

or SNCC, was formed. The legendary organization led sit-ins around the country. Then, on July 25, 1960, Woolworth desegregated its lunch counters. By August of 1961, over 70,000 Americans had taken part in the sit-ins. Three thousand were arrested in the act.

Finally, in 1964, President Johnson signed the Civil Rights Act which outlawed forever segregation in public accommodations. A section of the Woolworth lunch counter can be seen not too far from here, at the Smithsonian Institution in Washington, DC. The counter and four stools and a sign advertising 29-cent banana splits sits in a place of honor on the first floor of the National Museum of American History.

As we celebrate African-American history this month, we reflect on these events and so many other events, large and small, that have shaped our country. From slavery to segregation, we remember that America did not always live up to its ideals. In fact, we often fell far short of them. But we also learned that fundamental to our national character is the drive to live out the true meaning of our creed.

In the 108th Congress we passed the African American Museum of History and Culture Act to establish a national repository for this great history. The new museum will house priceless artifacts, documents, and recordings. It will bring to life the vibrant cultural contributions African Americans have made to every facet of American life. Visitors from around the world will learn about 400 years of struggle and of progress. They will learn that the Capital itself owes its completion to America's first black man of science, Benjamin Bannaker, who reconstructed the city's layout from memory after Pierre L'Enfant quit the project.

The new museum's council, which includes many of America's most prominent men and women in business, entertainment, and academia, will meet early this year to begin the hard work of selecting a site for the museum, hiring a director, building a collection, and raising funds. From blood banking to the modern subway, from jazz to social justice, the contributions of African Americans have shaped and molded and influenced our national culture and our national character.

The African-American experience is one of the most important threads in the American tapestry. The National Museum of African American History and Culture promises to become one of our Nation's most prominent cultural landmarks.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the time in rela-

tion to the statement I will give which pertains to the class action bill be charged to the class action bill. There is no time agreement, but rather than take up my leader time or morning business, that the time be charged against the time on the bill.

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

CLASS ACTION FAIRNESS ACT OF 2005

Mr. REID. Mr. President, for the past 2 days the Senate has been debating the so-called Class Action Fairness Act of 2005. I want to spend a few minutes today talking about this bill.

Despite its title, the bill is not about fairness at all, in my opinion. It is about depriving consumers of access to the courts and letting corporate wrongdoers off the hook.

People ask, what are these cases all about? These cases are about things dealing with fairness. Class actions fall in a number of different categories: environmental pollution, insurance practices, wage-and-hour employment disputes, consumer fraud, dangerous drugs, products that kill, and consumer protection. In those categories we have had, in recent years, some very successful pieces of litigation that have made our society a better place. However if this bill had been law, those cases would have been removed to federal court where they would have likely been dismissed. It is important for states to continue to have the opportunity to protect their own citizens in their own courts.

For example, there was a case in New Hampshire dealing with environmental pollution brought by the State of New Hampshire against 22 oil and chemical companies responsible for polluting the State's waterways with methyl tertiary butyl ether. We refer to that as MTBE. These companies were accused of violating state consumer protection and state environmental laws. They were negligent. They produced a defective product and created a public nuisance. In this case, New Hampshire is seeking compensation for the cost of the cleanup as well as penalties, both monetary and punitive in nature. Under this bill, because the named defendant is a citizen of another state, the State of New Hampshire would have to have their case heard in federal court instead of their own state court.

In Louisiana there was a pesticide there that had decimated the crawfish population. At one time, they were bringing in about 41 million pounds of crawfish. After this chemical was put into the waterways, that dropped to about 16 million pounds. Crawfish farmers were going broke. The plaintiffs were all from Louisiana and the harm occurred there. They filed a class action in state court, and a Louisiana state court judge recently granted final approval on a settlement agreement. This case is a clear example of a state

court having the opportunity to interpret its own state law, yet if S. 5 were already enacted, it would have had to be removed to federal court.

There was a chemical plant leak that occurred in Richmond, California that caused a dangerous cloud to form over the town. Over 24,000 people sought medical treatment in the days immediately following the leak. The residents sued as a class, and the chemical company had to settle. While only California residents were harmed in California, under S. 5 this case would have been removed to federal court because the defendant is based in New Jersey.

Insurance practices: In one case, a Missouri state judge gave preliminary approval to a settlement agreement in a class action brought by Missouri plaintiffs, where a pharmacist diluted prescriptions for thousands of patients, including chemotherapy patients. Because the defendant is based in Iowa, although they sell policies in Missouri, the case could be removable to federal court under this bill.

