

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. McCAIN and Mr. LIEBERMAN pertaining to the introduction of S. 342 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. McCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. EN-SIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 5, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 5) to amend the procedures that apply to the consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Pending:

Durbin (Modified) Amendment No. 3, to preserve State court procedures for handling mass actions.

Feingold Amendment No. 12, to establish time limits for action by Federal district courts on motions to remand cases that have been removed to Federal court.

Mr. SPECTER. Mr. President, I thank Senators on both sides of the aisle for their cooperation in moving this class action bill. We reported it out of committee a week ago today and started the opening debate on it on Monday afternoon and then proceeded in a very timely fashion. The prospects are good that we will conclude action on the bill today. A unanimous consent agreement is currently in the process of being worked out, and we will know in the next few minutes precisely what will happen.

We are going to proceed in a few minutes to the amendment offered by the Senator from Wisconsin, Mr. FEINGOLD, which would impose some time limits on the courts which, as I said at the committee hearing last week, I think is a good idea. I advised Senator FEINGOLD that I would feel constrained to oppose it on this bill because of the procedural status, where the House of Representatives has been reported to accept the Senate bill provided it comes over as what we call a clean bill, without amendments.

But as I said to Senator FEINGOLD, and will repeat for the record, I had

heard many complaints about delays in our Federal judicial system. I believe that is an appropriate subject for inquiry by the Judiciary Committee on a broader range than the issue specifically proposed by Senator FEINGOLD. It is in the same family.

I want to be emphatic. We are not impinging in any way on the independence of the Federal judiciary, their discretionary judgments. But when it comes to time limits, how long they have these matters under advisement, I think that is an appropriate matter for congressional inquiry. It bears on how many judges we need and what ought to be done with our judicial system generally. So that will be a subject taken up by the Judiciary Committee at a later date.

I think the Senate bill—this may be a little parochial pride—is more in keeping with an equitable handling of class action bills than is the House bill. For example, the House bill would be retroactive and apply to matters now pending in the State courts, which would be extraordinarily disruptive of many State court proceedings. I think it is fair and accurate to say that the House bill is more restrictive than the Senate bill and our Senate bill, I think, is a better measure to achieve the targeted objective of having class actions decided in the Federal court with balance for plaintiffs and for defendants as well.

So we are moving, I think, by this afternoon, to have a bill which will be ready for concurrence by the House, and signature by the President, and that I think will be a sign that we are moving forward on the legislative calendar.

The Senator from Louisiana is going to seek recognition in a few minutes. I thank my distinguished colleague, Senator HATCH, the former chairman, who has agreed to come over and manage the bill during my absence. We are, at the moment, having hearings on the bankruptcy bill which we hope to have in executive session next Thursday, to move ahead on our fast moving, ambitious judiciary calendar.

I now yield to my distinguished colleague from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise in strong support of S. 5, the Class Action Fairness Act of 2005. In doing so, I wish to recognize and thank them for their leadership, so many Senators who have moved the bill thus far, certainly including the chairman of the Judiciary Committee who just spoke, also the Senator from Iowa, the chief sponsor of the bill, and also the Senator from Utah, the former chairman of the Judiciary Committee.

I am also an original cosponsor of this bill, because it would protect consumers from some of the most egregious abuses in our judicial system.

Let me begin by saying that class actions are an important part of our justice system. They serve an important

purpose when properly defined. No one would dispute they are a valuable feature of the legal system. This bill doesn't do away with them.

As stated so eloquently by the bill's chief sponsor, my colleague from Iowa, S. 5 is really court reform more than tort reform. What does it reform? What is the problem?

The reason we need to pass this bill is that there are loopholes in the class action system, and it allows bad actors to game the system. As a result, in recent years class actions have been subject to abuses that actually work to the detriment of individual consumers, plaintiffs in such cases. That is exactly who the law is supposed to help.

Additionally, this gaming of the system clearly works to the detriment of business and our economy, and the need for job creation in forging a strong economy.

Such abuses happen mainly in State and local courts in cases that really ought to be heard in Federal court.

We currently have a system, therefore, which some trial lawyers seeking to game the system in an effort to maximize their fees seek out some small jurisdiction to pursue nationwide cookie-cutter cases, and they act against major players in a targeted industry. Often, these suits have very little, if anything, to do with the place in which they are brought. Rather, lawyers select the venues for strategic reasons, or for political reasons, a practice known as forum shopping.

These trial lawyers seek out jurisdictions in which the judge will not hesitate to approve settlements in which the lawyers walk away with huge fees and the plaintiff class members often get next to nothing. The judges in these jurisdictions will decide the claims of other State citizens under their unique State law. They will use litigation models that deny due process rights to consumers and defendants.

Often the decisions coming out of these hand-picked and carefully selected venues are huge windfalls for trial lawyers and big law firms and a punch line for consumers and the people the lawyers claim to represent. There is now in our country a full blown effort aimed at mining for jackpots in sympathetic courts known as "magnet courts" for the favorable way they treat these cases.

Let us look at a few examples of exactly what I am talking about. Perhaps the best example nationwide, in terms of preferred venues for trial lawyers, is Madison County, IL, where class action filings between 1998 and 2000 increased nearly 2,000 percent. There is actually an example of a South Carolina law firm filing a purported class action on behalf of three named plaintiffs. None of them lived in Madison County, IL, but the lawsuit was filed in that jurisdiction against 31 defendants throughout the United States. None of those defendants were located in Madison County. These lawyers based the alleged jurisdiction on the mere allegation that some as yet unknown class

member might happen to live in Madison County.

I have a law degree. That is stunning to me. You can imagine how astounding and silly and ridiculous that seems to the American people, small business owners, and consumers around the country. So Madison County is a great example of one of these magnet jurisdictions. Once their reputation as a magnet jurisdiction is established, they attract major nationwide lawsuits that deal with interstate commerce—exactly the types of lawsuits that should be decided in the Federal court.

As noted in one study:

Virtually every sector of the United States economy is on trial in Madison County, Palm Beach County, FL, and Jefferson County, TX—long distance carriers, gasoline purchasers, insurance companies, computer manufacturers and pharmaceutical developers.

Let us review some of the outrageous decisions that this gaming of a broken system produces.

The Bank of Boston case, where class action members actually lost money when their accounts were debited to pay their lawyers \$8.5 million; the Blockbuster settlement, where the class action members received coupons off their next rentals while their lawyers were paid \$9.25 million; and, the Cheerios case where the plaintiffs got coupons for cereal, while the lawyers reaped \$1.75 million—coupons that, quite frankly, they could have gotten in the Sunday local newspaper.

Sad to say, this is hitting home in my home State of Louisiana as well, because one of the jurisdictions that is appearing more and more on the list of these magnet jurisdictions is in Louisiana, Orleans Parish, the city of New Orleans.

I have mentioned how this gaming of the system is a huge disservice so many times to the consumers that were allegedly harmed. They get coupons or next to nothing. In one case, they had to pay even after the award. It is also a huge cost to business and a huge drain on the American economy.

Small businesses are already spending, on average, \$150,000 annually on legal fees. The tort system costs U.S. small business \$88 billion per year. This is all money that could be used to hire new employees or to improve benefits. I have long been concerned that Louisiana is increasingly becoming a part of this trend.

I mentioned a minute ago Orleans Parish, which is clearly showing up more and more on the list of these magnet jurisdictions. This is bad for our Louisiana efforts at job creation. It is a serious negative for companies looking to locate in our State.

I will quote from an amicus brief filed at the Louisiana Supreme Court in the case of Sutton Steel and Supply, Inc., Kate Davis, and Mestayer and Mestayer, APLC v. BellSouth Mobility, Inc. In that brief, they said:

In a recent poll of more than 1,400 in-house general counsel and other senior litigators at

public corporations . . . Louisiana was ranked 46th for its treatment of class actions, out of the 48 States that permit class action suits in their courts.

The study they cited is the Chamber of Commerce study done in March 2004, and the amicus brief continues:

Importantly, 80 percent of the respondents—these are businesses now, job creators—indicated that they perceive fairness of the litigation environment in a State “could affect important business decisions at their company, such as where to locate or do business” and with good reason.

Of course, many small businesses are dragged down by what are known as Yellow Page lawsuits. In these cases, hundreds of defendants are named in a lawsuit, and it is their responsibility to prove they are not culpable. In many cases, plaintiffs named defendants using vendor lists, or even lists literally from the Yellow Pages of certain types of businesses, be they auto supply stores, drugstores, what have you, in a particular jurisdiction.

Imagine what this means to your State's job creation efforts when national attention is brought to your local jurisdiction because it is a new magnet jurisdiction—a new Madison County, IL. The only jobs that you will be creating are legal positions for the flyby lawsuit filed by out-of-Staters hoping for a payoff from your local industries and companies.

I have identified the problem, gaming a broken system. We have identified the real and negative results of that problem, hurting the actual consumers who are supposed to be helped, and costing business and job creation in your State, including my home State of Louisiana, enormous amounts, including in terms of jobs not created or lost jobs.

Why is S. 5 the solution?

I believe S. 5 is a careful, reasonable, and moderate response to the problem with our class action system. We have a bipartisan compromise that has been in the making for 6 years: 6 years of negotiation, careful study, and careful compromise. It deserves our support.

The House of Representatives has already passed similar class action reform legislation more than once. I have personally supported and worked for that, and voted for that when I served in the House.

S. 5 provides for Federal district court jurisdiction for interstate class action, specifically those in which the aggregate amount in controversy exceeds \$5 million and any member of a plaintiff class is a citizen of a different State from any defendant. Under the bill, certain class actions with more than 100 plaintiffs also would be treated as class actions and subject to Federal jurisdiction.

The bill provides exceptions for cases in which Federal jurisdiction is not warranted. Under the so-called home State exception and the local controversy exception, class action cases will remain in State courts if there is significant connection to a local issue or event or a significant number of plaintiffs are from a single State.

The bill includes consumer protections so the real little guy, the plaintiff, the consumer who is wronged, is truly made whole. The bill's consumer bill of rights would require, among other things, that judges review all coupon settlements and limit attorney's fees paid in such settlements to the value actually received by class members. It would also require judges to carefully scrutinize net law settlements in which the class action members end up losing money in a class action settlement, and would prohibit settlements in which parochial judges allow some class action members to have a larger recovery because they simply live closer to the courthouse.

I am pleased there is bipartisan, bicameral support for a carefully crafted, well-thought-out measure. S. 5 is long overdue.

It is also important to say what we are not doing. This bill is not an attempt to eliminate class action lawsuits. Time and again, it has been said by parties on all sides that class actions have a proper place in the legal system. This bill is a modest effort to swing the pendulum back toward common sense, making the system work as it was intended.

This bill will not move all class actions to Federal court, only the ones most appropriately settled there. This bill will not overload Federal courts with class actions. They are prepared to deal with these cases far better than State courts, many of whom are overburdened now. We are also not delaying justice for plaintiffs. Federal courts have as good or better records of dealing with class actions in a timely manner.

In closing, our class action system is rife with abuses. It is gamed. It is broken. We need to fix it. First, we need to fix it for the consumers who are hurt by alleged abuses which are the subject of this class action litigation. Plaintiffs leave feeling cheated because they receive a token settlement in many cases for their efforts while lawyers reap all of the financial benefits.

Second, the system is broken and we need to fix it so we do not hurt legitimate business, legitimate job-creation efforts in Louisiana and elsewhere. Right now, businesses, fearing the mere threat of legal action, settle cases—a form of judicial blackmail. The whole economy is dragged down and fewer jobs are created as a result.

Third, our system of federalism is undermined today because one State's legal system, rather than the legal system of the Federal branch of the courts, is making decisions that affect many or even all other States. So the system is not working for anyone but the lawyers and law firms gaming that system.

A lot of good, hard work has been put into S. 5. I compliment again the prime sponsor, Senator GRASSLEY, as well as the Judiciary Committee, led by the Senator from Pennsylvania. I compliment all of their leadership and

their respective staff members for their efforts. I am proud to be a cosponsor of S. 5. I urge my colleagues to support and vote for the Class Action Fairness Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, today is going to be an important day for the American public because the Senate will adopt legislation that takes a significant step forward in improving our Nation's civil justice system. I commend my colleagues on both sides of the aisle for coming together on this very important bipartisan bill. Our work in this body bodes well for the Senate's ability to tackle important issues in the 109th Congress.

Let me now take a couple of minutes to address the pending amendment, Senator FEINGOLD's amendment, that would add a provision to S. 5 requiring Federal courts to consider remand motions in class actions within a specified period. This amendment is based on the questionable premise that Federal courts move too slowly and consumer claims will stall while plaintiffs are waiting for courts to rule on jurisdictional issues.

In fact, in many cases, Federal courts move more quickly than the State courts. Resolving remand motions is always their first course of business, and we are moving these cases to Federal courts.

The amendment also fails to recognize the important considerations a judge must make as part of a remand decision. Like other amendments that have been offered, this proposal would result in a less workable bill, not a better one. This amendment should be rejected.

The fact is, the Federal courts do not drag their feet in dealing with remand motions. Federal courts always consider jurisdictional issues first, as they must, before allowing discovery or other substantive motions. The Supreme Court has repeatedly held that jurisdiction is a threshold matter that must be decided prior to other substantive issues in a case. Courts take up jurisdiction as the first course of business already. The amendment is, therefore, unnecessary.

I also want to correct the misunderstanding that Federal courts drag their feet in dealing with class actions generally. This is not the case. In fact, Federal courts generally move more quickly than State courts when it comes to class actions. A recent 2004 study by the Federal Judicial Center found that State courts are far more likely than Federal courts to let class actions linger without ruling on class certification. Moreover, the median time for final disposition of a civil claim filed in Federal court throughout this country is 9.3 months; the median time to trial in a civil matter in State court is 22.5 months. Let me repeat that: 9.3 months in Federal courts versus 22.5 months in State courts for civil claims to be disposed. The dates showing the Federal courts act more

than twice as fast as State courts come from the nonpartisan Administrative Office of the United States Courts. There is simply no evidence that States proceed more quickly. Thus, the alleged problem that this amendment would fix is nonexistent. It does not exist.

Take, for example, the case cited by Senator FEINGOLD yesterday, *Lizana v. DuPont*. It did take a year to rule on the motion to remand, but it is my understanding that the court's docket reveals at the time the court was considering the motion, there were numerous briefings and motions on both sides and numerous hearings to determine whether to remand. The court was hardly sitting on its hands. If anything, this case shows that the courts may require more than 180 days to make a correct decision. They were moving, and moving ahead, and moving ahead with dispatch. But it was a complicated case and it took a little longer. It may very well take more than 180 days, and in some cases, it certainly will.

Another case cited in support of the amendment was *Gipson v. Sprint*. But when you look at the facts, the facts do not show much support for the amendment at all. Again, it is my understanding the docket reveals that the court was very busy on the case before the ruling on the motion to remand was even handed down. In fact, one of the motions the court was contending with was a motion for continuance filed by, you guessed it, plaintiffs' counsel. This means it was the plaintiffs who wanted the court to delay its ruling. How can anyone complain about the time it takes for a district court not to rule on a remand motion when there are scores of docket entries in a single year and the plaintiffs themselves were seeking delays?

Some opposed to this amendment suggested that defendants will use removal as a delay tactic, but Federal law already penalizes defendants who engage in such tactics. The Federal law governing removal gives judges discretion to make a defendant pay the plaintiff's attorney's fees if remand is granted. In addition, rule 11 of the Federal Rules of Civil Procedure gives Federal judges the authority to levy sanctions for frivolous filings. Thus, the law already addresses concerns about improvident removals.

The bottom line is that this amendment will make it unnecessarily difficult for judges to issue fair rulings in these more complicated cases. And class actions generally are more complicated cases. By forcing judges to decide remand motions by a certain date, as the Feingold amendment would do, that amendment fails to recognize that in some cases the jurisdictional issues will be complex, requiring discovery, substantial briefing, and hearings before the judge.

At times, courts consider several remand motions jointly in order to conserve judicial resources, such as in multidistrict litigation, or MDL, as it is called, and this may, in a limited

number of complex cases, result in a slightly longer time period for resolution as well. Forcing judges to rush these issues in all cases regardless of their complexity could result in a denial of due process in these cases where the judge cannot fully comprehend and resolve the issue, or issues, in the time allotted by the Feingold amendment.

The reality is that most remand motions will be decided in less time than the amendment requires, but in some cases they will require more time. We should not create rules of law that force judges to decide issues without full and fair consideration. And that is exactly what the Feingold amendment would do.

Finally, there is a reason the time limits make sense for remand appeals and not for initial rulings on remand motions. In contrast to district courts, which often must develop a factual record to address remand issues, an appeals court that is asked to review a remand order will be provided with a full record from which to reach a decision. Often, the appeals court's decision will be based simply on a reading of the law, and it will, thus, be less time-consuming than the district court's decision.

Even a 180-day time limit may be too stringent in some circumstances. Extending it to district court judges will make it more difficult for them, in some cases, to do their jobs in a fair and efficient fashion.

So I hope our colleagues will vote down the Feingold amendment. Frankly, it is another poison pill amendment that would probably scuttle this bill for another year. We have already been on this bill for 6 solid years. We have a consensus in this body to pass it. We know if we pass it in the form that it is in, the House will take it. We know it will become law because the President will sign it into law. Frankly, I hope this amendment will be voted down for all of those reasons.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I would like to talk more generally about the Class Action Fairness Act because it responds to a serious abuse of the class action system that is on the rise; namely, the filing of copycat or duplicative lawsuits in State courts.

Over the past several years, we have seen a rise in the number of class action lawsuits filed in a few State courts known for tilting the playing field in favor of the plaintiffs' bar; in other words, dishonestly, basically, getting the courts to not do justice. These courts, referred to as "magnet courts" for their attractive qualities to enterprising plaintiffs' lawyers, certify class

actions with little regard to defendants' due process rights. They award substantial attorneys' fees as part of class settlements, and they approve coupon settlements to the class members that are sometimes worth little more than the paper on which they are printed.

It has not taken the plaintiffs' lawyers long to figure out which courts are good for their bank accounts. There was an 82-percent increase in the number of class actions filed in Jefferson County, TX, between the years of 1998 and 2000. During the same time span, Palm Beach County, FL, saw a 35-percent increase. The most dramatic increase, however, has occurred in Madison County, IL. Madison County has seen an astonishing 5,000-percent increase in the number of class action filings since 1998.

Let me just refer to this bar chart. It shows that the number of class actions filed in State courts has skyrocketed under current law: Palm Beach County, 35 percent in just 2 years or 3 years; Jefferson County, 82 percent in the same 2 or 3 years; and Madison County, over 5,000 percent. And then this chart shows the overall increase in State courts: 1,315-percent growth.

Now, in their effort to gain a financial windfall in class action cases, some aggressive plaintiffs' lawyers file copycat class action lawsuits. This tactic helps explain the dramatic increase in filings in these magnet courts. Here is how the copycat class action strategy works: Competing groups of plaintiffs' lawyers, and sometimes even the same lawyers, file nearly identical class action lawsuits asserting similar claims on behalf of essentially the same class in State courts around the country. Some lawyers file duplicative actions in an effort to take a potentially lucrative role in an action. Other times, these duplicative actions are the product of forum shopping by the original lawyers who file similar actions in different State courts around the country, perhaps with the sole purpose of finding a friendly judge willing to certify the class.

Because these duplicative actions are filed in State courts of different jurisdictions, there is no way to consolidate or coordinate these cases. As a result of the separate, redundant litigation of copycat lawsuits, our already overburdened State courts can become clogged with complicated class actions that potentially affect the rights and recoveries of class members throughout the entire country.

