

Nelson (NE)
Roberts
Santorum
Sessions
Shelby

Smith
Specter
Stevens
Sununu
Talent

Thomas
Vitter
Voinovich
Warner

NAYS—48

Akaka
Allard
Baucus
Bayh
Biden
Bingaman
Boxer
Byrd
Cantwell
Carper
Clinton
Collins
Corzine
Dayton
Dodd
Dorgan

Durbin
Feingold
Feinstein
Graham
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman

Lincoln
Lott
McCain
Mikulski
Murray
Obama
Pryor
Reed
Reid
Salazar
Sarbanes
Schumer
Snowe
Stabenow
Thune
Wyden

NOT VOTING—2

Craig
Rockefeller

The PRESIDING OFFICER. On this vote, the yeas are 50, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Democratic leader.

Mr. REID. I have a parliamentary inquiry. I would be happy to yield to my friend from Virginia.

Mr. WARNER. I was just going to ask the Presiding Officer the regular order.

Mr. REID. That is what I was going to do. I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. REID. Now that the Senate has defeated cloture on the Defense bill, will the Senate remain on this bill, which is the bill that is to pay for our troops and protect our troops and our country, the Defense bill?

The PRESIDING OFFICER. The Senator would be informed that under the previous order—under the regular order, the Senate is to proceed to a motion to invoke cloture on the motion to proceed to S. 397.

Mr. REID. Mr. President, then I have a unanimous consent request. That request is that the cloture vote on the motion to proceed to the gun liability bill be vitiated and that the Senate remain on the Defense bill and complete the Defense bill this week and the Senate begin the very minute it gets back on September 6 with the gun liability bill, on cloture on the motion to proceed.

The PRESIDING OFFICER. Is there objection to the unanimous consent?

Mr. FRIST. Mr. President, reserving the right to object, I made it clear about 3 weeks ago to this body that we had a number of issues we were going to address before leaving for recess. We listed a number of them this morning. One of them was the gun liability bill. There are lots of roadblocks right now, barriers being thrown up to prevent us from addressing a very important bill that I believe we will show here shortly we have over 60 votes for. Thus, I will say one more time that we intend to complete the gun liability bill before we leave, complete addressing it. I am very disappointed in the last vote, the fact that we are not going to be pro-

ceeding with the Department of Defense authorization bill. I do look forward to coming back and looking at that bill and passing that bill. It is a very important bill, and that is why we filed cloture to complete that. In all likelihood, what will happen, we will proceed to the bill on gun liability, and the objective will be to complete that this week, and thus I do object.

Mr. REID. Mr. President, another parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. REID. When we finish the gun legislation, do we automatically come back to the Defense bill?

The PRESIDING OFFICER. The Senator should know that if the motion to proceed is passed, it displaces the Defense authorization bill.

Mr. REID. But that does not respond to my question. It is put back on the calendar, is that right?

The PRESIDING OFFICER. If the Senate proceeds to the gun liability bill motion, then it would displace the DOD bill and place it back on the calendar.

Mr. FRIST addressed the chair.

Mr. DODD. Reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. I would ask unanimous consent that at any time determined by the majority leader, the Senate resume the Department of Defense bill at that time.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. Will the Senator restate it.

Mr. FRIST. I ask unanimous consent that at the time determined by the majority leader, we will return to the Department of Defense authorization bill.

Mr. KENNEDY. Reserving the right to object.

Mrs. BOXER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank you. The majority leader said something here today that really surprised me. He said he is going to prove that the gun liability bill was one of the most important things we were going to do, and I want to know from the majority leader, does he think that bill is more important than the Defense authorization bill?

Mr. SANTORUM. Regular order.

Mrs. BOXER. Does he think that the Defense authorization bill is not as important as gun liability?

Mr. BUNNING. Regular order, Mr. President.

The PRESIDING OFFICER. The majority leader has the floor.

Is there objection to the unanimous consent request?

Mr. REID. Mr. President, I would suggest and ask if the distinguished leader would modify his request to say that when we finish the gun legislation, we would return to the Defense bill.

The PRESIDING OFFICER. Does the majority leader—

Mr. FRIST. I object and I once again state my request that at a time determined by the majority leader, we return to the Department of Defense authorization bill.

Mr. KENNEDY. Parliamentary inquiry.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mr. KENNEDY. Reserving the right to object, Mr. President, if we go to cloture and cloture is invoked, do we not displace the Defense authorization bill for consideration in this Chamber this afternoon and for the next days, if we pass it? Is that not the case?

The PRESIDING OFFICER. If cloture is invoked on the motion to proceed, we will remain on the motion to proceed until time is used or yielded back.

Mr. KENNEDY. So the answer is affirmative, that we are displacing the Defense authorization bill by voting on cloture on the motion to proceed. Am I not correct?

The PRESIDING OFFICER. If the motion were to pass, the Senate would continue on that motion.

Mr. REID. Mr. President, I hope the distinguished majority leader will bring this bill back at the earliest possible time. This is such an important piece of legislation. It should not be added to the tail end of things we do around here.

Mr. KENNEDY. I object.

The PRESIDING OFFICER. The objection is heard.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 15, S. 397: A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Bill Frist, George Allen, Larry E. Craig, Craig Thomas, Michael B. Enzi, Jeff Sessions, Christopher Bond, Lamar Alexander, Mitch McConnell, Sam Brownback, Tom Coburn, Richard Burr, John McCain, Richard Shelby, Saxby Chambliss, John Ensign, Chuck Hagel.

The PRESIDING OFFICER. Under the previous order, 2 minutes are equally divided on each side.

Who yields time?

Mr. FRIST. We yield back our time.

Mr. SCHUMER. Mr. President, I urge my colleagues to vote no on the motion

how detrimental runaway verdicts can be and one major verdict can bankrupt an industry. Huge costs arise from simply defending an unjust lawsuit. Indeed, such lawsuits, even if lacking any merit and ultimately unsuccessful, can deplete an industry's resources and depress stock prices.

Defendant industries must hire expensive attorneys and have their employees spending countless hours responding to the lawyers, providing them information and so forth, and meeting with them. Industries, in addition, must purchase liability insurance which takes away from funds necessary for expanding their new jobs, safety, research and development that they might otherwise be able to spend it on, which is important. No other nation must compete in the world marketplace carrying such a huge litigation cost as American businesses do and particularly gun manufacturers. Eventually, these costs are passed on to the consumer. Product prices increase and availability of the products becomes scarce.

In 1998, individuals and municipalities began filing dozens of novel lawsuits against members of the firearms industry. These suits are intended to drive the gun industry out of business by holding manufacturers and dealers liable for the intentional and criminal acts of third parties over whom they have absolutely no control. The firearms industry is particularly vulnerable to lawsuits.

In his testimony before a House subcommittee in 2003, the general counsel of the National Shooting Sports Federation stated:

Industry-wide cost of defense to date [against these lawsuits] now exceed \$100 million. This is a huge sum of money for a small industry like ours. The firearms industry taken together would not equal a Fortune 500 company. The National Shooting Sports Foundation now believes litigation expenses have exceeded \$150 million, Mr. President.

The danger that these lawsuits can destroy the gun industry is especially ominous because our national security and liberties are at stake. First, the gun industry manufactures firearms for American military forces and law enforcement agencies. Unlike many foreign countries, the United States doesn't have a government armory, but relies on private industry to make our firearms. Due in part to Federal purchasing rules, these guns are made in the United States by American workers. Successful lawsuits can leave the U.S. at the mercy of foreign small arms suppliers.

Second, by restricting the industry's ability to make and sell guns and ammunition, the lawsuits threaten the ability of Americans to exercise their second amendment rights. I can imagine the impact the ruin of the gun manufacturing industry would have on my home State of Alabama, which is one of the premier States in the Nation for hunting whitetail deer and eastern wild turkey. Hunting is a part of the

way of life for nearly 500,000 Alabamans. That is about 1 in 9 of our citizens. Imagine if they were unable to obtain hunting rifles or ammunition. What would happen to the hunting industry, which brings close to \$45 million a year in revenues into the State and provides nearly 16,000 jobs?

Additionally, if the arms industry must continue to hash out massive legal fees or eventually goes under, thousands of workers will lose their jobs. Manufacturers are already laying off workers to pay the legal bills. Secondary suppliers to gun makers have also suffered. This is why it is not surprising that the labor unions representing workers at major firearms plants, such as the International Association of Machinists and Aerospace Workers of East Alton, IL, support this bill. This union's business representatives stated the jobs of their 2,850 union members "would disappear if the trial lawyers and opportunistic politicians get their way."

Insurance rates for firearms manufacturers have skyrocketed since these suits began. I am going to talk about these suits and why they are fundamentally wrong in a minute. These suits have caused the insurance to go up and some manufacturers are being denied insurance and seeing their policies cancelled, leaving them unprotected to bankruptcy.

Thirty-three State legislatures have acted to block similar lawsuits, either by limiting the power of localities to file suit or by amending State product liability laws. However, one lawsuit in one State could bankrupt the industry, making all of those State laws inconsequential. That is why it is essential that we pass this law.

The lawsuits we are talking about—the kind of lawsuits we will be discussing today are the kind of lawsuits that do not have merit. They are not the kind of lawsuits that ought to be brought. Many of them eventually get dismissed by judges. Most of them do eventually. But the costs are huge and, who knows, some day an activist court may start allowing these lawsuits to be successful.

The anti-gun activists, at their base philosophy, want to blame violent acts of third parties—that is violent, illegal acts by criminals—on manufacturers of guns, because they manufactured the gun, and they want to be able to sue the seller who sold the gun simply for selling them. This doesn't make sense. Should a car dealer be sued if someone intentionally runs down a pedestrian because the car dealer sold the car that was used by a third party to commit a crime, a homicide? What about the car manufacturer? What an absurd thought. But that is the equivalent of what these plaintiffs are arguing to recover from gun manufacturers and sellers.

Guns can be dangerous in the wrong hands, but so can cars. Why would the manufacturer or seller of a gun who is not negligent, who obeys all of the ap-

plicable laws—we have a host of them—be held accountable for the unforeseeable action of some criminal third party? They should not, and this bill would simply prohibit that.

If you buy a gun and someone comes into your house and attempts to attack you or your family and you pull out that gun and attempt to use it and it fails to work because it was defective, and that criminal harms you or your family, you should be able to sue the gun manufacturer for a defective product. But if it fires as it is supposed to, as it was designed to, it operates like whatever widget is made in this manufacturing world we are in, and it does what it is supposed to do and it is a lawful product, you should not be able to be sued.

I don't understand how these lawsuits are being maintained. But we have major cities in this country that have taken it as a policy to sue the manufacturers for creating a product that works precisely as it is supposed to work, that is designed according to the laws of the United States, and it is sold according to the laws of the United States, and they still want to sue them for an intervening criminal act. That is contrary to our classical law of lawsuits and plaintiff lawsuits. It is something that I sense is being eroded, these classical principles of litigation today. I think that is one reason we are beginning to have movements to have court reform, lawsuit reform, around the country because courts have allowed things to go beyond what traditionally they were ever allowed to do.

So it sort of makes these gun manufacturers a guarantor, a person who would pay for all damages that might occur for a gun they manufactured. That cannot be the law and must not be the law. These plaintiffs are demanding colossal monetary damages and a broad range of injunctive relief; that is, orders from the court concerning this. These injunctions would relate to the design, manufacture, distribution, marketing, and the sale of firearms. We already have laws that cover all of that.

By the way, we have had laws about all of that. We have debated other laws the Congress and State legislatures have chosen not to pass. So the attempt, in a very real sense, is to put pressure on these companies to do things the elected representatives have decided they should not do or should not be required to do.

Some of the demands that are being made are the kinds of demands that legislatures, not courts, should be deciding: one-gun-a-month purchase restrictions not required by the State law, requiring manufacturers and distributors "to participate in a court-ordered study of demand for firearms and to cease sales in excess of lawful demand," prohibition on sales to dealers who are not stocking dealers with at least \$250,000 in inventory, a permanent injunction requiring the addition of a

safety feature for handguns that will prevent their discharge by “those who steal handguns.”

That will be a pretty ingenious device, if you can make it work. It is going to be on every gun that is sold? It may be within the power of this Congress to vote such a restriction if it can be done. It seems like somewhere in my memory we voted on something such as that.

But to have a judge who is supposed to be a neutral arbiter in a lawsuit start entering injunctions to require these kinds of things is beyond legitimate principles of law.

One of the most amusing demands was a prohibition on the sale of guns near Chicago “that by their design are unreasonably attractive to criminals.” Guns could not be sold near Chicago that are “by their design unreasonably attractive to criminals.”

What would that mean? What kind of responsibility does a manufacturer have? Should each court make that determination? Is that what they were elected to do? Is that the role of the court? No. It is a legislative requirement.

These lawsuits are part of an anti-gun activist effort to make an end run around the legislative system. That is the fact. Because their efforts to pass restrictive legislation have only partially succeeded, they want to do more. So they are taking their cause to the judicial system hoping they will land in court before an activist judge who will somehow allow their view of how guns should be sold and manufactured to become a part of a judge’s order. Just impose it. One judge who may not be elected—if it is a Federal judge, he has a lifetime appointment—just impose this by a court order. That is why people are concerned. So far they have not been successful in winning these cases.

The Ohio Court of Appeals held that allowing this type of liability would—they were correct about this—“open up a Pandora’s box. For example, the city could sue manufacturers of matches for arson, or automobile manufacturers for traffic accidents, or breweries for drunk driving.”

That is the same principle. I believe that judge in Ohio was correct. In the city of Bridgeport v. Smith & Wesson Corporation, Judge Robert McWeeny aptly stated that “plaintiffs must have envisioned such settlements as the dawning of a new age of litigation during which the gun industry, liquor industry and purveyors of junk food would follow the tobacco industry.” It is clearly an attempt to build on and expand those kinds of theories of tobacco lawsuits to go even further than what we are dealing with here.

The Florida Supreme Court summed up the issue nicely when it refused to hear a plaintiff’s appeal against the firearms industry in a lawsuit.

The plaintiff did not prevail in an appeal to the higher court in Florida, and the court held this:

The power to legislate belongs not to the judicial branch of Government, but to the legislative branch.

Hallelujah, Judge. I am glad you get it. Judges ought to be neutral umpires, not activists. They should not be setting public policy. They should not allow their courts to be used as a tool to further a political agenda, an agenda that has been rejected in the State legislature or Congress.

However, all it will take is one activist judge or activist court to destroy an entire industry in reality. So that is why the legislation is important.

Let me mention what this bill does and does not do. The bill is incredibly narrow. It only forbids lawsuits brought against lawful manufacturers and sellers of firearms or ammunition if the suits are based on criminal or unlawful misuse of the product by a third party.

