

drafted the most democratic constitution in the Arab world. By the millions, Iraqis approved that constitution in a national referendum. And by the millions, Iraqis elected a new Iraqi government under the Iraqi-written constitution for the Iraqi people. Let there be no doubt about it: the establishment of a meaningful political process and lasting democratic institutions will decide Iraq's future.

We can be proud of the fact that each national vote in Iraq has experienced less violence and produced bigger and broader voter turnout. President Bush put it best when he stated:

In all three aspects of our strategy—democracy, security and reconstruction—we are learning from our experiences, and we are fixing what hasn't worked. . . . we have witnessed a transformation in Iraq that is virtually without precedent.

Iraqi security forces continue to show improvements in defending their fellow countrymen. In October of last year, Iraqi police and army personnel secured polling sites around the country, quickly suppressing any incidents of violence.

Growing in size and strength, Iraqi military units have become more capable and able to defend their country's emerging democracy. Today, Iraqi security battalions have assumed control over entire sectors of Iraq. These accomplishments demonstrate the willingness of Iraqis to stand up to insurgents and protect their fellow countrymen. Iraqis are gradually taking over the frontline in defense of their communities.

With each Iraqi soldier trained and equipped to carry out the mission, Iraq draws closer to being able to stand on its own and protect its own freedom.

A free society cannot exist without an independent and impartial judicial system. With slow but steady progress on all fronts, the Iraqi people are carefully building one of the country's most important institutions: its judiciary. With the help from the international community, the Iraqi people have begun the trial of one of the most brutal dictators in history, Saddam Hussein. Although none of Hussein's victims had a luxury of due process, the new Iraqi government decided to adhere to the highest standard of the rule of law and allowed its former dictator to stand trial by his peers.

None of these successes would have been possible if not for the sacrifice of America's finest men and women in uniform. Their pride, patriotism and perseverance have been the deciding factor on the battlefields far away from home. They have answered the call of duty in a noble but difficult task. Some have made the ultimate sacrifice. Their families will always be in our thoughts and prayers. We should honor their lives by defeating the terrorists.

The successful strategy for prosecuting the global war on terror set forth by President Bush is steadily moving forward. The road ahead will require additional sacrifice from Amer-

ica's leaders, members of the military and the American people. We must continue to unite behind our Commander-in-Chief, make the necessary adjustments, and move forward on the path of complete victory. The Global War on Terror demands nothing less.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from North Carolina, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

#### RECESS

The PRESIDING OFFICER. The Senate now stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:18 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BOND).

#### FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005— MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Chair, in its capacity as a Senator from Missouri, suggests the absence of a quorum. The time will be charged equally.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CARPER. Mr. President, later this afternoon, in fact about 3½ hours, we will gather in the Senate to vote on a motion to proceed to take up and begin debate on legislation that is designed—imperfect legislation but well intended—to ensure that people who have been exposed to asbestos who become sick, whose breathing is impaired from that sickness, will have an opportunity to be compensated for their impairment. As their impairment worsens, if it does, they would be in a position to be compensated further. The legislation also is intended to try to ensure that more money that is paid—if you go by defendants and insurance companies—ends up in the pockets of those victims and of their families.

The question is, Why are we taking this up now? One of the reasons we are taking this up now is because the Supreme Court has been saying, at least since 1997, with Justices including, I believe, Justice Ginsburg and maybe more recently Justice Souter, that the issue of asbestos litigation is one that needs to be resolved by Congress, not

by the Court. It is appropriate that finally we are taking this on.

My own experience and involvement with asbestos litigation reform goes back to 2001, when I was called upon by an old friend who had ended up becoming a CEO of a company I had never heard of called Federal-Mogul. Federal-Mogul is a company headquartered in Michigan that manufactures, among other things, Champion spark plugs and a lot of other products. He had become CEO in 2001 and was in Washington and told me about it. I congratulated him and said good luck, and said if I can be of service, let me know. He called me back in about 6 months. He said: Remember, you said if I could ever be of assistance to let you know. We have a problem at Federal-Mogul. And he came back to explain what it was all about.

Apparently, Federal-Mogul acquired a number of years before, long before my friend became CEO, a British company that had an exposure to asbestos, and because of that exposure, Federal-Mogul was drawn into asbestos litigation lawsuits by folks whose health had been damaged, I believe, by the British subsidiary that I think was owned and sold by Federal-Mogul in a relatively short period of time.

At the time, I took my friend around to meet with the two Senators from Michigan, Senator LEVIN and Senator STABENOW. They were good enough to meet with him. I also took him over to meet with the then-chairman of the Senate Judiciary Committee, PATRICK LEAHY of Vermont, and asked Chairman LEAHY to meet with the CEO from Federal-Mogul. He did. The long and short of it is Federal-Mogul went into bankruptcy. They have come out of bankruptcy, but a lot of the shareholders who owned stock in the company lost a good deal. Folks who had been employees, pensioners who had their money in 401(k) plans, lost a fair amount of their money if it was invested in company stock. The company ended up with fewer employees than it had in the first place.

Along about the same time I had another visit, this from a trial lawyer who represented, and I presume still represents, people who have been exposed to asbestos in their work and have developed a fatal disease called mesothelioma. This attorney came to say that the system, as it existed in either 2001 or 2002, was not working, and the folks he represented who were sick and dying, many who die within a year or so, were not receiving the help they and their families needed—at least not promptly. And a good deal of the monies paid by defendants ended up in the pockets of people such as him, the attorney.

He said people who are sick and dying ought to get the money they need, generously; they should get it now. The folks who have been exposed to asbestos but who are not sick and do not have an impairment should not get anything now and folks such as I,

maybe, should get a little bit less in terms of the moneys paid by defendants to victims.

That was how I was introduced to this issue. I did not come to the Senate to be involved in civil justice reform or particularly asbestos litigation reform, but I did come with a number of core values. I think we all did. Among the core values I brought was to try to figure out what is the right thing to do: Try to treat other people the way I want to be treated, try to use a little bit of common sense.

We have been joined in the Senate by Senator HATCH, who preceded and later succeeded Senator LEAHY as chairman of the Judiciary Committee. He has worked, as has Senator LEAHY, and as has the current chairman, Senator SPECTER of the Judiciary Committee, to try to improve the legislation that was introduced years ago, maybe even before I came here in 2001, initially.

What was originally introduced was not a static use of legislation. It was not the Ten Commandments. It was not carved into stone. It was a legislative proposal. Over time, it has been changed and has been improved and, frankly, I believe it can be improved further. I will talk a little bit about some of the improvements that have been made over time to the earlier legislation and some further changes I would like to see made and would expect to support those changes.

Before I do that, let me back up for a moment and say some Members worked on class action reform legislation which was enacted and signed by the President early last year. Again, Senator HATCH was a leader in that effort. I was involved, to some extent, along with some of my colleagues, including Senators DODD, SCHUMER, and KOHL, among others on our side, working with our colleagues on the Republican side.

The history of class action reform goes back to the 1990s. The idea behind class action reform legislation was to try to come up with a legislative approach to make sure, when little people are harmed by big companies or by small companies—harmed not that they lose their arm, leg or eyesight but harmed in a material way—that those little people have the opportunity to be made whole but, at the same time, to make sure, when the class action lawsuit is filed by a group of people that are drawn into a plaintiff class, the defendants have the opportunity to be defended or have their case heard in a courtroom or before a judge so the defendant, as well as the plaintiff, can be given a fair shake.

That legislation was introduced in the 1990s, reintroduced in subsequent Congresses, debated in committee, voted on in committee, and reported out of committee. Class action literally came to the floor, I think, on at least two occasions where we were unable to get the votes for cloture to end debate and to go on to final debate and passage with an up-or-down vote on the bill.

That process, though, where legislation is introduced, maybe over several Congresses, is debated within the appropriate committees, voted on in those committees, amended in those committees, reported out to the Senate, and debated here, amended here, I call that regular order. That is what we call regular order.

When the final compromise was agreed to on class action, including the bipartisan group I alluded to a few minutes ago, we struck an agreement amongst ourselves, an agreement with the House of Representatives that if we would not amend or change that compromise that we struck on class action, the House would accept our proposal, the House would not change one word. As a result, we, the drafters, if you will, of the final compromise on class action reform opposed, for the most part, all amendments. I think I supported one offered by Senator FEINGOLD. But no amendments were approved. No amendments were attached to the bill. The bill passed with a bipartisan majority and was sent to the House of Representatives. They adopted it lock, stock, and barrel.

What I want to see happen on asbestos litigation legislation is that we proceed with regular order. In fact, we have been proceeding with regular order. But there is a difference between asbestos litigation on the floor and class action on this Senate floor a year or so ago. Here is the difference: There is no agreement amongst the bipartisan group that I talked about earlier to pass an unamended bill. As I said a few moments ago, this is not a perfect bill, it is an imperfect bill, but it is a whole lot better than it was when it started out. In my view, it can be made better still.