There is not a single magnet State court in this country that has not encountered the copycat phenomenon. For example, it is my understanding that in *Shields v. Allstate County Mutual Insurance Company*, filed in Jefferson County, TX, in the year 2000, three named plaintiffs sought certification of a nationwide class comprised of members who were insured by three insurance companies. At the very same time this action was brought in Jeffer-

son County, no fewer than nine similar actions, representing a similarly situated class and alleging the identical claims, were pending in Madison County, IL, against the same insurance companies.

Another example of copycat lawsuits is *Flanagan v. Bridgestone/Firestone*, filed in Palm Beach County, FL. Now, this lawsuit was but one of the approximately 100 identical class actions filed in State courts throughout the country in the wake of the Ford/Firestone tire recall in the year 2000.

One of the most obvious problems with copycat lawsuits is that they place new burdens on an already stressed State court system. Class actions are large, complex lawsuits with potential ramifications in jurisdictions across the country. Our State courts are courts of general jurisdiction that deal with issues ranging from domestic disputes to routine traffic offenses. They are simply not the best entity to handle the growing number of these complex lawsuits being filed across the country where multiple parties and multiple issues are involved.

S. 5 will mitigate the growing burden on our State courts by providing a means through which truly national class actions will be resolved in the most appropriate forum; that is, the Federal courts.

Over the past several months, I have heard some opponents of this bill argue that the Class Action Fairness Act will somehow result in a delay or even a denial of justice to consumers. They have argued that State courts resolve claims more quickly, and that removing these actions will result in the overburdening of our Federal courts. I have yet to see or hear a single shred of persuasive evidence to support these claims. In fact, according to the data, a strong case in the opposite direction can be made. According to two separate examinations of the State and Federal court systems conducted by the Court Statistics Project and Administrative Office of the U.S. Courts, the average State court judge is assigned nearly three times—nearly three times—as many cases as a Federal court judge. The increase of State court class actions further compounds this burden and interferes with the ability of the State court judges to provide justice to their citizens.

In fact, the Illinois Supreme Court has repeatedly criticized its own Madison County, IL, State court for its horrible backlog. The backlog is the result of the local court's willingness to take on cases that have nothing to do with Madison County, the county in which they sit. In fact, one Madison County State court judge expressed his willingness to take on cases that have little or no connection to Madison County, or even Illinois, for that matter, when he stated:

I am going to expand the concept that all courts in the United States are for all citizens of the United States. . . .

The fact is, when cases are accepted that have nothing to do with the State

in which they are filed, it is difficult to see how justice is served. When the cases are forced to remain in State court because some plaintiff's lawyers have exploited the system by engineering the composition of the class and the defendants, both the class members and the defendants can easily be deprived of justice. In some cases, it appears that the interests disproportionately served are those of the class counsel who stand to receive millions in attorney's fees upon the swift approval of a proposed settlement while their clients receive next to nothing.

Despite claims to the contrary, S. 5 will not flood or remove all class actions to Federal court. Instead the bill acts to decrease the number currently falling in State court dockets. Most of the cases that would be removed to the Federal courts under the bill are precisely the type of cases that should be heard by such courts in the first place; namely, large national class actions affecting citizens in and around the country, including the very copycat lawsuits I have discussed today.

Class actions generally have three things in common. No. 1, they involve the most people. No. 2, they involve the most money. And No. 3, they involve the most interstate commerce issues. Taken as a whole, the national implications of class actions are far greater than many of the cases filed and heard by the Federal courts today. With this in mind, one is left to wonder how anyone could argue that these actions are not deserving of the attention of our Federal courts.

As Chief Justice Marshall noted:

However true the fact may be, that the tribunals of the States will administer justice as impartially as to those of the nation, to parties of every description, it is not less true that the Constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and citizens, or between citizens of different States.

When the Framers of the Constitution created the Federal courts in article 3 of the Constitution, they gave them jurisdiction over cases involving large interstate disputes, cases such as class actions. Contrary to the claims of opponents of this bill, article 3 does not require complete diversity amongst parties to a claim.

The Class Action Fairness Act will also help protect the interests of consumer class members from copycat lawsuits. When duplicative lawsuits are pending in different States, a settlement or judgment in any one case has the potential to make every other pending case moot. This winner-takes-all scenario acts as an incentive for plaintiffs' lawyers with multiple class actions to seek a quick settlement in the case, even if the settlement does no more than make the lawyers involved rich. The bona fide claims of the plaintiffs to the other class actions are wiped out by the settlement. That is not fair, but that is what is happening.

Sometimes they file multiple suits so they can force a settlement with a simple settlement demand. And what company wouldn't pay the defense costs to get out of this type of abusive jurisdiction of the various courts throughout the country.

What this means is that while one injured consumer in one court of the country recovers for their injuries, an identically injured consumer in another part of the country may get nothing. The quick settlement of a copycat lawsuit may essentially steal the ability for similarly situated plaintiffs to fully or fairly recover for their injuries, especially if the forum-shopped court is going to pull this kind of stuff and favor certain attorneys over others and certain clients over others rather than do what is just under the law.

Under S. 5, many of these copycat lawsuits would be removed to Federal court and consolidated to ensure that all similarly situated plaintiffs received the same recovery under any settlement. Unlike State courts, Federal courts are equipped with a mechanism for consolidating similar claims. In the Federal court system, a judge may consolidate multiple identical lawsuits found in various jurisdictions into one proceeding before a single Federal court known as the multidistrict litigation panel or MDL. The MDL panel has proven to be a valuable tool for preventing abuse, judicial waste, and disparate outcomes in Federal courts.

Under this system, much of the time-consuming pretrial activity in the lawsuit is heard by a single court. This serves to help protect against the plaintiffs' lawyer from making a separate deal for some plaintiffs that is not in the best interests of all class members. And by the way, for those who argue that consumers are being hurt by this bill, guess how many consumers are hurt by a collusion between plaintiffs' counsel and a particular corporation to settle in one State that wipes out everybody else throughout the country.

That happens. It happens because we have not solved these problems. This bill goes a long way toward solving some of these problems.

S. 5 solves this very problem by ensuring that a plaintiff's claim is not extinguished by the settlement of the duplicative action in another part of the country. This bill protects consumers in areas where they are not protected under current law.

Before I close, I want to stress that this bill does not change substantive law. The Class Action Fairness Act does not make it any harder or easier to file or win a lawsuit unless, of course, winning is unjustly based upon an uneven playing field. In other words, courts who homer the cases because they want to help certain attorneys who have supported them for their election to those State court positions.

This bill is one that is long overdue. As Chief Justice Rehnquist stated:

We can no longer afford the luxury of State and Federal courts that work at cross-purposes or irrationally duplicate one another.

This bill is a procedural bill that applies common sense to streamline the court system. The underlying substantive law is the same for class actions whether they are in Federal or in State court. This bill is a balanced, modest approach to solving some of the most abusive problems in our current civil justice system. Members on both sides of the aisle have worked long and hard to formulate a bipartisan bill, and we are succeeding in this bipartisan effort on behalf of the American people.

I steadfastly support the Class Action Fairness Act and urge my colleagues to do so as well, because it is the right thing to do. It is the right thing to do for the legal profession and for the plaintiffs who deserve compensation.

I have been in some pretty tough cases in my day, but I have never seen a case I could not win if the case was the right thing to bring. I would not bring it if it were not the right thing to bring. I loved being in Federal court, time I could get there. I also loved being in State court. I never wanted a judge to lean my way or the other way. I wanted the judge to be down the middle, and if that is the case, I thought I stood a good chance of winning the case.

We are talking about unfair advantage here in these magnet courts, these forum-shopped areas. Madison County has become the "poster child" for magnet courts. It deserves its reputation.

This is an important bill. This is a bill that makes sense. This bill does not deprive anybody of rights. This is a bill that will resolve a lot of these conflicts and problems, and it is a bill that I think will help all within the legal community to live within certain legal and moral constraints.

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. HATCH. 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. HATCH. Mr. President, I ask unanimous consent that at 12:30, the Senate resume debate on the Feingold amendment, and that the time be equally divided in the usual form; provided that at 12:40, 10 minutes later, the Senate proceed to a vote in relation to the Feingold amendment, with no intervening action or debate and no amendments in order to the amendment prior to the vote. I further ask consent that following that vote, debate be equally divided between the two leaders or their designees until the hour of 3 p.m.; provided further that the time between 2:20 and 2:40 be equal-

ly divided between Senator SPECTER and Senator LEAHY; and that at 2:40, the final 20 minutes be reserved, with the Democratic leader in control of 10 minutes, to be followed by the majority leader for the final 10 minutes; provided further that at 3 o'clock, the Senate proceed to a vote in relation to the Durbin amendment, with no amendment in order to the amendment prior to the vote. I further ask unanimous consent that following that vote the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no intervening action or debate. Finally, I ask that no other amendments be in order other than the two above-mentioned amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, in light of the unanimous consent agreement that will bring this bill to closure, there is something I needed to get on the record. I appreciate getting a few minutes. I intend to vote for the bill. Everything the Senator said about the bill is very much true. The Senator from Utah has been working as chairman for years. The legal abuse that the Senator described is real. This bill really brings it to an end.

I found Federal court to be a fair place to try cases. The Senator is also right about the scope of class action lawsuits. They involve many people from different places throughout the country. We have a good balance in the bill of when you can be removed. Every class action is not going to go to Federal court. If the formula is right, and if it has enough national impact, Federal court will be the place to go because of the abuses described.

Those of us who practiced law for a living before we got here understand that the legal system can be reformed. I admire what the Senator from Utah and Senators SPECTER and GRASSLEY have done to bring about reform. But we find ourselves in a unique political dynamic with this bill. Our friends in the House say they want it like we have it. We all agree there are amendments that could make the bill better that we would vote for, but the political moment will not allow that to happen. I regret not offering in committee the amendment I am going to speak about. I learned from my mistakes there.

One of the things we have done by federalizing certain class action lawsuits is we have taken the abuse out of the system, and we have gone to Federal court to have a more fair way of

doing business when the formula is right and when there is a national impact to stop home cooking.

The reason the diversity clause exists to begin with is that when you have two people from different States, you want to pick a neutral sight. You do not want to do home cooking. Really, the whole goal of this bill is to get it in a neutral site where people can have their fair day in court. I certainly appreciate that.

But there is another component to class actions that is missing in this bill. Class actions, by their very nature, as Senator HATCH described, involve a lot of people from different places and usually a lot is at stake. Sometimes it is money. Sometimes it is a business practice that does not have a lot of economic effect on one person, but when you add up the economic effect, it is bad for the country. People are cheating. People are nickel and diming folks, getting rich at the expense of the elderly or the infirm, by taking a few dollars here, and it adds up to be a very bad situation for the country. Those type cases lend themselves to class action.

There is another group of cases that could lend themselves to class action, too. That is when products are not designed right. They are consumer cases where consumers throughout the country are affected by the particular behavior in question.

Most States have a procedure, when such cases exist affecting the public at large, where the judge is able to determine what is fair in terms of sealing documents relating to settlements. I had an amendment that was modeled after a South Carolina statute—and over 20 States have a similar statute—that says in cases where the public's interest is present, where there is a consumer case that affects the health or well-being of the community at large, settlements can be sealed, documents can be made secret to protect business interests, but only if the judge determines that the public interest is also being met.

The amendment I proposed would have received well over 50 votes in this body, and I think Senator HATCH would have been friendly to it. But I understand the effect it would have on the bill.

The current chairman, Senator SPECTER, and I will have a colloquy for the record. This is the point of my seeking recognition.

This bill will leave the Senate and go to the House in a way to solve abuse, but I think it is lacking in consumer protections. The reason I am speaking today is this colloquy for the record with Senator SPECTER recognizes the value of this amendment and a commitment on his part and the committee's part to allow this amendment to move forward at another date, another time, in another place.

The reason I am agreeing to that is enough of my colleagues who are sympathetic to the amendment do not

want to vote for anything that would derail the bill. I very much appreciate that because that is the way politics is, and there is nothing wrong with that as long as we do not lose sight of the goal. And the goal is to have a balance, to take care of abuses, but at the same time protect the public when the public needs to be protected.

What I am trying to say is I will not put my colleagues in a bad spot of having to vote down an amendment with which they agree because I do not have 50 votes. I am mature enough to know when you can win and when you cannot. Sometimes it is OK to lose. Losing is not bad as long as you feel good about what you are doing.

I do not want to offer the amendment, have colleagues vote against it, and create problems unnecessarily, but I do want my colleagues to know—and this colloquy will express this—that this bill needs to be amended and this problem needs to be addressed. We need to have a provision that is married up with the bill that is about to leave the Senate and go to the House that will allow a judge, upon motion of the parties, to determine in a situation where there is a request to keep the settlement secret and seal the documents from public review, to have a judge to determine what documents should be sealed in secret and what documents should be released to the public, balancing the needs of business and the right of the public to know what they should know about their health and their safety.

There were class action cases with the sunshine statute, about which I am talking, in effect. Without that statute, deadly lighters, exploding tires, defective drugs, toxic chemicals, and faulty automobile designs would not have been known if it were not for a procedure for the judge to release certain documents because the request was: We will give you money, but you cannot tell anybody about the underlying problem.

Sometimes that is very much unfair. I have case after case of sunshine statutes allowing the judge to determine what was in the public interest, to inform the public of deadly events, and peoples lives were saved and their health was protected.

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

Mr. GRAHAM. I ask unanimous consent for 2 more minutes.

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

PROTECTIVE ORDERS

Mr. GRAHAM. Mr. President, I appreciate Chairman SPECTER taking the time to join me in discussing a concern I have regarding S. 5, the class action bill. I am still prepared to seek a vote on my amendment, but based on my conversations with a number of senators this week, including Chairman SPECTER, and in a desire to see this bill pass as soon as possible, I have decided not to offer my amendment.

I agreed to support this bill some time ago because I believe we are long

overdue for reform in the class action area. Over the last few years, I have worked to support this bill in both the Judiciary Committee and on the senate floor.

While I have fully supported this reform, I have also noticed some areas where the bill could be improved. I had hoped to offer an amendment on the floor regarding protective orders during discovery. I am confident that the amendment that I had hoped to introduce with Senator PRIOR of Arkansas would have made a significant improvement in the area of class action discovery.

Our amendment is very simple. It is based on the local rule in South Carolina Federal Courts for obtaining protective orders for documents. All it says is, if you want a protective order, you must make a motion at the beginning of trial, explain why it is necessary for the court to seal your documents, and provide public notice of the motion and a description of the documents. that's it.

At least 20 states have taken action to limit secrecy agreements. This type of scrutiny should be extended throughout the nation, especially where we are removing parties from the protections afforded them by their States.

And let me be clear. This is not an onerous burden to place on those seeking protective orders. It is not that far a departure from the current discovery rules. We could have gone a lot further; with higher standards, a presumption against sealing, and other controversial discovery reforms. However, we are not seeking to tilt the playing field to one side or the other, just make sure some reasonable, well-thought out ground rules are applied to everyone.

My amendment creates a presumption of openness—it would require the parties in class action lawsuits to justify their requests for secrecy, followed by a medical review of the information they want the court to keep under seal.

They would have to identify the documents or information they want sealed—and most importantly the reasons why it's necessary to keep them secret.

They also would have to explain why a protective order approach is necessary and justify the request based on controlling case law.

The public would be notified of the information that was being put under seal—and a descriptive non-confidential index of the secret documents would be provided.

In the end, however, it is still up to the judge's discretion, albeit with a slightly higher standard than currently exist under the Federal rules of civil procedure.

I am doing this because I am convinced Federal Judges will come down on the side of consumer protection where it's in the public interest and come down on the side of secrecy where merited. In short, while the burden here is on any party that wants to keep

something secret, it is not an onerous task, nor impossible.

Valid trade secrets and proprietary information—sensitive information that goes to the heart of a company being able to compete in the market place should and will be protected. There must be safeguards for businesses—they have a right to protect valid trade secrets—patents and other proprietary information. But this isn't something that can just go on automatic pilot—there has to be some judicial review and I am confident the procedures protect all the parties in a class action lawsuit.

So again, we have merely tried to find a way to balance the legitimate interests of companies, who we want to remain strong competitors in the marketplace, with the public's interest in disclosing potentially harmful products or practices.

Our amendment strikes the right balance because it raises the bar only slightly for companies to justify why they need to impose secrecy, using our courts to do so, but does not force them to open up their companies to every passerby simply because they are defending a lawsuit.

Now there are critics who warn that an amendment like this is going to create a number of problems in the judicial system, making discovery more difficult and deterring settlements.

I do not agree. Take a look at Florida, which has one of the most stringent sunshine laws. I don't think anyone can tell you Florida is a magnet for class actions. In fact, the most recent studies in the 20 States that have sunshine laws show that limiting court secrecy has not led to more litigation or curtailed the number of cases that are settled.

In fact I do not believe there is any evidence that supports the proposition that more cases will go to trial and fewer settlements will be reached if some procedural safeguards are put in place.

Also, you have to remember that our amendment only applied to court-ordered secrecy. Parties would still have been free to privately agree upon secrecy between them.

In closing Mr. President, I must say I have been a bit taken aback by all the turmoil this amendment has caused. I am pretty sure we can all agree that ours was a fairly benign procedural amendment, one that serves both the public and those before our courts.

Toward that end, I very much appreciate the understanding I and Senator PRYOR have been able to reach with Chairman SPECTER regarding the substance of our amendment. The chairman has graciously agreed to assist us with this amendment in the Judiciary Committee. I thank the chairman and look forward to working with him to address this issue in the near future.

Mr. SPECTER. I appreciate Senator GRAHAM's willingness to help us move forward on this bill. He and I have agreed that, due to the procedural pos-

ture of this particular bill, we should address the substance of his amendment in committee in the future.

Mr. GRAHAM. I thank my chairman for his future assistance.

Mr. President, I say to my colleagues that they will have done a good thing by passing this bill. They will do a very good thing if we can take up this amendment at another time to make this bill more balanced because the abuses as described by Senator HATCH are real. My colleagues have worked a long time to bring about this date. They should be proud of it.

There is a way to make this bill better, and if we do not address this problem, I predict something is going to happen out there without a sunshine amendment. There is going to be a class action case involving consumer interests, and if there is no procedure for the judge to balance the public interests against business interests, we are going to shield the public from something they should know. There is no reason we cannot do both: Stop the legal abuse and help consumers. It is my pledge and my promise to work with everybody in this body to make that happen.

I yield the floor and thank the Senator for its indulgence.

The PRESIDING OFFICER. The Senator from Iowa. Without objection, the Senator is recognized on the minority time.

AMENDMENT NO. 12

Mr. GRASSLEY. Mr. President, I rise in opposition to Senator FEINGOLD's amendment which would add a provision to the bill requiring the Federal courts to consider remand motions in class actions within a set timetable. This amendment needs to be rejected because it is unnecessary.

There is not any evidence that the Federal courts are particularly slow in dealing with class actions, or specifically that they are slow relative to remand motions. In fact, there is evidence that the Federal courts move more quickly than State courts in considering these motions because they always consider jurisdictional issues first. Senator FEINGOLD cites three examples of delay to support his amendment, but I do not think that is enough to start placing strict time limits on court procedure. I think that Senator FEINGOLD is in search of a problem that does not really exist.

Also, the amendment could make it hard for judges to issue fair rulings in complicated class action cases because judges would be forced to make rushed decisions. This deadline may be too stringent and inflexible to deal with complex cases, where sometimes several remand motions are considered jointly in order to conserve judicial resources. These motions may require hearings, and the timeframe provided in Senator FEINGOLD's amendment may not be enough time for a court to schedule a hearing and consider all the evidence.

