely under the definition of a ''mass action'' to remove the case to Federal court, while at the same time none of the exemptions apply to keep Vioxx cases in State court.

So understand, for those who are arguing that this law we are considering is simply a case of changing jurisdictions in courts and stopping righteous lawyers from filing class action lawsuits, that it is much more.

For Merck, this law is the answer to a prayer. They will take their case out of the State court into a Federal court as a class action, which is less likely to certify the class even though the series of mass tort cases were not even filed as a class action.

That is why I am offering this amendment. My amendment would make two small, narrow, and common sense changes.

First, it would allow State courts to continue to consolidate these individual personal injury cases on their own motion without losing jurisdiction to a federal court under S. 5.

Second, it would also allow courts that consolidate cases not just for pretrial but all the way through trial or settlement to retain their jurisdiction and not lose it to a Federal court.

My amendment provides parity in the litigation process because one of the exceptions to the mass action definition in S. 5 already provides for defendants to consolidate cases without losing jurisdiction to a Federal court. I think it is important for the court—in addition to the defendant—to have this right as well.

I also think it is important for courts to be able to schedule their own calendar of cases without having to worry whether they would lose jurisdiction over their consolidated cases at certain

phases of litigation. They should not be limited ''solely'' to the pretrial proceedings.

These two small changes will ensure that mass tort cases involving personal injury claims that are not intended to be affected by S. 5 can continue to remain in State courts throughout the duration of the proceeding. The supporters of this bill claim that is their intent, and I want to make sure the language in S. 5 reflects this purpose.

AMENDMENT NO. 3

(Purpose: To preserve State court procedures for handling mass actions)

Mr. DURBIN. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 3.

Mr. DURBIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 20, before the semicolon at the end of line 23, insert ''or by the court sua sponte''.

On page 21, line 5, strike ''solely''.

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

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

(The remarks of Mr. ALEXANDER pertaining to the submission of S. Res. 44 are printed in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, this afternoon the Senate is debating a class action lawsuit bill. This afternoon in Detroit, President Bush said:

Congress needs to pass meaningful class action and asbestos legal reform this year.

My response is, before we pass something, we better understand how it will affect the rights and the lives of everyday, average Americans.

Unfortunately, the bill before the Senate will unfairly tip the scales of justice against average citizens. It will give big businesses even more power to avoid responsibility for their actions and it will delay justice for many victims who deserve justice.

We do not have to look very far to see why average citizens need access to courts. Look at this morning's newspaper from Seattle, WA. It reports that the Federal Government indicted the W.R. Grace Company for knowingly sickening workers and residents of Libby, MT, where hundreds of people have died from asbestos exposure. The indictment charges that the company officials knew of the dangers to workers in the community and created a conspiracy to hide those dangers.

I hope these indictments will bring a small measure of justice to the thousands of people who have suffered in Libby and around the country. These people worked hard. They provided for their families. But the company they worked for knowingly poisoned them and then covered it up.

The Federal Government is finally going after the company and the executives who made the decisions that put workers and the entire community at risk.

Here is the story from today's Seattle P–I:

Grace indicted in asbestos deaths. Mine Company and seven executives face criminal charges.

Mr. President, I ask unanimous consent that the entire article be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mrs. MURRAY. Mr. President, the story of what happened in Libby, MT, is heartbreaking.

Years ago, when I first heard what happened there, I began a campaign to ban asbestos and to protect its victims. In June of 2002, I testified at a hearing about Libby before the Senate Subcommittee on Superfund, Toxics, Risk, and Waste Management. The people of Libby, MT, have been waiting for this day for a very long time.

This indictment tells companies that they are responsible for their decisions and that human lives are more important than profits. The indictment sends a message that if you are putting workers and consumers at risk, if you try to hide the dangers, you will be prosecuted because at the end of the day, this is not about profits, it is about people.

It is about people such as Gayla Benefield, whom I met last summer. Gayla's father worked at W.R. Grace's vermiculite mine and mill in Libby, MT, from 1954 to 1973. Her father died of asbestosis in 1974. Gayla's mother never worked in that mine, but she was exposed to asbestos fibers on her husband's work clothes. Gayla's mother died of asbestosis in 1996. Gayla herself was exposed to asbestos fibers. Why? Because she hugged her dad when he came home from work. And then, in December of 2001, Gayla and her husband David both were diagnosed with lung abnormalities.

In all, about 37 people in Gayla's family have signs of asbestos disease, and only three ever worked in that mine.

Now, as my colleagues know, for the past 4 years, I have been speaking about the dangers of asbestos and the need to ban it in this country. I have stood up for victims and their families. I have introduced legislation to protect workers, educate the public, and improve research and treatment.

Last year, when Congress considered an inadequate trust fund bill, I stood up for the asbestos victims and voted against it. We still have a lot of work to do to take care of the current victims and to prevent future deaths. That is one of the reasons I am so personally concerned about the class action bill that is now before the Senate.

The bill allows companies to move class action lawsuits from State jurisdiction to Federal jurisdiction. That could delay justice for years. In many cases, victims have already been waiting a long time for their day in court. If their cases are moved to Federal court, they will essentially have to start all over at the bottom of the pile. That is because Federal courts already have a massive backlog of cases. It is one of the reasons the Federal bench opposes this bill.

If class action lawsuits are dumped on to our Federal courts, they will fall to the bottom of the list of priorities. Even if they work their way up to the top of the docket after many years, they will not be resolved quickly because they are such complicated cases.

The bill that is before the Senate now could add years to the amount of time it takes to resolve a case. Unfortunately, asbestos victims do not have time on their side. Once a person is diagnosed with mesothelioma, they usually have only about 6 to 18 months to live. So if companies know, they can just play legal games, they can just wait it out, just move the case and hold things up until the victim dies. If that happens, there is no justice.

For someone with the death sentence of an asbestos disease, justice delayed is justice denied. That is why Congress should reject this class action bill.

There are other ways this bill could deny justice. Companies could just wait until a victim's medical bills or lost wages are so high that the victim is forced into an unfair settlement. Once again, that is because this bill tips the scales of justice against average Americans.

I have focused on asbestos victims, but this class action bill would affect many more types of victims. Anyone with a class action lawsuit could find themselves pushed into Federal court at the bottom of the list. Congress should not delay and deny justice for victims.

As for asbestos victims, we still have a lot of work to do. Each year in this country 10,000 Americans die from asbestos disease—10,000 Americans. The first thing we need to do is ban the production and importation of asbestos in the United States. Do you know that each year in this country we put asbestos into 3,000 consumer products, products that you buy at the store regularly? Hair dryers, floor tile, and automobile brakes—we put asbestos in them in this country today. If we know this is deadly, we should stop putting it in consumer products in America.

Again, later this year, I am going to reintroduce my Ban Asbestos in America Act. The first year I introduced it, we only had four cosponsors. Last session, we had 14. We also made progress, including my ban in the asbestos liability legislation that was considered by the Judiciary Committee. My ban is also included in Senator SPECTER's most recent version of that bill.

But we also need to help victims by investing in mesothelioma research

and treatment. And we need to boost awareness of how consumers—that is all of us—and workers can protect themselves.

Today, up to 35 million homes, businesses, and schools have the deadly Zonolite insulation in their attics. People need to know about the danger so they can protect themselves, so they do not go up in their attic and do their work unknowingly exposing themselves to asbestos.

Many employees are still in danger—from construction workers to auto mechanics. And let's not forget that many asbestos victims were exposed to asbestos when they served our country in the military. About 32 percent of asbestos victims happen to be Navy veterans. Many of them worked in the Bremerton Shipyard in my home State of Washington.

The dangers of asbestos are not just limited to Libby, MT, or to military communities; they are everywhere. This Congress needs to address them the right way. Congress should make sure asbestos victims can get the justice they deserve. That is why I will vote against this class action bill. And that is why I am going to continue to fight to ban asbestos and to help the victims in this country.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Seattle Post-Intelligencer, Feb. 8, 2005]

W.R. GRACE INDICTED IN LIBBY ASBESTOS DEATHS

MINE COMPANY AND SEVEN EXECUTIVES FACE CRIMINAL CHARGES

(By Andrew Schneider)

MISSOULA, MONT.—W.R. Grace & Co. and seven of its current or former executives have been indicted on federal charges that they knowingly put their workers and the public in danger through exposure to vermiculite ore contaminated with asbestos from the company's mine in from Libby, Mont.