I would like to see us soon—we vote today at 6 o'clock on the motion to proceed to the bill. My hope is Democrats and Republicans, a majority of us, 60 or more, will vote to proceed to the bill, to debate the bill, offer amendments, debate those amendments, vote on those amendments, and then to see how the bill takes shape during the course of the debate in the week or so ahead.

Let me mention, briefly, some of the improvements that have been made in the bill over what was introduced maybe back in the late 1990s or the earlier part of this decade.

First of all, serious questions were raised, and are still raised, about the size of the trust fund that will be created. Moneys paid into it by defendant companies, roughly \$90 billion; by insurers, about \$46 billion; by trust funds and others, \$4 billion—adding up to, roughly, about \$140 billion. That is almost 50 percent more in the trust fund than I think was originally anticipated just a few years ago. So I would suggest one of the improvements that has been made in this bill is just the adequacy of the trust fund.

There is a second thing that I would suggest has been an improvement made

in this bill over maybe an earlier version. Now, \$140 billion is a lot of money, but there is a history of the trust funds set up to help asbestos victims, there is a history of them, in some cases, running out of money. So what happens if we have a trust fund that is set up where everybody who, in the future, wants to file a claim has to go to the trust fund for an administrative solution and the fund runs out of money? What do we do then?

What we do then is really take the path suggested by Senator DIANNE FEINSTEIN of California. In anticipation of just that kind of problem down the road, she offered language, which was adopted and made part of this bill, which says if the trust fund runs out of money at some point down the line and it does not look as if we are going to have enough money in the trust fund any time soon to pay victims' claims, then those victims can return to the tort system. They can go back into court in the State in which they live. They can go back into court in the State where they were injured. Or they can go back into the tort system in Federal courts.

Another area where I think improvement has been made deals with folks who have been injured, where they have been receiving workers' compensation, and now they will, in the coming months or years—if we establish this fund—have the opportunity to file a claim with the asbestos trust fund. The question was: Well, can a person receive money out of the trust fund and also have received previously workers' comp or currently receive workers' compensation funds? Or do they have to pay that back somehow out of the money they receive from the trust fund?

I think the authors of the bill, wisely, and the committee, wisely, said no. If the person is receiving workers' comp from a separate source of funds, they can keep that. It does not have to be reclaimed or repaid. And the claimant, the victim, can then also receive the moneys from the trust fund that we would set up, establish under this legislation.

If you look at the legislation, a fourth improvement deals with something called medical monitoring. But if you look at the legislation, there are a number of levels of impairment, starting with level I, and I think going up to level IX. And there may be some various gradations within each of those levels.

Level I is something called medical monitoring. It has been a matter of some contention. Some of the companies, some of the defendants, some of the insurance companies were very skittish and reluctant, understandably so, given the history of some of the ways people were recruited to file some, not all but some, asbestos claims in the past. They were concerned the medical monitoring might be an effort to recruit all kinds of people to file claims on the trust fund.

But medical monitoring is included as level I for impairment. And level I means a person has been exposed to asbestos—maybe in their work or another part of their environment—but they do not have an impairment, there is no discernible impairment that we can attribute to asbestos. But by establishing medical monitoring, what we say to those who have been exposed, who do not have an impairment, at least we acknowledge you could have a problem down the road, and we are going to provide, every year or two, for the opportunity for someone—a health professional who really does know their business—to examine that victim and see whether any impairment has developed. If so, they can go through other levels and become eligible for sums of money, from several tens of thousands of dollars to over \$1 million in the worst cases.

A fifth improvement I think has been made deals with what are called exigent claims. Those are claims filed traditionally by people who have mesothelioma, the disease I talked about earlier, caused by asbestos, solely by asbestos exposure. We know mesothelioma victims, folks, are going to die, unfortunately, and not a pleasant death, and die fairly soon, generally within less than a year.

For exigent claims like that, or other people who are believed by doctors to be in a terminal situation where their lifespan is less than a year, those claims, under this improved version of the bill, will be treated on an expedited basis. I believe that is an improvement.

There are other improvements. I mention one: silica claims. There are mixed death claims that are not just asbestos. They might be silica. A good thing that happened last year during the course of the committee's hearings is they brought in medical experts and actually talked to them and listened to the medical experts talk about: What do the x rays look like for people who have been exposed to asbestos as opposed to those who have been exposed to silica?

We know people can die from both, do die from both. But as it turns out, if we establish an asbestos trust fund, and someone has been exposed maybe to asbestos but does not have the markings from asbestos, and someone has been exposed to silica, and they have the impairment that relates to silica, can they come to the trust fund and be made whole out of the asbestos trust fund? The answer is no. The silica victims are welcome to go back into the tort system, to stay in the tort system. Again, there is apparently a real difference in the appearance of the x rays of the lungs of people who have been exposed to asbestos who have asbestosis and those who have lung disease that has been caused by silica.

Those are some of the improvements that have been made to the bill. I want to mention maybe one or two others that I think ought to be made and have been drawn to my attention, and I sus-

pect to most of our colleagues' attention as well.

One deals with the startup provisions and the steps we need to take to help ensure the trust fund is set up and running quickly and efficiently. We are on a tight time period, a tight timeframe. There is a whole lot of work that is going to be done that we have not done, at least not with asbestos. It is going to be a real challenge to the Department of Labor getting the right people to run this operation and assembling the money quickly and putting in place a system that is user friendly and will actually provide relief to a lot of victims.

I believe there are some further steps we will debate on the floor and, hopefully, be able to adopt.

Some folks from the insurance industry have shared with me, and I am sure shared with others, the concern they have about potential leakage issues, as people file claims in the tort system for alleging impairment of breathing from exposure to asbestos. And the question is, At what point do we say to the victim, to the plaintiff, you have to go into the trust fund or you may continue through the tort system? There are concerns raised by the insurance industry that we, frankly, have not done the kind of job that needs to be done with respect to what they call leakage in the system. That is one we want to revisit and consider.

I am not an attorney. We all know people who are. I have a concern, and I know it is a concern shared by others, that if we cap it at 5 percent, the amount of money that can go to an attorney, in some cases that is adequate. This is a system that is not designed to, frankly, need a whole lot of assistance. And, hopefully, some people will be able to go through this system and apply for money from the trust fund and receive their claim, their payment without the assistance of an attorney or anybody else.

But in some cases you are going to have an attorney who has worked for not just months but maybe a couple of years to help prepare a case to be heard in a court, only to find that before they could actually bring the case to a judge and jury and have a verdict, they are cut off because of the establishment of this trust fund. In that case, where you may have had attorneys work for months or a couple years, to say that person can only receive a 5-percent payment out of the payment from the fund, I think, is just unfair.

Again, it goes back to one of my core values I talked about earlier: treat other people the way we want to be treated. If I were the attorney and I had actually done work for a couple of years, I would want to be paid more than 5 percent of, say, a million dollars for the work I had done. Attorneys today, not uncommonly, get 25, 30, 35, 40 percent in attorney's fees for the work they do in conjunction with these victims. I am not suggesting we have those kinds of payments to attorneys,

but I would suggest maybe the better part of valor is to say that the attorneys could receive 5 percent, and in cases where they have done work give the administrator of the fund the discretion to provide something in addition, something on top of, above the 5-percent cap—at the discretion of the administrator. And maybe we want to cap it at 20 percent or something like that. But I would suggest that is a fair thing to do and a just thing to do, particularly where an attorney has done a great deal of work.

Let me close by saying this. I came here, like I think all my colleagues, because I wanted to get things done. I want to right wrongs and try to help people as best we can. Sometimes it is best for people who are hurt to take those grievances to the courts, and to address, through the judicial system, the wrongs they believe they have incurred. The highest Court in our land, the Supreme Court, has said on several occasions in the last decade, we have a problem with asbestos litigation that needs the attention of the Congress and the President and we should try to improve on a situation that is flawed.

I am an old Navy guy and spent a number of years of my life as a naval officer, and not as much time on ships. I spent a little time on ships. I know a lot of folks served in the military—and a lot of them were in the Navy who served on ships—who were exposed to asbestos, had their breathing impaired, and, in a number of cases, died.

They are not in a position to go into court and sue the Federal Government to be made whole. They can get some help through the VA system, and they have, but they are not in a position to receive the kind of payments and recovery of damages that others have been able to in the courts because private sector employers have been sued as defendants by victims, and those victims cannot sue the Federal Government. Under this legislation, a veteran from any part of the armed services who is precluded from receiving much in the way of damages will now have the opportunity to go into the same trust fund and apply for the same dollar payments that any other person who has been injured could apply for. As a veteran, that is especially noteworthy. It goes a long way to explaining why so many veterans groups strongly support this legislation.