I know it is hard to believe, but that is the theory of these lawsuits. That theory is you sold a gun lawfully, OK. You followed the complex Federal regulations that have a huge host of requirements. You followed the State legislature’s requirements, often very complex, also, to the T, and it comes in the hand of a criminal, and they use it for a crime. Now the manufacturer and the seller are liable. What kind of law is that? We do not need that. These lawsuits are happening, and so all this would say is that those kinds of lawsuits cannot be brought.

Manufacturers and sellers are still responsible for their own negligent or criminal conduct and must operate entirely within the complex State and Federal laws. Therefore, plaintiffs are not prevented from having a day in court. Plaintiffs can go to court if the gun dealers do not follow the law, if they negligently sell the gun, if they produce a product that is improper or they sell to someone they know should not be sold to or did not follow steps to determine whether the individual was properly subject to buying a gun.

The plaintiff can still argue that actions such as negligent entrustment, breach of contract, or warranty, or normal product liability involving actual industries caused by an improperly functioning firearm can be legitimately brought as a lawsuit and should be able to be brought. Furthermore, any allegation that the bill burdens law enforcement is completely false. Gun manufacturers and sellers are already heavily regulated by hundreds of pages of statutes and regulations. The Government requires that all gun manufacturers, importers, and dealers receive licenses. They have to have those licenses. And they must keep all their records by serial number, and each gun has to have a distinct, separate serial number recorded before entering or leaving their inventory. That is, if they are manufactured in Massachusetts or someplace and they are shipped to Alabama, they ship it by each one’s serial number and it is recorded. If it is received by a distribution center in Ala-

bama, it is recorded there, and if it is moved off to a gun store or a Wal-Mart where they sell guns, it is entered. When it is sold, it is entered. That serial number is recorded against the name of the person who bought it. That person who bought it must produce identification, must sign a sworn statement that they have not been convicted of a crime, that they are not under the influence of drugs, and a number of other things. They sign it. It is a Federal offense if they lie about it. And they do a background check.

So there are a lot of regulations set forth. The records have to be open for inspection by the Bureau of Alcohol, Tobacco and Firearms without a warrant and at any time. They don’t have a warrant. They can go into these licensed dealers any time, any day, and examine their records. That is the burden we put on gun dealers.

They can also do annual inspections without a specific investigation or obtain a warrant as any other law enforcement agency can.

Mr. President, I think I overstated it. The ATF can without a warrant any time do an inspection if it is related to an investigation of a gun that has been traced there, and they have an opportunity to do annual inspections at any time through the year as part of their enforcement dealings, and they do that. That guns are not heavily regulated is a complete myth. Gun dealers are carefully managed.

As a former U.S. attorney, I participated in the prosecution of a gun dealer for bad recordkeeping. He was most offended. Over a number of years we have created even more regulation. He really felt put upon, but he wasn’t filling out the forms. He wasn’t making people sign. He was telling people not to put down that they lived out of State because that affected whether the gun could be sold. He would tell them, don’t fill that out, and things of that nature. He was not complying, and we prosecuted him. He went to jail and lost his ability to sell guns.

Licensed dealers have to conduct a Federal criminal background check on their retail sales either directly through the FBI, through its National Instant Criminal Background Check, NICS, or through State systems that also use NICS. All retail gun buyers are screened to the best of the Government’s ability.

Additionally, the industry has voluntary programs to promote safe gun storage and to help dealers avoid selling to potential illegal traffickers in guns. Manufacturers also have a time-honored tradition of acting responsibly to issue recalls and make repairs if they become aware of defects. Law-abiding manufacturers and dealers of firearms are not threats to our society. They have not committed crimes by supplying our citizens with lawfully acquired firearms. It is essential that the people who are guilty, people who commit the crime, who deserve punishment, receive the punishment. More

importantly, this legislation is needed so that people who have suffered a real injury from a real cause of action can be heard and taken seriously while those who are trying to improperly spread the blame will not.

Mr. President, it is the responsibility of Congress to review our civil litigation system, our court system, and see how it is working. If over a period of years tactics and techniques are developed that exploit weaknesses or loopholes or gaps in that system or allow the system to be abused, then I think everybody would recognize that we ought to take action to fix it. Every day, attorneys file lawsuits under laws that we pass and the court's interpretation of those laws. Congress has every right to monitor this, and we have a duty once we determine a type of litigation is so legally unsound and detrimental to lawful commerce that it should be constrained to enact meaningful legislation to constrain it and to stop abuse.

In the past, Congress has found it necessary to protect the light aircraft industry, community health centers, aviation industry, medical implant makers, Amtrak, computer industry members affected by Y2K problems, and good Samaritans.

Senator McCONNELL offered a bill to protect a person who tried to save another person, who was the victim of an accident, from dying. He believed that a person trying to do the best they can to protect someone else should not be sued, if they are somehow found to be faulty in a good Samaritan act.

Congress may enact litigation reforms when lawsuits are affecting interstate commerce, and many of these lawsuits are trying to use State courts to restrict the conduct of the firearms nationally. They are trying to create legal holdings by the courts that would impact the entire industry nationally. In fact, it is the stated purpose of many of these groups. And a single verdict, even a single verdict, large verdict of an anti-gun plaintiff, could bankrupt or in effect regulate an entire segment of our economy and of America's national defense and put it out of business.

I do not know when there has been a better example of when this type of legislation is needed. We must pass this bill. It is long overdue. It has 60 co-sponsors. It is time for us to move forward and get it done.

It is simply wrong when we as a Congress have approved the sale of firearms in America and, through the Constitution, allowed the manufacture and sale of firearms, to allow those manufacturers who comply with the many rules we have set forth—they comply with those rules, to be sued for intervening criminal acts. They sell a gun and it ends up in the hands of a criminal, unbeknownst to them. If they knew, if they had reason to know, if they were negligent in going through the requirements of the law or failed to do the requirements of the law, they

can be sued. But if they do it right and it goes into the hands of someone who uses it for a criminal purpose, the manufacturer of that gun absolutely should not be subject to a lawsuit. It is a political thing that is going on out there, the filing of these lawsuits all over the country in an attempt to crush an industry that this Congress and our Constitution have stated to be a legitimate industry.

I know Senator REED has many wise comments on this, able Senator that he is. We will disagree, but I certainly respect his views.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Rhode Island.

Mr. REED. Mr. President, I rise in strong opposition to S. 397, the so-called Protection of Lawful Commerce in Arms Act. Like its predecessor which the Senate soundly rejected last year, this bill is one of the most blatant special interest giveaways that I have seen during my time in the Senate. At a time when more than 7.5 million Americans are unemployed and our Nation faces a deficit of \$333 billion, war in Iraq and Afghanistan, inadequate homeland security funding, and now a Supreme Court vacancy, to me the Republican leadership choosing to devote our precious time to a bill that would deny victims of gun violence their day in court and protect the gun industry is a travesty.

The gun lobby argues that this legislation would put an end to frivolous lawsuits that claim gun companies should be liable simply because their guns are used in crimes. In fact, the bill would bar virtually all negligence and product liability cases in State and Federal courts while throwing out pending cases as well as preventing future cases. The bill would provide this sweeping immunity to gun dealers, gun manufacturers, and even trade associations. Interestingly, the NRA modified the bill so that this year they don't appear to be granting themselves legal immunity as they did the last time around.

The track record for this bill in the last two Congresses has, thankfully, been one of failure. We can only assume that the gun lobby is hoping that the third time will be the charm. The gun lobby and its allies in Congress had to abandon their effort to pass similar legislation in the 107th Congress, after the Washington area sniper attacks terrorized an entire region. Then last year, in one of the more bizarre twists in recent Senate history, the National Rifle Association instructed the Republican leadership to kill the bill after a majority of Senators voted to add reasonable gun safety measures—to require background checks at gun shows, renew the assault weapons ban, and require child safety locks to be sold with handguns.

It is a good thing that the Senate defeated this bill because it would have thrown out the civil lawsuits filed by

the families of the victims of the sniper attacks, even though the Washington State gun dealer who had the Bushmaster sniper rifle in his inventory could not account for that weapon or more than 230 others. Instead, the families of the victims won a \$2.5 million settlement from Bull's Eye Shooter Supply and Bushmaster, the assault weapons maker who negligently supplied Bull's Eye despite its abysmal record of missing guns and regulatory violations.

At the heart here is not activist courts making law. The heart of this is people who have been harmed by weapons, innocent people, people such as the victims of the Washington sniper—someone walking to their car from the Home Depot and being shot and killed; a bus driver waiting to take his rounds in the morning, having a cup of coffee, reading the paper, with a wife and children at home, shot by snipers. Where did they get those weapons? They got them through the negligence of a licensed gun dealer. This legislation would effectively prevent those families from recovering damages, compensation for the loss of a husband and father, the loss of a wife. This is not about activist judges making law. This is about shutting the doors to the courts of America, mostly State courts, to prevent those who have been harmed by the negligence of others to be made whole. That is what this is about. That is why it is so wrong.

With respect to the sort of activism of public policymaking, we all recognize in this body that Federal law is one aspect, but State law is also important. In fact, most tort law is based upon State law. State assemblies make up State laws. They decide causes of action. They decide defenses. They do a lot of those things in conjunction with litigation in their courts. This legislation preempts all 50 States. This says to the State of Georgia, the State of Alabama, the State of Rhode Island, the State of Michigan, you can't have the ability of your citizens to go to court. Even if you believe it is appropriate and right in your State courts, we are preempting you. That is also wrong.

In addition to the monetary settlement for the victims of the families that were the victims of the snipers, in the settlement, Bushmaster agreed to inform its dealers of safer sales practices that should prevent other criminals from obtaining guns, something Bushmaster had never done before. What you have is a situation of negligence, and this negligence can extend not only from the dealer but to the manufacturer. This legislation not only would deny the right of a victim to come forward and ask for compensation, but also to reform the system.

We have to recognize, too, that there are elaborate rules for the governance of weapons and firearms and tobacco, an agency of the Federal Government. But this is one industry that is virtually not subject to any product liability, any consumer product safety

rules, any other type of regulation. This legislation would undercut ways in which a court could do justice. Because the Senate rejected this legislation last year, these victims and their families had their day in court, and at least one manufacturer's commercial practices were improved in ways that benefit all Americans. What could be more helpful to all of us if a manufacturer takes the time and the effort, appropriately, to inform his dealers about appropriate practices in selling weapons, about avoiding selling weapons to those people who might be trafficking in weapons, avoiding selling weapons to those people who might be irresponsible and reckless in the use of those weapons? That can only benefit all of us.

But despite all of these things, we find ourselves again in a familiar situation, one in which the NRA's pet project is again being granted a virtually direct, nonstop ticket to the Senate floor. The Senate Judiciary Committee has held no hearings on this legislation, and no committee markups were ever scheduled. The bill's supporters knew it would be difficult to withstand the kind of scrutiny that might result in careful, deliberate, and thorough committee hearings, so they brought it straight to the Senate floor. Here we are today. Now it is up to us make sure that there is a full and vigorous debate, including not only amendments to deal directly with aspects of this legislation but also to address other issues with respect to violence in America and gun safety.

If we are going to grant blanket legal immunity to the firearms industry, it is imperative that we address inadequacies in other areas with respect to gun safety legislation. Mothers and fathers across America go out of their way every day to protect themselves and their children from harm. How unsettling it must be for these families to think that the gun industry, which is already exempt from Federal product safety regulations that apply to children's toys, pharmaceuticals, and virtually every other product in this country, may now receive legal protection that no other industry enjoys.

I listened closely to the Senator from Alabama talking about this as if a car manufacturer was being held responsible for the actions of others. Well, they could be in certain situations. If a car dealer leaves his cars unlocked with keys in the ignition at night and someone comes and takes that car, drives it away, causes damage, certainly the issue arises, was that car dealer using good common sense? Certainly, that would be a case that would at least get to the notion of filing the case.

This bill would prevent such a similar case from the gun manufacturers and the gun dealers, but there is no attempt, at least today, to limit those types of liability to other manufacturers. I believe that shows how narrow this is and how it is focused to a very special interest. That is unfortunate.

As with any other business, there are good actors and bad actors with respect to the gun industry. There are those who carefully follow the law and those who ignore it. But granting unprecedented legal immunity to the entire industry without requiring any additional responsibilities to protect the public from reckless behavior would be a grave mistake. It will only encourage those who already engage in questionable conduct.

I urge my colleagues, as we work through this debate, to listen closely and to try to recognize that we are taking unprecedented action with respect to undermining the traditional system of common justice. First, we are usurping authority for State law that is traditionally the purview of State assemblies and legislatures. Then we are granting an unprecedented immunity to one very particular industry. That might be a precedent, unfortunately, for other industries that come forward, which would be a severe unraveling of the protections we all have.

All of this, again, begins not with someone going out to stage a lawsuit by being shot. That is the last thing that happens. The victims of this gun violence, who are the subject of these suits, didn't want to be victims. They didn't want to be in court. The bus driver waiting there to start his run was not thinking, Oh, boy, someone is going to shoot me so we can start a case and change public policy. He was shot by a sniper who obtained a gun through the negligence of others. Yet that family would have been denied their relief in court if this bill had passed last year.

There was discussion about personal responsibility. There is personal responsibility. It is important. It is fundamental to everything we do. What about the responsibility of the gun dealer to know how many weapons he has on hand, where they are, not to leave it out so it can be taken? Apparently the youngest sniper, who was barely of age, just picked it up off a counter and walked out of the store with it, a rifle that was used later to shoot and kill several people. Where is that personal responsibility? And if you are the victim of that lack of responsibility, how can you have your day in court if this legislation passes?

Now, we have a lot of work to do in this Congress. We should get on with it. That is why it is amazing that we have left the Defense bill that would provide the resources to protect our soldiers, sailors, marines, airmen and airwomen across the globe to move to this very narrow, special interest bill. I think it is extremely unfortunate.

A part of the rationale for this bill advanced by the proponents is that there is a crisis. There is a crisis with respect to the industry. They are about to lose their ability to manufacture. They are going to go bankrupt. We won't have any weapons for our national security. That is not substantiated by any of the facts before us.

The gun lobby says it needs protection because it is faced with a litigation crisis. The facts tell precisely the opposite story. There is no crisis. There is a crisis in Iraq. There is a crisis in Afghanistan. There is a crisis across the globe with international terrorists. That is a crisis. But it is not a crisis with respect to gun liability in this country. Yet we move from legislation dealing with these huge crises, some of which have existential consequences to us, particularly if terrorists ever get their hands on any type of nuclear material, to a situation where there is no crisis.