I also understand that Federal judges who have learned of this possible time

limitation on deciding these kinds of motions are concerned that it would place an unreasonable restriction on their ability to fairly decide cases. The Judicial Conference sent a letter opposing a previous iteration of Senator FEINGOLD's amendment that was more stringent than the current language. However, this amendment still puts significant time constraints on Federal judges that could prove to be too stringent.

So there just is not any evidence that there is a problem with remand motions in class action cases that requires this time limitation that Senator FEINGOLD is proposing. This is just an attempt to weaken the bill. So I urge my colleagues to reject this amendment.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I have restored the full 5 minutes I was originally given.

The PRESIDING OFFICER. The Senator has 3 seconds remaining.

Mr. FEINGOLD. I ask unanimous consent to have the 5 minutes restored. I would appreciate that, because the chairman who is handling this bill on the floor asked me to stay in committee and finish the bankruptcy hearing. I feel justified in asking for my time to be restored.

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

Mr. FEINGOLD. Mr. President, everyone understands that this bill will allow many more class actions to be removed from State to Federal court, but as the supporters have been proclaiming all week long, there are still class actions that belong in State court, even under this bill. Unfortunately, that may not stop defendants from removing cases that should still be in State court.

When a notice of removal is filed, the case is removed to Federal court. There is no proceeding in the State court to make sure the removal is proper. It is up to the Federal court to decide that question, but only if the plaintiffs file a motion to remand to return the case back to the State court.

The amendment I have offered is designed simply to make sure that this process of removal and remand does not become a tool for delaying cases that actually belong in State court. It requires a district court to take a look at a motion to remand within 60 days of filing and then do one of two things: Decide it, which I hope will be possible in almost all cases, or issue an order stating why a decision is not yet possible. If the court issues that order, it must then reach a decision within 180 days of filing. The parties can agree on an extension of any length.

I want to make this clear because I heard Senator GRASSLEY responding to my original argument when I came on the floor. The amendment before us actually gives the court a great deal of flexibility. It will also assure that a

motion to remand does not languish for months, or even years, before a court reviews it and says, oops, this case really should be back in State court.

As I noted last night, we have many examples of remand motions sitting unresolved for a year and then the case goes back to State court.

As the Senator from Iowa pointed out, the Judicial Conference did oppose my amendment in committee that had a strict limit of 60 days, but what I have done to try to accommodate this concern, which I believe moves in their direction, is tripled that limit in the pending amendment. I think that is eminently reasonable, as the Senator from Delaware, a strong supporter of this bill, acknowledged last night on this floor.

The bill itself provides that appeals of remand motions must be decided within 60 days. So why would there be any substantive argument against having a similar limitation at the district court level?

I heard the Senator from Utah suggesting that somehow my amendment denies due process, but I suggest that 180 days is enough time to handle any remand motion. That is time for discovery and for an evidentiary hearing. The problem is that without a deadline, the motion can sit there for a year or longer without any action.

What I am hearing from some of my colleagues who support the bill and recognize that what I am trying to do is reasonable is that they cannot upset the delicate agreement that has been reached with the House. On this one, I cannot accept that. It makes no sense to me that Senators would give up their independent judgment because of a fear of the leadership of the other body. Does anyone think, after everything this bill has been through, that the House leadership is going to refuse to pass this bill if my very reasonable amendment, simply making sure that motions to remand are decided on time, is included? Are they going to further delay this bill for this? I do not think so.

This amendment does not blow the bill up. It is not a poison pill. Everyone I have talked to says this amendment basically makes sense. So I implore my colleagues to exercise their own good judgment, accept this amendment, and persuade their colleagues on the House side and the business community, which several of my colleagues have told me privately, that this amendment makes sense.

It does not harm the bill. In fact, it makes the bill better because it means all the cases we agree on should remain in State court will actually proceed in State court without delay.

I thank the Chair for according me this additional time. I yield the floor, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 12.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: The Senator from New Hampshire (Mr. SUNUNU) and the Senator from Indiana (Mr. LUGAR).

The PRESIDING OFFICER (Mr. MARTINEZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 61, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—37

Akaka	Feingold	Murray
Baucus	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Jeffords	Reed
Byrd	Johnson	Reid
Carper	Kennedy	Rockefeller
Clinton	Kerry	Salazar
Conrad	Lautenberg	Sarbanes
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dorgan	Lincoln	
Durbin	Mikulski	

NAYS—61

Alexander	DeWine	McCain
Allard	Dodd	McConnell
Allen	Dole	Murkowski
Bayh	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Schumer
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Cantwell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Kohl	Thune
Collins	Kyl	Vitter
Cornyn	Landrieu	Voinovich
Craig	Lieberman	
Crapo	Lott	Warner
DeMint	Martinez	

NOT VOTING—2

Lugar	Sununu
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The amendment (No. 12) was rejected.

Mr. GRASSLEY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the time until 2:20 p.m. is equally divided between the leaders or their designees. Who yields time?

The Senator from Delaware.

Mr. CARPER. Mr. President, in an hour or two or three, we will have the opportunity to vote final passage on class action reform legislation.

The goals of this legislation are four-fold: One is to make sure when people—I say “little” people—are harmed by companies, big or small companies, that the little people have the opportunity to band together and be made whole and compensated for harm. The second goal is to make sure the companies know that if they shortchange their customers or others in our country, there will be a price to pay if they get caught. The third goal is to make sure when companies are called on the carpet and are involved in class action litigation, they are in a court, in a courthouse, with a judge, where the

companies have a fair shake and the deck is not stacked against them. Finally, our goal is to make sure that, in shifting some class action litigation of a national scope with hundreds of or thousands of plaintiffs across the Nation, multimillions of dollars involved and defendants scattered across the country in different States than the plaintiffs, to make sure we move some class action litigation to Federal courts, we do not overburden the already busy Federal judiciary.

I take a moment or two today to go through and cite examples—not all of them; this is not an exhaustive list—but some of the examples we have sought to make sure in many instances that the majority of class action litigation remains in State court where it belongs.

Let me cite a couple of examples where this bill has been modified over the years to enable a majority of class action litigation cases to stay in State courts. For example, these are cases where the litigation will remain in State courts: No. 1, cases against State and State officials will remain in state court. Smaller cases will remain in State court. Cases where there are fewer than 100 plaintiffs or in which less than \$5 million is at stake, those cases are not eligible for removal from State to Federal court. Cases in which two-thirds or more of the plaintiffs are from the same State as the defendant will remain in State court. Cases in which between one-third and two-thirds of the plaintiffs are from the same State as the defendant may well remain in State court. It is left to the discretion of the Federal judge to decide whether it is Federal or State based on the criteria laid out in the bill.

Similarly, cases involving a local incident or controversy, where the people involved are local, where at least one of the significant defendants involved in the litigation is within the same State, in those instances as well, the cases can and probably should remain in State courts.

That is a handful of the examples where we make sure a lot of the class action litigation remains in State courts where it belongs.

If you go back, the first bill introduced on class action litigation goes back about 7 years, I think, to 1997. That initial bill, along with a number of bills that were introduced in subsequent Congresses, was opposed by the Federal bench. There is an arm of the Federal judiciary called the Judicial Conference of the United States. They have a couple different committees, and from time to time they are asked, and they respond with their opinion, about whether certain legislation is needed, is appropriate, as it pertains to them and the work they are doing.

The initial legislation proposed, I think, in 1997, 1998, was opposed by the Federal judiciary through their Judicial Conference of the United States. In the next Congress, again, the Federal

judiciary opposed that legislation. As the legislation has evolved, we have gone back to ask the Federal judiciary: What do you think? We know you were opposed to original versions of this bill in the late 1990s. How about this latest revision? They continued to oppose subsequent versions of the class action reform until the last Congress.

The Federal judiciary has the same concerns a lot of us have, the wholesale shifting of class action cases from the State courts to the Federal courts. Federal judges are busy, and they do not want to see an avalanche of litigation coming to them. With the adoption of a number of provisions in this legislation that comes to us today, the Judicial Conference wrote to the Senate in 2003 that, particularly given the changes Senator FEINSTEIN proposed, their concerns about the wholesale shifting of State class action litigation to the Federal courts, for the most part, had been met and been satisfied.

They are not taking a position, saying the Senate should vote for this legislation. That is not what they are about. But the concerns they had expressed earlier, year after year after year, have been addressed.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Judicial Conference of the United States, dated April 25, 2003.

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

JUDICIAL CONFERENCE
OF THE UNITED STATES.
Washington, DC, April 25, 2003.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Thank you for your letters of April 9, 2003, and April 11, 2003. In those letters, you requested that the Judicial Conference provide the Senate Judiciary Committee with legislative language implementing the Judicial Conference's March 2003 recommendations on class-action litigation and the views of the Conference on S. 274, the "Class Action Fairness Act of 2003," as reported by the Senate Judiciary Committee on April 11, 2003.

As you know, at its March 18, 2003, session, the Judicial Conference adopted the following resolution:

That the Judicial Conference recognize that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that the federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such

factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude or burden federal courts.

S. 274, as reported by the Senate Judiciary Committee, generally provides for federal jurisdiction of a class action based on minimal diversity of citizenship if the matter in controversy exceeds the sum of \$5 million, exclusive of interest and costs. (S. 274 as introduced established a \$2 million minimum amount in controversy.) The bill also now permits a federal district court, in the interests of justice, to decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed. The court would be required to consider five specified factors when exercising this discretion. (This discretionary provision was not included in the bill as introduced.)

In addition, S. 274 as reported provides that the federal district courts shall not have original jurisdiction over any class action in which: (A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed; (B) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or (C) the number of members of all proposed plaintiff classes in the aggregate is less than one hundred. As introduced, the second and third exceptions were the same, but the first one originally precluded federal jurisdiction where "the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed" and "the claims asserted therein will be governed primarily by the laws of that state. The replacement language in essence substitutes a numerical ratio for "substantial majority" and eliminates the choice-of-law requirement.

We are grateful that Congress is working to resolve the serious problems generated by overlapping and competing class actions. The Judicial Conference "recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts." At the same time, the Judicial Conference does not support the removal of all state law class actions into federal court. Appropriate legislation should "include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed." Finding the right balance between these objectives and articulating that balance in legislative language implicate important policy choices.

Any minimal-diversity bill will result in certain cases being litigated in federal court that would not previously have been subject to federal jurisdiction. The effects of this transfer should be assessed in determining the appropriateness of various limitations on the availability of minimal diversity jurisdiction.

Certain kinds of cases would seem to be inherently "state-court" cases—cases in which a particular state's interest in the litigation is so substantial that federal court jurisdiction

ought not be available. At the same time, significant multi-state class actions would seem to be appropriate candidates for removal to federal court.

The Judicial Conference's resolution deliberately avoided specific legislative language, out of deference to Congress's judgment and the political process. These issues implicate fundamental interests and relationships that are political in nature and are peculiarly within Congress's province. Notwithstanding this general view, we can, however, confirm that the Conference has no objection to proposals: (1) to increase the threshold jurisdictional amount in controversy for federal minimal diversity jurisdiction; (2) to increase the number of all proposed plaintiff class members required for maintenance of a federal minimal-diversity class action; and (3) to confer upon the assigned district judge the discretion to decline to exercise jurisdiction over a minimal-diversity federal class action if whatever criteria imposed by the statute are satisfied. Finally, the Conference continues to encourage Congress to ensure that any legislation that is crafted does not "unduly intrude on state courts or burden federal courts."

We thank you for your efforts in this most complex area of jurisdiction and public policy.

Sincerely,

LEONIDAS RALPH MERCHANT,

Secretary.

Mr. CARPER. We are going to vote on final passage in an hour or two. I think Senator DURBIN is going to come to the floor. He may ask for a vote on his amendment. I am not sure he will. He cares deeply, passionately about these issues and has sought to try to make sure that we end up not making bad, unwise public policy decisions. My guess is, he is not going to come to the floor and urge us to vote for the bill or say he is going to vote for it. I know he has serious misgivings about this legislation. But he has worked constructively, as have people on our side and the Republican side, to get us to this point in time.

Senator REID of Nevada is our new leader on the Democratic side. He is not on the floor, but I express to him and my colleagues, if he is listening, my heartfelt thanks for working with the Republican leadership and those on our side who support this legislation, to enable us to have this opportunity to debate it fairly and openly, allowing people who like it, people who do not like it, those who wanted to offer amendments, those who did not want to offer amendments, to have a chance for the regular order to take place, to debate the issues and vote, and then to move on.

I do not know if this legislation, the way we have taken it up and debated it, can serve as a template or example to use in addressing other difficult issues—energy policy, asbestos litigation, a variety of other issues—but it might. Because in this case, Democratic and Republican leaders have worked together, have urged us, the rank and file in the Senate, to work together.

Each of the folks in the private sector—people who have an interest in this bill, not only the business side, but the plaintiffs' lawyers side, and other

interested parties, labor, and so forth, consumer groups—I think everybody has acted in good faith to get us to this point in time.

Whether you like the bill, I urge my Democratic colleagues, if you are on the edge and not sure which way to go—you may have voted for all these amendments, and you are not sure how to vote on final passage of the bill—I urge you to vote for this bill.

I do not know if it is possible to have a big margin. I would love to have 70 votes, 75 votes for this bill. I hope we can do that.

Let me close, if I can, by saying, whether you are for the bill or against it, for the amendments or against them, I hope there is one thing we can all agree upon. I will bring to mind the words of one of our colleagues, a legendary trial lawyer from Illinois, who has gone on to be elected and serves with us in the Senate. I will close my comments with his admonition. That admonition is the old Latin phrase: *semper ubi sub ubi*. Whether you like the bill, I think we can all agree on that admonition today.

With that having been said, I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. 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. CARPER. Mr. President, I ask unanimous consent that again we go into a quorum call, but that the time be equally divided.

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

Mr. CARPER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, this week's debate is the culmination of more than 6 years of work in the Senate on a very important piece of legislation, reform that is needed in the U.S. legal system—class action reform.

I practiced law for most of my adult life and have litigated in a number of different forums. I believe in our legal system. It is critical for America's economic vitality and our liberty to have a good legal system. There is no doubt in my mind that the strength of this American democracy, the power of our economy, and our ability to maintain freedom and progress are directly dependent on our commitment to the rule of law and a superb legal system, and we can make it better.

To keep our system strong, we in this Congress have to meet our responsibility to pass laws that improve litigation in America. Our court system must produce effective results that further our national policy, correct wrongs, punish wrongdoers, and generate compensation for those who suffer losses in a fair and objective way. We, therefore, as a Congress must periodically review what is happening in our courts and make adjustments if they are needed. That is what we are here for.

This class action fairness bill, S. 5, seeks to make the adjustments we currently need, in my opinion. It will guarantee that the plaintiffs in a class action, the people who have been actually harmed and have a right to be compensated, are the actual beneficiaries of the class action and not just their attorneys and not sometimes the defendants who benefit by being able to get rid of a bunch of potential litigation by settling the case and paying less to the plaintiffs than the case is really worth.

The Class Action Fairness Act will not move “all class actions” to Federal Court or “shut the doors to the courthouse” as some have claimed—rather it will provide fairness for the class action parties by allowing a class action to be removed from a State court where it has been filed to a Federal court when the aggregate amount in question exceeds \$5 million and the home State plaintiffs make up two-thirds or less of the plaintiff class.

The Act contains a bill of rights for class action plaintiffs to ensure that coupon settlements or net loss awards receive special scrutiny. We have had some real problems with those. The stories are painful to recite by those of us who believe in a good legal system.

Furthermore, the Class Action Fairness Act will provide notice to public officials of proposed settlements—I was an attorney general, and I know that notice is given to the proper official in a State so that public officials can react if the settlement appears to be unfair to some or all of the class members.

The Class Action Fairness Act has been through the proper channels in the Senate. The Act has been through the Judiciary Committee not just once but twice. The bill originally passed out of the Judiciary Committee by a 12 to 7 vote over a year ago in June of 2003. It was a bipartisan vote. Since then, it has gone through two substantive negotiations, each bringing on more Senators to support the bill. Just last week, we again passed a bill out of the Judiciary Committee, this time with an even stronger vote of 13 to 5. Today, we expect that more than 70 Senators will support it. The bill is a responsible, restrained bill that will curb class action abuses and further productive class action litigation.

The concept of class actions is a good one. Class actions can be extraordinarily effective tools in helping us

deal with legal problems confronting America. Sometimes error or negligence is committed by more than one defendant which harms multiple litigants. In such cases, the number of cases filed can quickly become unmanageable if separate individual lawsuits are required by each person who suffered the harm. One hundred thousand individual lawsuits would not be appropriate when one case could settle the issue for all involved.

Anyone looking closely at our legal system today knows that we have a number of problems to address. One of the main problems is how much the system costs the average American. Americans pay these costs primarily through increased insurance premiums. They also pay it in increased costs for our judiciary.

The 2004 Tillinghast study on the cost of U.S. tort systems found that the U.S. tort system—a tort is a lawsuit or an act that has wronged or injured someone—cost \$246 billion in 2003. That is \$845 per person. That is a significant number. It is worthy of repeating. The tort system cost \$246 billion at an average cost per American citizen of \$845. That is an average of \$70 a month out of somebody's livelihood. Now, \$246 billion is equivalent to 2 percent of GDP, gross domestic product. That is a stunning number. By 2006, the study estimates that the U.S. tort system will cost over \$1,000 per person.

Most Americans would be surprised to know that the 2003 version of the Tillinghast study found that the U.S. tort system returned less than 50 cents on the dollar to the people it is designed to help—the plaintiffs—and only 22 cents on the dollar to compensate for actual economic loss. Who, then, would appear to be making the money out of our current tort system? An earlier Tillinghast study reported that the income of litigation attorneys, trial lawyers, in 2001 was \$39 billion. That same year Microsoft made only \$26 billion, and Coca-Cola, \$17 billion.

As a Washington Post editorial has noted: No portion of the American civil justice system is more of a mess than the world of class action.

There are a number of problems with the class action system currently making up the mess. The Washington Post referred to.

The number of class actions pending in State courts, many of them nationwide, increased 1,042 percent from 1988 to 1998, while the number pending in Federal courts increased only 338 percent during that same period.

State courts are being overwhelmed by class actions. A number of State courts lack the necessary resources to supervise the class or the proposed settlements affected. Many State judges do not have even one law clerk, and most of the class actions involve citizens from a number of different States, requiring the application of multiple State laws. Some times a state court dockets becomes jammed while the judge researches out-of-State law to get up to speed.

Some say it is a burden on the Federal courts, but Federal judges have on their docket a fraction of the cases of most State court judges in America. Some cases are complex, but that is the nature of Federal court cases for the most part. They have at least two law clerks. The occupant of the chair, Senator ALEXANDER, clerked for Federal judges. District court judges all have at least two clerks, and appellate Federal judges have three or more. Some of them have their clerical support become on staff lawyers and then they really end up with three clerks. At any rate, they have a greater ability to give the time and attention to a major interstate class action involving over \$5 million and maybe thousands of plaintiffs than an average circuit judge in a State court system in America. I do not think that can be disputed.

The class action settlement process is problematic because many of the class members have no part in shaping the settlement agreement. In fact, many of the members of the class have no knowledge they have even been involved in a lawsuit or one has been filed on their behalf, leading to an abuse of the settlement process. In this scenario, plaintiffs' attorneys can find themselves in a position where their loyalty is not to these class members. It creates an unhealthy situation. For example, a plaintiffs' lawyer does not know the 1,000 or 10,000 members of his class. He is talking regularly with the defendant's company, and they say: Let us settle this case.