Again, what is our goal? Our goal is to try to make sure that when people have been exposed to asbestos for an extended period of time, when their health has been damaged, that they have an opportunity to receive some compensation for that harm, to try to do so in a way that is prompt and where the amounts of money they can receive actually vary from fairly modest, when the impairment is slight, to rather substantial when the impairment is substantial or maybe life threatening. We want to do this in a way where we put more money in the pockets of victims and their families

and in a way that acknowledges the work that is done by attorneys when they have done a considerable amount of work in preparing for a case that then ends up in the trust fund.

Is this bill perfect as it comes to us today? We have been joined on the floor by the chairman of the committee. I thank him and those with whom he serves, certainly Senator LEAHY. I also want to say a word about Judge Becker, former chief judge of the Third Circuit, who has worked very hard as a mediator to try to help us get to a better place with this legislation. I have met a lot of people in my life, but here is a man who suffers from very serious health problems himself. He has non-Hodgkins lymphoma and is in his early seventies. He travels from Philadelphia on the train, pays for his own way. When he spends a night here, he stays in a hotel and pays his own way. He pays for his own meals. He does all this work because he believes it is the right thing to do—and it is.

For all who have been working on this for a lot longer than I have to get us to this point in time, we need to vote at 6 o'clock to proceed to the bill, debate it, change the parts we think need to be changed, and go forth from there.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Utah.

Mr. HATCH. I thank my colleague for his remarks on this bill, for his comments on Senators SPECTER and LEAHY, and for his willingness to invoke cloture this afternoon. We need to proceed to this bill and debate it in on the Senate floor. It is that important.

Before proceeding with my remarks, I would like to reserve 15 minutes for my colleague from Ohio, Senator DEWINE.

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

Mr. HATCH. Mr. President, I rise to speak in favor of S. 862, the bipartisan Fairness in Asbestos Injury Resolution Act. More specifically, I rise in favor of debating S. 852. It is a bill worth our time.

The crisis of asbestos exposure impacts not only the lives of sick and dying workers and retirees, but also the lives of workers in every corner of the American economy. The litigation that these workplace injuries spawned now threatens to deprive the workers who need compensation for their injuries of their due rewards, while crushing businesses large and small in every State.

I find it surprising that there are those in those body who do not wish to address our Nation's asbestos crisis. They do not even want to have this debate. So they are filibustering even a motion to proceed to the bill. It is funny how things change. This summer, when some of the Members of this body were filibustering judicial nominations, we were told that the filibuster was a privilege central to the Senate's deliberative character. The

right to speak and debate had to be preserved. But through this filibuster, they do not seek to promote debate. They are seeking to prevent it. For the life of me, I do not fully understand this type of reasoning.

The public health calamity caused by occupational exposure to asbestos is something that we should be debating. It is precisely the type of situation that cries out for comprehensive bipartisan legislation. For what it is worth, it is precisely the type of well-documented crisis that I would expect my colleagues to want to talk about. Instead this filibuster shows that they would rather close their eyes to this crisis.

The consequences of asbestos exposure are tragic and well-documented. It has devastated the families of hard-working American men and women. And it is not an equal opportunity hazard. It frequently targets veterans. It targets those who took their lunch to work, who gave a full day's work for a full day's pay, and who came home with dirt under their fingernails.

Each and every year 10,000 individuals will die from mesothelioma, a cancer closely linked to asbestos exposure. Ten thousand moms and dads and grandparents. Think about it. And because of the asbestos fibers they would bring home from work, sometimes even the spouses and children of these workers become sick. Thousands and thousands more will be afflicted with debilitating lung conditions that make it hard to breathe, sapping the joy from what should be a person's golden years.

This is a public health crisis of the highest magnitude. And this public health crisis is made more pressing by a related litigation crisis. Nobody in this body believes, especially those of us who support this bill, that individuals who become sick as a result of asbestos exposure should be denied compensation. Let me be clear about this. They are owed compensation. Here is the problem: Who is supposed to pay? Most of the companies that originally produced this stuff have long since gone out of business or have been put out of business. They now exist in bankruptcy merely to pay out claims to the extent that they can, which amounts to a very small number of pennies on a dollar.

What are the victims actually getting from their settlement? Pennies on the dollar. The actual damage done by exposure to these fibers might be worth hundreds of thousands of dollars, but most people will never see that money, money that could go to pay medical bills or take care of loved ones, because the companies do not have the money to pay the number of claims.

Of course, this has not proven to be an obstacle to the innovative trial bar. These attorneys are going after corporations, not surprisingly ones with very deep pockets that have inherited their asbestos liabilities by acquiring companies that once produced or used asbestos. I remember one company in

particular that acquired another company for \$10 million. They have paid well over \$100 million out in asbestos-related claims because of that acquisition.

So not content with a public health crisis, a group of committed attorneys have set out to bankrupt some of our Nation's greatest companies, creating an economic crisis as well. And many of them have only had some collateral relationship with asbestos.

Playing fast and loose with the actual exposure of their clients, there has been an explosion of litigation in recent years. As a result, at least 73 companies have had to declare bankruptcy due to their asbestos-related liabilities.

Do those who have actually been harmed by asbestos benefit by this litigation? No. They wind up in years of litigation only to find that they get a mere 42 cents out of every dollar. By the time the attorneys take their fees and add on transaction costs, the poor person who has been injured gets only 42 cents out of every dollar recovered.

The status quo does not do justice to those injured by asbestos exposure. I am a conservative. I do not believe the Federal Government should attempt to fix every social or economic problem faced by the country. However, there are certain crises, because of their size, because of the number of persons impacted, and because of their detrimental impact on the American economy, that call out for national legislation. This is just such a bill.

Asbestos exposure has caused a far-reaching public health disaster of the highest order, one that is now compounded by an unprecedented litigation crisis. I am hardly alone in thinking this. The Supreme Court of the United States has called on Congress on three separate occasions to address this particular problem. In 1999, the Justices told the Nation that "the elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation." So we answered the call.

We are hardly springing this bill on the Senate. We have been debating a solution to the asbestos crisis since the 107th Congress. This is the 109th Congress. When I was chairman of the Judiciary Committee, we held hearing after hearing. We had weeks of mark-ups. We did our best to achieve some sort of compromise. Yet when it came time to debate this bill on the floor, it was filibustered. The Senate was prevented from giving its final up-or-down vote. That was April of 2004.

Then we heard the bill was not ready for prime time. We were rushing the issue, jamming the opposition. We have not considered the issues carefully enough, they said. If only we had more time.

Not it is almost 2 years later. The chairman of the Judiciary Committee, my colleague from Pennsylvania, Senator SPECTER, has again held hearing after hearing. Again, we have had week after week of mark-ups. He and his staff

have been tireless and fair in their negotiations. Judge Becker, a federal judge on the Third Circuit Court of Appeals, has worked to craft a solution.

Over the last 3 years, there have been 36 meetings hosted by the chairman where any group, including labor unions, trial lawyers, and any other interested parties, was welcome. And those efforts have borne fruit. Most notably my colleague from Vermont, ranking member of the committee, came to support this bill. We work a good deal on intellectual property issues together, but this bill is a different animal. This is a bill that impacts the rights of workers and the rights of the sick. On those types of issues, there is, unfortunately, not enough bipartisanship around here.

The fact that the distinguished Senator from Vermont, Mr. LEAHY, is a cosponsor of this bill is very important. It is a testament to both the scope of the problem it addresses and the depth of good faith compromises that have been made along the way.

There are many criticisms made about this bill. Some have suggested that even debating it demonstrates the triumph of corruption. I wonder what their colleagues from Vermont, California, and Montana think about that? All this time they thought they were working to make this a better bill. As it turns out, they were just tools of the special interests. Give me a break.

I will tell you who the special interests are in this debate. They are the law firms that specialize in much of the bogus asbestos litigation that is driving this crisis. They are the lawyers who file suits for people who are not sick, just hoping that some company will decide to settle rather than go to court. They are the lawyers who promise the truly sick a jackpot but give them instead years of litigation and then take for themselves fully 60 percent of any settlement. I would call it "jackpot justice." But for the workers impacted by asbestos exposure, there is no jackpot, and this sure is not justice.

These lawyers have gotten rich litigating these cases.

They do not like the prospect for reform. Why not? Because it is going to turn off the golden spigot. It will create an easy, no-fault, and quick administrative process that will enable those made sick by asbestos to obtain compensation without the middle man.

In other words, if this bill becomes law, these lawyers are going to have to find some other industry to bilk. The other side of this debate should take a good, long look in the mirror before going down the road of accusing the bill's supporters of promoting special interest legislation.