Mr. LIEBERMAN. Will the Senator from Rhode Island yield?

Mr. REED. I am happy to yield to the Senator from Connecticut.

Mr. LIEBERMAN. I would like to yield the hour allotted to me to the floor manager, the Senator from Rhode Island.

Mr. REED. I thank the Senator from Connecticut.

The only two publicly held gun companies that have filed recent statements at the Securities and Exchange Commission contradict the claim that they are threatened by lawsuits. Smith & Wesson filed a statement with the SEC on June 29, 2005, stating that:

We expect net product sales in fiscal 2005 to be approximately \$124 million, a 5% increase over the \$117.9 million reported for fiscal 2004. Firearms sales for fiscal 2005 are expected to increase by approximately 11% over fiscal 2004 levels.

That is their SEC report which they have to file subject to severe penalties for misstatement and mistruth. I believe that. It appears to be a banner year for Smith & Wesson. There is no crisis.

They go on and say in another filing on March 10, 2005:

In the nine months ended January 31, 2005, we incurred \$4,535 in defense costs, net of amounts received from insurance carriers, relative to product liability and municipal litigation.

What they said is—this company, with a banner year of increased sales, with projections for better sales—they incurred \$4,535 in out-of-pocket costs to defend product liability and municipal litigation claims and suits. That is a crisis? Sales are up. Litigation costs in this particular area—out-of-pocket costs, to be accurate, of \$4,500. That is what they are telling the Federal regulators, under severe penalties for misstatements and even inaccurate statements. There is no crisis.

In that same period for which they incurred \$4,535 in out-of-pocket costs, Smith & Wesson spent over \$4.1 million in advertising. Maybe the real crisis is they have to spend a lot on advertising. But that is not a crisis situation. That is not sufficient to bring the Senate here to debate a bill to give them protections from these types of suits.

Meanwhile, gun manufacturer Sturm, Ruger told the SEC in a March 11, 2005 filing:

It is not probable and is unlikely that litigation, including punitive damage claims,

will have a material adverse effect on the financial position of the Company.

Essentially, what these two publicly reporting companies have said, despite all of the discussion by others that they are on the verge of bankruptcy, is: There is no material adverse effect on our financials based on this type of litigation. There is no crisis.

So at the same time the gun makers are reporting to the SEC that litigation costs are not likely to have a material adverse effect on the businesses, their trade associations have been rapidly inflating the unsubstantiated estimates of litigation costs. Gun lobby claims of alleged litigation costs have risen in \$25 million increments, with no data of any kind to support these claims because most of these companies in the industry are privately held. But I would suggest if the publicly held companies are offering their truthful admissions to the SEC—unless the privately held companies are woefully unmanaged or are unusually involved in this type of litigation—then these estimates have to be widely suspect.

Here are the claims of increased costs: April of 2003, estimated litigation has cost the industry \$100 million in the last 5 years; July of 2004, estimated litigation costs of \$150 million; November of 2004, estimated litigation costs of \$175 million; February of 2005, some estimates talk about \$200 million.

Now, it does not seem to track when you have major companies saying they have no material impact, paying out of pocket \$4,500, and then you have these wildly inflated estimates.

Number of lawsuits faced by the gun industry is, if anything, far less than many other industries. From 1993 to 2003, 57 suits were filed against gun industry defendants, out of an estimated 10 million tort suits, according to the State Court Journal published by the National Center for State Courts—57 out of 10 million. That is not a record of litigants out of control.

The actual monetary awards faced by the gun lobby are even less. The gun lobby's record in court is far worse than the tobacco industry's, which for decades won every case brought against it. But the gun lobby has not lost them all either. In fact, many of the cases my colleague from Alabama was citing were some appeals court cases that were turning down plaintiffs who were unsuccessful at the trial court level. The results of these cases are what one would expect as suits against any industry: Some cases are dismissed, some cases are won by plaintiffs, some are on appeal, others are the result of a settlement between the parties.

Now, the fact is, most of the legal defense costs faced by gun industry participants have been covered by product liability insurance, with very little funding coming out of pocket. Again, every industry in the country has to insure itself against these risks. It seems to me there is nothing to indicate the insurance claims against these

gun lobbies and gun manufacturers are out of line with those. In this respect, the gun lobby is no different than any other industry. Moreover, the power of the gun lobby to protect itself from litigation and promote its views is illustrated by the war chest it has put together for this specific purpose over the past several years.

In 1999, the National Shooting Sports Foundation and others in the gun lobby created what is known as the Hunting and Shooting Sports Heritage Fund by setting aside a small percentage of industry revenues. The fund supports lobbying activities as well as industry public relations initiatives emphasizing the positive aspects of firearms, and it helps cover the cost of retaining internal memos and other sensitive documents with a law firm in California so the gun lobby can avoid the kind of unwanted leaks and exposure that plagued the tobacco industry for many years. Some reports indicate the fund has raised as much as \$100 million.

We are going to be talking about a lot of victims of gun violence over the next few days, and I can tell you that none of them has access to a \$100 million war chest to protect their legal interests or promote their point of view.

In any case, the purpose of lawsuits filed on behalf of victims is not to bankrupt the industry. In fact, some of the cases filed have sought only injunctive relief, including reforms of industry trade practices that would make the public safer. This is not always about money. In some cases it is about safety for the general public.

It is telling that the new Senate version of the gun industry immunity bill has been changed specifically to ban suits seeking injunctive relief. The argument, of course, is there is a crisis, and the crisis is the financial crisis of the gun manufacturers and the gun dealers, but yet this legislation was altered this year to avoid injunctive relief, which has very little direct impact in terms of awards, punitive or otherwise.

Even when plaintiffs seek commonsense reforms in the industry that could save lives, rather than have money damages, the gun lobby and its allies in Congress seek to shut the courthouse door in the face of these victims.

The findings section of the bill states:

[T]he possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system.

That sounds reasonable until you consider that the very essence of the cases the bill seeks to eliminate is that the harm suffered by victims of gun violence is often not solely caused by others, but that specific negligent conduct by defendants in the industry contributed to that harm. That is a key point here. This is not a situation as to anyone in the industry—a manufacturer or dealer—who has followed all

the rules and has done everything correctly, and then someone else did something wrong. In order to bring a suit for negligence, you have to point out, allege at least negligent activities on behalf of the defendant, be he or she a manufacturer or dealer. So the core here is the allegation that the defendant—those people this legislation seeks to immunize—did something wrong. Liability attaches if a court finds they did something wrong.

Moreover, the bill would exclude many cases that do not seek to hold the entire industry liable but instead focuses on specific dealers or manufacturers based on their negligent contribution to specific instances of harm to victims of gun violence. This is not just a situation where the whole industry is sued. This is a situation where anybody in the industry who is sued gets the benefit of these protections.

Unfortunately, this bill would overturn longstanding, widely accepted principles of civil liability law, which generally holds that persons and companies may be liable for the foreseeable consequences of their wrongful acts. By throwing out common law standards established throughout our Nation's history by State courts, and substituting new standards for negligence and product liability actions conceived by attorneys of the gun lobby, this bill would deprive Americans of their legal rights in cases involving a wide range of industry misconduct.

Even if we concede, for the sake of argument, that some cases against the industry might be frivolous, this bill applies the legislative equivalent of a weapon of mass destruction where a surgical strike would be sufficient. The bill proposes a sweeping Federal intrusion into traditional State responsibilities for defining and administering State tort law, yet there is no evidence that the State courts are not handling their responsibilities competently in this area of law. There has been no rash of questionable jury awards, and not a single decision or final judgment of any court that justifies this unprecedented legislation.

Nevertheless, the bill's proponents seek to preempt the law of 50 States to create a special, higher standard for negligence and product liability actions against gun manufacturers, gun dealers, and trade associations.

We are being asked to do this for an industry that already enjoys an exemption from the Federal health and safety regulations that apply to virtually every other product made in this country. There is no crisis. There is no showing that the gun lobby is in danger of extinction as a result of lawsuits.

We must look at the facts and not the rhetoric. Again, as to a company that spends out of pocket \$4,500 a year, when their sales are increasing by about 11 percent, that is not a crisis. There is nothing, I think, substantiated to suggest otherwise.

Now, Mr. President, we are going to engage in a series of discussions over

the next several days here. But I think we have to be very clear, this legislation would undercut State laws and State court practices that have existed for as long as the country has existed. It would do so for the benefit of a very special interest group. It would deny access to courts for people who have been harmed, really harmed.

Let's take some of these cases. Take the case of Denise Johnson, the wife of the late Conrad Johnson. Conrad Johnson was the bus driver who was the final sniper victim of the Washington area snipers. The snipers' Bushmaster assault rifle was one of more than 230 guns that disappeared from the Bull's Eye Shooter Supply gun store in Washington State. The gun store's careless oversight of firearms in its inventory raised serious questions of negligence that fully deserved to be explored by the civil courts.

Two hundred thirty misplaced weapons—if that is not at least a suggestion of some negligence, I do not know what is. This legislation, had it been enacted last year, would have denied the Johnson family their rights in court, their rights to go to that alleged negligent dealer and say: Without your action, without your negligence, my husband, our father, would be alive today.

But in addition to that, the manufacturer's actions also were questionable. Despite questionable control activities in relation to their inventory at Bull's Eye—serious and well-known problems at the gun store—they were still able to acquire weapons from the manufacturer. As I indicated before, the Johnsons were able to settle their claim in court. But if this legislation had passed last year, they would have been thrown out.

Now, there are other examples that are prevalent that also would have been dismissed by this legislation had it been passed, and future cases if, in fact, we pass it in this session.

There is the case of David Lemongello and Ken McGuire, former police officers of Orange, NJ. On January 12, 2001, Mr. Lemongello and Mr. McGuire were shot several times by a violent criminal who should never have had a gun. Because of the injuries he suffered, Mr. Lemongello will never be a police officer again. The gun used in the shooting was one of 12 guns purchased by 2 individuals on a single day from Will Jewelry & Loan, a gun dealership in West Virginia.

Mr. James Gray, a felon, used a woman with a clean record to purchase all 12 guns at once with cash. He and the woman came into the gun shop with thousands of dollars, and Gray pointed out guns he wanted, and then had the woman purchase them in a clear example of a “straw purchase” to evade the law. In fact, the gun dealer was so concerned about the suspicious transaction that, after taking the money and giving him the gun, he called the ATF. But it was too late; the guns were already destined for the illegal market. The actions of the gun

dealer—who failed to follow sales guidelines recommended by the National Shooting Sports Foundation—raise serious questions of negligence.

The manufacturer of the gun, Sturm, Ruger, is a member of NSSF, yet it failed to require its dealers and distributors to follow the guidelines. At one point in the proceedings, the West Virginia gun dealer and the manufacturer of the gun asked Judge Irene Berger of Kanawha County, West Virginia, to dismiss the case. She heard the gun seller's legal arguments and rejected each of them, applying the general rule of West Virginia law to allow the case to proceed.

Here is a classic example. Someone comes in with another person, purchases 12 guns at once, selects the guns, and pays with cash, but making sure the other person is the one whose name is run through the FBI records check, and then drives away. Doesn't that raise suspicion in your mind if you are a conscientious dealer? Don't you do anything other than call ATF? That is negligence in many respects. Certainly a victim of that crime eventually should have the right to take that case to court.

The gun industry bill would have overridden that judge's decision in West Virginia and thrown out the case of the police officers. Again, the Senate rejected this legislation last year, and in June 2004 Officers Lemongello and McGuire won a \$1 million settlement to compensate them for their career-ending injuries. After the lawsuit, the dealer and two other area pawnshops agreed to implement safer practices to prevent sales to traffickers, including a new policy of ending large-volume sales of handguns. These practices go beyond the law and are not imposed by any manufacturers or distributors.

So here is another situation. It is not only the immediate compensation to these police officers whose whole lives and careers have been changed irrevocably; it is also making it safer for other people so the next time someone wanders into this particular gun shop of this dealer, they won't be selling 12 or so handguns without seriously checking who is buying.

Today, as we face another attempt in the Senate to take away the rights of innocent victims of gun lobby negligence, there are still many legitimate pending cases that will be thrown out by the bill before the Senate. We can always anticipate additional situations. In fact, there is a very strong likelihood that if this legislation passes, whatever steps are taken today by gun dealers and manufacturers will be abandoned or lessened because effectively they have a free pass. No one can sue them. They don't have to worry about the litigant going to court and saying, your sales practices or your behavior were negligent. We have given them immunity. In fact, one might even anticipate more incidents.

But there are cases pending today that could be affected. For example, in

another case, Guzman v. Kahr Arms, a lawsuit was filed by the family of 26-year-old Danny Guzman of Worcester, MA, who was fatally wounded when a 9 mm gun stolen from a gun manufacturer's plant was stolen by a drug-addicted employee who had a criminal record. The manufacturer, Kahr Arms, operated the factory without basic security measures to protect against thefts, such as metal detectors, security mirrors, or security guards. Guns were routinely taken from the factory by felons it had hired without conducting background checks. The gun used to kill Danny Guzman was one of several stolen by Kahr Arms employees before serial numbers had been stamped on them, rendering them virtually untraceable. The guns were then resold to criminals in exchange for money and drugs.

The loaded gun that killed Mr. Guzman was found by a 4-year-old behind an apartment building near the scene of the shooting. Had Kahr Arms performed drug tests or background checks on the prospective employees or secured its facilities to prevent thefts, Danny Guzman might be alive today. A Massachusetts judge has held that the suit states a valid legal claim for negligence. But this bill would throw the case out of court, denying Danny's family their day in court.

That is the reality of this legislation. That is what we are protecting. We are protecting manufacturers who take no care in hiring employees, yet give them access and proximity to weapons, and who employ no effective security measures. That, at least, is negligence. At least they should be tried in court. This legislation would immunize that.

Ask yourselves again, What incentive would manufacturers such as Kahr Arms have to spend any money on background checks, to spend any money on security? None at all because, frankly, they have a free ride, a pass. No one can touch them. And in this legislation we are not about to start regulating the manufacturing practices of gun manufacturers in the United States.

Now, every industry has good actors and bad actors and the firearms industry is no exception. There are manufacturers that produce high-quality products that feature necessary devices to make the firearms as safe as possible. There are other manufacturers that create poorly designed, poorly constructed firearms that are favored by criminals, that have no place in the home, at the shooting range, or on hunting grounds. Likewise, there are licensed dealers who comply with both the letter and the spirit of our gun laws and do everything in their power to ensure firearms are sold only to lawful buyers. There are other dealers who routinely sell guns regardless of the age or criminal background of the buyer. Essentially, they wink and look the other way.