The plaintiffs' lawyer says: We would like to settle this case.

They say: What will it take?

He says: The plaintiffs want \$50 million to settle it.

They say: Well, that is too much. Look, why do we not give you \$10,000 in coupons for all of your victims and we will give you \$10 million or \$20 million in legal fees?

Now, most lawyers handle themselves well, but that plaintiffs lawyer now finds themselves in an ethical dilemma. His oath as a lawyer says that he or she should defend the interests of the client, get the most money for their client, but the defendant is dangled out a personally large fee in exchange for a settlement to end the litigation. We have had that happen, frankly, and we have seen that too often. Too often, the attorneys are the ones who received the big fees, and the named plaintiffs, the victims, have gotten very little. It is appropriate, then, that we in this Congress examine this difficulty in our legal system and tighten it up so we have less of that occur.

Many class actions appear to be filed solely for the purpose of forcing a settlement, not the protection of an interest of a class, and that has been referred to in debate frequently as "judicial blackmail." Rather than losing a public relations battle, going through court for several years, the defendants often feel they have to settle these

cases even if they are frivolous so they do not risk the cost of litigation and the embarrassment and difficulty of explaining some complex transaction.

There are several other problems. One is forum shopping, and another is settlements detrimental for class members.

Forum shopping occurs when the attorney sets out to try to find the best place to file the class action lawsuit. You could have a case involving an attorney from New York with California plaintiffs filing a class action lawsuit in Mobile, AL. Where can national class action lawsuits be filed today? Amazingly, the answer is in almost any venue, any court, county, circuit court in America. A plaintiff can search this country all over and select the single most favorable venue in America for filing their lawsuit—that is, if it is a broad-based class action that covers victims in every state and county in America, and some of them do. Some may just cover a region or half the counties in America or involve 10 percent of the States. At any rate, they are able to search within that area for the most favorable venue.

I believe that is not healthy. A report issued this year by the American Tort Reform Association about the abuse of this choice named the various counties around the country as "judicial hellholes." The study pointed to the large number of frivolous class actions found in counties it named, citing judicial cultures that ignore basic due process and legal protections and efforts by the county's judges to intimidate proponents of tort reform.

By bringing their suits in one of these areas, plaintiffs' attorneys can defeat diversity by naming a single defendant and a single plaintiff who have citizenship in the same State, thus preventing a Federal court from hearing the case and allowing a State court in a single county to bind people all over the country under that one State or county's laws.

Let me read what the Constitution says about diversity:

The judicial Power of the United States shall extend to all Cases, in law and equity, arising under this Constitution, the Laws of the United States . . . to Controversies which the United States shall be a party;—Controversies between two or more States, between a State and a Citizen of another State;—between Citizens of different States. . . .

Our Founding Fathers thought about this issue, and they concluded that, if a person from Alabama wanted to sue a person from Illinois, the person in Illinois might not be comfortable being sued in an Alabama state court. They might think that might not be a favorable forum. There might be "home cooking" for the Alabama citizen there. So they said those cases ought to be in Federal court.

As history developed, pretty early in our process it was concluded that diversity required complete diversity; that is, if one plaintiff and one of a host of potential defendants was a local

defendant, then that could be kept in State court.

I am not disputing that. All I am saying is I believe the Founding Fathers would have believed that a lawsuit that is predominantly intrastate in nature, involving the real defendant, should be in Federal court.

So what happens is if you sue a drug company and you want to keep it in State court, you sue the lady in small town Mississippi who sells the prescription at her store—she is a local defendant, whereas the person who is going to be paying the judgment is out of State. If the drug company had been sued directly, it would have been in Federal court, but by suing one local State defendant along with the big-money deep-pocket in New York, that is not the case.

The PRESIDING OFFICER. The time controlled by the majority has expired.

Mr. SESSIONS. Mr. President, I thank the Chair. I will conclude by saying there are a lot of reasons we ought to support this bill. It has been thought out very carefully. A lot of work has gone into it over a number of years. We are in a position to pass good legislation at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I would like to spend a few minutes to discuss my amendment No. 3, which is pending at this time, and then ask that it be withdrawn. This is the amendment I had offered on Tuesday to clarify the scope of the "mass action" provision in Section 4(a) of the bill.

As I had explained earlier this week, this provision requires that mass actions be treated the same as class actions under this bill, and therefore taken out of State courts and removed to Federal courts. But it was still unclear to me—and to many of the injured people who will be affected by this bill—what precisely the drafters had in mind in coming up with this "mass action" language in the bill.

When I last took the floor, I had raised some questions about the differences between "mass actions" and "mass torts," and whether mass torts would be affected by the language in S. 5. I heard from proponents of this bill that these are two very different types of cases, and that the bill is designed to affect only mass actions and not mass torts.

In fact, Senator LOTT of Mississippi the other day explained on the floor that:

Mass torts and mass actions are not the same. The phrase "mass torts" refers to a situation in which many persons are injured by the same underlying cause, such as a single explosion, a series of events, or exposure to a particular product. In contrast, the phrase "mass action" refers to a specific type of lawsuit in which a large number of plaintiffs seek to have all their claims adjudicated in one combined trial. Mass actions are basically disguised class actions.

I am glad that the proponents of this bill agree with me that there is a very

significant difference between these two types of cases. Mass torts are large scale personal injury cases that result from accidents, environmental disasters, or dangerous drugs that are widely sold.

Cases like Vioxx that I described earlier, and cases arising from asbestos exposure, are examples of mass torts. These personal injury claims are usually based on State laws, and almost every State has well established rules of procedure to allow their State courts to customize the needs of their litigants in these complex cases.

Senator LOTT also explained on the floor that:

There are a few States, like my State—I think, and West Virginia is another one and there may be some others—which do not provide a class action device. In those States, plaintiffs' lawyers often bring together hundreds, sometimes thousands of plaintiffs, to try their claims jointly without having to meet the class action requirements. And often the claims of the multiple plaintiffs have little to do with each other.

So, it seems to me that the authors of this bill are trying to include only these so-called mass actions and not mass torts.

And I understand from the statements made by Senator LOTT, the U.S. Chamber of Commerce, and many other proponents of the bill, that these so-called mass actions are currently filed only in Mississippi and West Virginia. In other words, this provision of S. 5 will have no impact on mass torts cases filed in the other 48 States.

That is good news because I would hate to see this bill—which already turns the idea of federalism on its head—preempt any more State rules and procedures than it already does with the diversity provisions.

I agree with the proponents that the scope of this language is limited.

It is my understanding from conversations with my colleagues who support this bill that a mass action, as used in this section of the bill, is simply a procedural device designed to aggregate for trial numerous claims. If that is the case, I believe my amendment would not be necessary.

I had offered my amendment as a good faith effort to keep mass tort cases from being impacted negatively by this provision. But if the language affects only a narrow set of procedural devices in a limited number of States, then I believe that is consistent with what I had attempted to achieve with my amendment.

Accordingly, I ask unanimous consent that my amendment, Amendment No. 3, be withdrawn.

The PRESIDING OFFICER. Is there objection to the request of the Senator to withdraw the amendment? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would also like to talk about the bill generally.

Why are we even debating a question about whether a lawsuit can be filed in a State court or a Federal court? If you can file a lawsuit, you are supposed to

have your day in court. But it is not that simple.

The reason why the business lobbies have spent millions of dollars in Washington pushing for this bill, the reason why this bill is the highest priority of the Bush administration and the Republican leadership in Congress, is because of one simple fact: Class action cases removed from State courts to Federal courts are less likely to go forward to be tried, they are less likely to reach a verdict where someone wins or loses, and if there is a decision on behalf of the plaintiffs, they are less likely to pay a reasonable amount of money in Federal court than in State court.

What I say to you is not idle speculation; it is based on Federal court decisions. That is why the business community has worked so long and so hard to remove the rights of consumers and citizens to sue in their own State courts. Rather, they want them removed to Federal courts where they have a better chance to win. The businesses know they can win more class action cases in Federal courts than they could ever win in State courts. That is what this whole debate is about. So you hear all of this talk about whether class action suits are filed here, whether they are filed there—frankly, many of these discussions overlook what these class action lawsuits are all about.

I had my staff compile some information on some of these lawsuits because people tell me: I don't understand what is a class action. I can understand if I am in an automobile accident, I get hurt, and I sue the person who ran into me. Is this what we are talking about? That probably wouldn't be a class action.

Let me give you some examples of real class action lawsuits. These cases will be more difficult to file and more difficult to be successful because the business interests are going to pass this bill.

U.S. postal workers given Cipro after the anthrax attacks in 2001 found out there were many damages that came from the drug, and the postal workers came together as a group to sue the company that made Cipro. This is a class action lawsuit.

Then we had a group of people in Rhode Island who were harmed because they were exposed to lead in paint. They sued, as a class, the manufacturers of lead paint that caused the damage to them physically. But because the manufacturers are not based in Rhode Island, this class action might be removed to a Federal court under this bill.

Then there was a court in Illinois in a class action lawsuit in one of the counties the proponents of this bill like to rail about. It was against Ford Motor Company because they were selling Ford Crown Victoria vehicles to police departments alleging they were better cars for police use. It turned out they had a defective fuel tank that

made them dangerous for policemen. So, all of the police departments that bought these cars sued Ford Motor Company as a class because of a defective product. But because Ford Motors is based in Michigan, the Illinois police officers might have to litigate this case in a Federal court.

Here is another one against Foodmaker, which ran Jack-in-the-Box restaurants. It turned out thousands of their patrons were subjected to food contamination and serious illness. The patrons sued as a class. Why? Because any individual might say: I took my child to Jack-in-the-Box, my child became sick and went to the hospital, and was there for two days. The medical bills came to \$1,500. But I can't file a lawsuit against the restaurant for \$1,500.

Then, the parent finds out that the same thing happened to hundreds of other kids, so all the parents come together and say: Jack-in-the-Box, you should have done a better job. And this class of plaintiffs went forward in a State court. But they would have less of a chance for success under this bill. That is what it is about.

A suit was brought by mothers and fathers when they discovered that Beech-Nut was selling apple juice for infants that turned out to be nothing but sugar water.

What is the damage to an individual infant, or a single family? How do you measure it? If a company sold millions of bottles of this defective product, shouldn't that company be held accountable?

That is what this debate is all about. It is about accountability for those who cause harm to the public. The businesses that are responsible for environmental contamination, for producing dangerous products that cause injuries, for manufacturing items that shouldn't be sold, or for overcharging customers, should be held liable.

But these business interests come to Congress for help, and they are going to win today. As a result of this victory, fewer consumers and fewer families are going to have a chance to succeed in court.

The Government closes down the agencies to protect you, Congress will not pass the laws to protect you, and now this Senate will pass a law to close the courthouse doors in your States when you want to come together as a group and ask for justice. This is the highest priority of the Bush administration: closing that courthouse door, making sure these families and these individuals don't have a fighting chance.

I think there are a lot of other priorities we should consider, such as the cost of health care in America. We will not even talk about that issue on the Senate floor, let alone discuss bipartisan options for addressing that pressing problem.

This so-called Class Action Fairness Act may pass today, but the ultimate losers are going to be families across

America who are hoping that Congress will at least consider their best interests in the very first piece of legislation that we consider.

I yield the floor.

Mr. LEVIN. Mr. President, I will vote against the Class Action Fairness Act of 2005 because, although this bill is an improvement over previous versions, it still has significant deficiencies that would have been corrected by a number of common sense amendments that were not adopted.

For example, forty seven attorneys general, including the attorney general of Michigan, expressed concern that this legislation could limit their powers to investigate and bring actions in their State courts against defendants who have caused harm to their citizens. The attorneys general supported an amendment offered by Senator PRYOR that would have exempted all actions brought by State Attorneys General from the provisions of S. 5 stating, "It is important to all of our constituents, but especially to the poor, elderly and disabled, that the provisions of the act not be misconstrued and that we maintain the enforcement authority needed to protect them from illegal practices." The Pryor amendment was defeated.

Federal courts generally do not certify class actions if laws of many states are involved. However, this legislation would force nationwide class actions into Federal courts where they would likely be dismissed for involving too many state laws. This would deprive the plaintiffs from the opportunity to have their case heard. An amendment sponsored by Senator FEINSTEIN, a co-sponsor of this legislation, and Senator BINGAMAN would have fixed this problem by prohibiting the district court from denying class certification in whole or in part on the ground that the law of more than one State will be applied. However, that amendment failed.

Senator FEINGOLD offered an amendment that would have set a time limit for a district court to assume jurisdiction or rule on a remand motion to State court. The amendment, which failed, would have provided protection for plaintiffs against attempts to remove cases to Federal court merely to delay the outcome.

We do need class action reform, however this bill fails to adequately protect the rights of our citizens and therefore I cannot support it.

Mr. SCHUMER. Mr. President, I rise today to express my support for S. 5, the Class Action Fairness Act, and to explain why I supported the amendment proposed by my friend from California, Senator FEINSTEIN, for herself and on behalf of my friend from New Mexico, Senator BINGAMAN.

I support the class action legislation before us today. Certain lawsuits have become a concern to many Americans. Many lawsuits have been filed in local State courts that have no connection to the plaintiff, the defendant, or the conduct at issue. This allows forum

shopping, which undercuts the basic fairness of our justice system.

Having said that, I am not one of those who think access to the courts should be unduly blocked. Our citizens' use of the courts has led to many reforms in the protection of civil rights and the environment, and has held corporate malefactors accountable for improper conduct that has cost victims billions of dollars. Often for those without power, a lawsuit is the only avenue for redress. We need lawsuits, but the rules governing them should be fair.

As we have heard yesterday and today, courts in some places have become magnets for all kinds of lawsuits. Some of these lawsuits are meritorious; some are not. In either scenario, if the case affects the Nation as a whole, it should be heard in Federal court. Judges in small counties should not make law for all of America. Although those judges might make good law, there is a real risk that parochial concerns would dominate in that type of decision. That is not to say that there are not judges in the Federal courts who do not have extreme views on both sides of the issues, much as we try not to confirm judges who fall out of the mainstream.

Consequently, we need to rein in forum shopping. When consumers allege that a product sold nationwide to consumers in all 50 States is defective, a Federal court should decide that case.

It is for these reasons that I joined with my colleagues, the Senator from Connecticut, Mr. DODD, and the Senator from Louisiana, Ms. LANDRIEU, to help craft the compromise that led to the bill before us.

The spirit of the compromise we reached would not create a new mechanism to dismiss class actions, but instead would remove the large and national class actions to the Federal courts.

But when Senators DODD, LANDRIEU, CARPER, KOHL, and I, all of whom have worked so long and hard on this bill, met with the majority leader and others 2 years ago, we made perfectly clear the right of the minority to offer amendments. That right remains an essential part of my participation in the compromise.

Although we worked hard to improve the bill, we wanted to make sure that our colleagues had the opportunity to offer amendments because no bill is perfect.

One area where the bill could be improved stems from a real concern that many of the consumer class actions removed to Federal court might not be certified on the grounds that there would be too many non-common issues due to differences among State laws that would apply to different members of the national class. To date, at least 26 Federal district courts have refused to certify class actions on those grounds.

Some of us believed that not certifying could have resulted in a problem

because it would effectively mean the weakening, if not the disappearance, of the class members' ability to get remedies, particularly with the changes made to current law by this bill. Not certifying could also create a practical problem for lawyers, who have the opportunity to try their class action before one court, and post-decertification might have to re-plead and try several class actions in several courts, thereby destroying the sought-after efficiency of class actions and creating the risk that the results would not be uniform.

This was not the desired outcome of our compromise: We intended to send national class actions to Federal court, not to their graves.

The amendment that my friend from California, Senator FEINSTEIN, and my friend from New Mexico, Senator BINGAMAN, introduced would not only have improved the bill, but would have also furthered the spirit of the compromise by clarifying our intention that the bill remove, but preserve class actions, even when Federal judges face choice of law issues.

Importantly, this amendment would not have aided forum-shopping plaintiffs' lawyers. Instead, it would have clarified options for a Federal judge facing a choice of law question. That clarification would have helped to grind to a halt the class action merry-go-round between the State and Federal courts. I hope that Federal judges view this bill, even without the amendment, as a vehicle that was intended to bring national class actions to the Nation's courts and not as a vehicle to balk at certification. The use of subclasses to protect people's rights under their State laws is now in the hands of Federal judges. They have the tools to protect those rights. This bill was not intended to destroy them.

That view will protect an important instrument of deterrence against future wrongdoing and an important adjunct to regulators in the enforcement of laws protecting our citizens.

Mr. ENZI. Mr. President, today I rise in support of S. 5, the Class Action Fairness Act of 2005. The class action system in our country is broken. Over the past decade, class action lawsuits have grown by over 1,000 percent nationwide. This extraordinary increase has created a system that produces hasty claims that are often unjust. Lawsuits that have plaintiffs and defendants from multiple States are tried in small State courts with known biases. This leads to irrationally large verdicts that make little sense legally or practically.

The U.S. Constitution gives jurisdiction to the Federal Government when cases involve citizens of differing states. It makes sense, that, in a case involving plaintiffs from Wyoming and Alabama and defendants from New York and Idaho, that no party be given the inevitable "home-court" advantage that comes when a case is tried in your backyard. Regrettably, for years, Congress has required all plaintiffs to be

diverse from all defendants. In large class action lawsuits, with plaintiffs or defendants from states throughout the Nation, it is increasingly difficult for this requirement of complete diversity to be met.

In the system we have created, we see lawyers seeking out victims instead of victims seeking out lawyers. We see lawsuits being adjudicated in a select few courts with proven track records for delivering large verdicts instead of lawsuits being tried in courts with the most appropriate jurisdiction.

S. 5 is a step in the right direction. It eliminates the lottery-like aspect of civil liability that individuals now face by moving interstate cases to the federal level. If passed, S. 5 makes it so that class action cases involving citizens from Wyoming, Utah, Kansas and Texas will not be adjudicated at a courthouse in Madison County, Illinois. In the same vein, it ensures that cases involving folks from Illinois, Arkansas, and Mississippi are not decided in a State court in Wyoming. These are interstate cases and should be decided without a home state bias that can exist in some State courts.

When the Founding Fathers drafted the Constitution and its provisions regarding the filing of interstate cases, they could never have imagined that our court system would be used someday to engage almost every sector of the U.S. economy in just three counties. That statistic should be a wake up call that something is dreadfully wrong and that the system is not working as the designers intended. By placing cases in Federal court, we avoid the forum shopping that has become so commonplace over the past few decades. S. 5 gives the defendants in a lawsuit a chance to have their day in an impartial court.

While State courts undoubtedly have their place, and in many instances operate more effectively than Federal courts, a select few have become notorious for delivering outrageous verdicts. Consequently, many of our most costly class action lawsuits end up in these courts. This should not be the case.

S. 5 will not only benefit the defendants, it will also make the system more fair for the plaintiffs. Weak oversight of class action lawsuits has created a system that returns less than 50 cents on the dollar to plaintiffs in a case. Compensation, when compared to actual economic loss, is approximately 22 cents per dollar. Settlement notifications are often times so confusing that plaintiffs do not understand what they are receiving. Plaintiffs are signing off on agreements they do not even understand, with even less understanding about how to challenge the settlement. They are getting a raw deal.