Hundreds of miners, their family members and townsfolk have died and at least 1,200 have been sickened from exposure to the asbestos-containing ore. The health effects also threaten workers, their families and residents everywhere the ore was shipped, including Seattle, and people living in millions of homes nationwide where it was used as insulation.

Yesterday, on the steps of the county courthouse here, U.S. Attorney Bill Mercer announced the 10-count indictment, alleging conspiracy, knowing endangerment, obstruction of justice and wire fraud.

''A human and environmental tragedy has occurred,'' he said. ''This prosecution seeks to hold Grace and its executives responsible.''

''This is one of the most significant criminal indictments for environmental crime in our history,'' said Lori Hanson, special agent in charge of the Environmental Protection Agency's environmental crime section in Denver.

In a statement released for Grace by a public-relations firm, the company ''categorically denies any criminal wrongdoing.''

Grace criticized the government for releasing the indictment before providing a copy to the company. ''We are surprised by the government's methods and disappointed by its determination to bring these allegations. . . . We look forward to setting the record straight.''

Federal environmental officials began examining the hazards in Libby after Nov. 19, 1999, when the Seattle Post-Intelligencer began publishing a series of stories about what the government has called ''the nation's biggest environmental disaster.'' Within three days of the P–I's first report, an EPA emergency team arrived in the tiny northwestern Montana town.

Present at the announcement yesterday were Libby victims Lester and Norita Skramstad and Gayla Benefield.

Lester Skramstad has asbestosis, as does his wife, Norita, and two of their children. He spoke softly but forcefully, struggling for breath to launch his words into the wind on a blustery winter afternoon. ''I've waited a long time for this,'' he said. ''It's a great day to be alive.''

If found guilty, the individual defendants face from five to 15 years in prison on each count, which for some of the executives could be as much as 70 years.

Grace could be fined up to twice the profits from its alleged criminal acts or twice the losses suffered by victims. According to the indictments, Grace made more than $140 million in after-tax profits from the Libby mine, which would mean a fine of up to $280 million. Alternatively, the court could fine the company twice what it computes the loss to be from more than a thousand Libby victims. In addition, the court could order restitution for the victims.

''This criminal indictment is intended to send a clear message: We will pursue corporations and senior managers who knowingly disregard environmental laws and jeopardize the health and welfare of workers and the public,'' said Thomas Skinner, EPA's acting assistant administrator for enforcement, yesterday.

The executives charged are Alan Stringer, formerly general manager of the Libby mine and Grace's representative during the government's Superfund cleanup; Henry Eschenbach, formerly director of health, safety and toxicology in Grace's industrial chemical group; Jack Wolter, formerly Grace vice president and general manager of its construction products division; Bill McCaig, also formerly general manager of the mine; Robert Bettacchi, formerly president of the construction products division and senior vice president of Grace; O. Mario Favorito, former Grace general counsel; and Robert Walsh, formerly a Grace senior vice president.

The 49-page indictment accuses Grace of knowingly releasing asbestos into the air, placing miners, their families and townspeople at risk, and of defrauding the government by obstructing the efforts of various agencies including the EPA, increasing profits and avoiding liability for damages by doing so.

P–I'S INVESTIGATION

Tens of thousands of pages of internal Grace documents and court papers were the basis of scores of stories in the P–I on Libby and the deadly ore that Grace shipped throughout the world. Those documents show years of extensive communication among Grace's top health, marketing and legal managers and mine officials in Libby about concealing the danger of asbestos in the ore and consumer products that were made from it.

They discussed methods to keep federal investigators from studying the health of the miners, the potential harm to Grace sales if asbestos warnings were posted on its products, and the effort to mask the hazard of working with the contaminated ore.

''The prosecution cannot eliminate the death and disease in Libby,'' said John Heberling, a lawyer with McGarvey, Heberling, Sullivan and McGarvey. ''But there is comfort in the hope that criminal convictions will say to corporate America . . . managers will be held criminally accountable if they lie and deny and watch workers die.''

For years, the Kalispell, Mont., firm has been fighting for damages from Grace on behalf of the families of the dead and the dying from Libby.

MINE'S HUGE PRODUCTION

Opened in 1913, the mine is six miles from Libby. Grace bought it in 1963 and closed it in 1990. In its heyday, the mine produced 80 percent of the world's vermiculite. The company still operates smaller vermiculite mines in South Carolina.

Vermiculite, a mineral similar to mica, expands when heated into featherweight pieces that have been used commercially for decades in attic and wall insulation, wallboard, fireproofing, and plant nursery and forestry products. It was also used in scores of consumer products, such as lawn and garden supplies and cat litter.

Exposure to the tremolite asbestos fibers, which contaminate the vermiculite ore, has caused hundreds of cases of asbestosis, lung cancer and mesothelioma in Libby and an untold number at hundreds of other sites across North America where the ore was processed.

Criminal investigators and lawyers from the EPA, the Internal Revenue Service and the U.S. Attorney's offices in Montana often put in 12- to 15-hour days while preparing the case.

Investigators and lawyers from the Justice Department and the EPA's headquarters also assisted. The haste was required because prosecutors were up against a five-year statute of limitation, based on the arrival of the first federal team in Libby after the P–1 stories. They gained a three-month extension of that limitation.

A TROUBLED PAST

The EPA said that over the years it had filed several complaints against Grace over the company's environmental practices. The only previous criminal charge against the Columbia, Md.-based corporation was in the mid-'80s. Grace was indicted on two counts of lying to the agency about the quantity of hazardous material used in its packaging plant in Woburn, Mass. In 1988, the company pleaded guilty to one count and was fined $10,000, the maximum at that time. The charges were brought after Grace and another company were sued after being accused of illegally dumping toxic chemicals, contaminating two wells and, some believe, resulting in the deaths of five children from leukemia. Grace paid the families $8 million to settle the suits. The book and movie ''A Civil Action'' were based on the Woburn case.

Grace, which produces construction materials, building materials and packaging, filed for Chapter 11 bankruptcy protection in 2001 because of the ''sharply increasing number of asbestos claims,'' Paul Norris, Grace's chairman and CEO, said at the time.

May 2002, the Justice Department intervened in Grace's bankruptcy, the first time it had entered such a case, alleging that before Grace filed for Chapter 11, it concealed money in new companies it bought. Justice Department lawyers said Grace's action was a ''fraudulent transfer'' of money to protect itself from civil suits.

In November of that year, just before the trial was to begin, the St. Louis Post-Dispatch reported that the companies returned almost $1 billion to the bankruptcy judges holding Grace's assets. Grace is far from out of business. Norris said the company has annual sales of about $2 billion, more than 6,000

employees and operations in nearly 40 countries.

Mercer refused comment on whether there would be more indictments from other locations where Grace had operations. Hanson said she had been discussing the investigation with her counterparts in EPA regions throughout the country.

Libby victim Benefield said yesterday that as she watched the announcement of the indictments, her thoughts were with her parents, Perley and Margaret Vatland, both of whom died of asbestosis. She wore on her coat a costume-jewelry pin her mother, who sold Avon products, bought from Avon for herself.

''Somewhere today they're smiling,'' she said, fingering the pin. ''I just know it.''

ONLINE

Read *Uncivil Action,* the P–O's award-winning coverage of the deadly legacy of asbestos mining, beginning with a November 1999 story about hundreds dead or dying in Libby, Mont.

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

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

Mr. GRASSLEY. Mr. President, we are in our second day of debate on the important Class Action Fairness Act of 2005. Because of my responsibilities as chairman of the Senate Finance Committee, I have not had a chance to participate in the debate of a bill that I have been the sponsor of going back to the 105th Congress. It is a pleasure for me to participate and anticipate the passage of this legislation.