This small minority of bad apple dealers has a significant impact on gun

violence on our streets throughout the country. According to the Federal data from 2000, 1.2 percent of dealers account for 57 percent of all guns recovered in all criminal investigations; 57 percent of the guns recovered in criminal investigations pass through their hands. Does that suggest there are some gun dealers who are negligent, who are not following the letter or the spirit of the law? And the gun manufacturers know who the problem dealers are because when guns are recovered at crime scenes, they receive firearm tracing reports that show which dealers sell disproportionately to criminals. But in too many cases, the gun industry refuses to police itself.

If this legislation passes, there will be less incentive to take precautions, to take steps to prevent guns from getting in the hands of those people who would use them irresponsibly.

The national crime gun trace data from 1989 through 1996 gathered by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives indicates the following gun dealers sold the highest number of crime guns in America and exhibited crime gun tracing patterns indicative of drug trafficking. Whereas most gun dealers have been associated with zero gun traces, guns sold by these suspect gun dealers turn up in the wrong hands over and over again.

For example, in Badger Outdoors, Inc., of West Milwaukee, Wi, the dealer sold 554 guns traced to a crime, and 475 of those guns had a "short time to crime" as defined by ATF. The guns were involved in at least 27 homicides, 101 assaults, 9 robberies, and 417 additional gun crimes. The dealer also sold at least 1,563 handguns in multiple sales. From 1994 to 1996, straw purchaser Lawrence Shikes bought 10 guns from Badger. In one case, he immediately sold the gun to an undercover Federal agent who told Shikes he was a felon. Several weapons Shikes purchased have been recovered from a killer, a rapist, a convicted armed robber, a man who shot a police officer, and three juvenile shooting suspects.

So, again, a very small percentage, but still we are immunizing these people also. This legislation doesn't make any distinction between competent, conscientious gun dealers. It is everyone. And we know everybody is not following the rules as scrupulously as they should.

To put a check on the behavior, if you are harmed and injured by this negligence, go to court and say, I have been harmed, this defendant contributed to my injury and I seek compensation, this legislation will tell that victim, go away; the courts are closed to you.

There are other cases. Realco Guns of Forestville, MD; Southern Police Equipment, Richmond, Va; Atlantic Gun & Tackle, Bedford Heights, OH; Colosimo's of Philadelphia, PA; Don's Guns & Galleries in Indianapolis, IN. Throughout the country, the exception to the rule, and the rule is generally

conscientious individuals follow the laws. But this legislation protects these individuals as well as the conscientious dealers. Again, it is inappropriate, unfortunate, unsubstantiated.

Where is the crisis? All the public records we have of the gun manufacturers say there is no material impact on the financial well-being. Those are reports submitted to the SEC, not press releases from lobbying groups. We are going to upset the traditions of tort law throughout this country for a situation where no crisis exists.

Again, we have moved from consideration of one of the most significant pieces of legislation we consider every year, the Armed Forces authorization, to deal with this issue—no crisis, no substance, but an industry-political motivation by the NRA and the gun lobby to protect their members from bona fide allegations of negligence in certain cases.

There is no explosion of suits. These are minimal, a fraction of the tort suits in this country. Yet we are here today to devote a huge amount of time after moving away from the Defense bill to consider this legislation. Procedurally, it is terrible. We should be talking now, as we all hoped we would, about further benefits for our military personnel, about improving their quality of life, improving their equipment, giving them the resources to defend us. Yet we are now staked out, literally, to try to provide benefits for the negligence of a few people in an industry that has no financial crisis and is in no danger of going away.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, there still remains a very serious problem and a very serious threat to gun manufacturers in the United States. Sure, a lot of these cases have not been successful because they are so bogus, so contrary to classical rules that a person is not liable for an intervening action done by a criminal, an intervening criminal act.

I will add, when I was a U.S. attorney, an individual walked off a veterans hospital grounds and was murdered. They sued the VA hospital for wrongful death. I defended on the theory that the hospital could be liable under certain circumstances, but there was a strong principle of law which I cited that an intervening criminal act is not foreseeable. You are not expected to foresee that someone will take a lawful product and use it to commit a crime or that they would commit a crime. This is a settled legal principle.

We are eroding these things and we end up with all kinds of problems. That is one of the things disrupting our legal system, particularly if there is a political cause here, a group of people who absolutely oppose firearms in any fashion. Mayors in major cities are encouraging these lawsuits and pushing them. We end up with some real problems.

Let me share with our colleagues this letter from Beretta Corporation. It was mailed out in 2005 by Mr. Jeff Reh, general counsel, written to the Vice President of the United States. He says a few weeks ago the District of Columbia Court of Appeals issued a decision supporting a DC statute that those manufacturers of semi-automatic pistols and rifles are held strictly liable for any crime committed in the District with such a firearm.

It had not been used until the District of Columbia recently filed a lawsuit against the firearm industry in an attempt to hold firearm makers, manufacturers, importers, and distributors liable for the cost of criminal gun misuse in the District.

The court of appeals, sitting en banc, dismissed many parts of the case but did rule that:

Victims of gun violence can sue firearm manufacturers simply to determine whether that company's firearm was used in the victim's shooting, and if so, they become liable.

He goes on to say that such a decision "will make firearm manufacturers liable for all costs attributed to such shootings, even if the firearm involved was originally sold in a State far from the District of Columbia and to a lawful customer."

If you sell a gun to somebody in Minnesota and they bring it to DC and some criminal uses it to shoot somebody, the gun manufacturer now becomes liable for that Beretta or Smith & Wesson or whoever made it. They go on to say this decision "has a likelihood of bankrupting not only Beretta, but every maker of semiautomatic pistols and rifles since 1991." There are hundreds of homicides committed with firearms each year in DC, and others are injured. And the defendants, under this bill, would have no defense that they originally sold the pistol or rifle to a civilian customer. So they ask that this legislation be supported.

Without it, companies like Beretta, Colt, Smith & Wesson, Ruger, and dozens of others, could be wiped out by a flood of lawsuits emanating from the District. This is not a theoretical concern.

The instrument to deprive the United States citizens of the tools through which they enjoyed a second amendment freedom now rests in the hands of trial lawyers in the District. Equally grave, control of the future supply of firearms needed by our fighting forces and law enforcement officials and private citizens throughout the country also rests in the hands of these attorneys. We will seek Supreme Court review of this decision, but the result of a Supreme Court review is not guaranteed. Your help might provide our only chance of survival.

It is the principle of the thing we are concerned about, first and foremost. Do we believe that a manufacturer who complied with the law and who sold a gun in Minnesota or in Kansas and sold it lawfully, according to the rules of the State of Alabama or Minnesota and Federal Government rules, and that gun ends up in the District of Columbia, they now become liable for an intervening criminal act? That is not a principle of law that can be defended,

according to justice or fairness. But we are in that mode now of using the courts to effect a political agenda that goes beyond what the Congress and elected representatives are prepared to vote. In effect, it would bankrupt these companies and may be able to prohibit people from even having firearms or certainly denying them a place to go buy a new firearm and ultimately denying them the right to purchase firearms.

So that is what we are concerned about. We are not trying to overreach here. We are trying to eliminate this political abuse of the legal system to effect a policy decision not subject to being won in the legislative branch.

Under this bill, I think it is very important to note that you can sue gun sellers and manufacturers who violate the law. It is crystal clear in the statute that this is so. To start off, one of the first things it says is an action can be brought against a transferer—that is, a seller—of a gun by any party directly harmed by the product of which the transferee is so convicted for violating the law. It also says this in paragraph 2:

These are actions that are allowed to be maintained by this legislation and are not constricted.—An action brought against a seller of the gun for negligent entrustment for negligence per se.

It is some sort of negligent act that gave the gun to the customer. We will leave it at that.

No. 3, an action can be brought against a manufacturer or seller of a qualified product, or gun, who knowingly violated a State or Federal statute applicable to the sale or marketing of the product when that was the proximate cause of the injury, such as the 12 guns being sold and mentioned by Senator REED earlier. I suspect that violated a law. It is certainly a violation of the law for a person to knowingly or negligently entrust a gun to someone when they believe or have reason to believe that it is a straw purchase. That would be a violation of the law. You have to produce an ID, sign a statement, say it is your gun, say you have not been convicted of a crime, say you are not a drug addict, where your residence is, and other laws that States and communities may have, such as waiting periods, before you can pick it up. You have to wait for the background check to see if those statements you made are valid.

So you can still bring those lawsuits if you don't comply with that. Lawsuits can be brought whenever the manufacturer or seller knowingly made any false entry or failed to make, negligently or otherwise, an appropriate entry in any record required to be kept under Federal or State law with respect to the qualified product or if they aided or abetted or conspired with any person in making any false or fictitious oral or written statements with respect to any material fact to the law necessary in the sale or other disposition of the qualified product.

And if they can maintain a lawsuit also, if you aided and abetted or conspired to sell or dispose of a qualified product, knowing or having reasonable cause to believe the buyer of the qualified product was prohibited from possessing or receiving a firearm, which would include a straw purchase, if you know you are selling it to this person and you know it is going to that person, then you would know that would be improper and it would be a negligent entrustment or violation of the statute.

I think those are important exceptions, as are many others. So it doesn't give immunity to gun dealers. That much we can say for sure. Now, it has been said that, well, these dealers—this little gunshop down here did something wrong and they would have insurance and the insurance company would pay. It is not so bad on them. But, Mr. President, that is a slippery slope, an unwise public policy argument that I think we use too much. One of the things that raises questions in my mind about the effectiveness of a lot of litigation today is it is argued that it is going to punish this person who did something wrong. But in truth, the insurance company pays all of it probably—maybe all of it, maybe a small deductible is paid by the wrongdoer, and insurance company pays the cost of defending the lawsuit. It is not the wrongdoer. So the juries are told they are punishing this wrongdoer who made an error, but really the insurance company pays it. What happens? They raise the rates on everybody. So if one gun dealer has messed up and he gets sued, as he should be, and he has to pay a verdict, the weird way our system is working today is the insurance company pays the verdict, and everybody's rates go up—every gun dealer who complies with the law, their rates go up too. It is something that has been bothering me as time goes by.

They are stating, as legal theories, broad powers and requesting broad relief, similar to some of the things I mentioned here in the District of Columbia in the Beretta letter. Sometimes the plaintiffs have argued that the very sale of a large number of guns and pistols, when a manufacturer knows that some of those "might" end up in the hands of criminals, means that they become liable. What kind of law is that? It is a stretch beyond the breaking point that if you comply with the law, you sell a firearm to a lawful customer in your shop and they have the proper identification, and you take all the proper steps, somehow that you become liable if that person utilizes it unlawfully or sells it or gives it to somebody who utilizes it unlawfully.

That is not the way the American legal system works. Those are the kinds of lawsuits being pushed, I submit, for political reasons because people are frustrated that they have not been able to get the legislatures to eliminate firearms. Who should be liable? The person who commits the

crime. John Malvo—if he commits a crime using a gun, he should be the one that pays and is sued in our system but, of course, people say Malvo doesn't have any money, so we will sue Wal-Mart because Wal-Mart sold the gun to somebody and it eventually went through somebody's hands and they got it, or whatever store sold the gun. Or we will even sue Smith & Wesson in Boston because they sold the gun and somebody was injured with it. What kind of law is that? I am very concerned about this theory. We have moved so far from our principle of liability. That is why it is quite appropriate here. And there may be other instances with other businesses around the country that are being unfairly held liable for actions that should not be their responsibility.

I will make a point about the serial number. I raised an issue I am personally aware of. The manufacturers have to put a serial number on every gun, which has to be recorded every step of the way as it moves from the manufacturer, to the distributor, to the subdistributor, to the retail store, to the customer. They are recorded and kept up with. A statement is filed including the name, address, phone number, driver's license, and a number of other things that are required by State and Federal law before it can ever be sold. It is now, and has been for many years, a crime to produce a gun that does not have that serial number, and it is a crime to erase it. It is a crime to sell a gun that doesn't have a serial number on it or has a number that has been erased. When I was a Federal prosecutor, I prosecuted many cases—30, 40, or 50 cases—in which criminals, thinking they could somehow avoid detection, would file off the serial number or somebody filed it off for somebody and delivered it to them, and both of them have committed a crime at that point. That is because we want to be able to identify that weapon and not have it subject to moving around without being able to be identified.

I would just say, there are a lot of laws that we pass in our legal system to clamp down on the sale of guns because they are, indeed, a dangerous instrumentality. But our Constitution provides the right of citizens to keep and bear arms. Our State and local laws provide that protection to our citizens, and we set many restrictions on it. The problem we are dealing with is the possibility that courts will create legal liability on a manufacturer of a lawful product, a lawful product that has been sold according to the strict requirements of Federal and State law, and that they somehow become an insurer of everything wrong that occurs as a result of the utilization of that lawful product.

All we are trying to do is bring some balance. I think the statute has been gone over for many years now. People on both sides of the aisle understand; there are probably 60-plus votes of people who are prepared to vote for this

legislation. One reason it has that kind of broad support is that the bugs have been worked out of it. Things that would have gone too far have been eliminated. People have had many months to review it. I think we have a good piece of legislation.

I respect my colleagues who differ, but I strongly think it would be in the interest of good public policy to pass this legislation, and that is why I support it.

I offer the letter from the Beretta Corporation and ask unanimous consent it be printed in the RECORD.

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

BERETTA U.S.A. CORP.,
Accokeek, MD, May 11, 2005.

Hon. RICHARD B. CHENEY,
Vice President of the United States, Eisenhower
Executive Office Building, Washington, DC.

DEAR MR. VICE PRESIDENT: A few weeks ago, the Washington, D.C. Court of Appeals issued a decision supporting a D.C. statute that holds the manufacturers of semiautomatic pistols and rifles strictly liable for any crime committed in the District with such a firearm.

Passed in 1991, the D.C. statute had not been used until the District of Columbia recently filed a lawsuit against the firearm industry in an attempt to hold firearm makers, importers and distributors liable for the cost of criminal gun misuse in the District. Although the Court of Appeals (sitting en banc in the case *D.C. v. Beretta U.S.A. et al.*) dismissed many parts of the case, it affirmed the D.C. strict liability statute and, moreover, ruled that victims of gun violence can sue firearm manufacturers simply to determine whether that company's firearm was used in the victim's shooting.

It is unlawful to possess most firearms in the District (including semiautomatic pistols) and it is unlawful to assault someone using a firearm. Notwithstanding these two criminal acts, neither of which are within the control of or can be prevented by firearm makers, the D.C. strict liability statute (and the D.C. Court of Appeals decision supporting it) will make firearm manufacturers liable for all costs attributed to such shootings, even if the firearm involved was originally sold in a state far from the District to a lawful customer.