I am pleased that the Class Action Fairness Act addresses this problem by including a "Consumer Class Action Bill of Rights." The "Bill of Rights" includes a provision requiring the Fed-

eral court to hold a hearing and find that a settlement is fair before it can be approved. It includes provisions that make more fair what have become known as "coupon settlements," in which the attorneys receive real money and the victims receive the equivalent of a Sunday newspaper clipping.

S. 5 works to reign in the only people who covertly benefit from the way the class action system works today, a select group of defense attorneys who seem more interested in profits than process. These lawyers are more concerned with reaching a settlement than helping their victims. They push for quick class certification, and once they have crossed that hurdle, they push for a quick settlement by threatening the defendants with large monetary verdicts that have come about in past cases.

In the face of these ridiculous verdicts, defendants settle quickly. They know the stars are lined up against them if the case goes all the way to trial and often times, by agreeing to coupon settlements, the defendants pay only a fraction of the stated damages. The Class Action Fairness Act takes steps to change this practice. It takes steps to ensure that when a settlement is reached, the lawyers and the defendants do not come out ahead when the victims come out behind.

Is S. 5 perfect? Absolutely not. It does not require that individuals opt-in to class action lawsuits. It does not require sanctions be brought against attorneys who file frivolous lawsuits over and over again. There are a number of provisions that I believe should be included in the bill that did not make the cut.

But S. 5 is the true example of a bipartisan compromise. S. 5 takes into account the wants of the various parties. It took a lot of give and take to get to this point, and now, we have a bill that does some good. We have a bill that takes a first step toward reforming our court system to make it more fair for both the plaintiffs and the defendants.

I look forward to voting in favor of the Class Action Fairness Act later today, and I will encourage all my colleagues to do the same.

Mr. KOHL. Mr. President, I rise today on the final day of debate on the class action reform bill to say a final word in support of the legislation. We have worked for many years on this bill through numerous hearings, committee markups and repeated floor consideration. We can proudly say that we are about to succeed in passing modest, yet important changes to the class action process. Consumers and businesses across the country will benefit and not a single case with merit will go unheard.

Today is the culmination of many years of our bipartisan efforts on this issue as we have attempted to make the class action system fairer for both consumers and businesses alike. Our success once again demonstrates that

the Congress works best when we work together. I am most proud that we were able to construct a bipartisan core of supporters to pass this bill.

While this bill does not solve all of the problems in the system, consumers will never again need to worry about being injured and receiving worthless coupons as damages. Businesses will never again need to fear being sued in a small county court where the rules are stacked against them. Most importantly, under our bill every claim with merit will still go forward and the court house doors will always be open.

It is a well-known saying that success has many fathers, so many will deserve thanks for their work leading to the passage of this bill today. I would like to mention a few people specifically who have been indispensable to the passage of this legislation. Senator GRASSLEY and I have worked on this bill for 7 years now. He has been a good partner and leader. He deserves tremendous credit for his willingness to accept bipartisan compromises in an effort to get this bill done.

Senators CARPER and HATCH also deserve praise for the tremendous energy that they have brought to this bill over the past two Congresses. Without them, class action reform certainly would not have made it to the verge of passage today.

In addition, Senators DODD, FEINSTEIN, SCHUMER and LANDRIEU contributed significantly in this process by making important changes to the bill. They were successful in identifying ways to ensure that primarily State cases stayed in state court and only truly national cases could be removed to the Federal courts. This has been our goal all along. With their assistance we have accomplished it.

I would be remiss if I did not thank the many very fine staffers whose work often goes unheralded. This bill addresses a very technical and difficult area of the law, so their contribution to this bill was truly indispensable. All of the following were essential to the final passage of this bill: Rita Lari with Senator GRASSLEY; Jonathon Jones, Sheila Murphy and John Kilvington with Senator CARPER; David Hantman with Senator FEINSTEIN; Jeff Berman with Senator SCHUMER; Shawn Maher with Senator DODD; and Harold Kim with Senator HATCH.

Finally, Paul Bock and Jeff Miller, my chief of staff and chief counsel respectively, deserve significant credit for the passage of this bill. They have worked tirelessly on this legislation for several years and have provided wise counsel during the long and difficult negotiations on this legislation. With their assistance, we succeeded in crafting a moderate bill that will help business and consumers alike. For that, we should all be proud.

Mr. ALLEN. Mr. President, I rise today in support of the Class Action Fairness Act.

This legislation we are considering today is crucial to ensuring that there

is fairness in our courtrooms, that claimants receive the judicial consideration they deserve, and that the American economy and small businesses are able to stay competitive.

This class action reform legislation is primarily designed to allow defendants to move a class action lawsuit from State court to Federal court when there is diversity or citizens from different States involved in the litigation. This concept is as old as our Republic. No one will be denied access to the courts. It is simply allowing most litigants to find the most appropriate court to decide the case. In significant cases with diversity, the Federal courts are the proper choice.

We have heard about cases where lawyers shop around to find courts in particular counties that have a proven track record of being sympathetic to class action lawsuits with absurdly large judgments. When justice arbitrarily hinges on what county in which a case is tried, that is not fair.

A recent study found that 89 percent of Americans believe the legal system is in need of reform. The statistics are indeed alarming: Over the past decade, the number of class action lawsuits has increased by over 1,000 percent nationwide. And the cost of the U.S. tort system has increased one hundred fold over the last 50 years. Lloyd's of London estimates that the tort system cost \$205 billion in 2001, or \$721 per U.S. citizen. Most importantly, Lloyd's estimates this number to rise to \$298 billion by this year. At current levels, U.S. tort costs are equivalent to a five percent tax on wages.

The implications of an abused tort system on the American economy are of legitimate concern. While there is no doubt that many class action lawsuits are legitimate, the inadequacies of the system have resulted in frequent abuses. And the increased cost to businesses has an enormous impact—tying the hands of businesses and restricting their ability to expand, provide additional jobs, or contribute to the economy. Even the threat of class action lawsuits forces businesses to spend millions of dollars. Defendants face the risk of a single judgment in the tens of millions or even billions of dollars, simply because a State court judge has rushed to certify a class without proper review. The risk of a single, bankrupting award often forces defendants to settle the case with sizable payments even when the defendant has meritorious defenses.

Believe it or not, some opponents of the Class Action Fairness Act are still urging that the current class action system works well and that class action reform is unnecessary. Apparently, they do not think it is a problem when consumers take home 50-cent coupons to compensate them for their injuries, while their lawyers pocket millions in cash. Take for example a case against Blockbuster, Inc., where customers alleged they were charged excessive late fees for video rentals.

These customers received \$1 coupons while their attorneys received over \$9 million. Or when one State court prevents citizens from litigating their claims under the law of their home State. Or when attorneys file the same lawsuit in dozens of State courts across the country and file the same lawsuit in a race to see which judge will certify the fastest and broadest class.

In fact, numerous studies have documented class action abuses taking place in a small number of “magnet” State courts, and by now, it is beyond legitimate debate that our class action system is in shambles. As the Washington Post editorial page has noted, “[n]o portion of the American civil justice system is more of a mess than the world of class action.”

A RAND Institute for Civil Justice, ICJ, Study on U.S. class actions released at the end of 1999 empirically confirms what has long been widely believed—State court consumer class actions primarily benefit lawyers, not the consumers on whose behalf the actions ostensibly are brought. Case studies in the ICJ piece confirm that in State court consumer class actions—that is, cases not involving personal injury claims—the fees received by attorneys are typically larger than the total amount of monetary benefits paid to all of the class members combined. In short, the lawyers are the primary beneficiaries. The ICJ Study contains no data indicating that this problem exists in Federal court class actions.

If we do not pass this vital legislation, the class action process will remain a system ripe for exploitation, and the harm to the fundamental fairness of the civil justice system will continue to grow. Excessive and frivolous class action lawsuits stifle innovation, discourage risk-taking, and harm the entrepreneurship that drives our Nation's economic growth and job creation.

This commonsense, bipartisan legislation will help alleviate the dramatic effects that have resulted from an abuse of the class action system. This legislation ensures that legitimate class action cases are given full consideration and that prevailing plaintiffs receive the compensation they deserve. Americans deserve to have a judicial system that is effective and efficient, and, most importantly, fair—this legislation goes a long way toward accomplishing these objectives. I urge my colleagues to support this legislation. In the 108th Congress, this legislation came up one vote short. We now have four more Senators on our side of the aisle, so I am confident in its success in the 109th Congress. This is a success that people in States desire, and it will be a promise kept.

Mrs. CLINTON. Mr. President, I oppose this legislation called the Class Action Fairness Act of 2005, because I do not believe it is fair to litigants who have legitimate claims that are most appropriately addressed by our state courts.

Yes, there are some problems in the use of class actions, and in some cases there are excessive fees or inappropriate coupon settlements. I am pleased that after many years of seeking to move class action “reform” legislation, the bill proponents finally agreed to include language that addresses some of the abuses concerning “coupon” settlements, in which plaintiffs who have proven their case in court receive in turn coupons for products or services that have little value. This language has long been advocated by the distinguished ranking member of the Senate Judiciary Committee, Senator LEAHY, and it is a good provision because in contrast to most of the bill, it is narrowly crafted to address an actual problem that the legal system and litigants confront.

But the vast majority of the provisions in this legislation are not narrowly crafted to address discrete problems. Instead, this legislation is an extremely blunt instrument that I believe will result in justice delayed and justice denied for many Americans.

There have been many claims about “judicial hellholes” and “magnet jurisdictions” but the evidence shows that these claims are, at best, overstated, and are certainly not so widespread so as to justify passage of this legislation that turns 200 years of federalism on its head. Indeed, a recent report by Public Citizen found that there were, at most, two jurisdictions—Madison County and St. Clair County, IL—of the 3,141 court systems in the United States for which bill proponents have provided limited data that they are “magnet jurisdictions.” As to Madison County in particular, the facts also do not support the rhetoric. In 2002, only 3 of 77 class actions were actually certified to proceed to trial, and in 2003, only 2 of 106 class actions filed were certified.

Moreover, the Public Citizen report notes that, in recent years, at least 11 states have made major changes to the class action process used in their States to aid in the administering of justice, and in fact Illinois is in the process of doing the same.

The legislation purports to help Americans but I believe it will hurt them. The legislation itself states its purpose is to: “(1) assure fair and prompt recoveries for class members with legitimate claims; (2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and (3) benefit society by encouraging innovation and lowering consumer prices.”

As to assuring “fair and prompt recoveries,” hundreds of consumer rights, labor, civil rights, senior, and environmental organizations, esteemed legal experts, and many State Attorneys General believe, as I do, that this legislation will do just the opposite.

There is also no reasonable basis for the assertion that this legislation “will

restore the intent of the framers" with respect to the role of our federal courts. As Arthur Miller, the distinguished Harvard Law School professor, author, and expert in the fields of civil procedure, complex litigation, and class actions noted with respect to similar legislation considered last year: it is a "radical departure from one of the most basic, longstanding principles of federalism [and] is a particular affront to state judges when we consider the unquestioned vitality and competence of state courts to which we have historically and frequently entrusted the enforcement of state-created rights and remedies."

As a Senator representing the great State of New York, I have worked closely with many businesses in my state to help them with their efforts to grow and create jobs, and I am a firm believer in encouraging innovation and lowering consumer prices. But even if we assume there is a strong connection between this legislation and those goals, there are many more appropriate means to achieve those ends without doing the harm to the administration of justice that I believe this legislation will impose.

In addition to being unfair to the American people, I do not believe this legislation is fair to our State or Federal judiciaries. This bill will effectively preclude state courts in many instances from employing their expertise and experience in class action cases based on state law that they have historically considered. I believe that state courts should determine matters of state law whenever possible. It is not fair to our Federal judiciary, which simply does not have the resources or experience to handle a mass influx of class action cases to our federal courts.

Indeed, the Judicial Conference of the United States has expressed its opposition to similar legislation introduced in prior Congresses because it "would add substantially to the workload of the federal courts and [is] inconsistent with principles of federalism." Similarly, the Board of Directors of the Conference of Chief Justices representing the Chief Justices of our state courts has said that legislation of this kind is simply unwarranted "absent hard evidence of the inability of the state judicial systems to hear and decide fairly class actions brought in state courts." That evidence simply does not exist.

As the National Conference of State Legislatures, NCSL, has noted in its strong opposition to this legislation, the legislation "sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy." The NCSL went on to say that the effect of the legislation "on state legislatures is that state laws in the areas of consumer protection and antitrust, which were passed to protect the citizens of a particular state against fraudulent or illegal activities, will almost never be heard in state courts. Ironically, state

courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in those cases."

Although bill proponents have sometimes suggested the contrary, make no mistake: if enacted, this legislation will not only result in the majority of class action lawsuits being transferred from our state to Federal courts, but it will also serve to terminate some class action lawsuits that seek to provide justice to everyday Americans.

Proponents of this legislation refer to an alleged abuse by lawyers in bringing class actions and assert that too many cases are instituted that are without merit. As I have already noted, I believe some proponents of this legislation have mischaracterized the extent of the problems concerning class actions. But, even if these assertions were true, the proponents have failed to justify the rejection of the very reasonable amendments offered by my colleagues that sought to address major concerns with the legislation without undermining its spirit or intent.

One such amendment was offered by my colleague Senator PRYOR of Arkansas, a former Arkansas State Attorney General. It would have clarified the role that State Attorneys General would continue to play in State class action cases. That amendment had the express written support of 47 of the 50 State Attorneys General in our Nation. As the highest law enforcement officers in their respective States, I cannot imagine that anyone in this body would believe that such public servants would bring "frivolous lawsuits" or would seek to abuse the class action process. And yet, that amendment failed, primarily along party lines.

The remaining amendments met a similar fate, including one offered by Senators BINGAMAN and FEINSTEIN. There is no general Federal consumer protection statute, which is why consumer fraud, deceptive sales practices, and defective product cases are almost always commenced in state courts.

Yet, the legislation before us would effectively move many of these cases to Federal courts, courts that are already overburdened and have neither the experience nor the expertise to handle these cases. If such cases are forced into Federal courts through consolidation of many state court cases, a Federal court hearing such a case must then decide which state laws should be applied. Because these kinds of circumstances have presented enormous challenges to our Federal courts, many Federal judges have simply, and understandably, denied certification of nationwide consumer fraud cases. Yet, the bill language would preclude the consideration of many of these cases in state courts, creating what many have described as the bill's "Catch-22." At that point, such cases would literally be in justice "limbo" because a federal court would have dismissed the case but under the provisions of the legislation, the case could not withstand a de-

fendant's challenge to maintain the case in a State court.

The amendment offered by Senator FEINSTEIN, an original cosponsor of the underlying legislation, and Senator BINGAMAN, would have provided a process to handle such cases to increase the likelihood that such cases would be certified by a Federal court and the appropriate State laws would be applied. This was a more than reasonable effort to address a significant concern with this legislation without undermining the legislation's intent to transfer many class actions to Federal courts. But, once again, a majority of the Members of this body chose to reject it.

The Leadership Conference on Civil Rights has stated, and no one has refuted, that "there is no evidence that lawsuits brought by workers seeking justice in state courts on issues ranging from overtime pay to working off the clock are abusing the system. To the contrary, failure to exempt such lawsuits in this legislation is an abusive act against every hard-working American seeking fair pay and a better life." Yet, the amendment offered by Senator KENNEDY that would have carved out such cases from this legislation was rejected as well.

In short, this bill currently stands now in the same shape as when it was introduced. Though valiant efforts were made to improve it, none were successful. Eliot Spitzer, the distinguished New York State Attorney General, and a number of other State Attorneys General, expressed their overall concern with the bill, including the fact that the legislation still "unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts." I could not agree more.

In speaking in opposition to this legislation on the Senate floor earlier this week, Senator LEAHY, the Ranking Member of the Senate Judiciary Committee, reminded all of my colleagues that sometimes individual claims are so small that even though a harm was done for which a plaintiff should receive relief, it is not worth it for him or her to spend significant financial resources to obtain that relief through the judicial process. Unfortunately, as he said, "[s]ometimes that is what cheaters count on, and it is how they get away with their schemes. [Yet,] cheating thousands of people is still cheating. Class actions allow the little guys to band together, allow them to afford a competent lawyer, and allow them to redress wrongdoing." With the expected passage of this legislation today, I believe the "little guy" loses, and I believe that is neither fair nor just. That is why I cannot support this legislation.

I appreciate the concerns raised by businesses in New York and around the country about the cost of litigation. I too believe that litigation costs have increased significantly. Any legislation that seeks to address discrete problems with class action litigation should address this and other concerns without

unnecessarily and negatively affecting the ability of Americans to seek and obtain justice through our courts. A proper balance must be struck. The so-called Class Action Fairness Act simply does not strike that balance.

Mrs. DOLE. Mr. President, I rise today in support of the Class Action Fairness Act of 2005, legislation that is greatly needed to restore public confidence in our Nation's judicial system and protect jobs in my own State and throughout the country.

Frivolous litigation has helped drive the total cost of our tort system to more than \$230 billion a year. Tort costs in America are now far higher than those of any other major industrialized nation, and in our global economy, this has become a tremendous disadvantage for American manufacturers and entrepreneurs, who have long sought reform. But this affects not just certain businesses; this affects our overall economy and all Americans.

The Class Action Fairness Act will provide that some class action suits be litigated in the Federal courts rather than allowing venue shopping for a sympathetic State court. The measure will also ensure that cases of national importance are not overlooked. Most importantly, this legislation will ensure that class members with legitimate claims are fairly compensated.

Class action suits are an important part of our legal system. They originated to make our courts more efficient by joining together parties with a common claim. However, growing abuses by opportunistic plaintiffs' attorneys—coupled with the skyrocketing costs of runaway litigation and excessive awards—have had a dramatic impact on America's interstate commerce.

Over the past decade, the number of class action lawsuits has grown by over 1,000 percent nationwide. And the jury awards are sharply increasing over time as well. In 1999, the top 10 awards totaled \$9 billion; by 2002, that number had jumped to \$32.7 billion.

Businesses, like those in my home State of North Carolina, are losing out because the rules in place today allow lawyers to "shop" for the "friendliest" court to hear their case. And it is not just large companies being sacked with enormous payouts in class action lawsuits. Small businesses are bearing the majority of tort liability costs. According to a study conducted for the U.S. Chamber of Commerce, small businesses bear 68 percent of tort liability costs but take in just 25 percent of business revenue.

We all know that small businesses are the job creators and the engines of our economy. They create 70 percent of all new jobs in America. Yet the rules in place today allow for a judicial system that is truly hurting them and causing them to spend money—on average \$150,000 a year—on litigation expenses rather than on business development and equipment and expansion—

the very things that can lead to more jobs.

Our goal in reforming class action lawsuits is to provide justice to the truly injured parties, not to deny victims their day in court and their just compensation. Lawsuit costs have risen substantially over the past several decades, and a significant part of these costs is going towards paying exorbitant lawyers' fees and transaction costs. And some injured plaintiffs are suffering because of weak State court oversight of class action cases. In fact, under the current U.S. tort system, less than 50 cents on the dollar finds its way to claimants, and only 22 cents compensate for actual economic loss.

And sometimes class members don't receive cash at all. For example, in a settlement with Crayola, approved by a State court in Illinois, crayon purchasers in North Carolina and around the country received 75-cent coupons for the purchase of more crayons; their lawyers, however, received \$600,000 in cash.

And in the Cheerios class action settlement, also approved by State court in Illinois, consumers in North Carolina and around the country received coupons for buying a single box of cereal, while lawyers got \$1.75 million.

I hardly think it's in the best interest of the class member to actually have to purchase more of a product to receive any benefit. And it isn't fair that class members are losing out while their attorneys are cashing in.