In addition, it is beyond ridiculous to suggest, as we heard yesterday from opponents, that this bill is being rushed. That is absolutely ridiculous. How is it that a bill that was debated on the floor nearly 2 years ago, reported favorably out of the Judiciary

Committee twice—on a bipartisan basis this time—and was subject to countless amendments is somehow not even ready for debate today?

We have been at this for years. This bill addresses a recognized public health tragedy. Yet it is not even worthy of debate on the Senate floor?

For those not steeped in Senate procedure, it is worth noting what is being suggested by this objection to the motion to proceed.

When a bill is filibustered after hours and even days of debate in order to prevent a vote on final passage, the message sent is that there has not been enough debate. The issues are so difficult and complex that more debate is required before this body could responsibly move to final passage.

Filibusters are not always justified, but they are sometimes understandable. When you filibuster a motion to proceed, you are saying this bill is not even worthy of a debate on the floor. This is an insult. I know this is not a perfect bill. Few bills are. The FAIR Act, however, is most certainly a bill worthy of debate.

We have a limited number of days in any given year to do the people's business. We only take up bills on the floor when there is a pressing public need. And in the opinion of not only the majority leader but the Republican caucus and even some Democrats, this is a bill worthy of our attention and time. Frankly, it is ludicrous to suggest otherwise.

Nineteen members of the Senate have cosponsored this legislation. It is supported by the chairman and ranking member of the Judiciary Committee. It has bipartisan support. I do not think there is a person in this body who doubts the severity of the problems it is designed to address. So something must be done. This bill is a sound and reasonable attempt to do something to help these sick workers get the compensation they deserve.

The asbestos trust fund created through this legislation deserves a debate. I urge my colleagues to vote for cloture on the motion to proceed and to give this bill the attention it is owed.

Mr. President, this is an important bill. I pay tribute to Senators SPECTER and LEAHY for the work they have done in committee and in bringing this bill to the floor. They deserve accolades from everybody in this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I come to the Chamber this afternoon to support the asbestos reform bill, S. 852. This bill is simply about helping victims. It is about doing the right thing for extremely sick individuals. It is about doing the right thing for very sick people by compensating them quickly and fairly.

As we know, this bill addresses the asbestos litigation crisis by removing most cases from the court system and

paying claims from a national trust fund, using money contributed by company defendants and insurance companies.

Let me say up front that removing cases from our court system is not something we should ever do lightly. Our civil justice system usually works well. Our State and Federal courts are a vital part of our system of government. That is where cases should normally be. Our court system, as a rule, ensures a level of fairness and justice for our citizens that is second to none, and I don't like removing cases from that system.

But our justice system is not perfect. Unfortunately, we all know that our justice system, in this case, has failed to deal with the asbestos crisis. The system is not adequately protecting the rights of victims, nor is it adequately protecting the rights of defendants. In fact, the system has been overwhelmed by asbestos litigation.

The numbers tell the story. The sheer volume of claims is staggering. More than 750,000 individuals have made claims for asbestos exposure, and approximately 300,000 of those claims are still pending. The most recent Rand study estimates that anywhere between 2.5 million and 3.3 million individuals could make claims in the future.

Part of the problem is the unusual nature of the illnesses caused by exposure to asbestos. Specifically, there is a long latency period between exposure to asbestos and the actual illness or impairment. In other words, people can be exposed to asbestos for long periods of time but usually don't show symptoms of illness for 25 or 30 years. Not everybody exposed to asbestos gets sick, but our tort system requires a potential victim to file a claim for injury within a year or two of discovering the potential harm. So a vast majority of people who are filing claims are not actually sick at that time, and many may not ever get sick, but to protect their legal rights, they file suit.

This enormous volume of lawsuits—again, many from people who are not ill at that time—crowds court dockets, slows the decisionmaking on claims from those who are sick, and imposes huge costs on defendants. As more and more defendants are pushed toward bankruptcy, actual payments to victims are diminished.

Perversely, the process creates a greater incentive to sue immediately because someone who has been exposed to asbestos—even if he or she has no symptoms—may decide to sue now or take the risk that nobody will be left to pay a claim down the road. This increases the problem, and the cycle of excessive litigation and decreasing payments to victims continues.

As a result, justice is not being served. Many victims wind up with no one to sue and receive pennies on the dollar for their claims from asbestos bankruptcy trusts. That is not right. That is not just. That is not fair to

these victims. We have to do something about that. On the other extreme, a few victims receive huge awards or settlements that are, frankly, sometimes out of proportion to their injuries.

The bottom line is that very few people are compensated fairly, and more and more victims face a risk of never being compensated at all for asbestos-related illnesses. It is our responsibility in the Senate to deal with this crisis. We simply must not wait any longer to act. We must take steps to help the victims of asbestos exposure, and the bill we have in front of us today does just that.

There is another critical problem we have to address with regard to asbestos, and that is the issue of jobs. Not only is the current mass of litigation hurting victims, but it is also causing tremendous problems for the business community and, subsequently, of course, for the creation and retention of jobs, which hurts workers. As more and more businesses are drawn into this endless cycle of litigation, more and more money is being spent on legal fees. These costs, and the uncertainty that engulfs these businesses, make it harder to invest in improving their companies and creating new jobs. In fact, asbestos liability is actually bankrupting many potential defendants. It has gotten to the point where claims are now being brought against businesses that have a very remote connection with the manufacture of asbestos. So the impact of asbestos claims today is simply overwhelming—not just to some of our Nation's largest companies but to our small businesses as well.

This is not just some abstract or academic problem. When businesses are harmed, workers are harmed, too. Tens of thousands of workers—real people employed by these businesses—are today being affected. Many employees and their families—people who never had any exposure to asbestos at all—are feeling the effects in lost wages, lost jobs, and diminished pensions.

The impact in my home State of Ohio is particularly severe. Ohio is one of the top States in which asbestos litigants choose to file their suits. In fact, literally thousands of companies have been named as defendants in Ohio courts. Out of the more than 8,000 firms that have been named as defendants nationwide, over 7,000 of these businesses have been named in cases filed in Ohio. Of the almost 80 companies that have filed bankruptcy because of asbestos-related liability, more than 20 of those companies are headquartered or have significant facilities in the State of Ohio.

Let me be clear: I believe companies should be held accountable for their conduct. That is a basic principle of American jurisprudence. But most of the companies that manufacture asbestos are today now bankrupt. The legal system already has decided their liability, and they are paying their liability through asbestos trusts.

I am concerned, however, about the many companies that now find themselves held responsible for the actions of other companies. These companies have little to do with asbestos production or use, but they employ thousands of people who contribute to our economy and to our tax base. No one, including the victims of asbestos, is helped when these companies are punished.

I believe it is clear, bluntly, that we have a legal disaster—yes, a disaster—on our hands. The court system is clogged with claims by people who are not ill and may never get ill, and victims who are ill must wait a long time for sometimes very little compensation. Employers are at risk even when they have had little to do with asbestos, and their current employees and retired workers as well are paying the price.

Anyone who looks at this honestly has to conclude that the current system does not work for anyone involved. In fact, the Supreme Court on three separate occasions has called for a national solution, has called on Congress to take a look at this issue.

We have to do something about this crisis. We need to protect the rights of victims, and we need to provide business—the group of businesses which will provide compensation to those victims—with some way to predict how much this crisis will cost so they can plan for it and figure out a way to stay in business while they pay for it. The FAIR Act—this bill—provides that needed protection to victims and provides that needed predictability to businesses so they can continue to provide for their employees and retirees.

We know, of course, that no bill is perfect. This bill is not perfect. Many people believe it must be amended. As a matter of fact, I have heard from a number of Ohio companies that they are not happy about some of the provisions in this bill. Not surprisingly, some think the bill goes too far and some think it doesn't go far enough. We have spent a great deal of time discussing and modifying this bill over the years. I believe it has improved the process. During this whole process, I think we have simply improved it as a result of the work that has been conducted in the Judiciary Committee.

As we debate this bill in the Senate, I plan to work with Chairman SPECTER and many others to make some additional refinements to the bill. It truly is a work in progress. But the bottom line is that we must move forward and we must move forward now. The status quo is simply not acceptable. It is not fair to the victims, and it is not fair to the companies.

We all know this bill is not perfect and, in fact, this issue is so complicated that no bill could ever be perfect. But the bill we have before us is far better than the current situation. We must move forward.

I would like to conclude my remarks with a story that illustrates why we

need to vote for this legislation. A fellow Ohioan came to my office recently and explained that he is very ill from asbestos exposure. He has retained a lawyer and has a trial date scheduled. He was worried that this bill would remove his ability to sue without giving him enough compensation to take care of his family and provide for their future and not give him the compensation he deserves.