Beretta U.S.A. Corp. makes the standard sidearm for the U.S. Armed Forces (the Beretta M9 9mm pistol). We have long-term contracts right now to supply this pistol to our fighting forces in Iraq and these pistols have been used extensively in combat during the current campaign, just as they have seen use since adopted by the Armed Forces in 1985. Beretta U.S.A. also supplies pistols to law enforcement departments throughout the U.S., including the Maryland State Police, Los Angeles City Police Department and to the Chicago Police Department. We also supply firearms used for self-protection and for sporting purposes to private citizens throughout our country.

The decision of the D.C. Court of Appeals to uphold the D.C. strict liability statute has the likelihood of bankrupting, not only Beretta U.S.A., but every maker of semiautomatic pistols and rifles since 1991. There are hundreds of homicides committed with firearms each year in D.C. and additional hundreds of injuries involving criminal misuse of firearms. No firearm maker has the resources to defend against hundreds of lawsuits each year and, if that company's pistol or rifle is determined to have been used in a

criminal shooting in the District, these companies do not have the resources to pay the resultant judgment against them—a judgment against which they would have no defense if the pistol or rifle was originally sold to a civilian customer.

When the D.C. law was passed in 1991, it was styled to apply only to the makers of "assault rifles" and machineguns. Strangely, the definition of "machinegun" in the statute includes semiautomatic firearms capable of holding more than 12 rounds. Since any magazine-fed firearm is capable of receiving magazines (whether made by the firearm manufacturer or by someone else later) that hold more than 12 rounds, this means that such a product is considered a machinegun in the District, even though it is semiautomatic and even if it did not hold 12 rounds at the time of its misuse.

The Protection of Lawful Commerce in Arms Act (S. 397 and H.R. 800) would stop this remarkable and egregious decision by the D.C. Court of Appeals. The Act, if passed, will block lawsuits against the distributors and dealers of firearms for criminal misuse of their products over which they have no control.

We urgently request your support for this legislation. Without it, companies like Beretta U.S.A., Colt, Smith & Wesson, Ruger and dozens of others could be wiped out by a flood of lawsuits emanating from the District.

This is not a theoretical concern. The instrument to deprive U.S. citizens of the tools through which they enjoy their 2nd Amendment freedoms now rests in the hands of trial lawyers in the District. Equally grave, control of the future supply of firearms needed by our fighting forces and by law enforcement officials and private citizens throughout the U.S. also rests in the hands of these attorneys.

We will seek Supreme Court review of this decision, but the result of a Supreme Court review is also not guaranteed. Your help in supporting S. 397 and H.R. 800 might provide our only other chance at survival.

Sincerest and respectful regards,
JEFFREY K. REH,
General Counsel,
and Vice-General Manager.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, this is an important debate and discussion, but I ask unanimous consent to speak on a different topic and have it count against the 30 hours.

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

GUARANTEED VETERANS HEALTHCARE

Ms. STABENOW. Mr. President, I had hoped at this time to come to the floor to vote on an amendment that I introduced with Senator TIM JOHNSON and other colleagues, to make sure that veterans health care funding is, in fact, secured and stable for the future through an amendment which was supported by the American Legion—by many groups—the Disabled American Veterans, Blind Veterans of America, Jewish War Veterans of the USA, AMVETS, Veterans of Foreign Wars, Paralyzed Veterans, Military Order of the Purple Heart, Vietnam Veterans—all of whom want us to pass the Stabenow amendment which would make veterans health care funding mandatory, reliable, rather than having the situation we are in with the VA

coming to us with a shortfall right now and asking for emergency funding, then a debate on what we are going to do for next year.

This is a very important amendment. It was pending prior to the vote on whether to invoke cloture, or to bring one level of debate to a close. If cloture had been invoked, this amendment would not be in order to be voted on. It would not have been in order, which is why, among other reasons, I voted not to proceed to invoking cloture.

There are a number of very important amendments that address the needs of our troops and their families, and other important issues about keeping us safe, securing nuclear materials, and other critical issues that were brought forward by colleagues on both sides of the aisle. These are amendments that need to be debated and included, in many instances, I would say, in the Defense reauthorization bill.

I am deeply disappointed that instead of proceeding with that work and getting it done in the next day or two, which we on this side of the aisle committed to do—our leader indicated we would commit to stay here and get that work done—instead of doing that, we saw the leadership put this aside and go to another issue that is of concern, I know, to the gun industry.

But we are at war. We are at war. We have men and women who need our best efforts, both those who are our troops serving us, as well as those who have a veteran's cap on right now who have served us in other wars or come home from Iraq and Afghanistan.

I want to speak to the Defense authorization bill which I strongly support, as well as the amendment that I hope we will return to when we come back to the Defense bill. I hope it will be very quickly because our men and women in the armed services are counting on us to get the work done and make it the best product we can possibly make it in terms of our national defense and the Defense reauthorization.

I do support the 2006 Defense authorization bill. I believe providing the equipment and resources our service men and women need to do their jobs is one of our most important responsibilities, which is why I wish we were debating that right now. This duty is especially important, as I said before, in a time of war. As everyone knows, our men and women in uniform are under tremendous stress as they either prepare to deploy or are currently serving their country in Iraq and Afghanistan. I am pleased the Defense reauthorization bill will authorize a 3.1-percent pay raise for military personnel and provide \$70 million in additional funds for childcare and family assistance services for our military families.

I know Senator MURRAY has an additional amendment that relates to supporting families and childcare, which I think is very important.

Foremost in the minds of the men and women in uniform with whom I

visit is the safety and security of their families. The bill that was pulled in order to have this debate on gun manufacturers is a bill that also authorizes \$350 million in additional funding for up-armored vehicles, and \$500 million for the Improvised Explosive Device Task Force.

It also continues our strong support for the Nunn-Lugar cooperative threat reduction programs that work to keep weapons of mass destruction out of the hands of terrorists—an incredibly important effort that needs to be fully funded and receive our full commitment in every way.

These and other important provisions of this legislation will help make our country safer, make our troops safer and more capable as they serve us abroad.

I met with men and women from Michigan and across the country who are recovering at Walter Reed Army Medical Center. Some have suffered minor injuries that will not have a dramatic impact on the rest of their lives. Others, because of their injuries, will need years of rehabilitation and will face considerable obstacles as they return to their civilian lives. We owe these men and women our continued support so they can recover from their injuries and lead productive lives.

Today's soldiers are tomorrow's veterans. America has made a promise to these brave men and women to provide them with the care they need and deserve. They deserve the respect and support of a grateful nation when they return home. We also owe it to the men and women who have fought America's prior conflicts to maintain a place for them in the VA system so they can receive the care they need. We need to keep our promises to our veterans, young and old.

Today, I was privileged to participate in a press conference before the question came up about closing debate on these kinds of amendments. I was pleased that the current National Commander, Tom Cadmus, who is from Michigan, was there representing the American Legion. There were numerous other veterans organizations represented, as I listed earlier in my comments. All of them were saying to us: Let's stop this taking from one pocket to put in the other, taking from Peter to pay Paul, with our veterans. Let's keep the promise of veterans health care, period, and put veterans health care into a category that will allow that to happen on an ongoing basis.

I believe we must consider the ongoing costs of medical care for America's veterans as part of the continuing costs of national defense. The long-term legacy of the wars we fight today is the care for the men and women who have worn the uniform and been willing to pay the ultimate price for their Nation.

Senator JOHNSON and I and other colleagues are offering this amendment, which is currently still pending on the Department of Defense reauthorization.

tion, to provide full funding for VA health care to ensure that the VA has the resources necessary to provide quality health care in a timely manner to our Nation's sick and disabled veterans. The Stabenow-Johnson amendment provides guaranteed funding for America's veterans from two sources. First, the legislation provides an annual discretionary amount that would be locked in future years at the 2005 funding level. Second, in the future—and importantly—the VA would receive a sum of mandatory funding that would be adjusted year to year based on changes in demand from the VA health care system and the rate of health care inflation. In other words, it would depend on the number of veterans rather than this arbitrary debate now on inflationary increases.

We know the current formulation has not worked because the VA tells us that they are over \$1 billion short now in funding for health care services for our veterans. I think that is absolutely inexcusable, and it needs to be fixed permanently. The amendment that we have offered creates a funding mechanism that will ensure that the VA has the resources it needs to provide a steady and reliable stream of funds to care for America's veterans, and it will also ensure that Congress will continue to be responsible for the oversight of the VA health care system, as it does with other Federal programs that are funded directly from the U.S. Treasury.

In fact, this amendment would bring funding for veterans health care into line with almost 90 percent of the health care funding that is provided by the Federal Government. Almost 90 percent of federally funded health care programs are in the mandatory category, not discretionary. Why in the world would we say to our veterans they don't deserve the same kind of treatment in terms of the Federal budget for mandatory spending that other programs receive, such as Medicare and Medicaid?

The amendment also requires a review in 2 years by the Comptroller General to determine whether adequate funding for veterans health care was achieved. Depending on the outcome of this review, Congress would have the opportunity to make changes to the law to ensure that veterans receive the care they deserve.

The problem we face today is that resources for veterans health care are falling behind demand. In other words, we are creating more veterans than we are covering under our health care system. Shortly after coming into office, the President created a task force to improve health care delivery for our Nation's veterans. The task force found that historically there has been a gap between the demand for VA care and the resources to meet the need. The task force also found that:

The current mismatch is far greater . . . and its impact potentially far more detrimental, both to the VA's ability to furnish high-quality care and to support the system to serve those in need.

The task force released its report in May of 2003, well before we understood the impact of our men and women fighting in Iraq and Afghanistan, and what that would mean to our veterans' health care system. If this mismatch between demand and resources was bad in May of 2003, imagine what it is today. That is why we see this gap. That is why we need to address—and the Senate has now passed, twice—\$1.5 billion for emergency spending for veterans health care.

Over 360,000 soldiers have returned from Iraq and Afghanistan, and over 86,000 have sought health care up to this point from the VA.

There are an additional 740,000 military personnel who served in Iraq and Afghanistan. They are still in the service. This next generation of veterans will be eligible for VA health care and will place additional demands on a system that is already strained.

In addition, each reservist and National Guardsman who has served in Iraq is eligible for 2 years of free health care at the VA. I support that. The administration has in its own way admitted that they do not have sufficient resources to provide adequate care for America's veterans. While they would not until recently admit that there was a shortfall, they have for years attempted to ration care and cut services at the expense of our Nation's veterans. This is just not acceptable.

In 2003, the VA banned the enrollment of new priority 8 veterans. For the past 3 years I fought attempts by the administration to charge our middle-class veterans a \$250 enrollment fee to join the VA health care system, and a 100-percent increase in prescription drug copays.

This year the administration also proposed slashing Federal support for the State veterans homes from \$114 million to \$12 million. The heads of the Grand Rapids Home for Veterans and the D.J. Jacobetti Home for Veterans in Marquette tell me these cuts would be devastating to them in serving our veterans in Michigan. The fiscal year 2005 and 2006 VA health budgets are a case study in why Congress should guarantee reliable and adequate resources through direct spending. Last March, the President submitted an inadequate fiscal year 2005 budget request for VA health care to Congress. That fell \$3.2 billion short of the recommendation of the Independent Budget, which is an annual estimate of critical veterans health care needs by a coalition of leading veterans organizations. In fact, in February 2004, Anthony Principi, then the Secretary of the VA, testified before Congress that the request the President submitted to Congress fell \$1.2 billion short of the amount he had recommended. It then fell to Congress to again increase the amount provided to VA for health care. The final amount Congress provided to the VA for health care was \$1.2 billion over the President's request. While above the President's request, it was

still not enough to meet the immediate needs.

In April of this year, I supported an amendment by Senator MURRAY to the fiscal year 2005 supplemental to Iraq and Afghanistan to provide \$1.9 billion for veterans medical care, specifically for those veterans returning from Iraq and Afghanistan.

During the debate on the amendment, we were again told that the President's budget was sufficient. In fact, on April 5, Secretary of Veterans Affairs Jim Nicholson sent a letter to the Senate that said:

I can assure you that the VA does not need emergency supplemental funds in the 2005 budget to continue to provide timely quality service. That is always our goal.

Mr. President, since April the story has changed, and we now know the truth.

On June 23, 2005, the VA testified before Congress that they forecasted a 2.5-percent growth in demand—in other words, more veterans, as we have all been saying, more veterans coming into the system—when in fact the increased demand this year is 5 percent. They said 2.5 percent; it actually was 5 percent. This has left the VA with a \$1 billion shortfall. I was proud to support an amendment the following week to the Senate's Interior appropriations bill that provided an additional \$1.5 billion for veterans health care. The following day, on June 30, the House passed emergency supplemental legislation that would cut this by \$575 million, in line with the President's request.

At the time, our friends in the House suggested that the Senate was making up numbers. In fact, we wanted to be sure that the VA had enough funds to cover the shortfall and to cover any potential shortfall of next year. As it turned out, we received more bad news from the administration a couple weeks ago, on July 14, when the administration requested another \$300 million for this year and a whopping \$1.7 billion for next year. The total shortfall for this year and next now stands at nearly \$3 billion.

The Interior appropriations bill is currently in conference. I am hopeful that the bill will include \$1.5 billion for this year, as the Senate has twice unanimously supported. Further, last week the Senate Appropriations Military Construction and Veterans Affairs Subcommittee, under the able leadership of Senator HUTCHISON and Senator FEINSTEIN, included extra funding to cover the 2006 shortfall in VA health care.

Mr. President, I recall all of these events to make two points. First, it is clear that the demand for VA health care is increasing, and a good portion of this increase can be attributed to men and women seeking care after they have returned from Iraq and Afghanistan. Second is to show that despite the best intentions of the VA and Congress, the VA does not have a reliable, and dependable stream of funding

to provide for veterans health care needs. We should not have to pass an emergency funding bill to give our veterans the health care they have earned.

Imagine that. It is not acceptable. It has been over a month and Congress has still not resolved the \$1.3 billion shortfall in VA medical services for this year. We owe our service men and women more than that.

In 1993, there were about 2½ million veterans in the VA system, and there are more than 7 million veterans enrolled in the system, over half of which receive care on a regular basis today. Despite the increase in patients, the VA has received an average of a 5-percent increase in appropriations over the last 8 years. At last count, at least 86,000 men and women who have returned from Iraq have sought health care from the VA, and we can safely assume this number will reach hundreds of thousands. This bill gives the resources our troops need to prepare and defend our country in Iraq. We must not forget them when they come home. We have an obligation to keep our promises to our veterans.