This legislation establishes a "Consumer Class Action Bill of Rights" that will ensure that class actions do not harm the intended beneficiaries—people who were actually harmed by the actions of a defendant. And it does nothing to prevent class members from having their cases heard—it just establishes that some of these cases may be heard in Federal courts.

It is time we do what is right and repair this broken system—for claimants in class action cases, for our Nation's economy, businesses large and small, and for all Americans.

Mr. VOINOVICH. Mr. President, I rise today to speak on behalf of the Class Action Fairness Act, a bill to stop unfair and abusive class action lawsuits that ignore the best interests of injured plaintiffs. This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements.

It is also needed to reform the class action process, which has been so manipulated in recent years that U.S. companies are being driven into bankruptcy to escape the rising tide of frivolous lawsuits and has resulted in the loss of thousands of jobs, especially in the manufacturing sector.

Unfortunately, not enough Americans realize that we are in a global marketplace and businesses now have choices as to where they manufacture their products. Many of our businesses are leaving our country because of the

litigation tornado that is destroying their competitiveness. The Senate must start taking into consideration the impact of its decisions on this Nation's competitive position in the global marketplace.

I believe that for the system to work, we must strike a delicate balance between the rights of aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole. This is what the Class Action Fairness Act, does, and I am proud to cosponsor it.

Since my days as Governor of Ohio, I have been very concerned with what I call the "litigation tornado" that has been sweeping through the economy of Ohio, as well as the Nation.

Ohio's civil justice system is in a state of crisis. Ohio doctors are leaving the State and too many have stopped delivering babies because they can't afford the liability insurance.

From 2001-02, Ohio physicians faced medical liability insurance increases ranging from 28 to 60 percent. Ohio ranked among the top five States for premium increases in 2002. General surgeons pay as much as \$74,554, and OB-GYNs pay as much as \$152,496. Comparatively, Indiana general surgeons pay between \$14,000-\$30,000; and OB-GYNs pay between \$20,000-\$40,000.

Further, Ohio businesses are going bankrupt as a result of runaway asbestos litigation. And today, one of my fellow Ohioans can be a plaintiff in a class action lawsuit that she doesn't know about and taking place in a State she has never even visited.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation that became law in Ohio for a while. It might have helped today's liability crisis, but it never got a chance.

In 1999, the Supreme Court of Ohio, in a politically motivated 4-3 decision, struck down Ohio's civil justice reform law, even though the only plaintiff in the case was the Ohio Academy of Trial Lawyers—the personal injury bar's trade group.

Their reason for challenging the law? They claimed their association would lose members and lose money due to the civil justice reform laws we enacted.

The bias of the case was so great that one of the dissenters, Justice Stratton, had this to say:

This case should have never been accepted for review on the merits. The majority's acceptance of this case means that we have created a whole new arena of jurisdiction—advisory opinions on the constitutionality of a statute challenged by a special interest group.

From this, it is obvious to me that the way we currently administer class actions is not working.

While we were frustrated at the State level, I'm proud to have continued my fight for a fair, strong civil justice system in the United States Senate.

To this end, a few years ago I worked with the American Tort Reform Association to produce a study entitled “Lawsuit Abuse and Ohio” that captured the impact of this rampant litigation on Ohio’s economy, with the goal of educating the public on this issue and sparking change.

Can you imagine what this study found? In 2002 in Ohio, the litigation crisis costs every Ohioan \$636 per year, and every Ohio family of four \$2,544 per year. These are alarming numbers. And this study was released on August 8, 2002—imagine how high these numbers have risen in 2½ years.

In tough economic times, families can not afford to pay over \$2,500 to cover other people’s litigation costs. Something needs to be done, and passage of this bill will help!

Mr. President, this legislation is intended to amend the federal judicial code to streamline and curb abuse of class action lawsuits, a procedural device through which people with identical claims are permitted to merge them and be heard at one time in court.

In particular, this legislation contains safeguards that provide for judicial scrutiny of the terms of class action settlements in order to eliminate unfair and discriminatory distribution of awards for damages and prevent class members from suffering a net loss as a result of a court victory.

This bill would establish a concept of diversity jurisdiction that would allow the largest interstate class actions into Federal court, while preserving exclusive State court control over smaller, primarily intrastate disputes. As several major newspaper editorial boards—ranging from the Post to the Wall Street Journal—have recognized, enactment of such legislation would go a long way toward curbing unfairness in certain state court class actions and restoring faith in the fairness and integrity of the judicial process.

This bill is designed to improve the handling of massive U.S. class action lawsuits while preserving the rights of citizens to bring such actions.

Class action lawsuits have spiraled out of control, with the threat of large, overreaching verdicts holding corporations hostage for years and years.

In total, America’s civil justice system had a direct cost to tax payers in 2002 of \$233.4 billion, or 2.23 percent of GDP. That is \$809 per citizen and equivalent to a 5 percent wage tax. That’s a 13.3 percent jump from the year before—a year when we experienced a 14.4 percent increase which was the largest percentage increase since 1986.

Now, some of my colleagues have argued that this bill sends most state class actions into Federal court and deprives state courts of the power to adjudicate cases involving their own laws. They argue that the bill therefore infringes upon States’ sovereignty.

However, in one empirical study done by two attorneys from O’Melveny & Myers, their data indicated that this

bill would not sweep all class actions into Federal court. Rather, the bill is a targeted solution that could result in moving to Federal court a substantial percentage of the nationwide or multi-State class actions filed in class action “mill” jurisdictions (like Madison County, IL), while allowing State courts everywhere to litigate truly local class actions (the kinds of class actions typically filed in State courts that do not endeavor to become “magnet” courts for class actions with little or no relationship to the forum).

There is just no evidence for the assertion that this bill deprives State courts of their power to hear cases involving their own laws. In fact, it is the present system that infringes upon state sovereignty rights by promoting a “false federalism” whereby some state courts are able to impose their decisions on citizens of other States regardless of their own laws.

Another argument against this bill is that it will unduly expand Federal diversity jurisdiction at a time when courts are overcrowded. However, State courts have experienced a much more dramatic increase in class action filings and have not proven to be any more efficient in processing complex cases.

In addition, Federal courts have greater resources to handle the most complex, interstate class action litigation, and are insulated from the local prejudice problems so prevalent under current rules.

Mr. President, I emphasize to my colleagues that this isn’t a bill to end all class action lawsuits. It’s a bill to identify those lawsuits with merit and to ensure that the plaintiffs in legitimate lawsuits are treated fairly throughout the litigation process.

It’s a bill to protect class members from settlements that give their lawyers millions, while they only see pennies. It’s a bill to rectify the fact that over the past decade, State court class action filings increased over 1,000 percent. It’s a bill to fix a broken judicial system.

I am a strong supporter of this bill, and I urge my colleagues to do the same.

Mr. JEFFORDS. Mr. President, I am pleased to support S. 5, the Class Action Fairness Act of 2005.

I believe there are problems with our current class action system that should be addressed through Congressional action. These problems include:

Cases and controversies that are national in scope and are currently being decided in State courts;

Decisions or settlements that are determined in one State’s court system, are being applied nationwide, and conflict with laws in other States; and

Plaintiffs receiving little compensation, or in the most extreme example, actually owing money from the settlement of a class action lawsuit.

Class action lawsuits serve a useful purpose in our judicial system. Class actions allow individuals to merge a

number of similar claims into one lawsuit, which can be an efficient use of judicial resources. Class action lawsuits enable individuals with small claims the ability to seek justice.

The legislation we are considering today will fairly determine whether a class action should be considered in a State court or a Federal court. Thus, the legislation will help ensure that issues that are national in scope are heard in federal court, while issues that are local in nature are heard in State courts.

The Class Action Fairness Act also provides some common sense reforms and oversight of the class action settlement process. These changes will help ensure that individuals who should be compensated receive fair compensation for their injuries, rather than worthless coupons, or actually owing money.

I cannot, and would not, support legislation that denies individuals their ability to pursue compensation in the legal system for damages they have suffered. The legislation before this body is a bipartisan compromise worked out over many years. It does not deny individuals their right to pursue justice through the legal system. Because I believe the Class Action Fairness Act of 2005 fairly addresses the problems in our class action system, I will support its passage today.

Mr. REED. Mr. President, I rise to speak about S. 5, the Class Action Fairness Act.

First and foremost, I want to commend both the Republican and Democratic Leaders for all the work they did to bring this bill before the Senate. In particular, I am pleased that the consent agreement allowed all relevant amendments to be offered and debated.

I believe many of these amendments would have improved the underlying legislation without threatening its reforms. In particular, I think we should have adopted the Feinstein-Bingaman amendment, which would have given federal judges clear guidance about how to apply state consumer laws in multi-state class action lawsuits. This would have permitted more multi-state consumer class actions to be certified in federal court and resolved on their merits.

After S. 5 is enacted into law, I believe we should rapidly revisit this issue and make sure that consumers are actually getting their day in court and not having their class action cases thrown out because Federal courts are deeming them too complex or unmanageable to certify.

That being said, I think this legislation benefited greatly from the negotiations entered into by Senators DODD, LANDRIEU and SCHUMER with the bill’s major sponsors, Senators GRASSLEY, KOHL, HATCH and CARPER. Although S. 5 is not the bill I would have written, I do think it will address some of the well-documented problems created by overlapping class actions in State and Federal courts.

In particular, the Dodd-Landrieu-Schumer language included in S. 5 addressed some of my biggest concerns about moving class actions to Federal court. Many class actions involve only State law issues, are brought by plaintiffs from the same geographical area and have a defendant who is based within that same community. Moving these cases to Federal court is inappropriate, especially if they do not involve issues of national importance. In many cases, it is our State judges who are in the best position to make determinations about State law. The Dodd-Landrieu-Schumer compromise created a new exception for keeping cases like this in State court. Under the bill, if two-thirds of the plaintiffs are from a given State, the injury happened in that State and at least one significant defendant is from that same State, then the class action can remain in State court. As a result, I believe S. 5 ensures that "nationwide" class actions are separated from those that should continue to be heard in State courts.

I also believe that any attempt to stop forum shopping by plaintiffs should minimize forum shopping by defendants. The Dodd-Landrieu-Schumer compromise in S. 5 addressed this issue by making it clear that there is a firm 30-day deadline for the removal of nationwide class actions to Federal court once the plaintiffs have filed papers that create conditions for removal.

I also am pleased that the Dodd-Landrieu-Schumer compromise dealt with one of the most serious abuses in class action cases, certain types of collusive coupon settlements. S. 5 clarified that if a settlement provides coupons as a remedy, attorneys' fees will only be paid in proportion to the redemption of the coupons. A provision like this does not prohibit coupon settlements, but practically speaking, attorneys will not agree to such settlements unless the coupons are actually valuable. S. 5 also requires that a judge may not approve a coupon settlement until a hearing is conducted to determine if the settlement terms are fair, reasonable, and adequate for class members.

Finally, I believed that is important to preserve the ability of the Advisory Committee on the Federal Rules, the U.S. Judicial Conference, and the Supreme Court to amend the class action rules or procedures to the extent necessary to accomplish their purposes more effectively or to cure any unanticipated problems. S. 5 also included a provision saying that the Federal courts could make such changes as appropriate.

As a result of all of these improvements, I believe S. 5 is legislation that addresses serious problems in our nation's class action system and will make the system fairer for both plaintiffs and defendants.

The PRESIDING OFFICER. Twenty minutes is to be equally divided between the chairman and ranking member of the Judiciary Committee.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the distinguished senior Senator from Illinois. He is absolutely right. You have the corporate interests, and this administration is closing courthouse doors—one of the few places where people can go that are not aligned with either the Republican or the Democratic Party: a place where they don't need any political clout; a place where somebody can't say they are going to contribute heavily to a political party so their interests will be heard, or something like that. There is one place they could go—whether they are a mechanic, a bus driver, a person raising a family, somebody who had been damaged by a product sold when the manufacturer knew of the flaw—the one place they could go would be the courthouse. They are not the rich, powerful, or well-connected. They could win. Or at least seek justice. We are going to close that door, too.

Over the few days that the Senate has been considering this bill, there have been a few modest amendments that might actually keep the door open a tiny crack for the people who need it. There have been serious concerns raised by the National Conference of State Legislatures of our 50 States, the National Association of State Attorneys General, prominent legal scholars, consumers, environmental groups, and civil rights organizations. They asked us to at least consider a few improvements but the courthouse door was slammed shut. The Senate's door was slammed shut.

For anybody watching this debate, they have figured out that by now the fix was in, despite these legitimate concerns.

After 31 years here I am disappointed that the Senate is now taking its marching orders for major legislation from corporate special interests and the White House.

We could have actually acted as an independent body and made some changes in this bill. Instead, we are saying—the 100 of us—to all 50 of the State legislatures that we know better than they do, that they are irrelevant, that we could close them off.

It is going to make it harder for American citizens to protect themselves against violation of State civil rights, consumer, health, environmental protection laws, to take these cases to State court.

Aside from being convenient, plaintiffs actually know where the local state courthouse is. These courthouses have experience with the legal and factual issues within their States. We are simply going to sweep these cases into Federal court, after we have already swept so much criminal jurisdiction there, and you can't get a civil case heard anyway. We are erecting barriers to lawsuits, and we are placing new burdens on plaintiffs. They will languish.

The bill contains language that would reduce the delay that parties can

experience when a case is removed to Federal court by setting a limit for appeals of remand orders. But we don't say anything about how long the court can sit on the remand motion. They could sit on it for 10 years if they want to before they do a thing. Plaintiffs can die, witnesses can move away, memories could grow dim, and nothing happens.

Senator FEINGOLD offered a modest amendment to set a reasonable time for action on remand motions. The solution received praise from one of the sponsors of this legislation, but the corporate masters and the White House said no. So it was rejected by the Senate.

The biggest concern raised by legal scholars and agreed to by several Senate sponsors of the bill would address the recent trend in Federal courts not to certify class actions if multiple state laws are involved.

The way this is set up in the bill—a lot of the business groups are behind this—one could easily get a case dismissed by a Federal court.

Senator FEINSTEIN and Senator BINGAMAN worked together to alleviate what was a legal Catch-22. The Federal court says if a case has complicated State laws in it, it can't hear it. But you can't bring it in State court either. The Federal court says the State laws are complicated and it should have been heard in the State court. But under this bill, it goes to the Federal court so, of course, the corporate interests win. We tried to change that.

Cynics might even speculate that is what the business groups behind this purported "procedural" change are really seeking, the dismissal of meritorious cases on procedural grounds by the federal courts. Naturally, the orders came down from the corporate masters and the White House: Don't do it. We love the way this is going to allow us to keep things out of court. There it goes.

Anyone who reads this bill will notice that despite its title, it affects more than just class actions. Individual actions, consolidated by state courts for efficiency purposes, are not class actions. Despite the fact that a similar provision was unanimously struck from the bill during the last Congress, mass actions reappeared in this bill this Congress. Federalizing these individual cases will no doubt delay, and possibly deny, justice for victims suffering real injuries. Senator DURBIN's amendment sought to clarify the bill's effect on these cases. I'm glad the debate this week served to clarify the narrow scope of this provision.

It is interesting because a similar provision to was unanimously struck from the bill during the last Congress—unanimously but that wasn't good enough for the corporate masters. It was slipped back into the bill this Congress.

Class action legislation had been criticized by nearly all of the State attorneys general in this country, Republicans and Democrats alike. The distinguished former attorney general, Senator PRYOR of Arkansas, had a concern that S. 5 would limit their official powers to investigate and bring actions in State courts against defendants. He wanted to put in minor clarifications to show they could do that. Although these attorneys general contacted their Senators—Republicans and Democrats alike—they were tossed out.

Senator KENNEDY's amendment to exempt civil rights, and wage and hour cases in the bill, was a sensible solution. Prominent civil rights organizations and labor advocates requested that the bill be modified to acknowledge the fact that many of our states have their own protective civil rights and employment laws. I was proud to cosponsor it and regret that with the fix being in, this amendment was rejected by the Senate. But the fix was in, and that is out.

What we have done here? I will give you an example of one class action suit that would have been impacted under this legislation—Brown v. Board of Education, finally ending segregation in our schools, a blight on the American conscience. And how did Brown v. Board of Education get to the Supreme Court? Not from the three Federal courts in that class action suit; not the three Federal courts that said “separate but equal” is the law of the land. It had been good enough for all of us. Send those African-American children to one school. Send the White kids to a much better school—because that is what it was. The view was that is good enough for us, always been that way.

Only one State court in the State of Delaware said: That might be what the U.S. Supreme Court said, but they are wrong. They are wrong. We don't believe in Plessy v. Ferguson. We don't believe in the separate but equal. We say sending Black children to one school and White kids to the other is not equal. We are making second-class citizens of these African Americans.

And because a State court heard and ruled on that class action, it went up to the U.S. Supreme Court, and the U.S. Supreme Court unanimously came down with Brown v. Board of Education.

We pray there is not some class of people in this country being damaged the way African-American children were being damaged at that time because if they go into the courts in the wake of this legislation, the fix is in, this Senate has closed the court doors to them, this White House has closed the court doors to them, these corporate interests have closed the court doors to them. It is a shame. It is wrong. It is one heck of a message to send to this country.

It is disappointing to me that the Senate has refused to listen to wise counsel of our state legislatures, our state law enforcement officers, our

state judges and even the views expressed by our federal judiciary since they are the institutions that we are affecting by enacting this legislation.

I predict this legislation will be manipulated by well-paid corporate defense lawyers to create complex, expensive and lengthy litigation over the criteria and factors in the bill and whether they apply to a particular case. Unfortunately, one of the great boons of this legislation, to the extent it does not simply deter class actions brought by consumers, is that it will make them more costly, burdensome and complicated.

The so-called Class Action Fairness Act falls short of the expectation set by its title. It will leave many injured parties who have valid claims with no avenue for relief, and that is anything but fair to the ordinary Americans who look to us to represent them in the United States Senate.

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. SPECTER. 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. SPECTER. Mr. President, I thank my colleagues for moving this bill through to final conclusion where we are now scheduled to vote on final passage at 3 o'clock this afternoon.

We took this bill up in the Judiciary Committee a week ago today. Although there was some conjecture we could not pass the bill out of committee, in the morning we did so. We started the floor debate Monday afternoon. I led off in my capacity as chairman of the Judiciary Committee. We had a number of amendments and we have worked the will of the Senate. A number of amendments have been withdrawn, a number of amendments have been defeated.

The Senator from Wisconsin, Senator FEINGOLD, offered an amendment which would have imposed time limitations on the courts on their handling of class action cases. I told him I thought it was a good idea, but I was constrained to vote against it because we have an understanding—implicit or explicit, I am not quite sure which because I was not party to it—with the House of Representatives that if we sent them a so-called clean bill without amendments, they would accept the Senate version. I told Senator FEINGOLD as to his issue, I have had a number of complaints about delays in the administration of the courts. That is something the Judiciary Committee will take up.

I make it plain we will not deal with judicial independence or the court's discretionary functions, but when it comes to delays, that is a matter of congressional oversight on our fundamental responsibility to decide how many judges there will be at all levels. That is an issue we will take up.

The Senator from South Carolina, Senator LINDSEY GRAHAM, had proposed an amendment on disclosure, on transparency, sunshine. There again, that is a good idea. We have worked through a colloquy. I have not seen the final form, but I was discussing it with Senator GRAHAM again this morning and the staffs are working that out. I anticipate we will have that finished.