It is about time that the Senate gets this bill done and gets it to the President. Of course, I am very pleased that Majority Leader FRIST sees this as an important enough issue to move so early in the 109th Congress. I also thank Chairman SPECTER, as new chairman of the Senate Judiciary Committee, for getting this class action bill through committee so very quickly. I hope we can move expeditiously with few or no amendments, pass this bill, and have the President sign it, which we are sure he will.

My colleagues will recall that in the 108th Congress, Senator FRIST brought the class action fairness bill to the floor in October 2003, but we were not able to proceed to the bill. We lost the vote on cloture on the motion to proceed by just a one-vote margin; in other words, 50 votes as opposed to the 60-vote supermajority that cloture takes.

After that vote, I worked with Senator HATCH, who was then chairman of the Judiciary Committee, and our lead Democratic cosponsors, Senators KOHL and CARPER, to modify the bill to address concerns that were raised by three Senators and maybe others, but I remember specifically Senators DODD, LANDRIEU, and SCHUMER. Then we reintroduced the Class Action Fairness Act in February 2004 as a new bill with a new number, S. 2062. It contained the compromise language that we worked out with Senators DODD, LANDRIEU, and SCHUMER. Senator FRIST then attempted to bring up the bill last July. Unfortunately, we were once again denied the ability to close debate on the bill, and we lost, again, a cloture vote. This was because Senators wanted to offer nongermane amendments—amendments, as you know, Mr. President, that have absolutely nothing to do with the subject matter of the underlying bill. This was particularly disappointing to me after all of the hard work we had done to reach an acceptable compromise with several Democrats. We could have passed the bill in the 108th Congress, but raw politics got in the way.

Now is the time to get this bill done. We have reintroduced the language contained in last year's bill, a compromise worked out with Senators DODD, LANDRIEU, and SCHUMER. That is what is now before us in S. 5, the very same bill. We made no changes to last year's bipartisan compromise. So I hope we can stop having politics interfere with this bill and pass what is a relatively modest bill that will help reform a class action regime that has gotten to be very bad, which ends up most of the time serving no one except the lawyers who bring these class action suits.

I would like to give some background on the need for this very important legislation. Everyone has heard about the abuses going on with the current class action system. These problems undermine the rights of both plaintiffs and defendants. Class members often do not understand what their rights are in a class action suit, while the class action lawyers drive the lawsuits and the settlements. Class members cannot understand what the court and the settlement notices say because they are in very small type and written in hard-to-understand legalese. So class members often do not understand their rights and they don't understand the consequences of their actions with respect to the class action lawsuit in which they are invited to participate.

Moreover, many class action settlements only benefit the lawyers, with little or nothing going to the class members. We are all familiar with the class action settlements where the plaintiffs got coupons of little value, or maybe no value, and the lawyers got all of the money available in the settlement agreement. So what is the point of bringing a lawsuit? I thought it was to find redress for the plaintiffs and not to benefit the lawyers who bring the case. But that is what happens many times now in these class action lawsuits. The lawyers drive those cases, not the individuals who allegedly have been injured. The lawyers are the ones who get the millions and millions of dollars in fees while the people who allegedly have been injured get worthless coupons.

In addition, the current class action rules are such that the majority of large nationwide class actions are allowed to proceed to State court when they are clearly the kinds of cases that should be decided in Federal Court. The U.S. Constitution provides that cases involving citizens of two different States and an amount of controversy of $75,000 can be heard in Federal Court. However, the law has been interpreted in such a way that class action lawsuits; that is, cases involving large sums of money, citizens of many different States, and issues of national concern, have been restricted to State courts even though they have national consequences. Crafty lawyers game the system. Crafty lawyers file these large class actions in certain courts. They are shopping for magnet State courts, and they are able to keep them there.

For example, in Madison County, IL, the most notorious class action magnet State court, which has been called a ''judicial hellhole,'' class action filings have jumped from 77 in 2002 to 106 in 2003. I understand that Madison County has had an increase of over 5,000 percent in the number of class action filings since 1998. That surely says something. Clearly, the judges there are playing somewhat fast and loose with the class action rules when they are deciding whether to certify a class action lawsuit. So unscrupulous lawyers are gaming the present rules to steer their class action cases to these certain preferred State courts, such as Madison County, IL, where judges are quick to certify classes, quick to approve settlements, with little regard to the class members' interests or the parties' due process rights. Of course, that is the reason for this legislation. We need to do something about this kind of abuse of the judicial process.

Class action lawsuits at least should have the opportunity to be heard in Federal court because usually they are the cases that involve the most amount of money, citizens from all across the country, and issues of nationwide concern. Why should a State county court be deciding these kinds of class action cases that impact people all across the country? Of course, that just doesn't make sense to me; hence, the authorship of this legislation. I hope it doesn't make sense to at least a majority of my colleagues.

Both the House and Senate held numerous hearings on this legislation and on other kinds of class action abuse. We heard about class lawyers manipulating case pleadings to avoid removal of a class action lawsuit to Federal court, where it should be, claiming that their clients suffered under $75,000 in damages in order to avoid the Federal jurisdictional amount threshold.

We heard about class lawyers crafting lawsuits in such a way to defeat the complete diversity requirement by ensuring that at least one named class member was from the same State as one of the defendants even if every other class member was from one of the other 49 States.

We heard about attorneys who filed the same class action lawsuit in dozens of State courts all across the country in a race to see which judge would certify the fastest and the broadest of class.

We heard about class action lawyers entering into collusive settlements with defendant attorneys which were not in the best interest of class members.

These are only a few of the gamesmanship tactics lawyers like to utilize to bring down the entire class action legal system. The bottom line is that many of these class actions are just plain frivolous lawsuits that are cooked up by the lawyers to make a quick buck, with little or no benefit to the class members who the lawyers are supposed to be representing.

Out-of-control frivolous filings are a real drag on the economy. Many a good business is being hurt by this frivolous litigation cost. Unfortunately, the current class action rules are contributing to the cost of business all across America, and it particularly hits small business because it is the small business that gets caught up in the class action web without the resources to fight.

Too many frivolous lawsuits are being filed. Too many good companies and consumers are having to pay for this lawyer greed. Make no mistake about it, there is a real impact on the bottom line for many of these companies and, to some extent, on the economy as a whole. They have to eat this increased litigation cost or else it is farmed out to consumers, such as you and me, and this is all in the form of higher prices for goods and services we buy.

This is unacceptable, and we need to do something about this. We need to restore some commonsense reform to our legal system. We need to restore common sense to the class action system. We should pass this bill.

I now wish to say something about class action lawsuits. They can be a very good tool for many plaintiffs with the same claims to band together to seek redress from a company that has wronged them. I am not against the use of class action lawsuits, and neither are other supporters of this bill. We are not here to put a stop to the class action tool.

I certainly know my friend and original cosponsor of this bill, Senator KOHL, feels the same as I do. People who have been injured should be able to sue companies that do not follow the law. Our problem is many class actions are not proceeding in the way they were originally intended.

Our problem is many of these lawsuits are not fair and violate the due process rights of both plaintiffs as well as defendants.

Our problem is many times these lawsuits are not helping the class members at all. They are an effective tool for lawyers to make a big, easy buck.

Our problem is these kinds of suits should have an opportunity to be heard in Federal court, not stuck in a magnet court in a county that has no connection whatsoever to the case. That is why Senator KOHL and I joined forces several Congresses ago—this is the fifth Congress this bill has been around for us to try to do something about this situation. That is a period of 8 years past and 10 years including this Congress—to do something about the problems we were seeing and about the runaway abuses.

The Class Action Fairness Act will address some of the more egregious problems with the class action system while preserving class action lawsuits as a very important tool which brings representation to the unrepresented.

Let me underscore for my colleagues that S. 5 is a very delicate compromise. As my colleagues already know, this bill has gone through many changes to accommodate Democratic Senators, much to the frustration of some of my Republican colleagues who think we have gone too far.