Equitable Life Insurance was accused of misleading and cheating customers. This was a situation of the so-called vanishing premium cases in the 1980s. They sold policies when interest rates were high. They told customers as soon as the interest rates went down their premiums would be lower. That was not true. Class action lawsuits were filed in Pennsylvania and Arizona state courts, and Equitable settled the suits for \$20 million helping over 130,000 people. However, because the insurance company was based in another state, under this legislation, the case would have been removed to federal court and these people harmed between 1984-1996 would still be waiting for justice.

Wage-and-hour employment disputes: In California, Wal-Mart employees have been denied pay for actual time worked. A California state judge certified a class action brought by California plaintiffs. The harm occurred in California, nonetheless, under the proposed legislation the case would be removed to federal court.

Consumer fraud: Roto-Rooter overcharged approximately two million customers \$10 each by adding charges to invoices violating state consumer protection laws. A class action was brought in Ohio where many of the class members live and where Roto-Rooter is based. Under S. 5, the case could be removed to federal court.

AOL, a Virginia based company, charged the credit card of their customers for services even after those customers had canceled their AOL subscriptions. The lead plaintiff in a class action case was a California citizen. AOL wanted to litigate the case in federal court under Virginia law. The California Court of Appeals held that the proper venue was in state court because Virginia law did not allow consumer class actions and the available remedies were more limited than under California law. This would undermine

California's strong consumer protection laws. Under this bill we are considering, California would be powerless to protect their own public policy. What's fair about that?

In Florida a person sold funeral plots that didn't exist and desecrated some of the graves that were there. The issues raised in this case are state issues and the coffins desecrated were only those in Florida, yet under S. 5 the case would be removed to federal court because the parent company of the funeral home is based in another state.

Products that kill: Lead paint has poisoned thousands of children since 1993. Ford sold police cruisers that are prone to fire. This bill would seek to remove these cases to our already overburdened federal courts where they would experience extreme delays and possible dismissal.

Consumer protection: Cases against Monsanto, Jack-in-the-Box, and Nestle would all be removed to federal court possibly denying the members in the class the protection of their own state laws.

I believe it has been good for our country to have these lawsuits because if you didn't have these lawsuits and you had the law that is now sought in this legislation, these cases, most of them, wouldn't have been brought.

I am not saying there is no room to improve the rules governing class action lawsuits. There is. There are abuses. Coupon settlement cases, I believe, are not good. Consumers get no meaningful relief, and the lawyers get everything. That isn't fair. If this bill simply addressed the coupon problem, all 100 Senators would vote for it. But this pending proposal goes much further. It effectively closes the courthouse doors to a wide range of injured plaintiffs. I have mentioned some of them. At the same time, the bill turns federalism on its head. It denies State courts the opportunity to hear State law claims brought by residents of that State.

My friends on the majority side, the Republicans, say they favor States rights. They should be embarrassed to support this bill, which is one of the most profound assaults on States rights to come before Congress in many years. Most disturbingly, this bill limits corporate accountability at a time when corporate scandals have proliferated.

As we began debate on this bill, the majority leader and I received a letter signed by attorneys general of New York, Oklahoma, California, Illinois, Iowa, Kentucky, Maine, Massachusetts, Maryland, Minnesota, New Mexico, Oregon, Vermont, and West Virginia. These attorneys general whose sworn duty is to protect the public and enforce State laws oppose the bill now before the Senate. They say that despite improvements since the bill was first introduced a number of years ago, that:

S. 5 still unduly limits the rights of individuals to seek redress for corporate wrong-

doing in their State courts. We therefore strongly recommend that this legislation not be enacted in its present form.

They warn us further:

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.

This bill would "reorder" our justice system, as the attorneys general have warned us.

Several amendments we are going to offer are important.

First, S. 5 will allow corporate defendants to remove many multi-state class actions from State court to Federal court. But under current law and practice, the Federal courts can refuse to certify these cases as class actions on the ground that there are too many State laws involved. Prior to the passage of S. 5, the Federal courts' failure to certify would allow consumers to refile their cases in State court, but this bill would preclude plaintiffs turned away in Federal court from going back to State court. If this problem isn't corrected, consumers will have lost their only means of redress when they have been cheated by a corporation in a matter too small to file an individual case. Plaintiffs in cases like the Roto-Rooter example would have no remedy, and the corporation could continue to take advantage of them.

Senator BINGAMAN will offer an amendment. It is my understanding that he and Senator FEINSTEIN are working on a compromise. Senator FEINSTEIN has been an early supporter of S. 5. She understands that this is a problem. I am confident she will work with Senator BINGAMAN to come up with some way to resolve this important issue.

Second, the bill will literally make a Federal case out of what has always been State personal injury cases. Sometimes such cases are consolidated by State courts for efficiency. They are not "class actions" at all. But the pending bill would include them under a newly invented term, "mass actions," and allow them to be removed to Federal court.