Mr. President, I am very hopeful that we will quickly return to the Defense reauthorization bill and have the opportunity to show our veterans all across America that we will permanently keep our commitment to them by passing the Stabenow-Johnson amendment. There are other important amendments that remain in front of us now because we have discontinued the opportunity for us to improve on this bill, a bill I support, but a bill that needs to be the very best that we can do for our men and women serving us today and for our veterans. I hope we will quickly return to it and that we will get about the business of continuing to work on these critical amendments and quickly bring this to a close. And we can do it this week if there is the will to do it so that we provide the very best to our men and women in service and those who have come home and put on the veterans cap.

Mr. President, I yield the remainder of my time under the 30 hours to Senator REED.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. First, let me thank the Senator for yielding the time. I appreciate that very much. I want to make some brief comments.

My colleague and friend from Alabama made reference to the Beretta Company and apparently their concern about legislation in the District of Columbia. I want to make a few points to clarify what I believe the context of this letter from Beretta is. First, the District of Columbia Council apparently passed strict liability legislation which is an example of an elected body, not a judge, making up laws. We might disagree with them, but the point is that this is an elected body doing this; this is not judge-made law. As I understand it, the Court of Appeals for the

District of Columbia simply upheld the statute. They acted appropriately, procedurally correct, and the statute is in force. I do not know if this is the intent of the suggestion, but a lot of the debate today has been about letting legislators and legislatures do their jobs without defying the court. In this situation of Beretta, that is exactly what happened. The DC Council acted, the court of appeals said we have no reason to disagree substantively with what you have done and the law stands.

But I think there are much more important points to be made in the context of this legislation. The proposed legislation is not simply attempting to eliminate claims of strict liability against gun manufacturers, gun dealers, and trade associations. It goes all the way to wiping out a broad array of negligence claims. And the essence of negligence is that the defendant, or the one who is being accused of negligence, must fail to perform some duty, the duty to the injured party.

There has to be some personal action, not simply doing something that has been legislatively ruled to be wrong. In that context, one can look at the concerns of the Beretta Company about strict liability much differently than in this legislation, and I think it would be wrong to assume and argue that because they are concerned about strict liability applied entirely to the legislation before us.

Now I assume they oppose the legislation. But the issue is much broader than strict liability; it is negligence. It is not a situation where a manufacturer or an individual will be held liable for something they never did. The essence of negligence is you have to fail to perform a duty, and that is at the heart of the legislation before us, providing broad exemptions and immunities for gun dealers, gun manufacturers, and trade associations whose own conduct would at least lead to allegations in court of negligent behavior.

I wanted to make those two points, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Mr. President, I ask to speak on a nongermane topic for approximately 10 minutes.

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

Mr. SESSIONS. Mr. President, reserving the right to object, the time would be counted against the 30 hours; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SESSIONS. No objection.

Mrs. MURRAY. I thank the Chair.

BRIAN HARVEY

Mr. President, I rise this afternoon to honor Brian Harvey. He is a loving husband, father, grandfather, teacher, advocate, and a hero in the fight to protect Americans from deadly asbestos.

Anyone who has followed the debate over asbestos in Congress will immediately remember Brian for his booming voice, for the way he could capture the attention of every person in a packed committee hearing room and for his commitment to saving lives and bringing victims the justice they deserve.

This picture shows him doing what he did best: urging Congress to ban asbestos and to protect victims. Brian Harvey is my hero.

Mr. President, it is my sad duty today to report to the Senate that Brian passed away on Friday, July 22. Today, I want to extend my condolences to his entire family, including his wife Sue, his daughter Valerie, his stepchildren Ethan, Anne, and Amy, and his three grandchildren. But mostly I want to share my thanks that Brian was given more time on this Earth than many asbestos victims and that he used that time to help others.

I was very lucky to work with Brian over the past 3 years. We came together at an important time in both our lives and in the history of congressional action on asbestos. Back in 2002, Brian was defying the odds in fighting mesothelioma and looking for a way to share his experience and to help others. At the same time, I was 1 year into my effort in the Senate to ban asbestos.

I was surprised and horrified to learn that asbestos was still being put in lots of commonly used consumer products on purpose. In my research, I learned about the deadly toll of asbestos diseases and about the lack of prevention, research, and treatment. I wrote a bill to address those critical needs. I was very proud to have Brian Harvey at my side and at the podium as I introduced that bill in June of 2002.

Brian Harvey is my hero because he never hesitated to stand up and speak truth to power. Whenever we had a hearing or press conference, whenever Senators needed to understand the horror of asbestos disease, whenever my legislation needed a little boost or a powerful push, Brian Harvey was the first person on a plane from Washington State all the way here to Washington, DC.

Like so many asbestos victims, Brian was exposed to asbestos through no fault of his own. Brian grew up in Shelton, WA, and like me he attended Washington State University. During his summers back in college, Brian worked at a paper products mill in Shelton, WA. That is where he was exposed to asbestos fibers, but the damage of that exposure would not be revealed until three decades later.

In September of 1999, Brian experienced shortness of breath and fatigue. He was diagnosed with mesothelioma, and the odds were stacked against him.

Most people diagnosed with mesothelioma who do not receive treatment die within 8 months. Those who do receive treatment increase their life expectancy to an average of only 18 months. Overall, a person's chance of surviving 5 years is 1 in 20. Brian lived 6 years after being diagnosed. He was truly one in a million.

Brian Harvey was lucky in many ways. He was diagnosed early. He got experimental treatment at the University of Washington. He had skilled doctors and medical professionals, and he had the support of his entire family and many friends. Many asbestos victims are not that lucky. Brian recognized that, and he used the time he was given to speak up for others whose lives and families have been torn apart by asbestos.

Brian Harvey is my hero because he did not despair about his own personal challenges. Instead, he shared those challenges with all of us, helping us to understand the threat and to inspire change in our public policy. And he did it with an actor's presence and a deeply human personal touch. Brian used to say to me that the left side of his body was made of Gore-Tex. And it was. But that did not explain Brian's toughness or his determination.

That came solely from his heart.

Brian Harvey is my hero because he made a difference. He pushed Congress to treat victims fairly and to ban asbestos. While that work is still a work in progress, Brian's voice and passion echo as loudly today as they did that day 3 years ago when he stood beside me as we introduced the bill for the first time. Brian Harvey is my hero because in the face of so many challenges that could have drained his energy, he found the strength inside to fight the good fight.

Every time I stood up for asbestos victims, Brian Harvey was at my side. He was there on June 28, 2002, when I first introduced my bill. He was by my side in June of 2003 when we stood together to call for fairness for asbestos victims. On March 5, 2003, Brian testified before the Senate Judiciary Committee, and with his passion and power he called for increased detection and fair compensation for asbestos victims. Three months later, on June 24, 2003, the Judiciary Committee included my ban in its reform bill. On March 25, 2004, at a press conference to call for passage of my bill, Brian Harvey was there as well.

It is very hard for me to picture the next hearing or press conference without Brian standing by my side. But I will continue the fight. When Brian and I met 3 years ago, the odds were against both of us. The medical odds were against Brian. Every day for him was a triumph. And the legislative odds, the chance we could pass a bill, were against both of us. We have made progress, but we are not there yet. I know it will be harder without Brian's advocacy, but I also know he has done so much to bring that goal now within

reach. I know eventually we will ban asbestos, we will ensure victims are treated fairly, we will find new treatments for asbestos disease, and we will protect future generations from this epidemic. When that day comes, all of us will have Brian Harvey to thank.

Again, I extend my thoughts and my prayers to Brian's lovely family and his many friends. Last week, when Brian was in the hospital, I spoke to his wife Sue and his daughter Anne. Brian was not well enough for me to speak with him, but I talked to the nurse at his bedside. I asked her to tell Brian something that I have always wanted him to know: You are my hero. Brian Harvey was given extra time on this planet to help other people. That is exactly what he did. Brian Harvey will always be my hero.

I yield the rest of my time to the Senator from Rhode Island.

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

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

The bill clerk proceeded to call the roll.

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

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

Ms. MURKOWSKI. Mr. President, I ask unanimous consent to speak as in morning business.

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

TRAGEDY AT THE BOY SCOUT JAMBOREE

Ms. MURKOWSKI. Mr. President, when people ask me what is the best thing about Alaska, I can talk about the mountains, I can talk about the trees, I can talk about our great salmon. They are all very wonderful, very special. But the very best thing about Alaska is its people. The spirit of volunteerism and civic engagement is what makes Alaska one of the best places in the Nation to live and to raise families.

Alaskans not only invest their time and energy in their own children, they also invest it in the development of their neighbors' children. This spirit of giving manifests itself in the thousands of hours that adult volunteers contribute to youth activities, such as Scouting.

Scouting enriches the lives of young people in many parts of my State because adult volunteers give generously of their time to work with our young people. My two boys have proudly participated in Scouting in the Mat-Su Western District as members of Troop 176 in Anchorage. I am very proud of the opportunities they have through Boy Scouts.

Now, as we know, last evening there were four adult volunteers who were associated with the Western Alaskan Council of the Boy Scouts of America who lost their lives at the Boy Scout Jamboree which is taking place at Fort A.P. Hill near Fredericksburg, VA. Accounts in the newspapers this morning back home in Anchorage were riveting,

tragic, and I think they hit all of us in a place in our heart we are always going to remember.

Mr. President, the four gentlemen who were killed last evening were:

Ron Bitzer of Anchorage. Ron and his wife Karen had just recently made the decision to move out of State. They were selling their home, and they were going to be moving out of State.

Michael LaCroix, who I had the privilege of working with on the Boys & Girls Club board. Mike was a small businessman and owned a very successful business in Anchorage. He was with his son here in the jamboree.

Michael Shibe of Anchorage was also here with two of his sons, twin boys.

The fourth individual was Scott Powell. Scott moved from Alaska, as I understand, just last year. He had served for more than 20 years as the program director of Camp Gorsuch, which is the Boy Scout camp in Alaska.

In my office today, we were talking about Scott Powell and the recognition that just about every Boy Scout in Alaska and the moms and dads who go either to help out at the camp or go there for the end-of-camp ceremonies knew, recognized, and loved Scott Powell. He touched the lives of countless Alaskan youth.

All of these gentlemen are going to be terribly, terribly missed.

Another Alaskan volunteer, Larry Call, of Anchorage, was injured in the incident. We understand he is hospitalized. Of course, we are praying for his speedy recovery.

I do not intend to dwell this afternoon on the tragic details of what has happened. The fact is, these men are heroes and should not be remembered for the way they lost their lives but for how they lived their lives. This is a phrase that was coined by Vivian Eney, the widow of a U.S. Capitol Police officer, who lost her husband in a sudden and unexpected training accident.

The four Scout leaders who we pause to think about today will be remembered for the way they lived their lives. They will be remembered as heroes for the service they gave to the young people of Alaska.

At this time, Mr. President, I ask unanimous consent that the Senate observe a moment of silence so we may reflect upon the events that occurred last evening and so we may also express our love and our support for the Scouts and their family members.

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

(Moment of silence.)

Ms. MURKOWSKI. Mr. President, my message to the families of these five outstanding leaders and to all of the Boy Scouts in Alaska and around the world is simple: Please know that the Senate and, indeed, the Nation grieves with you on this very difficult day.

I thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator MURKOWSKI for her elo-

quent remarks and for taking this opportunity to reflect on the contribution of these Boy Scout leaders to the moral and spiritual and emotional and psychological maturation of young boys.

The truth is, young boys today are having a harder time than girls in relation to their graduation rate from college, their crime rate, their imprisonment rate. There are other problems occurring in boys. Boys are struggling in our society today.

I am a strong believer in the Boy Scouts. I thank so much the Senator from Alaska for her kind remarks. I had the honor to be an Eagle Scout. Every Thursday night, a group of us from Hybart, AL, met in Camden, AL, which was 15 miles north of Hybart. Hybart was just a little crossroads community. My father had a country store. There were a couple little stores. People were farmers and carpenters and worked at the railroad or whatever.

There were nine boys there. Of those nine boys, eight became Eagle Scouts. I don't think a single one had a parent who graduated completely from college. One became a Life Scout, he almost became an Eagle Scout. And as I think of those kids with whom I grew up, they did well. One is a Ph.D. now, teaching at the University of South Carolina. One is a dentist in Charleston. One is a medical doctor, Johnny Hybart from Hybart. He is in Pensacola now, working at the hospital there. Bob Vick is a CPA. Pete Miles is an engineering graduate and a former plant manager at a major corporation. And Andy and Greg Johnson both graduated from college, one in engineering and one in business, and are very successful. Mike Hybart graduated with a horticulture degree from Auburn and is in the real estate business now.

It was a great pleasure for me to participate as a member of Troop 94 in Camden. As the Senator from Alaska read the names of Michael Shibe and Michael LaCroix and Ronald Bitzer and Scott Edward Powell, who were killed serving their boys, I thought of people who meant so much to me: John Gates and Peyton Burford and Billy Malone and Dean Tait, and quite a number of others, and Rev. Frank Scott, my Methodist preacher who traveled with us on trips, and how much that meant to me and us as a community and how it shaped our lives in ways that are really unknowable.

I also remember the most exciting trip I ever took; it was with Troop 94 and we stayed at Fort A.P. Hill, Camp A.P. Hill, I believe it was called at the time. As our troop came to Washington, I do not think a single member of the troop had ever been to Washington. We were from rural Alabama. Our leaders decided it would be a big trip, and everybody planned it for a year or more, and we came up.

Our Scoutmaster, Mr. John Gates, was quite a leader, and Peyton Burford and the team of adults made it a highly

successful trip. It was in the spring-time, as I recall, and I do not think they had hot water at A.P. Hill. It was cold water, but they made you take a shower. We stayed in the old barracks that were vacant at the time. The Army was very helpful to us in making that facility available. We were able to use it as a base to come in to Washington and to tour the area during a trip that was very, very, very meaningful to me and to others.

I have on my mantlepiece in my office here in Washington, on this very day, a picture of that troop with all those kids—60 or more, I guess it was. A big chunk—maybe 12 or 14—at that time were Eagle Scouts, and more than that became Eagle Scouts.

It was a very, very important part of our lives. The key to it was good leadership. Our leaders, as those leaders in Alaska, gave untold hours to make those events meaningful. If you were not a good leader, you would not be able to maintain a troop, and you would not be able to bring them from Alaska all the way down to A.P. Hill in Virginia as part of a Jamboree.

There are 32,000 Scouts at that Jamboree, I understand, with over 3,000 leaders present. It is a very important and good thing that at this very moment we think about the thousands and thousands of leaders in the Scouting program all over America who have meant so much to young people and have shaped their lives in so many positive ways that would not have happened otherwise.