I worked in good faith with these colleagues on the other side of the aisle to bring people together and to address valid concerns to increase support for this bill, most importantly to, hopefully, have 60 votes on board, the supermajority it takes to bring a halt to debate, to get to finality, to get this bill passed, to get it to the House where we are told it will pass if we do not change it, and go to the President very quickly.

I did not think then that we needed to make any changes to the class action bill that was originally introduced several Congresses ago, but as compromise is often necessary in this process if I wanted to move the class action bill forward, I did my best to listen to the issues raised and to make modifications to the bill where there was room for that compromise.

Nevertheless, with all the compromises we cut, S. 5 still retains the goal we set out to achieve: to fix some of the most egregious problems we are seeing in the class action system and to provide a more legitimate forum for nationwide class action lawsuits.

The deal that was struck is a very carefully crafted compromise that does not need to be modified any further. So I am asking my colleagues to withhold the offering of amendments to avoid disrupting the balance we have achieved.

My colleagues should not be fooled. The amendments that are going to be offered are an attempt to weaken or gut the bill. Some amendments may sound reasonable, but they pose a problem in the other body. Other amendments may sound good, but they do not have anything to do with class action reform. Other amendments are, plain and simple, poison pills.

We have worked far too long and we have worked far too hard to have this bill come down because folks are misled into supporting an amendment that in reality perpetuates the problem and preserves the status quo.

We have worked far too long and too hard to have this bill delayed and complicated with amendments that the House will never accept.

We have also worked far too long and far too hard to have this bill bogged down by amendments that are not critical to the core purpose of the legislation.

So then let's get this bill past the finish line, not create more hurdles and obstacles. I ask my colleagues to vote against the amendments and keep the bill clean. How often do we in this body, the Senate of the United States, have the respect the House is giving us by saying if this bill is not changed any more, they will buy it the way it is? That happens once in a decade. We ought to take advantage of it.

I would like to highlight, before I sit down, some of the changes we made to the bill to increase support for this bill since Senator KOHL and I introduced the first Class Action Fairness Act in the 105th Congress, now 8 years ago.

The bill, as was originally introduced, did several things. It required that notice of proposed settlements in all class actions, as well as all class notices, be in clear, easily understood English and include all material settlements, including amounts and sources of attorney's fees. Since plaintiffs give up their right to sue, they need to understand the ramifications of their actions and should not have to hire another attorney to find out what these notices mean.

Then our bill required that State attorneys general or other responsible State government officials be notified of any proposed class settlement that would affect the residents of their States. We included this provision to help protect class members because such notice would provide State officials with an opportunity to object if the settlement terms are unfair to their citizens.

Our bill also required that courts closely scrutinize class action settlements where the plaintiffs only receive coupons or noncash awards while the lawyers get the bulk of the money.

It required the Judicial Conference to report back to the Congress on the best practices in class action cases and how to best ensure fairness of these class action settlements.

Finally, the bill allowed more class action lawsuits to be removed from State court to Federal court. The bill eliminated the complete diversity rule for class action cases but left in State courts those class actions with fewer than 100 plaintiffs, class actions that involve less than $5 million, and class actions in which a State government entity is the primary defendant.

Our bill still does many of these things, but we have made a number of modifications to get this bipartisan support.

In the Judiciary Committee in the 108th Congress, we incorporated Senator FEINSTEIN's amendment which would leave in State court class action

cases brought against a company in its home State where at least two-thirds or more of the class members are also residents of that State.

We also incorporated changes to address issues raised by Senator SPECTER relative to how mass actions would be treated under this bill. In our negotiations and outside the committee with Senators SCHUMER, DODD, and LANDRIEU, we made numerous changes, so I will only mention a few of the more important compromises we reached.

For example, we made changes to the coupon settlement provisions in the bill providing that attorney's fees must be based either on the value of the coupons actually redeemed by class members or the hours actually billed in prosecuting the case. We deleted for these Senators the bounties provision because of a concern that it would harm civil rights plaintiffs.

We deleted provisions in the bill that dealt with specific notice requirements because the Judicial Conference had already approved similar notice arrangements to the Federal Rules of Civil Procedure.

To address questions about the merry-go-round issue, we eliminated a provision dealing with the dismissal of cases that fail to meet rule 23 requirements so that existing law applies.

We deleted a provision allowing plaintiff class action members to remove class actions to Federal court because of gaming concerns. We placed reasonable time limits on the appellate review of remand orders in the bill. We clarified that citizenship of proposed class members is to be determined on the date the plaintiff filed the original complaint or when plaintiffs amend the complaint.

We made further modifications to the FEINSTEIN compromise already referred to and to the mass action language Senator SPECTER was concerned about. We clarified that nothing in the bill restricts the authority of the Judicial Conference to promulgate rules with respect to class actions.

Finally, we drafted a new what is called local class action exception, which would allow class members to remain in State court if, one, more than two-thirds of the class members are citizens of this forum State; two, there is at least one in-State defendant from whom significant relief is sought by members of the class and whose conduct forms a significant basis for the plaintiffs' claims; three, the principal injuries resulting from the alleged conduct or related conduct of each defendant were incurred in the State where the action was originally filed; and, four and lastly, 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 3 years.

We did all of this to ensure that truly local class action cases, such as a plant explosion or some other localized event, would be able to stay in State court. So we have made significant concessions to get our Democratic colleagues on board this Class Action Fairness Act. Of course, some of my Republican colleagues feel we have made too many compromises. But these folks on the other side of the aisle have been telling us that they are ready to support the bill and get it passed, so the time has come that hopefully no more politics are played, that we get down to business and we get this bill done. It is time to make real progress on a class of lawsuits that has become burdensome for business, not beneficial to the plaintiffs, and enriching of attorneys.

If we do that—and we do that when we pass this bill—again I want to remind my colleagues that we have crafted a carefully balanced bill that consists of a number of compromises and some would say too many compromises. I think we have done a pretty good job of addressing legitimate concerns with the bill and I am hopeful we will not see a lot of amendments to disrupt this compromise. I am hopeful my colleagues will join me and vote against all killer amendments that gut or weaken the bill. I am hopeful my colleagues will join me and vote against poison-pill amendments that the House will never accept.

All of these amendments need to be defeated because we should send a clean bill to the House. All of our hard work on forging a bipartisan compromise bill should not go down the drain.

The bottom line is this class action reform is badly needed. Both plaintiffs and defendants alike are calling for change. The Class Action Fairness Act will help curb the many problems that have plagued the class action system. S. 5 will increase class members' protection and ensure the approval of fair settlements. It will allow nationwide class actions to be heard in a proper forum, the Federal courts, but keep primarily State class actions where they belong, in State court. It will preserve the process but put a stop to the more egregious abuses. It will also put a stop to the frivolous lawsuits that are a drag on the economy.

Now that we have worked together on a very delicate compromise, we should be able to get this bipartisan bill done without changes.

I see another person who has worked very hard on this bill has come to the Chamber and that is Senator CARPER of Delaware. There is no person who has been more determined to get this bill passed and get it passed in a bipartisan way, and I appreciate very much the cooperation he has given us over the last year but, more importantly, in a time when I have been involved with a lot of issues other than class action, he has kept me focused on this bill that I want to get passed, and he has helped me get the job done. I thank Senator CARPER as well as other Democrats who have helped in this process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, before Senator GRASSLEY leaves the floor, I simply want to say how much I have enjoyed and appreciated the opportunity to work with him on this issue. If we go back 7 years when this idea first took legislative form and look at the changes that have occurred over each of the last three or four Congresses, they have been dramatic.

My goal, and I believe it is a goal many of us share who support the legislation, is to make sure that when what I term little people are harmed by the actions of big companies or small companies, those little people have a chance to aggregate together and be made whole. I think we agree on that principle.

We want to make sure the companies that do something that is wrong or that are contemplating an action or behavior that is inappropriate or wrong, that they know if they get caught, they will pay a price, and class actions can help catch them at that and make sure they are put on notice. I think that is a principle on which we all agree.