After discussing the details of his case and explaining how the FAIR Act would apply to him, it was clear that the bill, if enacted, would likely provide him with more money much more quickly than he likely will get if he pursues his claim in court, although, of course, litigation is notoriously difficult to predict. Even though this Ohioan still has a difficult road to walk in dealing with his illness, he is now reassured that this bill, if it becomes law, will provide his family with hope for the future and provide him with some just compensation.

Nothing can ever be fair. Nothing can ever provide a victim with what would be considered just, but I think he was assured and felt better after my staff was able to discuss this bill with him, and the details of it.

As I have said, this bill is not perfect, but it will help the victims of this asbestos crisis. It will help the real people most at risk, and it will help save countless jobs. That is why I am supporting it. It simply is the right thing to do.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to speak on the asbestos bill and to indicate my support for the cloture motion which will be voted on at 6 o'clock this afternoon.

For over 15 years now, believe it or not, the U.S. Supreme Court has repeatedly urged Congress to create a solution to this asbestos crisis. In 1997, in a case called *Amchen Products v. Windsor*, Justice Ginsburg wrote this:

The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.

This is exactly what we are trying to do in this effort. It is true it is not easy to do. It is true it has taken many years of hearings in the Judiciary Committee, and it is true efforts to draft this legislation have been ongoing for many years, but I would like to take this opportunity to commend the chairman and ranking member of our committee, Senator SPECTER and Senator LEAHY, for their tireless efforts to develop a true bipartisan compromise, and I know it hasn't been easy.

Before discussing the specifics of this legislation, I think it is important to remember what has brought us here and why so many of us have spent hundreds of hours working through the complex issues in trying to develop a



no-fault administrative solution. As has been stated, the pivotal question before this body is, Will a victim be better off in a trust fund, or will they be better off in the tort system? I believe that overall a victim will be better off in this trust fund.

Up to this point, more than 70 American companies have filed for bankruptcy caused by asbestos liability. This has cost the American economy up to 60,000 jobs. Each displaced worker from a bankrupt company will lose on average an estimated \$25,000 to \$50,000 in wages over his or her career because of periods of unemployment and the likelihood of having to take a new job paying a lower salary.

This impact is not limited to workers who lose their jobs. For the workers who are able to keep their jobs at these companies, they can expect an average 25-percent reduction in the value of their pensions. And for every 10 jobs lost to an asbestos bankruptcy, a community will lose 8 additional jobs.

At least four companies headquartered in my home State of California have been bankrupted from asbestos lawsuits. Additionally, 41 companies with current or former operations in California have been sued or are currently facing lawsuits. They include: Allwood Door Company; Ashland; Atlas Corporation; Bechtel; Bethlehem Steel; California Portland Cement Company; Celotex; Dow Chemical; Exxon Mobil; Federal Mogul; Flintkote; Gencorp; Georgia Pacific; Goodrich Aerospace; Hill Brothers Chemical Company; Honeywell; Jacuzzi Brands; JM A/C Pipe Corporation; Kaiser Cement; Kelly Moore Paint; Metalclad Insulation; National Gypsum; National Steel and Shipbuilding Company; Norton and Sons of California; Occidental Petroleum; Owens-Illinois California Container; Owens Corning Fiberglas; Pacific Gas and Electric; Pittsburgh Corning; Plant Insulation Company; Polyone; Raymark Industries; Reinhold Industries; RPM; The Scotts Company; Southern California Edison Company; Todd Shipyards; Tyler Pipe Industries; Walter Industries; Unocal; U.S. Gypsum; and Viacom.

One of those companies, Celotex, had three plants and two regional sales offices in California. In 1987, Celotex employed 325 people there, with a payroll of \$7 million. They were forced into bankruptcy and today they operate in the United Kingdom. This is one impact of what has been happening.

According to a study done by the RAND Institute for Civil Justice, in 1980, 300 companies were being sued for asbestos claims. This grew so much that by 2002, 8,400 companies had been named as defendants.

RAND also concluded that litigation has spread beyond the asbestos and building products industries to the point that companies now being sued cover 75 out of 83 different types of industries in the United States. And, just through 2002, \$70 billion had been paid out to 730,000 personal injury claims.

So again, the question is whether a victim is better off in a no-fault trust where they automatically recover if they meet the criteria or in the tort system with high transaction costs that often eat up 50 to 60 percent of a judgment.

It is true that bankruptcies have tragic consequences, not just for the businesses, but also for their employees who lose their jobs, lose their savings, and for the victims whose settlements are frequently reduced even more by bankruptcy trusts until they are receiving pennies on the dollar.

I think the most startling and most egregious example of the asbestos tragedy is what occurred in Libby, MT. Candidly, this is what put it on my radar screen big time. This small community has been devastated because of the callous and potentially criminal actions of one company, W.R. Grace.

The asbestos found in Libby, MT, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared with chrysotile asbestos. Diseases contracted from tremolite asbestos are unique and they are highly progressive, which means they move quickly. So far 192 residents from this small community have died and 1,400 are suffering from asbestos-related diseases.

In addition, W.R. Grace not only sent its workers into the earth to mine asbestos without proper protection, it also pumped asbestos out of its factory and into the community of Libby. W.R. Grace provided asbestos materials to high schools and parks. It even put out piles for children to play in. For decades, there was an unprecedented 24-hour-per-day contamination of this community.

Based on this and other actions, a Federal grand jury in February of last year indicted W.R. Grace on multiple criminal counts. The indictment charges that W.R. Grace was aware of several studies that demonstrated the dangers of asbestos exposure and concealed this information from the people of Libby and from the Environmental Protection Agency. The prosecutor is quoted in the press as saying W.R. Grace's treatment of workers and residents is "a human and environmental tragedy."

Sadly, while the situation in Libby is extraordinarily unique and our legislation recognizes this, the harm caused by asbestos is far reaching.

In California, we have had shipments of asbestos from Libby in 35 locations. Our shipyards became hotspots for asbestos-related diseases because the shipping industry used asbestos to insulate boilers, steam pipes, hot water pipes, and incinerators. In fact, according to the data compiled from the National Center for Health Statistics, between 1979 and 2002, 4,618 Californians died because of asbestos-related diseases.

Statistics do not adequately tell the full story of this tragedy. The day after Father's Day in 2003, Alan Reinstein of

Redondo Beach, CA, first learned about the devastating effect asbestos can have. After months of ineffective and inaccurate testing to diagnose his health problems that Mr. Reinstein was experiencing in his lungs, doctors finally determined that he was suffering from mesothelioma. Mesothelioma is a debilitating and aggressive form of cancer that has been directly linked to asbestos exposure.

After learning the correct diagnosis, Mr. Reinstein had to have major surgery to remove his left lung, his diaphragm, and the lining around his heart. The surgery to save his life was so extensive it nearly killed him. He and his wife Linda today face his continued health problems from mesothelioma. As a matter of fact, he is a very rare case and the only person I know of who has survived for more than 1 year with mesothelioma.

Billy Speicher from Ontario, CA, spoke of his experience with mesothelioma before the Judiciary Committee around this time last year. He discussed how he was exposed to asbestos while serving as an aircraft mechanic for the Marine Corps in the late 1950s and again as a pipefitter from 1965 to 1999. He stated that in his jobs:

Asbestos was everywhere. It was all over me and all over everyone who worked near me . . . At first the doctors I was seeing for two years kept telling me I had asthma—even though I had CAT scans that showed my lungs were scarred. But finally the fluid built up so much in my lungs they realized I had mesothelioma.

Now I'm living with a lot of pain—and I can barely get my breath. [I] can't hardly sleep at night either. You know that mesothelioma is a death sentence.

These stories illustrate the personal tragedies asbestos has caused. Unfortunately, these two men are not alone. So the question is what to do, and many people think: Just leave it up to the tort system. I looked at that. But then you also hear cases of people who receive pennies on their judgment, and the question arises, Is it not possible to protect victims and not bankrupt companies and have a no-fault system whereby medical people can make the judgments and people can be paid a fair sum? That is what this legislation is all about.

Compromises have been made. What I have tried to do, on the Judiciary Committee, is ensure that there are strong provisions in place to protect individuals who were struck with terminal asbestos-related diseases.

There are some important provisions that I would like to highlight. The bill we are now considering contains higher awards values for victims than the version that was before the Senate in the 108th Congress. A broader definition of asbestos has been included to address the potential threat of naturally occurring asbestos that has been discovered in California and other parts of the country.

During the startup period, the bill incorporates a process so mesothelioma victims and other terminally ill victims will have their claims resolved

and paid within 9 months or else they will be allowed to take their case to court. So either they get prompt payment or they can go to court. I have insisted on that. Thanks to Senator SPECTER and Senator LEAHY, that is in the bill.