For example, when a large number of people are injured by the same dangerous pharmaceutical drug, their claims may be consolidated by State court rules. Now those consolidated individual claims would be removed to Federal court where they will be subject to extensive delays or even dismissal if the laws of more than one State are involved. These mass torts often involve hundreds of plaintiffs who have been physically injured by drugs, medical devices, tobacco, lead paint, or ground water contamination.

S. 5 should be required to have a big label on it: "Warning: This legislation may be dangerous to the health of all Americans"—especially healthy American consumers.

Senator DURBIN has already offered an amendment to deal with this "mass

torts" issue. I hope that the chairman of the committee, Senator SPECTER, will work with him to see if this matter can be resolved.

These two things I have mentioned—the Bingham amendment and the Durbin amendment—are issues of basic fairness.

Third, the bill would apply to civil rights and wage-and-hour cases that have nothing to do with the coupon settlements the bill sponsors say they want to address. These cases would now be subject to the same delay and potential dismissal as the personal injury cases I just discussed.

Class actions are particularly important for low wage workers. There are now dozens of class action suits in State courts representing tens of thousands of low wage workers who have been forced to work extra hours without pay or who have been denied their wages for other reasons. Also, many States provide greater civil rights protections than are available under Federal law. Senator KENNEDY will offer an amendment to carve out these cases from this bill. That is fair.

Fourth, as drafted, this bill even applies to cases brought by State attorneys general enforcing State laws on behalf of State consumers. Federalism has certainly taken a tumble around here when State courts are not permitted to hear cases brought by their own attorneys general to enforce State consumer fraud laws, environmental protection laws, and other vital State interests.

Separate from the letter I described earlier from Attorney General Spitzer and others, we have received a letter from the National Association of State Attorneys, the organization representing all 50 statewide prosecutors, Republicans and Democrats. Forty-six of them have signed it. They uniformly urge that the bill be clarified to include consumer class actions brought by State attorneys general. That is fair. Senator PRYOR, one of several former state attorneys general we have serving in this body, will offer an amendment to achieve this goal.

This bill is imbalanced in that it establishes a 60-day deadline for Federal appellate courts to decide appeals of a district court's decision to remand a class action lawsuit, but it lacks a parallel mechanism to ensure speedy consideration of the motion to remand in the district court. Senator FEINGOLD will offer an amendment to correct this imbalance. If 60 days is not a good deadline, they can come up with another one. But unless the Feingold amendment is agreed to, these people can bring a case to court which will lay there forever.

None of these amendments we offer are killer amendments. All are modest improvements that would strengthen corporate accountability and ensure that vulnerable citizens get their day in court. I urge my colleagues to accept these amendments.

These amendments I have talked about to the underlying bill will be

helpful. However, even with these amendments, the underlying bill will still be a bad bill, but it would be better. They would certainly improve the bill.

There was a tremendously powerful article in Business Week last week entitled, "A Phony Cure: Shifting class actions to federal courts is no reform." No one can say it is some liberal rag of the Democratic Party. In this article, even Chief Justice Rehnquist criticizes this legislation. The article emphasizes that Federal judges hate this legislation and it is more of a step towards chaos than reform. Justice Rehnquist says: Don't do this to us. Federal judges are too busy. Federal courts are already overburdened and it will make the case backlogs even longer. In addition to that, instead of helping Federal courts, the article states that it will cut back on those resources to our Federal court system, and it is going to leave these Federal judges in a real bind.

This month is Black History month, and this legislation brings to mind for many of us Brown vs. Board of Education. The distinguished majority leader, Senator FRIST, talked today about the first sit-ins by these courageous young men and women in the South which brought about a number of things. But one reason that the Brown vs. Board of Education case was able to move forward was because it was a class action. It was a culmination of appeals from four class action cases—three from the Federal court decisions in Kansas, South Carolina, and Virginia, and one by the decision of the Supreme Court of Delaware. Only the state court, the Supreme Court of Delaware, made the correct decision by ruling in favor of the African-American plaintiffs. The State court held that the segregated schools in Delaware violated the 14th amendment, Delaware rejected separate and unequal schools.

Another example is a case brought last June. The U.S. Supreme Court decided to allow a state class action lawsuit against Daimler Chrysler to continue in Oklahoma. That was an important case because it affects up to 1 million owners of minivans that have front passenger seat air bags that deploy in low speed accidents, very low speeds, with tremendous force, potentially killing children and hurting small adult passengers. Oklahoma's Supreme Court ruled that the case could go forward in state court for this defect. A federal court, relying on the Federal Rules of Civil Procedure, would probably find the case unmanageable.

These cases I have mentioned should be allowed to proceed. This legislation would not allow that. That is too bad.