A third principle is to make sure the defendant companies, if they are called on the carpet, can go to a court where they have a fair chance of defending themselves and presenting their case.

The last one is to try to do all of this in the context of not needlessly overburdening the Federal judiciary.

It is tough to balance all of those different principles, but I think on the legislation the Senator has authored and that some of us have been privileged to work with the Senator to help shape, we have come close to realizing those principles.

I wanted to say a special thanks to the Senator for his willingness to work with people on both sides of the aisle, to hear us out, to hear our ideas, and be willing to accept a number of the ideas we have put forward. My hope is at the end of this week we will have passed that legislation. It is a delicate compromise and balance and, God willing, our friends in the House of Representatives will accept that and the President will sign it into law.

I thank the Senator.

Mr. GRASSLEY. I thank my colleague from Delaware, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I ask unanimous consent that I be able to speak for as much time as I consume in morning business.

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

THE TAX CODE

Mr. DORGAN. Mr. President, something is happening in our Tax Code that very few people understand, and I wanted to call it to their attention.

There is something going on called repatriation, which is a $2 word that probably people won't understand. But I want to explain it.

Repatriation is a process by which U.S. companies that have moved some operations overseas, begun to manufacture and sell products overseas and made income overseas, are able to bring their profits back into this country.

When an American corporation makes a profit as a result of selling overseas, or producing overseas—we have something in this country called deferral in our tax law. It says you can defer paying taxes on your foreign profits as long as you don't bring them back into this country. But when you bring them back—which is called repatriation—then you must pay taxes like everybody else does.

Let's take Huffy bicycle company, for example. The Huffy bicycle company made bicycles for almost 100 years in this country. They sold them in Wal-Mart, Sears, and Kmart. Huffy then shut down their plants in the United States, and got rid of their workers. Today Huffy bicycles are still sold in the United States but they are made in China for roughly 30 cents or 40 cents an hour labor by people who work 7 days a week, 10 to 12 hours a day. The company decided they should actually manufacture their bicycles in China and presumably make more money.

What happens to that income? We have a perverse and insidious provision in our tax law that says, shut your manufacturing plant, move those jobs overseas, and we will give you a deal. You don't have to pay taxes on the profits that you once made in the United States when you made that bicycle or the Radio Flyer little red wagon, which is now made in China, or the Newton cookies, but now earn on the same products made overseas until you bring those profits back to the United States. Only then do you have to pay taxes. That is the deal.

Whenever companies defer their tax obligation, they understand that when they repatriate the income to the U.S., they are going to have to pay taxes. But they got a special deal, as is always the case, it seems.

Last year a bill was passed with a tiny, little provision which was very controversial. I opposed the provision, but it got passed. The special deal is that the repatriation of income back into this country now by companies that earned that income overseas—in some cases by moving their American jobs overseas—now get to pay taxes at the 5¼ percent tax rate.

What prompts me to come to the floor to talk about this, despite the fact I opposed this last year, was a New York Times article that says, ''Hitting the Tax Break Jackpot.''

Let me quote a part of it.

When Congress passed a one-time tax break on foreign profits last fall, lawmakers said their main purpose was to encourage American companies to build new operations and hire more workers here at home. But as corporations are gearing up to bring tens of billions of dollars back to the United States this year, adding jobs is far from their highest priority. Indeed, some companies say they might end up cutting their workforces here in the U.S.

Hewlett-Packard, which has accumulated $14 billion in profits and lobbied intensely for the tax break, announced January 10 that it would continue to reduce its workforce this year. That would come on top of more than 25,000 jobs eliminated during the previous 3 years.

We have a provision in tax law now that says to these companies that have earned this money overseas, you deferred taxes on them previously, now you are going to bring them back. We encouraged them to bring them back. And, by the way, while all the other American people are working and paying income taxes—and, yes, those at the bottom of the ladder who pay income taxes pay the lowest rate of 10 percent but it is 10 percent, 15 percent, up to 35 percent, despite the fact everybody else is going to pay a higher rate of taxes—you repatriate those profits, and we will allow you to pay an income tax rate of 5¼ percent.

There was a Governor of Texas named Ma Ferguson. Ma Ferguson became Governor of Texas, I believe, when her husband died. As Governor of Texas, Ma Ferguson got involved in a very controversial issue dealing with some sort of initiative in Texas about English only. She held a press conference. She held up a Bible. She said: If English is good enough for Jesus, it is good enough for Texas.

She didn't quite understand, I guess.

But the good enough concept is something we all talk about here. If the 5¼ percent income tax rate is good enough for the biggest corporations in this country that have moved jobs overseas, and now bring profits back and get to pay 5¼ percent, why is it not good enough for the Olsens, Johnsons, and the Larsens? Those are names from my hometown. Why is it not good enough for the people living down the street, or up the block, or on the farm who may pay multiples of this tax rate?

Let me show a chart. These companies aren't doing anything wrong. These companies are simply going to benefit handsomely from what this Congress did for them—to say to them: By the way, we will give you a very special deal. This is Exxon Mobil, IBM, Hewlett-Packard, Pepsi-Cola, and so on—unpatriated foreign earnings totaling tens of billions of dollars. And they get to pay income taxes at 5¼ percent. That sounds like a sales tax, doesn't it? That sounds like a sales tax and not an income tax. But do average folks get to pay an income tax at 5¼? No. Nobody else does.

It kind of reminds me Tom Paxton's old song. He seemed to be able to say it in kind of a simple way. He got all excited—this folksinger—when the Congress gave a big, old loan to Chrysler Corporation. So he wrote a song saying, ''I'm Changing My Name to Chrysler.''

Oh the price of gold is rising out of sight, and the dollar is in sorry shape tonight, what a dollar used to get us now won't get a head of lettuce. No the economic forecast isn't bright.

He says:

I'm changing my name to Chrysler. I am going down to Washington, DC, I will tell some power broker, ''What you did for Iacocca would be perfectly acceptable to me.''

Maybe he would want to write a couple more verses. Maybe he would like to pay income taxes at 5¼ percent. Maybe every citizen of my home State of North Dakota would like to be able to pay a 5¼ percent income tax rate.

If it is good enough for Exxon Mobil, why isn't it good enough for my citizens, or good enough for all the citizens of this country?

This was done last year with very little debate; just stuck in a big old bill and says it is going to create jobs. Let us give a special deal to some big old economic interests. Nobody will care and nobody will know.

Now we see the result—hitting the tax break jackpot. Those who are going to get the biggest benefits as a result of the generosity which I think has probably not ever been given before. All of these companies expected that the profits they earned overseas would be taxed at the regular tax rate when they brought the profits back. That is what they were told. That is what the deal was. That is what the deferral was in the Tax Code.

Guess what. They got a big old fat tax break unlike any that is given to any other American citizen. They get to pay 5.25 percent.

By the way, they boast that they would be creating jobs and that now appears not to be true. Some of the same companies that moved their American jobs overseas to boost foreign profits now get a special deal back home to pay lower taxes than virtually any other American citizen.

Congress ought to hang its head and maybe Tom Paxton ought to write another song: If it is good enough for Hewlett-Packard and good enough for Exxon Mobil, it ought to be good enough for constituents who live up the block and down the street and on the farm in this country.

Enough about that. These things happen behind closed doors with little debate and great complexity and people do not understand. Somehow at the end of the day it is always kind of the cake and crumbs approach to public policy: The big interests get the cake; the little folks get the crumbs and hope everyone is happy and nobody debates too much about it.

SOCIAL SECURITY

There is a lot of this influence in the Social Security debate. I will talk for a moment about that. I also will talk about the budget that was offered yesterday. The Social Security debate is

an example of this strange approach to public policy.

Social Security was created in 1935. The first monthly benefit was paid in 1940. Social Security has lifted tens of millions of senior citizens out of poverty. Fifty percent of America's elderly were living in poverty when Social Security was enacted. Today it is less than 10 percent.