The committee also adopted an amendment that provides accelerated payments for terminally ill victims so they can get their awards quickly, once the fund becomes operational. The bill protects cases that have a verdict, final judgment, or final order issued by a trial court and cases in trial or those that have an enforceable settlement so that victims who have had their claims resolved are not suddenly uprooted.

And this legislation prevents subrogation of awards, ensuring that victims' awards cannot be reduced.

As everybody has said, this bill is not perfect. However, given the current state, I think it is an important solution to help provide relief to both victims and businesses. My understanding is that the chairman will have a managers' package that will further clarify and make improvements to the bill as well. I urge my colleagues to look carefully at that managers' package because many improvements have in fact been made.

During this huge undertaking, there have been many concerns raised and criticisms levied against the bill. At every step, Senators SPECTER and LEAHY have attempted to address any flaws or ambiguities. This has not been a "take it or leave it" piece of legislation. I know of no chairman or ranking member who have been more receptive to looking at changes and evaluating them.

Several concerns have been expressed regarding how quickly money will come into the fund and whether the trust fund will be able to process the immediate flood of claims that are currently pending in court. The so-called upfront funding has been increased throughout the process, so now the fund will have \$42 billion in the first 5 years to pay claims. In addition, the committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

The bill also provides the administrator of the trust fund with borrowing authority, so if the upfront funding of \$42 billion proves to be inadequate, he or she may borrow funds to cover any shortfall.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately upon enactment of the legislation. This provision ensures that terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing claims before the trust is up and running so there would not be an overwhelming flood of claims filed with the trust on day one.

Finally, Senator SPECTER included language in the statute of limitations

to give individuals sufficient time to file their claims—5 years—so there will not be a need to rush to the fund for fear of being cut off.

Another concern that has been expressed, and I want to address it, is that the legislation will harm small businesses by requiring payments to the fund that are well beyond the means of these small businesses. Under this bill, small businesses, as defined under section 3 of the Small Business Act, are explicitly exempt from having to contribute to the fund.

Let me repeat that. Under this bill, small businesses, as defined under section 3 of the Small Business Act, are explicitly exempt from having to contribute to the fund. At the same time, these companies will receive the protections provided under the legislation. They don't have to contribute, and they will receive the protections provided under the legislation—meaning they cannot be sued.

For example, manufacturing companies that have fewer than 500 employees will qualify as a small business. Some categories of manufacturing, including chemical manufacturing, will qualify if they have fewer than 750 employees.

It is also important to remember that companies are only required to pay if they have already expended money on asbestos claims. They only pay if they have already expended money on asbestos claims. Smaller companies that had not incurred asbestos liability-related costs of \$1 million or more before December 31, 2002, are exempt from having to contribute to the fund.

In addition, for those companies which are not exempt from having to contribute to the fund, the bill tiers companies by size and amount of liability. The current tort system provides no protections for small businesses and allows any company of any size, no matter how small, to be sued into bankruptcy.

Another argument made against the bill is that there is inadequate funding to cover all future asbestos claims. Trying to project how many individuals will make claims is clearly an inexact science—if you can each call it a "science." Even the Manville Trust, an almost 20-year-old trust that was created after the bankruptcy filing of the Johns-Manville Corporation, has had to alter its projections time and time again. Since we do not know how many people have been exposed to asbestos and, of those, who will develop a disease, we must rely on protections based on sound calculations and real-world experiences of other trust funds. The size of the fund is based on the strongest statistical data and economic models available. A leading actuary with Tillinghast-Towers Perrin testified before the committee on June 4, 2003, that "\$108 billion appears to be more than adequate," while RAND Corporation estimates the remaining future cost of asbestos-related loss and expense at \$130 billion.

By using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs that most experts agree consume more than half of the total amount being expended. Of the \$130 billion of future asbestos-related costs, it is estimated—and listen to this carefully—it is estimated that approximately \$28 billion, or 21.5 percent, is attributable to defendant costs and approximately \$41 billion, or 40 percent, will go to plaintiffs' attorneys. So there you have 61.5 percent going to lawyers.

I understand how lawyers feel, but 61.5 percent of the total amount going to lawyers means that amount of money is not going to victims. Because of these transaction costs, if we continue in the current system, less than 40 percent of the \$130 billion estimate of future asbestos-related loss and expense—less than 40 percent will be paid to asbestos victims.

This legislation provides for \$140 billion to come into the fund over 30 years without the transaction costs of the legal system, allowing for more money to go to victims. The bill, as amended, obligates defendant and insurer participants to contribute \$136 billion to the fund, and at least \$4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds.

As an added protection against the risk of insufficient funding, the legislation gives the administrator of the fund the authority to borrow from commercial and government lending institutions.

Finally, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts.

With this safety net, carefully thought out and eagerly debated, this legislation ensures that no one is left without an avenue for recourse.

Another argument opponents of the bill make is that victims will be forced to wait years before they receive compensation.

While California has a system to provide expedited trials when a victim is terminally ill, victims in most States across the country are forced to wait years before they can have their cases brought before a judge or a jury. And often, even after the case is heard and decided, or a settlement is reached, payments can still be stretched out for several months or even years.

Due to the long delays in other States, I have fought throughout this process to ensure that the fund follows California's example and resolves claims of terminal individuals as quickly as possible.

An amendment was adopted in committee that ensures once the trust fund becomes operational, individuals who have mesothelioma are paid in one lump sum within 30 days after their claims are approved, or within 6 months after their claims are filed, whichever is shorter.



Let me repeat that because that is important.

Mesothelioma victims are paid in one lump sum within 30 days after their claims are approved, or within 6 months after their claims are filed, whichever is shorter. What we are trying to do is prevent the delay in payment to someone who is terminally ill.

Other terminally ill claimants, individuals who have been diagnosed with less than a year to live, must be paid within 6 months after their claims are approved, or 1 year after their claims are filed, whichever is shorter.

During the committee consideration of the bill, we also adopted an amendment to speed up payments to terminally ill individuals while the administrator is attempting to get the fund up and running. This amendment provides for a process whereby terminally ill victims can receive a settlement directly from the administrator or claims facility even before the fund is operational. So the first people to be served before the fund is operational are terminally ill victims.

If, for whatever reason, the administrator or claims facility is unable to process or pay these claims during the startup period, the companies or the insurers will be required to make a settlement offer directly to the individual.

We cover that possibility as well.

If the offer is rejected because it is less than the individual would have received under the fund—in other words, the company makes an offer but it is a low offer—the companies have 20 days to make a new offer or else they are penalized.

Under these settlement agreements, claims are to be paid to mesothelioma victims, with 50 percent of the claim to be paid within 30 days after the settlement is accepted, and the other 50 percent within 6 months after the settlement is accepted.

Other terminal victims are to be paid 50 percent of the claim to be paid within 6 months after settlement is accepted, and 50 percent within 1 year after settlement is accepted.

If after 9 months, as I said, the terminally ill individual has still not had their claim processed or fully paid, then they may return to the court.

This has been hard fought for, and this is the fail-safe in this legislation. I think it is fair to say that the companies would like to avoid this. I don't know if Senator SPECTER would agree with that, but I found that to be true. And, therefore, this ability to go back into court if you are terminally ill and you are not paid right away is an added protection that you will get paid.

Finally, I want to address the argument that this bill creates a new entitlement program and will cost the people millions of dollars. This is simply untrue.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending, which "require the payment of benefits

to persons . . . if specific criteria established in the authorizing law are met," and they are not subject to discretionary appropriations from Congress. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment.

That is not the case here. The fund created by this legislation will be privately funded. The money collected for the fund comes from businesses and insurance companies—not from the U.S. Treasury.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from businesses and insurers.

In addition, as an extra protection, it is expressly stated several times throughout the bill that nothing in the act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the fund are inadequate. If anyone doubts that, they can look up section 406(b) of the bill.

Some have argued that the Government's liability is derived from the provision that allows borrowing from the Federal financing bank.

In response to an inquiry from former Senator Don Nickles on a previous version of this bill, the GAO stated that "[t]o ensure that the government incurs no liability for repayment of borrowing under the act, Congress may wish to explicitly state that repayment of borrowing is limited solely to amounts available in the fund."

That is what Senator SPECTER did.

The bill expressly provides that "[r]epayment of moneys borrowed by the administrator . . . is limited solely to amounts available in the [Fund]."

It also states that "Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . ."

With these explicit statements throughout the bill, it is abundantly clear that this legislation would not be a burden on the U.S. Treasury.