When you go to your Scout meeting—every Thursday night, as we did—you say that oath: On my honor, I will do my best to do my duty to God and my country, to obey the Scout laws, to help other people at all times, to keep myself physically strong, mentally awake, and morally straight.

Some find that offensive. I can't imagine why. What kind of objection could somebody have to ideals such as that. Every week you also recite the Scout laws. A Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty—you don't hear that word much anymore—brave, clean and reverent. Those are good qualities. I don't see anything in those qualities that violates the Constitution or should in any way cause them to not be able to be supported by the military on their bases.

I am thankful that the majority leader, BILL FRIST, offered legislation to make crystal clear that Scouts will be able to participate actively on our military facilities as they have for so many years. Along with Senator REED—a graduate of West Point he is—I serve on the board of West Point with him. Senator REED chairs that board. I remember one of the briefings we had about the young people who graduate from West Point and go on to a military career. They said the two groups of graduates that had the highest re-enlistment rate, the two groups that made the Army a career in the highest

percentage, were children of former military parents and Eagle Scouts.

There is some connection there, a connection in terms of duty and honor and commitment to country and to our creator in a way that is special. The Scouts and our military do share some ideals.

I thank the Chair for allowing me to share these remarks. I appreciate the Senator from Alaska so much for her tribute to these fine leaders who gave their lives in service to the young men under their supervision.

I yield the floor.

The PRESIDING OFFICER (Mr. AL EXANDER). The Senator from Texas.

Mr. CORNYN. Mr. President, I know we are currently debating the motion to proceed on S. 397, the Protection of Lawful Commerce in Arms Act. I am supportive of this legislation. I am happy to see 65 of my colleagues join me in invoking cloture today so we can reach resolution on the bill later this week. This is critical legislation for gun manufacturers, some of whom work in my State and employ hard-working Texans. It is important for our economy and for our national security. I plan to speak about this issue in greater detail later, but I wanted to take a few moments to address another urgent matter.

I ask unanimous consent to speak as in morning business, and that the time be discounted against the 30 hours.

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

IMMIGRATION REFORM

Mr. CORNYN. Mr. President, earlier today, Chairman SPECTER of the Senate Judiciary Committee convened a very important hearing addressing one of the most urgent matters confronting our Nation; that is, the need to fix our broken immigration system. I want to speak a few minutes about a proposal that I have made, along with my colleague from Arizona, Senator KYL, together representing two border States, ones that perhaps have the most experience with this issue because of our proximity to the border with Mexico.

In summary, this bill strengthens our border enforcement while it comprehensively reforms our immigration system. Unfortunately, the ongoing immigration debate has too often divided Americans of goodwill into two camps—those who are angry and frustrated by our failure to enforce the law, and those who are angry and frustrated that our immigration laws do not reflect reality. I have learned that those two groups, both of whom deeply care about America and are committed to building a system that works, share more in common than they or many other people actually realize. The only groups who benefit from the current system are human smugglers, unscrupulous employers, and others who profit at the expense of people who are trying to come into this country and work through illegal channels. Unfortunately, we know that those channels are being investigated and potentially

exploited by those who want to come here to do us harm.

The reality is we need both stronger enforcement and reasonable reform of our immigration laws. It is my opinion that we, in the past, have not devoted the funds, the resources, or the manpower necessary to enforce our immigration laws or to protect our borders. No discussion of reform is possible without a clear commitment to—and a substantial escalation of—our efforts to enforce the law.

Over a series of months now, as chairman of the Immigration Subcommittee of the Senate Judiciary Committee, I have come to believe that increased enforcement alone cannot solve the problem. Any reform proposal must both serve our national security and our national economy. It must be capable of securing our country, but it must also be compatible with our growing economy.

As I mentioned a moment ago, as chairman of the Subcommittee on Immigration, I have worked closely with Senator KYL, who chairs the Terrorism Subcommittee of the Senate Judiciary Committee, to conduct a thorough review of our Nation's immigration laws. We have covered a wide variety of subjects, and we have had the opportunity to hear from a diverse group of experts. From an analysis of how the immigration system failed on 9/11, to the role of our neighboring countries in raising living standards in their home countries, our hearings have laid a foundation upon which we have developed a comprehensive solution, one that will not result in yet another immigration crisis some 10 or 20 years down the road.

We all know our immigration system has been broken for many years. First, the volume of illegal immigration continues to increase. According to the Pew Hispanic Center, there has been a dramatic increase in illegal immigration since 9/11, approximately 30% since 2000. That same organization estimates there are approximately 10.3 million illegal aliens in the United States currently.

Over the course of the 1990s, the number of illegal aliens increased by half a million a year, almost matching the number of visas that Congress has made available for legal immigrants. Last year alone, the Border Patrol detained roughly 1.1 million aliens who had come across the border. Professionals I have talked with on my travels to Texas and along the border, people whose experience and professionalism I trust, estimate that we are only detaining perhaps one out of every three or one out of every four people who are coming across our borders illegally.

Second, and for me the most alarming, is the information that suggests that terrorists and other criminals, including smugglers, are aware of the holes in our system. They may be—and I am confident that they are—looking at ways to exploit these weaknesses.

In recent visits in McAllen, TX, and Laredo, TX, I learned from people who have been long familiar with the movement of people back and forwards across our borders that the nature of illegal immigration has changed dramatically. The number of aliens from noncontiguous countries, sometimes called OTMs—in other words, people from countries other than Mexico—has doubled in the last year alone. Already this year the Department of Homeland Security has apprehended about 100,000 aliens across the southern border who are from noncontiguous countries.

While many of these individuals are coming from countries that you would expect, countries in Central and South America, many come from countries that have direct connections with terrorism. For example, we know that the Border Patrol has apprehended at least 400 aliens from countries with direct ties to terrorism.

Former Deputy Secretary of the Department of Homeland Security, Admiral James Loy, stated that “entrenched human smuggling networks and corruption in areas beyond our borders can be exploited by terrorist organizations.” He went on to state that “several al-Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe that illegal entry is more advantageous than legal entry for operational security reasons.”

I believe the vast majority of the people who come to this country, even those who come outside of our laws, come here for understandable reasons. That is, people who have no hope and no opportunity where they live see this tremendous beacon of opportunity that America represents, and they want to come here to work and provide for their families.

At the same time, we have to acknowledge that our porous borders represent a national security vulnerability which can also be exploited by international terrorists. We know the current system benefits smugglers and all too frequently leads to the deaths of immigrants whose only crime was trying to find a better life for themselves and their families. Indeed, the greatest hazard to people who come to this country to find work is the fact that they have to, under current law, resort too often to an illegal entry into the country. They turn their lives over to people who care nothing about them and who are willing to leave them to die under the most extraordinarily bad circumstances. They must work for employers who can exploit them because they know they can't report labor law violations to the authorities. And they suffer criminal acts, such as domestic violence, and they must endure these acts because they believe they can't report the crime to law enforcement authorities or else they risk deportation.

I believe a reform proposal must encourage aliens to participate in the legal process, to live within the law.

Ultimately, after they have completed their time of work in this country, most will return home to their countries and to their families and to contribute to their societies in their homeland. And those who decide to live permanently must enter through the legal process.

When people who come to this country live outside of the law, they are vulnerable to exploitation and violence. They risk their lives, sometimes just to visit their families. I believe we must take away this black market from smugglers and others who exploit these vulnerable immigrants by addressing deficiencies in our current system.

Identifying problems, of course, is not the most difficult part of our jobs. If this were easy, someone would have already done it. It is not easy, but it merits our best efforts. The challenge that Senator KYL and I have assumed is to find a solution, to find workable results.

Last Wednesday, we introduced the Comprehensive Enforcement and Immigration Reform Act of 2005, a bill that we believe will restore America's faith in lawful immigration and will meet the needs of our country, both from a security perspective and from the standpoint of our growing economy which needs the work provided by many immigrants.

The bill is based upon certain principles. First, we have to reestablish the rule of law. Second, we have to enact laws that are capable of strong enforcement. That means they have to be realistic. Third, and most importantly, the law must be fair. If we address deficiencies in the current immigration process, then we must require that everyone who is here, even those who have come here just to provide for their families, must go through normal legal channels.

The good news is that our bill provides them a direction and a way to do that in a way that is not overly disruptive of their employment or of their family life. We believe it provides a path so that they can regain their status as legal temporary workers or, if eligible, as legal permanent residents.

The men and women who secure our borders at the ports of entry, and frequently at remote locations, should be commended for the job they do every day. But we have not provided them with the resources they need to be able to give them any reasonable chance of success.

Last week, the Senate approved the Department of Homeland Security appropriations bill, which, to the credit of the Senator from New Hampshire, Senator GREGG, included increases for border security and immigration enforcement.

Senator KYL and I have introduced a bill that we believe builds on that foundation. First of all, it authorizes 1,250 new Customs and border protection officers over the next 5 years. It calls on the Department of Homeland Security

to hire 10,000 new Border Patrol agents over that same 5-year period. That same amount was authorized by Congress in the Intelligence Reform Act of 2004. It calls for the expansion of a process called expedited removal, which is a fair and effective system for quickly removing those who are ineligible to enter our country. Right now, we only use expedited removal in a few locations along the border. But our bill calls for the Department of Homeland Security to expand that process to all Border Patrol sectors, and we also provide for additional safeguards for aliens by requiring a supervisory official with the Government sign off on any removal.

Let me say a quick word about expedited removal. Right now, because of a lack of detention facilities, we have what is commonly called a "catch and release" program. For those we catch coming across the border illegally, a criminal background check is done to determine whether they are a threat to the American people; but if they don't appear on one of these watch lists or criminal background databases, they are released into the U.S. and asked to return for a hearing. It should not surprise any of us that this "catch and release" program results in more people not showing up than do show up, and those who show up for their hearing and are ordered removed then do not show up later when they are asked to report for their deportation process.

So that is the problem that we simply have to remedy. And I believe that expansion of the expedited removal process will deal with it in a way that is consistent with our laws and our values and our need for an effective border security program.

Our bill also addresses the release of aliens who come into the country from countries other than Mexico. It raises the minimum bond amounts for these aliens from \$1,500 to \$5,000. That means that fewer people from countries other than Mexico will be released, and those who are released will have a greater incentive to appear for their hearings.

Another important component of immigration reform is interior enforcement. We also need to deal with those who make it past the border and into the interior of our Nation. Tackling illegal immigration cannot be done in a piecemeal fashion. If we increase our ability to apprehend illegal aliens at the border, we must have a place to put them. Once detained, lawyers and judges are necessary to ensure that these people receive timely and fair hearings. Reform, therefore, must evaluate the whole enforcement process, and we must remove obstacles that appear anywhere in the process.

The goal is simple: If we apprehend someone who has no legal right to be in this country and is not entitled to any claim of asylum, then we must have an effective and efficient means to remove them from the U.S.

The bill Senator KYL and I have introduced will restore confidence in the

system. First, it authorizes an additional 10,000 detention beds. Currently, there are only 23,000 detention beds. You will recall that a moment ago I said last year alone immigration control authorities apprehended 1.1 million people coming across our border illegally. Yet we only have 23,000 detention beds. That leads to what I described earlier as the "catch and release" program, which has proven to be completely unworkable.

The intelligence reform bill called for an additional 40,000 beds over the next few years. The bill that we have introduced increases the total amount to 50,000 detention beds. Still, that is not enough to detain everyone who comes across the border illegally. That is where expedited removal comes into play—a process to remove aliens quickly so that we reduce the need for bed space.

Our bill also increases penalties for alien smuggling, document fraud, and gang violence by aliens. We know, as I said a moment ago, that the nature of the people coming across our border, through our porous southern border, has changed. We are seeing many people who are violent gang members coming from places in Central America. We know that people are coming from Asia and from Europe, all around the world, and they are transiting through Mexico.

Alien smugglers are the people that make that happen. We have learned that they consider human beings to be just another commodity. They are just as likely to smuggle arms, drugs or anything else that will make them money. We need to make sure that we crack down on these alien smugglers that facilitate this intrusion into our country illegally and show that we are committed to tough punishment. Our bill accomplishes that.

We provide greater tools for the Department of Homeland Security and the Department of State to require that countries accept their own citizens back if they violate our immigration laws and they come into our country illegally.

Our bill also clarifies the authority of State and local officials to enforce immigration laws and authorizes the reimbursement of local and State officials for costs they incur in enforcing Federal immigration law.

Recently, I traveled to Victoria, TX, and met with a group of sheriffs down there. It so happened that the Minutemen who first organized in Arizona were organizing in Goliad, TX, and local law enforcement officials were concerned about having these citizen volunteers engage in what essentially is a law enforcement process. They said to me:

If the Federal Government would provide us additional resources, we would be glad to help. We need some training, but we would be glad to be cross-designated, if that is important, to enforce both Federal immigration laws as well as State and local laws. We would be glad to detain them in our local jail

facilities pending their hearings, if necessary, but it is going to take a little help from the Federal Government.

I told them that I welcomed their offer to assist because I believe interior enforcement performed by many of these local law enforcement officials is an important part of this puzzle.

Our bill also creates a new senior-level position at the Department of Justice committed to immigration enforcement.

The third piece of the enforcement puzzle deals with the employment of undocumented immigrants. The Congressional Research Service estimates that out of the roughly 10 million people who have come into our country in violation of our laws, about 6 million are currently in the workforce. I believe that a vast majority of employers simply want an effective, user-friendly way to comply with the law. In other words, they want a way to determine whether the person who shows up in their place of business saying "I would like to work for you" is in fact legally authorized to work in the United States. We must ensure that we provide them an efficient, easy-to-use system that is airtight.

The example I often use is the following: if I show up at a convenience store and buy something, I can present my debit card or Visa or Master Card. In a matter of seconds, the clerk can swipe the card and it can authorize that purchase using modern technology. Why can we not use something similar—maybe with a few more bells and whistles—to allow employers to determine whether a person they want to hire is in fact eligible to work?

Since 1996, the Government has been testing an electronic verification system that provides instantaneous confirmation of an individual's authorization to work in the United States. Our experience with this program tells us that it can work but only if we give it sufficient resources. Our bill calls for an expansion of this electronic verification system and requires all employers to participate.

But while we make sure that there is a way for employers to check, we also have to make sure we crack down on employers who continue to operate in the black market of illegal labor. We have to crack down on the criminals who sell and who create fake identity documents and Social Security cards, which can also be exploited by terrorists.

Because our bill will create bright-line rules for employers, companies will be able to know whether they are in compliance or not. That is an obligation we owe them. If we are going to ask them to comply with the law, we have to give them a clear and simple way to do so. Our bill will further reduce identity theft and fraud by increasing the penalties for false claims to citizenship or for filing false information with the Social Security Administration. It requires Social Security cards to be more secure and it im-

poses standards for the issuance of birth certificates, so someone may not simply counterfeit these documents and make a false claim to citizenship.