The fact is, Social Security works. It has been a Godsend for a lot of people who reach retirement age. Social Security is the one dependable source of income they know will be there. It is the social insurance that they have paid for over all the years when they worked. Social Security includes not only old-age retirement benefits but also provides disability and survivor benefits. It is the one piece of that social insurance that workers knew would be there, and it has always been there.

Now, in 1983, a commission said, when the baby boomers retire, they will hit the retirement rolls like a tidal wave.

After the Second World War, the soldiers came home. We have all seen the pictures. We beat back the oppression of Hitler and Nazism. What a wonderful time. There was a great outpouring of romance and affection when the soldiers got home. We had the biggest baby crop in the history of the world. We had a lot of babies. Those GIs came home; they had families; they raised families; they built schools; they created jobs; they went to college on the GI bill. They built this country.

There comes a time, then, when the baby boomers will retire and we have a strain on the Social Security system. So we decided to save for that. This year, for example, we collected Social Security taxes from worker paychecks—$151 billion more than needed to pay out current Social Security benefits. We are doing that every year. This will help grow Social Security trust assets to over $5 trillion by 2018.

The President said the other night something that is not right or not accurate. He said, in the year 2018, the Social Security system will be paying out more than it takes in. That is just flat wrong. Our colleague, Daniel Patrick Moynihan, once said everyone is entitled to their own opinion but not everyone is entitled to their own set of facts.

In the year 2018, the Social Security system will be taking in taxes from paychecks as well as a substantial amount of interest that will exist on the Treasury bonds that have been accruing over these many years in the Social Security trust. This interest, along with the tax collected from paychecks, will far exceed that which is necessary to be paid out. It is the year 2042 or 2052, according to either the Social Security actuaries or the Congressional Budget Office, where we hit the point we can no longer pay full benefits. It is not bankrupt at that point, but unless we make some adjustment, we cannot pay full benefits.

The President's proposal for private accounts, however, anticipates a level of investment return on private accounts that, if realized, means the economic growth in the country would put Social Security in a position where it would not have a problem at all for the long term. With that kind of economic growth as projected by the President, there will be no problem in Social Security. It will meet its obligations over the long term.

But we have a circumstance now where the President and Administration official say Social Security is in crisis, it is bankrupt, it is flat bust, depending on whom you listen to. The purpose of using that language is to convince people there is a very serious problem here. There may need to be some adjustments because people are living longer, better, and healthier lives. But there is not a crisis that justifies taking the Social Security system apart, which is what the President proposes to do.

He proposes several things, none of which he talks about but all of which are part of his plan: First, borrow a great deal of money, from $1 to $3 trillion. Second, change the indexing in Social Security and cut benefits. Under his plan, you are borrowing money, cutting benefits, investing the borrowed money in the stock market, and hoping in the end it comes out all right.

All the indications I have seen, whether from the Congressional Budget Office or the Brookings Institution or others, say that workers will come out further behind, not ahead, as a result of this plan.

The question, What should we do, is answered, we preserve, protect, and strengthen Social Security. This program works. It is probably true that almost none of those who are proposing these changes—borrowing money and putting it in private accounts and taking the Social Security system apart—will ever have to worry about Social Security. Almost all of them will have sufficient assets to not be too worried about Social Security for themselves. But there are a lot of people in this country who do worry about Social Security. It has always been there and can always be there as part of the social insurance that represents the foundation of retirement security.

Retirement security has two parts. One part is the guaranteed insurance on which we pay premiums in the form of taxes every month from our paychecks. That is always there. The second part in retirement security is private investments, 401(k)s, IRAs, and others. I support that. I believe we ought to do even more to incentivize private investments. But we should do that without taking apart the Social Security Program.

THE BUDGET

Now, finally, I mention the budget. The budget offered yesterday is a budget that has a great many controversial issues. All Members would agree we have the largest deficits in the history of this country. This country is way off track in fiscal policy. It needs to be put on track. It is not just fiscal policy. Fiscal and trade policy, between them, contributed somewhere between $1 to $1.2 trillion in debt just in the last year. That is unsustainable. You cannot continue to do that.

The trade deficit we will know on Thursday of this week, but the trade deficit is somewhere around $600 to $700 billion—just in the past year. The fiscal policy budget deficit is somewhere around $560 billion. This country cannot continue it do this. It is off track.

We have to put it on track.

The budget that was offered yesterday claims that we will have a budget deficit this year of roughly $427 billion. The fact is that figure takes the Social Security tax money we are supposed to be putting into Social Security and uses it to make the deficit look smaller. The real budget deficit for the current year is expected to be about $587 billion, and although that is the real deficit, that does not include the costs of Iraq, Afghanistan, and prosecuting the war because the President does not include that in the budget. Why? Because he says we do not know what it will cost despite the fact we have known for a long while it is costing at least $5 billion a month. He is now saying, I want you to approve an extra $80 billion in emergency funding. So we have roughly a $580 billion out-of-balance budget that does not even include the extra money that is necessary that the President knows he will ask Congress to spend on Iraq and Afghanistan and the military budget.

You could get a much better grip on what all this costs by taking a look at the numbers in his proposed budget dealing with gross debt. He is proposing about a $677 billion increase in gross federal debt next year versus this year. So that is the real measure of how much we are spending that we do not have—a $677 billion increase in gross debt.

Now, we know we have to tighten our belt. There are some things in the budget I agree with, some I do not. I do not agree that, for example, we ought to shut down Amtrak except for the east coast. That is what the President wants to do. I do not support that. I think rail passenger service strengthens this country and it is good for this country.

I do not agree that we should cut back on Indian tribal colleges. It is the one step up and out of poverty and toward hope and opportunity that has been remarkably successful. I could go through a list of things where I might disagree.

On the spending side, I do not agree with the President that we ought to begin building earth-penetrating, bunker-busting, designer nuclear weapons. What on Earth is that about? Spending money to build more nuclear weapons? Bunker busters? I do not understand that. Not only is it the wrong

message for the world, it is spending money we do not have on things we do not need.

Let me give you an example of a little program in this budget that we have spent almost $200 million on over the years. It is Television Marti. It is this country deciding to send television signals to the Cuban people to tell them how good things are outside of Cuba. Well, I visited Cuba. The Cuban people know how good things are outside of Cuba. That is why they try to escape Cuba.

It is interesting, we spend all this money on Television Marti to broadcast into Cuba. We do it through Aerostat balloons, and now we do it with a sophisticated C–130 airplane, which is very expensive. And guess what. No Cubans see the television broadcasts. Oh, we broadcast. We have expensive studios and expensive people, and we have balloons, and we have airplanes, and we broadcast these television signals to the Cuban people. And the President wants to double the money for it, despite the fact that all those signals are jammed and the people do not see the broadcasts. I do not understand that.

What on Earth could they be thinking about? They are going to double funding for the broadcasting signals into Cuba that are jammed and that the Cuban people cannot see. In fact, one of the reasons he wants to double funding is he wants to buy another airplane for this program. So you talk about waste, it is unbelievable.

I think the most important point to make about the budget, however, is it is time for Republicans and Democrats, for the President and the Congress, to level with the American people. We have a fiscal policy that is reckless, is way out of control and is completely unsustainable. You cannot spend $677 billion that you do not have—not next year, not last year, not the year after next. You cannot have a trade deficit that is wildly out of balance. And you cannot have a Tax Code that incentivizes shutting down American factories and sending American jobs overseas. You cannot keep doing these things.

There are some who take a look at this place, and they see a bunch of windbags in blue suits, I suppose. They think we just talk, and occasionally, when the lights go out, we pass something like a 5.25 percent special tax break for the biggest economic interests.

The American people deserve for us to be serious about fiscal policy, about trade policy and about tax policy, and for us to begin to put together a plan to put this country back on track. It is not all the fault of one side or the other. But if both sides do not pull in the right direction, this country cannot provide economic health and opportunity and growth in the future.

What is happening in this country no one on this floor recognizes because no one in the Senate has lost a job because of outsourcing; no one here has lost a job because their plant was closed.