In conclusion, from the beginning it has been clear that creating a national asbestos trust fund is an extraordinarily complex undertaking. This has been a compromise effort and there are numerous issues where competing interest groups have come together, such as the creation of a no-fault administrative system, the equitable allocation of contributions, the establishment of reasonable medical standards, the resolution of pending claims and settlements, fair compensation values, and transparency of the system to both victim and corporate stakeholders alike. That is very important.

However, I must say it often seemed that with every solution and compromise, more concerns and problems would arise. In the end, there are some provisions I think all sides would like

to change, but compared to the shortfalls in the current system, this is a strong solution and a good compromise.

I hope Members will vote to close off debate and that we will be able to pass this important piece of legislation.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from California for the comments which she has made. They are thoughtful, they are profound, they go to the heart of the question, and they illustrate the need for legislation. I thank her even more for the great contribution she has made to the bill as it has moved through the committee process. She has devised some of the key sections of the bill, starting with the handling of exigent claims to see to it that people with mesothelioma and other deadly diseases are handled at a very early stage in the proceeding.

We have worked together countless hours in her office, in my office, with many other Senators in the committee process, and she has done a great job in committee generally on many items, including the one identifying victims whose identities are stolen, legislation we are trying to bring to the floor now. But I think the speech she just made was a fine hour, perhaps her finest hour, in identifying their very serious problems.

Mrs. FEINSTEIN. I thank the Senator very much.

Mr. SPECTER. Mr. President, the crux of what Senator FEINSTEIN has had to say is proof positive that we ought to proceed. There is no doubting the problem. The only issue is whether we ought to take up the bill and work on it. Anybody who votes against taking up this bill will be casting, in my opinion—it is a tough word, a tough term—an unconscionable vote, considering how many thousands of people have suffered from deadly diseases and how many companies have gone bankrupt—at least to proceed to take it up. I haven't seen any Senator who has addressed the issue on the floor who hasn't at least faced up to the fact that we have a problem that ought to be addressed. Occasionally, we do consider the merits of a pending motion. The merit of a motion to proceed is whether there is a problem which ought to be taken up. If somebody has a better bill, let them come to it.

I am going to speak very briefly because our distinguished colleague from Alabama, Senator SESSIONS, is on the floor. He, too, has been a major contributor.

First, I wish to thank Senator CARPER for his speech in support of the motion to proceed earlier. I think there is Democratic support. Senator LEAHY, of course, is a cosponsor, Senator KOHL is a cosponsor, Senator FEINSTEIN has spoken, Senator CARPER has spoken, and others have stated their intention to move to take up and consider the

bill. Senator HATCH's comments were very important. He is the author of the trust fund concept, and chaired the Judiciary Committee before term limits called for a shift in chairmanship. He did a great job. Senator DEWINE has spoken in a very important way.

I want to put into the RECORD a couple of newspaper articles which I think are very germane.

Senator REID and I had a conversation about the bill yesterday, with Senator REID making the accusation that lobbyists paved the way for this bill to come to the floor. On the floor, in his presence, I challenged him as violating rule XIX which bars a Senator from making derogatory comments about another Senator.

This morning, in the Hill publication there was the disclosure of a fascinating document which the Hill obtained from a coalition opposing the bill. This document, which is published at some length in the Hill, points out that nearly 20 corporations paid a total of about \$3 million to defeat the asbestos legislation.

The document obtained says this bill's "defeat could bring an end to the trust fund as a viable political option for addressing the asbestos litigation crisis. Therefore, coalition activities leading up to that vote should be commensurate with the opportunity presented to us to defeat the trust fund once and for all."

This coalition document then specifies how they are laying out \$2.78 million for defeating the bill, allocating \$1.34 million for coalition operations and \$1.44 million for advertising.

Then there is a specification as to the companies that are trying to defeat the bill, such as American International Group, Allstate, American Re, a reinsurance provider, the Chubb Corporation, Hartford Insurance, Liberty Mutual, Nationwide Insurance, and Zurich Financial. Each has received bills, according to this document, for \$134,250. ExxonMobil paid \$73,000 to the coalition.

I shall not read any further, but I ask unanimous consent that it be printed in the RECORD at the conclusion of my comments.

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

(See exhibit No. 1.)

Mr. SPECTER. Mr. President, I also think it is relevant to note an editorial in the New York Times today which is solidly in support of this bill. The Times editorial refers to the efforts of Senator LEAHY, the distinguished ranking member and principal cosponsor with me, and says:

That makes it a 21st century rarity; a thoughtful, bipartisan compromise on a vexing national problem. It would create a trust fund to pay awards to those who are already sick, using detailed medical criteria to determine eligibility and awards. Under this no-fault system, akin to workers' compensation, those exposed to asbestos at work but not ill would be entitled to free medical screening every three years.

And the Times editorial goes on to point out:

Lobbyists for the trial lawyers, at various companies, insurers and union interests that feel aggrieved by some aspect of the complex package are trying to round up lawmakers to block the bill. A key test is to come today, when the majority leader, Bill Frist, has scheduled a vote to allow the Senate to begin formal consideration of the bill. Mr. Reid is trying to derail the measure even before the debate begins in earnest, and Democrats who want to see asbestos victims treated fairly should not support him.

There are other dangers ahead, including the possibility of a "poison pill" amendment that would expand to other communities a special provision that would make residents of Libby, Mont., a town uniquely affected by asbestos contamination, eligible for a guaranteed level of compensation without a need to show occupational exposure. Another worry is that some Republicans will try to amend provisions or medical criteria in ways that would be unfair to victims.

The New York Times editorial concludes, saying:

No one can be sure that \$140 billion will cover all current and future claims. But the bill would give victims the option of going to court should the trust fund run out. It would be a vast improvement over the present method of dealing with the claims of asbestos victims, which is to clog the courts and bankrupt companies while depriving many victims a measure of justice.

I ask unanimous consent that the full text of this editorial be printed at the conclusion of my comments.

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

(See exhibit 2.)

Mr. SPECTER. Mr. President, in order to make other documents available, I ask unanimous consent that a series of letters be printed in the RECORD. I think it important that these be available in the RECORD for Senators and their staffs and for the public to see the kind of support this bill has.

Yesterday, Senator REID and I had a few words about a number of groups who are for the bill and who are against the bill. This letter is from many veterans groups urging Senator REID not to filibuster the bill. They say:

We urge you not to stand in the way of full Senate consideration of this vital legislation.

And the number of veterans groups is enormously impressive, including the Veterans of Foreign Wars, the Paralyzed Veterans of America, The Retired Enlisted Association, the Blinded American Veterans Foundation, the Jewish War Veterans of the USA, and quite a number of veterans organizations which will appear in the RECORD.

I also have printed letters of support from the NFIB and a letter signed by manufacturers, labor groups, small business, and 25 additional veterans groups.

I ask that these documents be printed in the RECORD so colleagues can see the kind of support this bill has. By doing this, they get into the CONGRESSIONAL RECORD, and the people note the support.

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

(See exhibit 3.)

Mr. SPECTER. My distinguished colleague from Alabama has been waiting. In advance, I thank Senator SESSIONS for his outstanding work on this committee generally but especially on this bill.

EXHIBIT No. 1

[From the Hill, Feb. 7, 2006]

AIMING AT ASBESTOS BILL

(By Alexander Bolton)

Nearly 20 corporations have paid a total of about \$3 million to defeat the asbestos trust-fund bill, which Senate Majority Leader Bill Frist (R-Tenn.) has designated his first priority in 2006, according to a coalition planning document obtained by The Hill.

The Senate will consider the bill, which establishes a \$140 billion trust fund to compensate the victims of asbestos exposure, over the next two weeks, leading up to the Presidents Day recess. Strategists leading the opposition view the debate as an opportunity to defeat the creation of such a trust fund permanently.

"Majority Leader Frist's agreement with Chairman [Arlen] Specter [R-Pa.] to put S. 852 on the Senate floor for a vote, in the face of opposition from the Judiciary Committee conservatives and Budget Committee leadership, has increased the stakes of that vote beyond its important role in the legislative process," Kieran Mahoney, a strategist with Mercury Public Affairs, wrote in a private memo to the Coalition for Asbestos Reform. The firm Fleishman-Hillard is also coordinating the lobbying effort.

"This has become a do-or-die opposition for the advocates of the Trust Fund, and its defeat could bring an end to the Trust Fund as a viable political option for addressing the asbestos litigation crisis," Mahoney wrote. "Therefore coalition activities leading up to that vote should be commensurate with the opportunity presented to us—to defeat the Trust Fund once and for all."

The memo was contained in a 22-page internal planning document detailing the Coalition for Asbestos Reform's strategy. The bill is sponsored by Specter and cosponsored by Sen. Pat Leahy (Vt.), the ranking Democrat on the Judiciary Committee. The document, crafted at the end of last year, is available on The Hill's website, <http://img.thehill.com/img/news/020706/asbestos.pdf>

It lays out a \$2.78 million budget for defeating the bill, allocating \$1.34 million for coalition operations and \$1.44 million for advertising.