Our bill also imposes certain obligations on countries who would like to make their citizens eligible to participate in this program. This would address another big challenge that we have, and that is the development gap between the United States and other countries.

We, along with those other countries, have an interest in ending the one-way flow of workers, which only results in the drain of highly motivated workers from those countries and further impedes their development. Our proposal would not only require the sending countries to assist with border security, but it will require them to cooperate with the United States in bridging the development gap between our country and theirs. Foreign Minister Derbez of Mexico has said that "[T]he Mexican government has to be able to give Mexicans . . . the opportunity to generate the wealth that today they produce in other places."

I could not agree more. Other countries need for their young, energetic risk-takers and hard workers to ultimately return home, to bring back to their countries the savings and skills they have acquired in the United States.

The bill we have introduced will require countries to enter into an agreement in which each country agrees to cooperate on border enforcement, to work to reduce gang violence and smuggling, to provide information on criminal aliens and terrorists, and to accept the return of nationals whom the United States has ordered removed.

Lastly, let me cover the temporary worker program. I mentioned a moment ago that out of the 10 million or so people who have come to this country illegally, about 6 million are in the workforce. I believe the fact is many of these immigrants have come here to provide for their families, something all of us as human beings can empathize with and understand. Who among us would not do anything in our power, risk life itself, to provide for our families, even if it happened to be outside of our laws?

We know many jobs being performed by immigrants in this country are jobs American citizens are reluctant to fill. I can only think about roofers working with hot asphalt in south Texas during August as the one example of that kind of job. Whether it is that or picking agricultural products, there are a lot of jobs, unfortunately, that Americans simply are reluctant to fill. We know we have a need for the work provided by many immigrants.

What we provide for in our bill is a temporary worker program. That is something I believe can best be characterized as a work-and-return program, not a work-and-stay program.

Some have said that is unrealistic, that you will never get people who

come to the United States to agree to return. I guess we can all have opinions, but I have something even better than my opinion. The Pew Hispanic Center, a nonpartisan, impartial think-tank that looks at some of these matters, has done a survey of almost 5,000 Mexican immigrants who applied for matricula consular card, a Mexican identity card, at Mexican consulates in the United States. They asked migrants to fill out a 12-page survey, and one of the questions they answered was this: Would you agree to work in a temporary worker program in the United States if it was legally authorized, even though at the end of that time period you would have to return home to your country of origin?

By a ratio of 4 to 1, 71 percent to 17 percent, these immigrants said they would. I think that is solid evidence that people who are currently working in the shadows realize that they operate without the protection of our labor laws, without the protection of our criminal laws, and all too frequently they view law enforcement with suspicion rather than as an ally. They are looking for an opportunity to come out into the sunshine and to secure the protection our laws provide.

Our bill does create a new temporary worker category that allows workers who have a job offer from a U.S. employer to enter the country for a period of up to 2 years to work in the United States. Before the employer can hire the worker, the employer must advertise a position, offer it to any qualified American worker, and agree to pay at least minimum wage. The worker will go through background screening, will be issued secure biometric documentation, that they are who they say they are and are coming here to work and not for some other nefarious purpose.

We also create some financial incentives so that the worker, after the period of their temporary visa expires, will return home with the savings and skills they have acquired while working in the United States.

I talked moments ago about the Pew Hispanic survey. Circular migration is important both for the United States and for countries such as Mexico and the countries of Central America who are losing their young risk takers and the potential entrepreneurs, the people who are essential to the development of their own economy.

What economy could withstand the loss of the young men and women, the people who are going to be the engines of those economies and the prosperity of those countries? The public officials in Mexico and Central America with whom I talked do understand they need to have these people come back with the savings and skills they have acquired in the United States, so they can develop a way forward for their own people. In the end, it will benefit the United States because it will take a lot of pressure off illegal immigration if people can find hope and opportunity and good jobs in their own country.

Finally, let me address what perhaps is the hardest issue: the people who are here now who have come here outside of our laws.

According to the Pew Hispanic Center again, about a third of these individuals have been here for more than 10 years. So we do know that some have established roots in the United States, but we also know we have to find some way to transition this population into legal status. It must not, however, create a new path for people who have come here outside our laws. Our bill allows them to get back in line so they can return to the United States in a temporary worker program or, should they choose, as legal permanent residents.

But we do it in a way that is premised upon fundamental fairness. I believe there are many people in America who would be deeply offended if we said: if you come to this country through legal channels, that is nice, but we are going to allow people who have come here illegally to have a preference, and we are going to let them jump ahead of you in line.

Our bill provides a path for people to return to their country of origin and then, on an expedited basis, return to the United States. It will not be disruptive. To secure their participation, it may be necessary for them to know by the time they leave that they will be eligible to come back immediately once they secure the proper documentation. And we need to address processing delays so that they can obtain that proper documentation in a matter of days. If disruption is the only concern, then I see no reason why the model cannot minimize or eliminate that disruption.

This bill is a comprehensive bill, and I know my colleagues are as concerned as I am about finding a workable solution to this problem. I speak today to share with all of our colleagues, not just the people who sit on the Judiciary Committee and who participated in the hearing this morning, an overview of our proposal which I think has some real promise in achieving results.

I believe our constituents sent us here to represent them to solve problems, not to engage in partisan or otherwise divisive rhetoric designed to pick a fight. Our proposal is one idea about how we can find our way through this thicket, how we can thread the needle in a way that does not provide amnesty. I think our colleagues across the Rotunda in the House of Representatives will be open to discussing our proposal, for it is consistent with their principles of reform.

I thank the Chair. I thank the indulgence of my colleagues. I yield the remainder of my hour to the Senator from Alabama.

I yield the floor.

The PRESIDING OFFICER. The Senator has that right.

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

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

Mr. ALEXANDER. Mr. President, I am glad I had an opportunity to be presiding this afternoon and to hear Senator CORNYN speak. I appreciate his assuming the Chair for a moment so I could step down here and compliment him and Senator KYL for their work on this legislation.

They have introduced a comprehensive bill to improve our immigration system, focusing, as the Presiding Officer said in his remarks, on border security, on interior security, on employment accountability, and on a legal status for temporary workers.

I am glad they have taken the time to work on this program. We have talked about it many times over the last several months, and I know the hours they spent on this. I have not had an opportunity yet to see all the specifics of the bill, but I know the principles they are working on and I heard the speech. I believe in what they are trying to do, and I think it is terribly important that we as an entire Senate take this issue up and begin to deal with it.

We need to stop thumbing our nose at the rule of law and decide which persons from other countries should be allowed to work and study and live in our country and create a legal status for them, and then enforce the law. We must do that. It is hypocritical for us to go around the world preaching about the rule of law to other countries when 10 million people or so are living illegally in this country.

Our failure to solve the problem also unloads huge health and education costs on State and local governments and puts the immigrant population at risk.

So the Cornyn-Kyl bill stands for the rule of law by enforcing our borders and creating a solid temporary worker program so that we know who is here, and that they are here within a clear legal framework.

The people of this country expect us to deal with this issue. This is a difficult issue, but it is what we are sent here for: We are sent here to deal with the major issues facing our country, and I can think of no more important issue for us to deal with than upholding the rule of law by securing our borders, protecting our interior, and making sure that people we welcome to live here and work here are here legally, and that we then enforce the law.

But, as important as the Cornyn-Kyl bill is, we can do more. This bill enforces the borders and welcomes temporary workers. But we also need to do a couple of other things. One of the other things we need to do is to welcome foreign students, not just foreign workers. A second thing we need to do,

with a half million to a million prospective citizens who come to our country legally every year, is to help them become Americans. We need to help them to become a part of this country whose most important accomplishment is admitting and welcoming people from all over the world, of every background, and helping those new citizens become something new—Americans who are proud of where they came from but prouder to say they are all Americans.

Foreign students who come to the United States to study at our colleges and universities are a boon not only to our educational system, but also to our economy and to our foreign policy. But after September 11, in an effort to increase our security—which is appropriate—we have been making it harder for international students to come to the United States. Earlier this year, the administration removed one important hurdle by extending the Visa Mantis process, which clears foreign students and researchers who are studying advanced sciences.

The Presiding Officer, Senator LUGAR, Senator COLEMAN, and I, and others have spent some time over the last year working with the administration on the question of foreign students coming to the United States. There were 570,000 foreign students who attended classes in the United States last year. Sixty percent of the postdoctoral students in the United States last year were foreign students. One-half of the students in our graduate programs in computer sciences and in engineering are foreign students. Many of these students are here working to help increase our standard of living. Many will return to their home countries after 4 years with a fresh perspective on our country and on what their own country could become.

When I visited the country of Georgia last March, which recently became a pro-Western democracy, I was reminded that most of the top officials there had been students in the United States of America. They were doing things there we could have never encouraged them to do. They were doing them because they came here and learned what it meant to be an American and were using those principles in their own country of Georgia.

Many other foreign students will stay here and, thanks to their studies, they will invent new products or start new businesses, and that creates jobs here at home. So we need to welcome these students when they are legally here in the United States.

Finally, we also need to do more to welcome and support legal residents who are working to become American citizens. Each year we welcome about 1 million new permanent legal residents, many of whom go on to become citizens of the United States. To become an American is a significant accomplishment. First, you must live in the United States for 5 years. Next, you must speak some English. Next, you

must learn about our history and government. Next, you must be of good character. Next, you must swear an oath to renounce the old government from where you came and swear allegiance to the United States of America and its Constitution. That is no small thing.

Between 500,000 and 1 million new citizens each year come in and complete that process and take that oath.

Earlier this year, Senator SCHUMER and I introduced a bill to codify that oath of allegiance that new citizens swear to when they become citizens. It is hard to believe that while the Pledge of Allegiance, the National Anthem, and the American Flag are all prescribed by law, we have been allowing the oath of allegiance, a binding pledge for new citizens, to be determined merely by Federal regulators. We can do more to welcome these new citizens.

In the near future, in September, I hope to introduce legislation that perhaps could become part of a comprehensive immigration bill. This legislation would provide new incentives and support for legal immigrants to learn English, our common language, and to learn about our Nation's history and government and values. I hope that effort to welcome new legal immigrants and to help them become a part of our American community will become a part of the Senate's overall approach to immigration reform.

Our country is unique in the world. We are not defined by common ethnic background or origin. We and our ancestors came from every corner of the world to be a part of this country because it was founded on something much bigger, much grander than ethnic heritage or a tie to the land. In the Declaration of Independence, our Founders wrote:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

This is what binds us together as Americans: a belief in our common values, values such as equal opportunity, the rule of law, and liberty. That is why we welcome immigrants who swear allegiance to our country and to those values as new citizens. That is why our Nation of immigrants has always succeeded and can succeed in the future.

If we are to continue to succeed, we must pass along these values that comprise our American identity—pass them on to posterity—both to our children and to those new citizens who come to our shores from distant lands.

In the coming months, this Senate will have a chance to reform our Nation's immigration policy. The Cornyn-Kyl legislation is a tremendously important first step toward a comprehensive immigration bill. It is one whose principles I support. I look forward to working with its authors as it moves through the Senate. I hope as we write this comprehensive immigration legis-

lation, though, we also remember to welcome foreign students who add so much to our economy and spread our values to the world, and that we remember to welcome legal immigrants who wish to join the American family and help them learn our common language, learn our values, and become American citizens.

I hope the legislation that I will offer in September can help us along that track.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I join with Senator ALEXANDER in complimenting you and Senator KYL for the legislation that you have just described for us. The Senator from Texas, as I know, has taken the lead on this very important and complex subject. I salute you for it.

Some would say it is a thankless task, it can't be done, and will make nobody happy. But I believe you have the right principles. If the right principles are applied with the right prescriptive language, we can make great progress in this area, and I salute you for it.

Frequently have I quoted Senator ALEXANDER in the phrase he has used: No child should grow up in America who doesn't know what it means to be an American.

I think that is good for immigrants, too, as the Senator just said so eloquently. I salute him.

I also thank the Senator from Texas for considering a critical component of this legislation he has proposed, and that is the part that deals with State and local law enforcement. I have just written a Law Review article for Stanford University to deal with that area of the law. Suffice it to say, local law enforcement does have complete authority to detain people who are violating the criminal laws of the United States. But that has been confused. Clearing this up more, setting up a mechanism so that they can participate if they choose, would be helpful to enforcing the law. That is so because we have 700,000 State and local law enforcement officers at every street corner and town in America. We have only 2,000 INS immigration officers inside the border—not those on the Border Patrol and on the border, but those inside the border. So obviously we are not very serious about ultimately reaching a lawful system if we exclude them.

I thank the Senator from Texas.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. THUNE. Mr. President, I ask unanimous consent to proceed as if in morning business and I be allowed to speak for up to 20 minutes.

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

BRAC

Mr. THUNE. Mr. President, last week I offered an amendment to suspend the 45-day congressional review of the President's final BRAC recommendations pending completion of several vital studies pertaining to long-range security needs in the implementation of BRAC and redeployment of many units presently deployed in Iraq and Afghanistan back to bases in the United States.

I also introduced a similar amendment yesterday that would allow Congress discretion to remove individual bases from the closure list based upon the findings of these studies and results of the redeployments.

There are two separate options, one of which I hope comes to the Senate for a vote. I underscore the assertions I made last week. The underlying purpose of the Base Realignment and Closure Commission, or BRAC, is not only good for our Armed Forces, it is good for American taxpayers. We all want to eliminate waste and reduce redundancy in the Government, but when Congress modified the BRAC law in December of 2001 to make way for the 2005 round of base closings, it failed to envision this country involved in a protracted war involving stretched manpower resources and the burden of large overseas rotational deployments of troops and equipment. This is not the time to begin a new round of domestic base closures and massive relocations of manpower and equipment.

I am aware, hearing that coming from a Member of Congress with a major base on the chopping block, that assertion may sound like another pitch to defend a home State parochial interest. Regardless of the outcome for my base, I am very concerned about how this BRAC round will affect our Nation's overall military posture, not only in South Dakota but around the country and around the world. This BRAC, in particular, has serious implications both in the short term, because we are engaged in a war, and in the longer term because of the need to preserve critical infrastructure as we enter a very uncertain future.

In essence, we cannot lose sight of the imperative of, in addition to saving money, perhaps the most critical goal of BRAC should be to maximize our Nation's warfighting capability. If we fail to follow that fundamental principle, the BRAC process will fail us and ultimately put this country at risk.

This BRAC, in particular, not only has serious implications, it raises serious questions, especially in terms of its timing. In the short term, our war in Iraq and Afghanistan has put great logistical strain on our Active military