The Senator from Illinois, Senator DURBIN, had a proposed amendment on mass actions. We had worked through to see if we could formulate a colloquy. That has not reached fruition. Senator DURBIN has decided to withdraw. That is a complex matter which we took up in committee 2 years ago. We made some modifications in the bill, but it is very important as this bill moves forward to become law that it be dealt with as a procedural change, that there not be substantive changes in the rights of the parties.

We have sought to move into the Federal courts in order to avoid forum shopping on judges or courts where there is some indication of a prejudicial predisposition. It is my hope as this class action bill is interpreted that it will not effect substantive rights.

There is a tender issue on selection of State law where there are a number of States involved. There is a lot of commonality in our law injected through the uniform commercial code and interjected through the restatement of varieties of substantive matters such as torts, where class actions can be certified, so it is my hope this bill, this act, will not be interpreted to curtail a substantive right.

There is a great deal of wisdom in the Senate on this bipartisan bill which has received considerable support on the Democratic side of the aisle as well as very strong support on the Republican side of the aisle to move through without a conference where we might have had a bill which was a great deal more restrictive of plaintiffs' rights, where we might have had a bill where the House provision calls for retroactive application. That would upset a great many existing lawsuits. All factors considered, we have come to a wise conclusion.

Mr CORNYN. Mr. President, I have spoken previously on this floor about my concerns that this legislation does not go far enough to address the scandal of litigation abuse that plagues our civil justice system. I stand by those concerns today. We can and should do more to reduce the burden of frivolous, expensive litigation. Our Nation's economic competitiveness in the 21st century depends on it.

We should consider additional measures that better level the playing field, that produce a good flow of information and transparency, and that provide a clear relationship between plaintiffs and their attorneys.

But while this modest legislation could do more, I believe that S. 5 is an important first step to reform—a step in the right direction.

By providing for removal of a greater number of class action lawsuits from State court to Federal court and by requiring that judges carefully review all coupon settlements and limit attorneys' fees paid to these settlements to the value actually received by class members, it sets the groundwork for a much needed reform.

In the spirit of bipartisan cooperation that drove this bill forward, I set aside my concerns for now and am proud to co-sponsor.

I thank my friend from Iowa, Senator GRASSLEY, for his leadership and persistence on this issue. For five consecutive Congresses, dating back to 1997, Senator GRASSLEY has taken up the mantel of class action reform and he deserves a great deal of credit for it.

Finally, I want to thank Chairman SPECTER and Senator HATCH for their continued stewardship. Without them, this bill would not be where it is today.

Mr. SPECTER. Mr. President, I have a few minutes remaining on my 10 minutes. I notice the distinguished Democratic leader is here, but I said I would yield to the Senator from Connecticut, Senator DODD. He has a very unique spot in my evaluation of Senators because he was elected in the class of 1980. He reminds me there were 18 of us elected, and the Democrats, through their tenacity and wisdom, have maintained 50 percent of their class and the Republicans, on the other hand, have only retained 12½ percent. Of course, we started with 16 to 2, so let the record show that the Republicans from the class of 1980 still outnumber the Democrats 2 to 1.

I yield to Senator DODD.

Mr. DODD. Mr. President, I thank my colleague from Pennsylvania. One of the great pleasures over the past 24 years has been to serve with ARLEN SPECTER in this body.

We are nearing the end of consideration of this bill.

I would like to spend just a few minutes to offer some thoughts on it.

First, a brief word about the process by which this bill has been considered by the Senate. I don't think it is an overstatement to say that—aside from the details of the legislation itself—the most important factor in its expected passage is the unanimous consent agreement that was put into place at the onset of the Senate's deliberations on the bill.

In that respect, the two leaders—Senator FRIST and Senator REID—are to be greatly commended. Either one could have refused to enter into such an agreement—which would have made the prospects for passage of this legislation far less certain.

As I said yesterday, a determined minority of even one Senator can impede or block consideration of legislation in this body. Either Leader, by declining to enter into a consent agreement, could have paved the way for others to employ dilatory, delaying, and distracting tactics.

However, both Senators REID and FRIST agreed that only relevant

amendments to the bill would be in order. No doubt, that agreement displeased some members in both caucuses. However, it helped ensure that the debate we have had on this bill has been substantive, orderly, and deliberate. And it minimized the risk that this bill would be derailed by contentious issues wholly unrelated to the substance of the bill itself.

So the cooperation shown by the two leaders on this legislation cannot be overemphasized. Senator REID is to be particularly commended in this regard, given that a majority of the members of his caucus do not appear to support the bill.

The consent agreement that he entered into with the majority leader demonstrates his commitment to working in a cooperative manner as possible for the good of the Senate.

Allow me to spend a few moments talking about the substance of this legislation. We have heard a lot of characterizations over the past few days to describe the bill and the problems it seeks to correct. I am among those who believe that our class action system is in need of reform. There are clear abuses and shortcomings that have not served the interests of the parties or the interests of justice. And this bill takes a number of significant steps to remedy those abuses and shortcomings.

To those who say that this legislation will have dire consequences on the quality of justice in our Nation, I must respectfully disagree. And I do so for a number of reasons.

First, it is important to view this legislation in a larger perspective. According to one estimate, .92 percent of all cases filed in Federal courts over the past three decades have been class actions. This point deserves special emphasis: from 1972 to 2002, less than one percent of all cases filed in the Federal courts of our Nation have been class actions.

Not all states compile similar data, so there are no comparable statistics for class actions as a percentage of all cases filed in State courts. However, there is every reason to believe that the percentage of class actions filed in state courts is at least as minuscule as the percentage filed in state courts. My point is simply this: that this legislation will affect only a very small percentage of all cases filed in our courts—less than 1 percent.

Some would argue that if even one just case in America were denied by this bill, that would be an unit result, and merit the defeat of this bill. I am not unsympathetic to that argument. Indeed, I agree wholeheartedly with it. Our system of justice is premised on the belief that equal justice under law is the right of each and every citizen.

Even one just cause unjustly denied offends our Nation's commitment to justice and fair play. Any legislation that would deny to even one citizen the right to equal justice deserves opposition, at least in this Senator's opinion.

But this bill does not deny such a right. It does not even come close. It

will not close the courthouse door on a single citizen.

Moreover—unlike other legislation that has been considered by this body—it will not cap damages in a single case.

It will not cap attorney's fees for a single class action lawyer.

It will not extinguish or alter in any way a single pending class action.

Nor does it impose more rigorous pleading requirements or evidentiary standards of proof in a single class action.

In short, no citizen will in any way lose his or her right to go to court and seek the redress of grievances.

My colleagues might ask: if this bill will not do any of these things, then what will it do?

First and foremost, it will put an end to the kind of abusive forum-shopping that has grown in frequency and notoriety over the past few years.

Opponents of this bill claim that, by in any way altering the procedural rules governing class actions, substantive rights will be denied.

However, this argument is trumped by a little document called the U.S. Constitution.

Article III of that document extends Federal jurisdiction to suits between "citizens of different States." The purpose of extending this "diversity jurisdiction" to citizens is to prevent the citizens of one State from being discriminated against by the courts of another State.

However, over the years, this purpose has been increasingly thwarted by clever pleading practices of enterprising class action attorneys.

By adding a plaintiff or a defendant to a lawsuit solely based on their citizenship, they have been able to defeat efforts to move cases to Federal court—even cases involving multiple parties from multiple States. Likewise, by alleging an amount in controversy that does not trigger the \$75,000 threshold, they have thwarted Federal jurisdiction—even in cases alleging millions if not billions of dollars in damages.

In short, current pleading practice by the class action plaintiffs bar has very effectively denied Federal jurisdiction over cases that are predominantly interstate in nature. These are precisely the kinds of cases the Framers thought deserve to be heard in Federal courts.

All that this legislation does in this respect is bring pleading practice more into line with constitutional requirements. Cases that are primarily intra-rather than interstate in nature may continue to be heard in State courts.

But those that are clearly interstate in nature will now be more likely to be heard in Federal court, where they belong.

The notion that cases will be "dismissed" as a result of this and other changes created by this legislation is, in my view, patently absurd. No provision of this legislation requires a single case to be dismissed. Plaintiffs' attorneys may end up spending more time in

Federal court than State court. They may not be able to pick a class of plaintiffs that is as large as they can now, or that encompasses as many States. They may end up bringing cases in two or more courts that they might have preferred to bring in a single court. But they will not find their cases dismissed.

As my friend and colleague from Utah, Senator HATCH, said earlier, good lawyers will find a way to do well under this bill. Good lawyers will do well in Federal courts, as they have done well in State courts. In that sense, then, this bill is exceedingly modest.

We write our laws on paper. We do not etch them in stone. I am confident that the bill we have written here is a good one. I believe that, if and when it becomes law, it will withstand the test of time. Likewise, I am confident that if in the future any shortcomings emerge, we will have the good sense to fix them.

By way of analogy, I remind our colleagues of another reform bill that was considered several years ago. The Senator from New Mexico, Senator DOMENICI, and I wrote a bill to address frivolous securities lawsuits directed primarily at high-tech companies. The bill was on the floor of the Senate for about 2 weeks, if I recall correctly. A number of amendments were offered. It ultimately became law, despite a Presidential veto.

There were those who predicted dire consequences as a result of that bill's enactment. We were told that securities lawsuits would dry up, that harmed investors would have no recourse.

Well, here we are, about 9 years after enactment of that law, and there has been no appreciable drop-off in investor lawsuits and recoveries. In fact, some of the most vehement opponents of that law in the trial bar continue to be some of the most successful under the law.

In sum, we have written a good bill here. It deserves to become law. I hope that it will. I want to acknowledge those of our colleagues who are most responsible for bringing us to this point: Senators FRIST and REID, as I have already mentioned; as well as Senators GRASSLEY, KOHL, HATCH, FEINSTEIN, CARPER, and others. I also want to acknowledge the hard work of their staff, who in some cases have worked on this legislation for a number of years.

So, to briefly reiterate, I thank my leader, Senator REID, and the majority leader, as well. We would not be in the position we are in, I have said on several occasions over the last 3 or 4 days, had the Democratic leader—particularly because the minority always has unique rights in this Senate to delay or stop legislation moving at all.

Even though my colleague from Nevada has strong reservations, which I am sure he will express shortly, about the substance of this bill, as a result of

his willingness to let a product move forward, we are here today about to adopt a piece of legislation. When I hear some of the comments being made about whether Democrats are willing to work on issues, even ones they disagree with, that is belied by the fact that the minority leader made it possible for us to be here to deal with all relevant, germane amendments on this bill. I thank the Senator from Nevada for his efforts in allowing that to go forward.

There has been a lot of talk over the last several days. Classically, with a matter like this the opponents and proponents have a tendency to engage in, if I may say with all due respect, a little bit of hyperbole. But it's important to stick to the facts. And one important fact that should shape how we view this legislation is that less than 1 percent of all cases filed in the Federal courts since 1972 have been class action cases. I searched very tirelessly to find out the percentages in State courts. I could not come up with an exact number. I am told by those knowledgeable the number of class actions filed in State courts as a percentage of all State actions is not substantially different than the Federal courts, and is likely to be even smaller given the large number of State cases filed generally. What is beyond dispute is that a very small percentage of the cases filed in our court systems are class actions.

Obviously, if anyone is denied access to the courts in this country because of things we do here, then, obviously, justice is denied to someone who cannot make that case.

We have not done that. This system of class action is in need of reform.

This is about money. Unfortunately, it is not about the money that legitimate plaintiffs get; it is about the money that is either saved by a defendant or made by the plaintiffs' bar. That is what this is about, and forum shopping around the country, finding the venue that gets you the best possible result for your particular point of view—not exactly what the Founders had in mind when they drafted the diversity provisions of article III of the Federal Constitution. If you want to change the Constitution and say that no longer should diversity apply, then you may try to do that. If that is what opponents of this legislation believe, then they can try to amend the Constitution to in effect keep all these cases in State courts. But since the founding of this Republic, the diversity clause of article III of the Constitution has been very clear.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Connecticut be allowed 5 more minutes.

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

Mr. DODD. Mr. President, I thank my colleague. I will go quickly.

The point is, this is about court reform more than tort reform. About fifteen months ago, as many of my col-

leagues recall, we worked out this bill. We struck an agreement, a good one. Unfortunately, the majority here, last year, decided not to bring this bill up. I believe they made a mistake in doing that. We could have wrapped this bill up in January of 2004 but did not do it. This agreement has been ready for the Senate's consideration for over a year. We have had good debate on some of these amendments, and we have drafted a pretty good bill. It is not written in marble; it is not written in granite; it is written on paper. And we think it is going to provide equal access to the courts. It is going to provide a fairness to plaintiffs and defendants, to see that they get a just decision regarding the matters that are brought before the courts.

So to my colleagues who are strong opponents of all of this, believe me, this bill is a simple matter of court reform. It will help ensure that victims of wrongdoing get fair compensation and relief, rather than a raw deal that lines the pockets of those who either allegedly represent them or those who are on the defendant side who want to avoid some of the payments they would otherwise have to make.

There are no caps in this bill. It does not impose any rigorous procedural requirements or evidentiary requirements of proof at all. In short, no citizen will in any way lose his or her right to go to court to seek redress for their grievances.

You get anecdotal stories, hearing of one case or another. This bill is about court reform, getting a system right. It is long overdue. It does not mean that every tort reform measure that comes before us ought to be supported, but on this one, those of us who worked on this believe we have done a good job. We were asked to make four improvements in this bill. We made 12 of them over a year ago.

I thank the Senator from Delaware, Mr. CARPER, Senator FEINSTEIN, Senator SCHUMER, Senator LANDRIEU, and other Members on the Democratic side who have worked on this issue to make this possible.

Again, my thanks—and it should be noted—to the distinguished Senator from Nevada, Mr. REID, and Senator FRIST, who struck a procedural agreement so the Senate could consider this bill.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, yesterday on the Senate floor I expressed serious concerns about this legislation that is pending before the Senate. I explained at that time that this legislation, in my opinion, is one of the most unfair, anti-consumer pieces of legislation to come before the Senate in a long time. It slams the courthouse doors on a wide range of injury plaintiffs, it turns federalism upside down by preventing State courts from hearing State law claims, and it limits corporate accountability at a time of rampant corporate scandals. Instead of turning up

the heat on corporate fraud, this bill lets corporate wrongdoers off the hook.

At the beginning of the debate yesterday, I said this is a bad piece of legislation, but there are going to be some amendments offered, amendments that will improve this bad legislation. They would have made significant improvements. But my hope of these amendments passing was very short lived. It did not happen. Over the last 2 days, the Senate has turned away each and every effort to make this bill less offensive. Every single amendment—each a message of fairness—was debated and turned down. That is a shame. Proponents of this bill explained their opposition to the common sense amendments by describing the current bill as a “delicate compromise.” I have heard that so many times. I spoke to Congressman SENSENBRENNER, the chairman of the Judiciary Committee in the House, who is supposedly the gate-keeper on this legislation. He said: We are going to accept legislation that is in keeping with what you did last time. Well, when he said, What you did last time, he was talking about the bill that came out of the Senate Judiciary committee and was here on the floor. These changes would not have dramatically altered that.

If you went downtown to see what K Street wanted with these amendments, of course they were against all of them because, in my opinion, this legislation slams the door on most everyone who wants to bring a case and use class action as the tool for coming to court.

The debate yesterday was characterized by two significant misunderstandings about the bill. First, proponents claimed that under this bill, class action lawsuits could stay in State courts as long as two-thirds of the plaintiffs are from a single State. Well, in fact, the bill reverses long-standing Federal court diversity rules by saying that no matter how many plaintiffs are from a single State, the case can still be removed to Federal court if the defendant corporation is incorporated in a different State. Keep in mind, of the Fortune 500 companies, 58 percent of them are incorporated in Delaware, so the majority of class action lawsuits would be removable just on that figure alone.

For example, in the State of Nevada, at the famous Yucca Mountain, the contractors were in such a rush, the Department of Energy was in such a rush to drill a hole in this mountain, they had a huge auger. The size of this auger was halfway to the top of the second story of this Chamber. It was a huge machine. It dug a hole almost as big as this Chamber—a big tool going right through that mountain. They knew they were coming to a formation there and that the toxic mineral dust from drilling the formation would cause people to get really sick with silicosis. They knew that, but they were in such a rush that they would not even wet down this big tool to prevent the dust. They drilled dry, so to speak,

and this toxic dust flew all over and the workers inhaled it. And today, as we speak, people are dying as a result of that.

Well, there has been a request for the case to be considered a class action—under the old law in existence before this passes—that would allow all those workers to join together in a class action and have it certified. Even though well over two-thirds of the plaintiffs are residents of Nevada, the harm was caused in Nevada, and the defendants were obviously doing business in Nevada, a defendant incorporated in a State other than Nevada could remove the case from Nevada State court. That is how this bill works. It is just unfair.

The second mischaracterization of this legislation is that supporters make it sound as though all we are talking about is venue. These cases will simply move from State court to Federal court and proceed just the same. That is simply not true. Under Supreme Court precedents that this bill does nothing to change, Federal judges routinely dismiss class action lawsuits based on State law. Those cases that are not dismissed go to the back of a very long line in the overburdened Federal court system.

One of the foremost experts on class actions is a man who is also an expert in antitrust law. He is a professor at Harvard Law School. His name is Arthur Miller. Here is what he said:

Federal courts have consistently denied class certification in multi-state lawsuits based on consumer as well as other state laws. . . . not a single Federal Circuit Court has granted class certification for such a lawsuit, and six Circuit Courts have expressly denied certification.

The rejection of the Feinstein-Bingaman amendment shows this bill's true colors. And I admire greatly Senator FEINSTEIN for having the courage to do the right thing and say: I have been one of the original pushers of this legislation, but what we are trying to do is unfair, and the Bingaman amendment should be adopted. She joined with him for the Feinstein-Bingaman amendment.

So, if the sponsors merely wanted federal court review of lawsuits with national implications, they would not object to an amendment making clear that federal judges may not dismiss these cases.

But without that change, the truth is plain to see: This bill is designed to bury class action lawsuits, to cut off the one means by which individual Americans ripped off by fraudulent or deceptive practices can band together to demand justice from corporate America.

What does this change mean in the real world? It means, for example, that cases like the one brought by Shaneen Wahl will not be able to go forward. Shaneen is a 55 year old woman, and she was diagnosed with breast cancer. Her health insurance company raised the rates on her insurance premiums from \$194 a month to \$1,800 a month—

a little jump in price. She found out that her insurance company was improperly doing this for tens of thousands of other chronically ill patients. She got a lawyer, they banded together in a class action lawsuit, and they prevailed in state court. Under this legislation, the case would be dismissed.

Another breast cancer survivor also a Florida woman, is 40-year-old Susan Friedman. Susan's insurance company removed her case to federal court, where it was dismissed. She is an unlucky example of what will happen to more people under this legislation. This is the fate of many other class action lawsuits under the bill the Senate will soon pass.

Unfortunately, insurance companies are ripping people off all the time, and this legislation will give the biggest, best businesses in the world, the insurance companies, more money.

In the real world, this legislation means that when a phone company systematically bills customers for services they had cancelled or a plumbing company routinely overcharges customers by \$10, those practices will not be brought to light. The dollar amounts would be too small. Why should the plumbing company get an extra \$10 from everyone? I guess what this legislation means is if you cheat a lot, you can take them to court, but if you cheat just a little bit, lots and lots of times, have at it, because no one can do anything about it. This is the “cheat a little bit” legislation.