Let me again say, as I conclude, the people who worked for Huffy Bicycles know what that is like. The people who worked for Schwinn Bicycles know what that is like. The people who worked for Fig Newton know what that is like. The people who worked for Levi Strauss know what that is like. The people who made T-shirts and shorts for Fruit of the Loom know exactly what that is like. They all lost their jobs because they cannot compete with people who are willing to work for 30 cents an hour overseas. The employers have found a billion people on this Earth who are willing to do it. And they will not only work for 30 cents an hour, you can put them in factories and dump sewage and dump chemicals into the air and water. You can work them 7 days a week, and if they decide to create a union, you can fire all of them, just like that.

If this country does not get serious about stemming the outmigration of jobs and about stemming the hemorrhaging of red ink in international trade in our trade deficit and dealing with our fiscal policy and budget deficit, our economic future is not going to be a bright future.

We have far too much promise as a country to let this happen to us. We need leadership, yes, from the White House, and from Congress, to deal with serious things in a serious way. I hope that happens soon. I want to be a part of a group that is bipartisan that says let's put this country back on track. But I see precious little evidence of bipartisanship these days. The minute you stand and talk about the facts, all of a sudden you are being excessively partisan, and the White House comes after you; to wit, the story yesterday about the RNC and what they have decided to do with respect to Senator REID.

Well, there is a lot at stake in this Congress and this President getting it right for a change: on budgets, on trade, on taxes. And I, for one, hope we can begin a serious discussion about serious issues in the days ahead and give people some hope that their future will be a brighter and better future.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to speak about the Class Action Fairness Act. It is the pending business before the body today. I want to spend a few minutes talking about this bill and talking about it in the context of some of the issues that the prior speaker has spoken about, the Senator from North Dakota, whom I have worked with on a number of issues over time. We agree on some issues; we disagree on some. We hopefully are going to be able to work together on a number of these issues.

I view this bill as a chance for us to grow the economy, as a chance for us to do something to create jobs and opportunities. We may disagree on what are the various issues and what we need to do to create those jobs, to address issues for people who have lost work in a certain area, and to create them in another area. But what we are dealing with in this class action reform bill, this Class Action Fairness Act—I serve on the Judiciary Committee; we passed this bill out on a bipartisan vote in the Judiciary Committee—is to try to deal with the legal system that is putting too much burden on business so that it cannot create jobs here, and so then those jobs and economic opportunities go somewhere else.

It was a bipartisan vote coming through the Judiciary Committee. If you look at the membership on that committee, you can see these are dedicated people from both sides of the aisle. But they look at this issue, and they say, here is a chance for us to reform a system, create growth and opportunity, create fairness within the country, within the system.

That is the overall way we ought to be going. That is what we ought to be doing. That is why this is one of the lead substantive bills coming from the Senate right now. That is why we are hopeful of keeping it amendment free, so we can get it through the House, passed, and on to the President, so the American people can see some product, and they can see us dealing with a problem that they believe is there: too much litigation, litigation where it is not fair, litigation in ways that tend to help lawyers more than helping people—lawyers are people, but tending to help the lawyers who are bringing the case more than the people who are supposed to be attracted and dealt with in the case and in the class.

The prior speaker spoke about a number of different problems we have. The budget deficit, clearly that is an issue. Clearly that is a problem for the country. Clearly, that is something the President puts down a mark to try to correct. I think the President is right on moving to cut the deficit in half in 5 years. I think we need to go further and balance in 7 years.

Now, you say, well, wait a minute, how are you going to do that? We have done it before. We do it the same way the next time that we did it the last time; that is, you get the economy growing and sustain that growth in the economy. It kicks off a lot of receipts that way. Right now the economy is growing. It has started to move again. We have had some lethargic times, but it is growing, it is moving, it is creating jobs, and that creates receipts at the Government level—Federal, State, and local. That is starting to happen.

The second piece of that equation is you have to restrain your growth of Federal spending. As your receipts go up, you cannot spend it at the same rate. You have to spend it at a slower rate. That is what the President is trying to do with this budget. He is saying, OK, if we can get this type of growth, we will have a slower rate of

growth in the spending areas. You have to spend it in more prioritized areas.

Clearly, the war on terrorism, homeland defense, key areas, and several others the President has identified, that is how we are going to get at the deficit. I don't agree with the whole budget document put forward. I do agree with the structure of the plan, that we get the deficit cut in half in five and, as I say, I believe we need to get it balanced in seven, so we can hand it over to the next generation in a balanced situation.

One plug I want to put in is, a number of us put forward a bill previously to create an overall commission within the Federal Government to identify programs that maybe have accomplished their purposes and we need to go on and do something differently and zero out programs and to identify those that have accomplished their mission or are wasteful Government spending and propose to the Congress to zero them out, and then the commission give the Congress one vote on a whole package of bills. Maybe it is 53 total programs that need to be, maybe it is 253 that need to be eliminated. Give the Congress one vote to eliminate all of them, keep them all, unamendable, and by that means then us starting to cut at some of the wasteful spending, which we do, which takes place.

We used this sort of structured program to get at our military bases where we had too many bases around the country, and we used this to get fewer bases and to get those bases the needed resources to serve our troops. I want to use the same model throughout the Federal Government. That is the way we can get at the budget.

The previous speaker also spoke about Social Security. One of the problems he identified and that has been spoken about is that we run a surplus in Social Security and then that is spent in Government and then you borrow against the Federal Government for that. One of the beauties of creating personal accounts in Social Security is the Government can't spend that money. That is then the money of the individual, and there is actually something there, instead of this Government borrowing on one hand off of the Social Security account and on another hand. So that when we get to about 2013, we are no longer running a surplus in Social Security, we are running a deficit. And then the Government has to borrow in other places to pay Social Security.

That is not a good situation. That is an untenable situation. That is not the sort of country or structure we want to turn over to our kids. That is why this need to look at personal accounts, so that the money is not spent, the money is safe. We get a higher rate of return. We get a rate of return on these funds.

But our business at hand today is on the Class Action Fairness Act. This bill needs to pass. I believe it will pass. I believe it will pass with a substantial bipartisan vote. And the reason it will pass is we need this to reform this portion of our legal system.

Class action lawsuits allow plaintiffs whose injuries might not be worth enough to justify bringing individual suits to combine their claims into one lawsuit against a common defendant. That is the nature of a class action. It is to try to create a more efficient and equitable distribution. Class actions are a valuable part of the legal system. However, some trial lawyers have found a weakness in the current system and developed a class action practice devoted to finding opportunities to, in some cases, extract payments from American businesses.

Currently in diversity cases, where plaintiffs reside in different States, trial lawyers can forum shop. That means they can go to a place where they think they will get a better jury, they think they will get better treatment rather than fair treatment, or a setting where the parties actually reside. Once a class action is certified, they can force businesses into paying expensive settlements, so it becomes an extractive process that way.

Due to this abuse in the system, injured plaintiffs are not getting the recourse they are supposed to get through class actions. It is documented that the legal system returns less than 50 cents on the dollar to the people it is established to help and only 22 cents to compensate for economic losses. Although injured plaintiffs are receiving little of value in class action settlements, unfortunately, we are seeing in too many cases trial lawyers obtaining large windfalls.

I will give a couple of examples. One well-known example is the 2001 case against Blockbuster. Customers alleged they were charged excessive late fees for video rentals and received $1 coupons for the next trip to the video store, while their attorneys received over $9 million. That is a lot of videos.

Similarly, in Shields v. Bridgestone/Firestone, a 2003 suit was filed for customers who had Firestone tires that were among those the Government investigated or recalled but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, they rejected certifying that this was a class, both sides negotiated a settlement which has received preliminary approval of a Texas State court. Under the agreement, the company is to redesign certain tires, a move already under way, irrespective of the lawsuit, and to develop a 3-year consumer education and awareness campaign. But the members of the class, the actual members of the class, the plaintiffs, received nothing. However, if the court gives final approval, the lawyers will get $19 million.