This legislation, especially if we don't get these amendments passed, is disrespectful to States rights and will result in many instances of injustice. I am going to vote against this bill. I hope my colleagues will do the same. But I certainly hope my colleagues will do something to improve this bad bill. We need to be alarmed at what it is

doing to States rights. I am going to vote against this bill, but I hope people will work with us.

I apologize to my colleague for taking away from his morning business time. I ask unanimous consent that when the Chair announces morning business the full hour be extended with one-half hour on each side.

The PRESIDENT pro tempore. The Chair states that was previously the understanding. It would not take a unanimous consent request.

The Senator from Oregon.

PRESCRIPTION DRUGS

Mr. WYDEN. Mr. President, yesterday, the Senate got the eye-popping news that prescription drug benefits will cost far more than anyone had ever anticipated. In fact, the early appraisal was that it would cost \$400 billion, and then it shot up to over \$500 billion. Yesterday, we learned that it would cost \$720 billion over the next decade, and perhaps would even go to \$1 trillion. A lot of us in the Senate, frankly, were not too surprised because the legislation doesn't allow for the use of cost containment strategies that are utilized in the private sector.

To me, it is incomprehensible, for example, that Medicare, with all of its bargaining power, wouldn't use the same kind of clout that a timber company does in Alaska or Oregon or an auto company in the Midwest or any other big purchaser. Under this law as it is constituted today, what Medicare does is the equivalent of standing in the price club and buying toilet paper one roll at a time. There is absolutely nobody in the United States who goes out and purchases that way. What Medicare is going to be doing just defies common sense because we all know that if you buy more of something, whether in Oregon or in Alaska or anywhere else, you say, Let us try to negotiate a better deal. But Medicare is not allowed to do that under current circumstances.

I have come today to say that in addition to the debate about how the numbers are crunched, what we ought to be doing is working on a bipartisan basis to ensure that we have real cost containment in this program that seems to grow in costs almost by the day. I have worked with Senator SNOWE for more than 3 years on legislation to do that. We have introduced it. It has bipartisan support.

On our side of the aisle, Senator FEINSTEIN and Senator FEINGOLD were original sponsors. Senator MCCAIN joined Senator SNOWE and me in this bipartisan effort. We simply believe that at a time when we are seeing so many Government programs cut and reduced and tremendous financial pressures for belt tightening, we shouldn't leave seniors without even the kind of private sector bargaining, the kind of private sector cost containment power that we see in communities all across the country.

I will tell you, I can't for the life of me figure out why Medicare shouldn't

have the power to be a smart shopper. As it stands today, everybody in the United States tries to be a smart shopper instead of Medicare.

What I would like to do for a couple of moments is try to lay out the legislation that Senator SNOWE and I have spent so much time working on and why I think it is particularly critical right now.

For a senior who lives in rural America where there may be only one private plan serving that area—and maybe there is no private plan at all—that senior is likely to be part of what is called the fallback plan. As of now, all of those seniors in those small communities, many of them in Arkansas—I see our distinguished colleague has joined us; like me, she vetted for the law. We would like to see people in Arkansas and Oregon, in areas with large, rural populations, have some bargaining power the way smart shoppers would. Under the Snowe-Wyden legislation, we say that the seniors in those fallback plans could in effect be part of a group that could use private sector bargaining power in order to hold costs down.

Many of us also represent the larger cities. I have Portland, but we want to hold down costs in Miami, New York, and Chicago. These people might have a choice of larger health programs to try to deal with their benefits. Maybe they are in a managed care organization or what is called a PPO, preferred provider organization. However, these private entities ought to have some bargaining power to hold down the cost for all of their members. Our bipartisan legislation that I have with Senator SNOWE and Senator MCCAIN stipulates we can have bargaining power for seniors in those metropolitan areas as well.

This legislation is going to save taxpayers money as well, not just seniors but taxpayers because, as the Senate knows, we put out a substantial amount of money to offer assistance to employers to not drop their coverage. When the Medicare plans save seniors money on medicine, that means less cost for the retiree plan to make up. Containing costs on the Medicare side, in our view, will help keep costs down for employers insuring retirees as well.

We have an opportunity to get beyond the debate about the numbers that came out in the last day or so, these shocking numbers that Medicare prescription drug care will cost \$720 billion. We can get beyond those numbers and go to a comprehensive, bipartisan, market-based cost-containment strategy, a bipartisan plan that will contain costs for rural and urban seniors in plans across the country, in plans in rural and urban areas, and a plan that will also provide cost containment for employers insuring retirees as well.

It is our view we desperately need some common sense as it relates to cost containment for prescription drugs in our country. It is my view that giving bargaining power to millions of seniors through the private