This legislation is not good. It will help the tobacco industry avoid accountability. It virtually guarantees that tobacco-related cases will end up in federal court where they won't be able to proceed. I had a person, Fritz Hahn, who lived on my property in Nevada to keep an eye on things. He was there for many years. He started smoking when he was a teenager. He is now dead as a result of tobacco. He smoked too much. He got throat cancer. He died a slow, terrible death. But for class action lawyers, tobacco companies would have a free rein, and they would be able to kill a lot more people like Fritz Hahn.

That is what class action is all about, joining together and going after those companies who do bad things to people. However, this legislation will make it so much more difficult. That is why numerous consumer groups, including the Campaign for Tobacco-Free Kids, the Leadership Conference on Civil Rights, the Consumers Union, the AFL-CIO, Public Citizen, and many others have urged the Senate to reject the bill.

I ask unanimous consent to print in the RECORD scores and scores of companies that support my statement against this legislation.

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

NATIONAL ORGANIZATIONS OPPOSED TO FEDERAL CLASS ACTION LEGISLATION AS OF MAY 21, 2004

AARP, ADA Watch/National Coalition for Disability Rights, AFL-CIO, Alliance for Healthy Homes, Alliance for Justice, Alliance for Retired Americans, American Association of People with Disabilities, American Association of University Women, American Cancer Society, American Heart Association, American Federation of Government Employees, American Federation of State, County and Municipal Employees, American Lung Association, American-Arab Anti-Discrimination Committee, Americans for Democratic Action, Bazelon Center for Mental Health Law, Brady Campaign to Prevent Gun Violence, United with the Million Mom March, and Campaign for Tobacco Free Kids.

Center for Disability and Health, Center for Justice and Democracy, Center for Responsible Lending, Center for Women Policy Studies, Civil Justice, Inc., Clean Water Action, Coalition to Stop Gun Violence, Commission on Social Action of Reform Judaism, Communication Workers of America, Consumer Federation of America, Consumers for Auto Reliability and Safety, Disability Rights Education and Defense Fund, Earthjustice, Education Law Center, Environmental Working Group, Epilepsy Foundation, Families USA, Federally Employed Women, Friends of the Earth, and Gray Panthers.

Greenpeace, Homeowners Against Deficient Dwellings, Jewish Labor Committee, Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, Mexican American Legal Defense and Educational Fund, Mineral Policy Center, NAACP Legal Defense and Education Fund, National Alliance of Postal and Federal Employees, National Asian Pacific Legal Consortium, National Association for the Advancement of Colored People, National Association for Equal Opportunity in Higher Ed, National Association of Consumer Advocates, National Association of Consumer Agency Administrators, National Association of the Deaf, National Association of Protection and Advocacy Systems, National Bar Association, National Campaign for Hearing Health, National Center on Poverty Law, and National Coalition on Black Civic Participation.

National Committee on Pay Equity, National Consumer Law Center, National Consumer's Coalition, National Council of La Raza, National Employment Lawyers Association, National Fair Housing Alliance, National Gay and Lesbian Task Force, National Law Center on Homeless & Poverty, National Legal Aid and Defender Association, National Organization for Women, National Partnership for Women & Families, Natural Resources Defense Council, National Workrights Institute, National Women's Health Network, National Women's Law Center, North Carolina Justice Center, NOW Legal Defense and Education Fund, People for the American Way, Public Citizen, and Pride at Work.

Project Equality, Religious Coalition for Reproductive Choice, Sargent Shriver National Center on Poverty Law, Service Employees International Union, Sierra Club, Tobacco Control Resource Center, Tobacco Products Liability Project, UNITE!, United Food and Commercial Workers International Union, United Steelworkers of America, USAAction, U.S. Public Interest Research Group, Violence Policy Center, and Women Employed.

GOVERNMENT ORGANIZATIONS OPPOSED TO CLASS-ACTION LEGISLATION

Conference of Chief Justices (State Supreme Court Justices), Judicial Conference

of the United States (Federal Judges Association), Attorney General of California, Bill Lockyer, Attorney General of Illinois, Lisa Madigan, Attorney General of Maryland, J. Joseph Curran, Jr., and Attorney General of Minnesota, Mike Hatch.

Attorney General of Missouri, Jeremiah W. Nixon, Attorney General of Montana, Mike McGrath, Attorney General of New Mexico, Patricia A. Madrid, Attorney General of New York, Eliot Spitzer, Attorney General of Oklahoma, W.A. Drew Edmondson, Attorney General of Vermont, William H. Sorrell, and Attorney General of West Virginia, Darrell Vivian McGraw, Jr.

Mr. REID. Organizations are against it. State court judges, Federal judges, many state Attorneys General, and the National Conference of State Legislators are against it. Officials in our home States are telling us not to do this. The only groups that want us to pass this bill are those representing defendants in these lawsuits. Sure, they want to be relieved of the burden of accountability. We shouldn't let them. This is not just a battle between big business and lawyers. It is more. It is certainly more anti-lawyer than I would like to think. But that is what we hear coming from the White House.

At a meeting in Las Vegas, the President said: The most hurtful thing in the American economy today is lawyers. I don't believe that, as indicated by the instances I gave about tobacco. Sure there are bad lawyers who bring meritless cases, and there should be something we do to crack down on them. But this bill is not about punishing bad lawyers. More fundamentally this bill is about limiting access to civil courts and hurting consumers.

One of the grievances that inspired our Founding Fathers to revolt against King George was they couldn't bring their grievances to a body.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. REID. What time is that? I will use leader time.

The PRESIDING OFFICER. The Senator had 10 minutes.

Mr. REID. I thank the Chair.

As I was saying, one of the grievances that inspired our Founding Fathers to revolt against King George was limited access to the civil courts. That was based on the rights secured in the year 1215, when King John signed the Magna Carta. King John couldn't sign his name, so he put an X. From that day forward, one of the things that was brought over the ocean and is now in our common law, when the Founding Fathers developed our country, is that you bring to court your grievances. They had a jury that could sit down and talk about what was good and bad about your case. Access to the courts is a basic right in our democracy, and after today it will be a diminished right.

These rights are being denigrated, taken away from us with this legislation. It is too bad. A basic right that has been in existence since we have been a country, they are chipping away at.

I am going to vote against this ill-considered bill. I recognize it is going

to pass. I think that is too bad. I can say this without any question: Downtown beat us. There is no question about that.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in a few minutes we will be voting on the Class Action Fairness Act. We have before us truly a bipartisan bill that was introduced with 32 cosponsors, 24 Republicans and 8 Democrats. It was voted out of the Judiciary Committee on a strong bipartisan vote. Every vote on every amendment that has been offered has been bipartisan, if we look at the vote tallies. I do anticipate that in a few minutes our vote on final passage will be strongly bipartisan as well.

There are a few misconceptions about the bill that I would like to definitively dispel in these final moments. This bill does not close the courthouse doors to injured or aggrieved plaintiffs. It does not. This is court reform. It is designed to rein in lawsuit abuses, and it does just that. The plaintiff may end up in Federal court, yes, rather than State court, but no citizen will lose his or her right to bring a case—no citizen. In fact, the Class Action Fairness Act will protect plaintiffs in large interstate class action cases. No longer will predatory lawyers be able to negotiate deals that leave their clients with coupons while they take home millions. Plaintiffs will now be covered by a consumer bill of rights for the first time, a consumer bill of rights that will require lawyer's fees for coupon settlements to be based either on the value of the coupons that are actually redeemed or on the hours actually billed.

Take the case such as the one in my home State of Tennessee involving a Memphis car dealer. It was discovered that a dealership was instructing its employees to cheat car purchasers by as much as \$2,000. Numerous residents were affected so a class action suit was filed. The suit was eventually settled, and the plaintiffs received a coupon for \$1,200, but that coupon could only be used if they went back to the same dealer who had cheated them in the first place and bought another car. Meanwhile, the trial attorneys who settled the suit received \$1.3 million in legal fees. A number of customers were understandably upset that in order to receive any financial benefit, they would have to take that coupon and go back to the very same dealer, while at the same time the lawyers were able to take their money and put it right into their pockets. The legislation before us today will put a stop to such unfair practices.

Second, the class action bill will help end the phenomenon that we all recognize known as forum shopping. Aggressive trial lawyers have found that a few counties are lawsuit friendly, and in these select State courts, judges are quick to certify a class action and juries are known to grant extravagant damage awards. Meanwhile, this same defendant can face copycat cases all

across the country, each jury granting a different result. These counties may have little or no geographic relationship to either the plaintiff or to the defendant, but the trial lawyers know that simply the threat of suing in these particular counties can lead to huge, extravagant cash settlements. One study estimates that virtually every sector of the U.S. economy is on trial in only three State courts.

The Class Action Fairness Act moves those large nationwide cases that genuinely impact interstate commerce to the Federal courts where they belong. The Class Action Fairness Act is a good bill. It is a fair bill. It is a significant first step in putting an end to the lawsuit abuses that undermine our legal system.

I commend my colleagues for their hard work. I thank, in particular, Senator GRASSLEY, the bill's lead sponsor, who has been working on this issue for a decade; Senator SPECTER, for leading the bill expeditiously through the Judiciary Committee and on to the floor; Senator HATCH, who has been a tireless advocate for legal reform and class action reform and has helped to manage this bill on the floor; Senator CORNYN, who has been tireless in his presence and participation on this class action bill over the last several days; the bill's Democratic supporters, especially Senator KOHL, Senator DODD, Senator CARPER, Senator BEN NELSON; all have worked and reached across the aisle despite great pressure from the bill's opponents, and for that I thank them.

Finally, I thank the Democratic leader, HARRY REID, for working on a process. We just heard him speaking on the floor against the bill. In spite of that personal feeling toward this bill, he has worked in a real leadership manner—working with us to deal with the bill in a timely and expeditious manner on the floor.

The American people expect and deserve a government that works and leaders who work together. I think they have seen it play out very well on this bill. They did elect us to govern toward meaningful solutions. The bill, I believe, demonstrates we are accomplishing just that. We are meeting the challenge and we are moving America forward. I look forward to quick passage of the bill in the House and being able to send it to the President's desk.

Mr. President, we will vote very shortly. So that Members can plan on their schedules, this upcoming vote on final passage of the class action fairness bill will be the last vote of the evening.

Following this vote, we will have a few Members making statements. We will remain in session for a short period today. The Senate will not be in session tomorrow and we will reconvene on Monday.

On Monday, the plans are to begin debate on the nomination of Michael Chertoff to be Secretary of Homeland Security. At closing today, we will reach an agreement that will provide

for debate on the Chertoff nomination during Monday's session, with a vote to occur on that nomination on Tuesday.

Therefore, I am prepared to announce we will not have any votes on Monday. I will have more to say about the precise timing of the debate and vote later today when we wrap up our business. Once again, I thank all Members for their cooperation and assistance throughout the debate on the class action bill. I believe we are ready for final passage.

Mr. President, I ask for the yeas and nays on the bill.

The PRESIDING OFFICER (Mr. COLEMAN). Is there a sufficient second? There is a sufficient second.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from New Hampshire (Mr. SUNUNU).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—72

Alexander	DeWine	Lugar
Allard	Dodd	Martinez
Allen	Dole	McCain
Bayh	Domenici	McConnell
Bennett	Ensign	Murkowski
Bingaman	Enzi	Nelson (NE)
Brownback	Feinstein	Obama
Bunning	Frist	Reed
Burns	Graham	Roberts
Burr	Grassley	Rockefeller
Cantwell	Gregg	Salazar
Carper	Hagel	Schumer
Chafee	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Smith
Cochran	Isakson	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stevens
Conrad	Kohl	Talent
Cornyn	Kyl	Thomas
Craig	Landrieu	Thune
Crapo	Lieberman	Vitter
DeMint	Lincoln	Voinovich
	Lott	Warner

NAYS—26

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Biden	Harkin	Nelson (FL)
Boxer	Inouye	Pryor
Byrd	Kennedy	Reid
Clinton	Kerry	Sarbanes
Corzine	Lautenberg	Stabenow
Dayton	Leahy	Wyden
Dorgan	Levin	

NOT VOTING—2

Santorum Sununu

The bill (S. 5) was passed, as follows:

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Class Action Fairness Act of 2005".

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction for interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Report on class action settlements.

Sec. 7. Enactment of Judicial Conference recommendations.

Sec. 8. Rulemaking authority of Supreme Court and Judicial Conference.

Sec. 9. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(b) PURPOSES.—The purposes of this Act are to—

(1) assure fair and prompt recoveries for class members with legitimate claims;

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

“CHAPTER 114—CLASS ACTIONS

- “Sec.
- “1711. Definitions.
- “1712. Coupon settlements.
- “1713. Protection against loss by class members.
- “1714. Protection against discrimination based on geographic location.
- “1715. Notifications to appropriate Federal and State officials.

“§ 1711. Definitions

“In this chapter:

“(1) CLASS.—The term ‘class’ means all of the class members in a class action.

“(2) CLASS ACTION.—The term ‘class action’ means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

“(3) CLASS COUNSEL.—The term ‘class counsel’ means the persons who serve as the attorneys for the class members in a proposed or certified class action.

“(4) CLASS MEMBERS.—The term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

“(5) PLAINTIFF CLASS ACTION.—The term ‘plaintiff class action’ means a class action in which class members are plaintiffs.

“(6) PROPOSED SETTLEMENT.—The term ‘proposed settlement’ means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

“§ 1712. Coupon settlements

“(a) CONTINGENT FEES IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney’s fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

“(b) OTHER ATTORNEY’S FEE AWARDS IN COUPON SETTLEMENTS.—

“(1) IN GENERAL.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney’s fee to be paid to class counsel, any attorney’s fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

“(2) COURT APPROVAL.—Any attorney’s fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney’s fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney’s fees.

“(c) ATTORNEY’S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

“(1) that portion of the attorney’s fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

“(2) that portion of the attorney’s fee to be paid to class counsel that is not based upon

a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

“(d) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

“(e) JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys’ fees under this section.

“§ 1713. Protection against loss by class members

“The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

“§ 1714. Protection against discrimination based on geographic location

“The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

“§ 1715. Notifications to appropriate Federal and State officials

“(a) DEFINITIONS.—

“(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term ‘appropriate Federal official’ means—

“(A) the Attorney General of the United States; or

“(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) APPROPRIATE STATE OFFICIAL.—In this section, the term ‘appropriate State official’ means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

“(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is par-

ticipating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

“(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

“(2) notice of any scheduled judicial hearing in the class action;

“(3) any proposed or final notification to class members of—

“(A)(i) the members’ rights to request exclusion from the class action; or

“(ii) if no right to request exclusion exists, a statement that no such right exists; and

“(B) a proposed settlement of a class action;

“(4) any proposed or final class action settlement;

“(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

“(6) any final judgment or notice of dismissal;

“(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or

“(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

“(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

“(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

“(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

“(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

“(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

“(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

“(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class

member demonstrates that the notice required under subsection (b) has not been provided.

“(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

“(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

“(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

“114. Class Actions 1711”
SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d)(1) In this subsection—

“(A) the term ‘class’ means all of the class members in a class action;

“(B) the term ‘class action’ means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

“(C) the term ‘class certification order’ means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

“(D) the term ‘class members’ means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

“(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which—

“(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

“(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

“(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

“(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

“(A) whether the claims asserted involve matters of national or interstate interest;

“(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

“(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

“(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

“(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

“(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

“(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

“(A)(i) over a class action in which—

“(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

“(II) at least 1 defendant is a defendant—

“(aa) from whom significant relief is sought by members of the plaintiff class;

“(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

“(cc) who is a citizen of the State in which the action was originally filed; and

“(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

“(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

“(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

“(5) Paragraphs (2) through (4) shall not apply to any class action in which—

“(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

“(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

“(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

“(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

“(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

“(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

“(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

“(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or

by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

“(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

“(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

“(B)(i) As used in subparagraph (A), the term ‘mass action’ means any civil action (except a civil action within the scope of section 1711(2)) 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, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

“(ii) As used in subparagraph (A), the term ‘mass action’ shall not include any civil action in which—

“(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

“(II) the claims are joined upon motion of a defendant;

“(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

“(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

“(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

“(ii) This subparagraph will not apply—

“(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

“(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

“(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting “subsection (a) or (d) of” before “section 1332”.

(2) Section 1603(b)(3) is amended by striking “(d)” and inserting “(e)”.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

“§ 1453. Removal of class actions

“(a) DEFINITIONS.—In this section, the terms ‘class’, ‘class action’, ‘class certification order’, and ‘class member’ shall have the meanings given such terms under section 1332(d)(1).

“(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section

1446(b) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

“(c) REVIEW OF REMAND ORDERS.—

“(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

“(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

“(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

“(A) all parties to the proceeding agree to such extension, for any period of time; or

“(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

“(4) DENIAL OF APPEAL.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

“(d) EXCEPTION.—This section shall not apply to any class action that solely involves—

“(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

“(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

“(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

“1453. Removal of class actions.”.

SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on class action settlements.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to

which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorneys' fees.

SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.

Notwithstanding any other provision of law, the amendments to rule 23 of the Federal Rules of Civil Procedure, which are set forth in the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of enactment of this Act or on December 1, 2003 (as specified in that order), whichever occurs first.

SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE.

Nothing in this Act shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code.

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

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

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

The Senator from Oregon.

MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. WYDEN. Mr. President, the staggering cost estimates for the Medicare prescription drug benefit, coupled with the small number of seniors who have signed up so far, has threatened the very survival of this program. I do not want to see that happen, having voted for this program. I want to see the Senate take the steps to ensure that it works; that it delivers medicine to our seniors in a cost-effective way, and ensures that it reaches the hopes and expectations that millions of older people and their families have for this program.

The fact is, the Medicare prescription drug program now faces two very serious problems. The first is the skyrocketing cost. These are the costs we have been debating throughout the week, that have been far greater than anyone could have predicted.

A second problem may also herald very big concerns. To date, a small number of older people have signed up for the first part of the drug benefit, the drug card. So what you have is a pretty combustible mix. The combination of escalating costs and a skimpy number of older people signing up thus far raises the very real problem that a huge amount of Government money will be spent on a very small number of people. That is a prescription for a program that cannot survive.

I do not want to see that happen. As someone who voted for this program and worked with colleagues on both sides of the aisle to make this program work to meet the urgent needs of the Nation's older people, I think the Senate ought to be taking corrective action and take corrective action now, in order to deal with what I think are looming problems.

As I said, we learned a bit about the escalating costs of the program. But when you couple that with low levels of participation by older people, that is particularly troublesome. I think it is fair to say, if the drug card debacle—the first part of the program and the small number of older people signing up for the drug card continues into the full benefit phase of the program, what you have is a situation where I believe people are going to say this program cannot be justified at a time of scarce Government resources.

To turn for a moment to the drug card part of the program that I don't think has been discussed much lately, the choices are eye-glazing. There are more than 70 cards available; 39 you can get in any part of the country, the other 30-plus you can get only in some States. The Inspector General of the Department of Health and Human Services reported in an informal survey that the program information was confusing and inadequate.

What makes it amazing is that a lot of folks who were looking at it are people who were relatives of HHS employees. So you have a situation where even folks connected with those who would know a fair amount about this program are having difficulty sorting through it.

I have come to the floor today to try to sound a wake-up call, to say those of us who voted for the program, like myself, and those who opposed it, we ought to be working together on a bipartisan basis now to correct it. The first part of that effort should be to put in place sensible cost containment like we see in the private sector. It is incomprehensible to me that this program is not using the kind of cost containment strategies that you see in Minnesota and Oregon and all across the country.

The Medicare Program is pretty much like a fellow standing in the Price Club who buys one roll of toilet paper at a time. They are not shopping in a smart way. They are not using their purchasing power. I and Senator SNOWE have sought to correct that and