Over the past decade, class action lawsuits have grown by over 1,000 percent nationwide, spurring a mass of these kinds of hasty, unjust settlements. This is because even if the class certification ruling is unmerited or even unconstitutional, it often cannot be appealed until after an expensive trial on the merits of the case. Facing the cost of litigation often forces defendants to settle out of court with sizable payments, even when the defendant will likely prevail under the law. These settlements have come to be known as a form of traditional blackmail and are problematic to all Americans because they make trial lawyers rich while imposing increased costs on the economy, causing lower wages and higher prices for consumers. They also create an environment of unpredictable litigation costs and serve to chill the investment, entrepreneurship, and the capital needed for job creation. In short, class action abuse shortchanges true victims while severely damaging the economic engines in this country.

That is not to say all class actions are wrong, and this bill doesn't impact legitimate class actions. It basically deals with the issue of forum shopping. Class actions are still going to be brought. They still will be brought. They still need to be brought in this country. But you take away this issue, particularly this issue on forum shopping.

In response to the growing crisis in class actions, Senator GRASSLEY has authored the Class Action Fairness Act. It is a moderate, bipartisan approach that addresses the most serious of the class action abuses by allowing more large interstate class actions to be heard in Federal courts and by implementing a consumer class action bill of rights that protects consumers from some of the most egregious abuses in class action practice today.

The bill is the result of a bipartisan compromise reached with Senators DODD, LANDRIEU, and SCHUMER in the last session of Congress that narrowed the group of cases that would be removable to Federal court and added a Democratic provision put forward by the Democratic Members to build attorney's fees in coupon settlement cases. It is important to remember that this bill is merely court procedure reform that will go a long way to end abusive forum shopping.

S. 5 does not alter substantive law at all or otherwise affect any injured individual's right to seek redress or to obtain damages. It does not limit damages, including punitive damages. It does not limit those. It does not impose stricter pleading requirements. Rather, the Federal courts will continue to apply the appropriate State or States' laws in adjudicating a class action suit.

Some of the critics of this legislation have stated that S. 5 will move all class actions to the Federal courts, which will become clogged, resulting in a windfall for corporate defendants. The facts do not support this allegation.

First, while S. 5 does expand Federal court jurisdiction over class action, the bill is drafted to ensure that truly local disputes will continue to be litigated in State court. Most notably, the bill will

leave in State court class actions in which the plaintiffs and defendants are all residents of the same State, class actions with fewer than 100 plaintiffs, class actions that involve less than $5 million, shareholder class actions alleging breaches of fiduciary duty, any class action in which a State government entity is a primary defendant, and any class actions brought against a company in its home State in which two-thirds or more of the class members are also residents of that State.

Secondly, the average State court judge is assigned three times as many cases as his or her Federal counterparts. State court judges are assigned, on average, about 1,500 new cases each year. For example, in California, the average judge was assigned 1,501 cases in 2001. In Florida, the average was 2,210. In New Jersey, the average was 2,620. In Texas, it was a little over 1,600 cases. In contrast, each Federal court judge was assigned an average of 518 new cases during the 12-month period ending September 30, 2002.

The exponential growth of State court class action filings over the last decade has added to the workload problem of State court judges who, in many cases, unlike their Federal counterparts, do not have a number of law clerks, magistrate judges, or special masters to help with particularly time-consuming tasks involving supervising complex cases. Since many State courts or tribunals of general jurisdiction hear all sorts of cases, from traffic violations, to divorces, to felonies, judges who are distracted by class actions do not have enough time to focus on providing basic legal services for the community that they serve.

Finally, recent surveys have shown that the majority of class actions in many jurisdictions would remain in State court under this bill. As far as those cases that could be heard in Federal court under S. 5, many of them involve copycat class actions filed in different jurisdictions, which Federal judges can consolidate under one judge. Therefore, moving more class actions to Federal court would actually reduce the burden for everyone.

Ultimately, this bill will allow claims with merit to go forward while preventing judicial blackmail. That has become, unfortunately, something involved in our judiciary today.

I urge my colleagues to vote a clean class action bill out of the Senate, to vote against any amendments that would dilute the bill and stop us from moving this reform forward, and that would help in job creation in the United States. This is a small measure. I think we should do more, but it is an appropriate measure. It moves us in the right direction. It helps in the creation of jobs in the United States and in litigation reform, which we desperately need in this country.

These sort of bipartisan, modest steps, while they won't have perhaps as big a positive impact as we would like them to have, will have a positive impact on the judicial system and in helping us to reform that. That is something we need to do. We need to move forward on the budget deficit, we need to move forward to make sure we have a true trust fund in Social Security, and we need to move forward in litigation reform. All these are positive steps for our future. I hope we can continue, as with this bill, to work it forward on a bipartisan basis.

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

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

AMENDMENT NO. 3, AS MODIFIED

Mr. DURBIN. Mr. President, earlier I offered an amendment at the desk which needs to be modified. I ask that the amendment, under the rules, be modified accordingly to reflect the pages and lines of the bill.

The PRESIDING OFFICER. The amendment is so modified.

The modification is as follows:

On page 21, before the semicolon at the end of line 2, insert ''or by the court sua sponte''.

On page 21, line 9, strike ''solely''.

Mr. DURBIN. Thank you, Mr. President.

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

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

MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

IRAQ VOTES FOR FREEDOM

Mr. ENSIGN. Mr. President, I rise to speak about the recent historic elections in Iraq—elections that had been anticipated by an anxious global community for some time.

This election is the story of true patriots who knew the odds and decided to beat them. This is the story of the millions of Iraqis who defied the threats and the intimidation of '' terrorists to cast their votes for a brighter future in Iraq.

News reports are flush with first-hand accounts from observers. The reports paint a picture of a people acting on their innate desire to be free.

One such account details the determination of Samir Hassan, who at 32 lost his leg in a car bomb blast last October. Hassan said, ''I would have crawled here if I had to. I don't want terrorists to kill other Iraqis like they tried to kill me. Today I am voting for peace.''

The act of voting by ordinary Iraqis in the face of extreme danger confirms President Bush's belief that people around the globe, when given a chance, will choose liberty and democracy over enslavement and tyranny. Human beings crave freedom at their core.

Early estimates by Iraq's Independent Electoral Commission show that about 8 million of the nearly 14 million registered voters cast their ballot on Sunday—a turnout almost equal to the number of Americans who voted last November without the threat of snipers or suicide bombers.

In the words of Arkan Mahmoud Jawad, who came to vote with his mother and younger brother, ''This is the salvation for the Iraqis. I hate the terrorists, and now, I am fighting them by my vote.''

These are people who were beaten down by the brutal regime of Saddam Hussein. That is exactly why they want to reclaim their country through these elections. They know what the cost of failure would be.

And they know all too well that tyranny breeds isolation. Any dissent from Saddam Hussein's regime could result in torture or death. Neighbors couldn't trust neighbors. Families were torn apart. All this leaves scars on a nation that may take generations to heal.

I believe that voting is the first act of building a community as well as building a country. With the election we saw a peaceful majority reclaiming their birthright. We saw people gaining courage from realizing that they were not alone—that their friends and neighbors and relatives were going to vote—and that they could vote too. Together they are building their future.

Here is one description of how voting progressed:

The first Iraqis on the streets seemed tense as well, not smiling and not waving back. But as the day unfolded, and more and more voters took to the streets, a momentum seemed to gather, and by mid-morning Karada's main street was jammed with people who had voted and people on their way to vote. Some Iraqis, walking out of the polling places, used their cellphones to call friends and urge them to come. Some banged on their neighbors' doors and dragged them out of bed. Old men rolled up in wheelchairs. Women came in groups, lining up in their long, black, head-to-toe abayas. The outpouring, which filled Karada's streets with Shiites, Christians and even some Sunnis, surprised the Iraqis themselves. When Ehab Al Bahir, a captain in the Iraqi Army, arrived at Marjayoon Primary School, he braced himself for insurgent attacks. The mortar shells arrived, as he anticipated, but so did the Iraqi voters, which he did not.

Voting was an act of defiance against the terrorists and an affirmation that Iraqis control their own destiny through self-government. The people of Iraq realize that a stable, successful,