Fleishman-Hillard and Mercury Public Affairs are charging \$510,000 in fees and \$80,000 in expenses for their work over the first four months of the year, according to the document.

In his memo, Mahoney writes that the advertising campaign will be built around "creating political will inside three audiences—moderate/conservative Democrat Senators who are deemed persuadable, conservative Democrat Senators who are deemed persuadable, conservative Republican senators whose current opposition needs to be turned into a "no" vote, and DC opinion leaders who collectively make up conventional wisdom.

Opinion leaders are being targeted by advertising through national cable networks, D.C. broadcast stations and Capitol Hill print outlets.

Senators are being targeted through TV and print ads in select markets in key states.

The business groups are leaving the persuasion of liberal-leaning senators to trial lawyers and unions.

"Separately, the Coalition needs to ensure that the trial bar and related advocacy

groups are preparing a similar strategy that targets liberal Democratic Senators," the Mercury Public Affairs memorandum stated.

The campaign appears to have gained traction, as Senate Minority Leader Harry Reid (Nev.) has vowed to filibuster it and conservative Republicans on the Judiciary Committee such as Sens. John Cornyn (R-Texas) and Tom Coburn (R-Okla.) have voiced concerns over the bill.

It passed out of the Judiciary Committee with the support of all Republican members and Sens. Leahy, Dianne Feinstein (D-Calif.) and Herb Kohl (D-Wis.).

Manufacturing and insurance companies have long sought a trust fund to pay asbestos-related medical claims and to avoid costly lawsuits. Partisan wrangling over the best way to pay asbestos-related claims and to settle a blizzard of ongoing and potential lawsuits that has dragged on for years.

The bipartisan proposal has garnered opposition from groups of labor unions, trial attorneys, midsize manufacturing companies and insurance companies. Unions have pushed for more money in the trust fund and trial attorneys oppose the concept because it curbs litigation. Midsize companies have balked at how much they must pay into the fund, and insurance companies are worried about their liability if it runs out of money.

But a significant portion of the business community supports Specter and Leahy's efforts.

"There are numerous supporters of the trust fund," said Matt Webb, vice president of the U.S. Chamber of Commerce's Institute for Legal Reform, which has not taken a position on the bill.

"It's impossible to say how many are in each camp, it depends on each individual company's financial situation and legal situation."

The coalition's document includes a list of member companies and how much they've been asked to contribute to the opposition effort.

Donors such as American International Group; Allstate; American Re, a reinsurance provider; Chubb Corp.; Hartford Insurance; Liberty Mutual; Nationwide Insurance; and Zurich Financial have each received bills for \$134,250 to pay for operating and advertising costs, according to the document.

Oglebay Norton, an industrial-minerals company, and Okonite Co., an electrical-wire manufacturer, have received bills for \$55,000. Bills for varying amounts have been sent to other member companies.

Exxon Mobil paid \$73,000 to the coalition but is not a member, said Thomas O'Brien, chairman of the coalition, who will receive \$100,000 for his work over January, February, March and April, according to the document.

O'Brien declined in a phone interview to discuss what other companies have joined the coalition or if the billing records accurately represent the contributions of coalition members to date.

"Things change every day," he said during the interview in which Bill Fay of Fleishman-Hillard also participated. "That was a planning document. As Bill said, that document was not for public dissemination, I wouldn't comment on it."

O'Brien and Fay said that the time for Congress to act was several years ago but that states such as Texas have now taken steps to deal with the slew of medical claims. They said that the Senate bill would wreck those efforts.

#### EXHIBIT 2

[From the New York Times, Feb. 7, 2006]

#### JUSTICE FOR ASBESTOS VICTIMS

Just last week, the Democrats' Senate leader, Harry Reid of Nevada, failed to mus-

ter the gumption to try to stop the nomination of a right-wing ideologue to a lifetime seat on the Supreme Court. So it's shocking to hear Mr. Reid threatening now to block a bipartisan bill that would finally bring justice and compensation to victims of asbestos-related diseases. We can't imagine what Mr. Reid is trying to achieve, other than showing fealty to the trial lawyers who have been so generous to his party.

The Senate should approve the bill, which would replace the current morass of asbestos litigation with a \$140 billion fund to pay the claims of victims of asbestos exposure. The fund would be financed by makers of asbestos, a carcinogenic material, and manufacturers that used it, and their insurers.

It is the product of an assiduous effort by Senator Arlen Specter, the Republican who is chairman of the Judiciary Committee, and Senator Patrick Leahy, the committee's senior Democrat. That makes it a 21st-century rarity: a thoughtful bipartisan compromise on a vexing national problem. It would create a fund to pay awards to those who are already sick, using detailed medical criteria to determine eligibility and the awards. Under this no-fault system, akin to workers' compensation, those exposed to asbestos at work but not ill would be entitled to free medical screening every three years.

Lobbyists for trial lawyers, and various companies, insurers and union interests that feel aggrieved by some aspect of the complex package, are trying to round up lawmakers to block the bill. A key test is to come today, when the majority leader, Bill Frist, has scheduled a vote to allow the Senate to begin formal consideration of the bill. Mr. Reid is trying to derail the measure even before the debate begins in earnest, and Democrats who want to see asbestos victims treated fairly should not support him.

There are other dangers ahead, including the possibility of a "poison pill" amendment that would expand to other communities a special provision that would make residents of Libby, Mont., a town uniquely affected by asbestos contamination, eligible for a guaranteed level of compensation without a need to show occupational exposure. Another worry is that some Republicans will try to amend the payment provisions or medical criteria in ways that would be unfair to victims.

No one can be sure that \$140 billion would cover all current and future claims. But the bill would give victims the option of going to court should the trust fund run out. It would be a vast improvement over the present method of dealing with the claims of asbestos victims, which is to clog the courts and bankrupt companies while still depriving many victims a measure of justice.

#### EXHIBIT 3

JANUARY 31, 2006.

Hon. HARRY REID,  
*Democratic Leader, U.S. Senate,*  
*Washington, DC.*

DEAR SENATOR REID: Veterans across the country who are afflicted with asbestos-related diseases would at last get compensation and relief under the Fairness in Asbestos Injury Resolution (FAIR) Act. But according to a number recent media reports, you have labeled the FAIR Act as a bill that caters to special interests and have informed Majority Leader Frist in writing that you will oppose this critical legislation. In all frankness, your words and actions are extremely disappointing to veterans across this nation—surely you do not consider sick veterans to be a "special interest"?

The FAIR Act will provide proper compensation to sick men and women who volunteered to fight for our country—compensa-

tion they simply can't get under the current system. The military used asbestos throughout its facilities, bases, and ships during and after World War II, and countless veterans were exposed to this deadly material. But because the U.S. government has asserted sovereign immunity, these sick veterans are unable to seek compensation from the government through the courts.

The FAIR Act's victims' trust fund would open a door for veterans that has been closed for years.

We are disappointed that you are trying to keep that door closed and stop veterans from receiving the compensation they deserve. Sick veterans—and indeed, all victims—deserve better than political gamesmanship on this critical issue. We urge you not to stand in the way of full Senate consideration of this vital legislation.

The FAIR Act is more than overdue. The Senate has been debating these reforms for years. Sick victims, including sick veterans, shouldn't be forced to wait for help any longer.

Sincerely,

Air Force Sergeant Association.  
American Ex-Prisoners of War.  
Blinded American Veterans Foundation.  
Blinded Veterans Association.  
Fleet Reserve Association.  
Jewish War Veterans of the USA.  
Marine Corps League.  
Military Officers Association of America.  
Military Order of the Purple Heart.  
National Association of Black Veterans.  
Non Commissioned Officers Association.  
National Association of Uniformed Services.

National Association of State Directors of Veterans Affairs.

Paralyzed Veterans of America.  
Pearl Harbor Survivors Association.  
The Retired Enlisted Association.  
Veterans of the Vietnam War, Inc.  
Veterans of Foreign Wars of the U.S.  
Women in Military Service for America.  
Memorial Foundation, Inc.  
U.S. Submarine Veterans, Inc.  
U.S. Submarine Veteran, Inc., Lockwood Internet Base.

U.S. Submarine Veterans of World War II.  
U.S. Submarine Veterans Base Rhode Island.

U.S. Submarine Veterans World War II Thames River Chapter.

U.S. Submarine Veterans World War II Central Connecticut Chapter.

NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS,  
*Washington, DC, February 6, 2006.*

Hon. ARLEN SPECTER,  
*U.S. Senate, Hart Senate Office Building,*  
*Washington, DC.*

DEAR SENATOR SPECTER: On behalf of the 600,000 members of the National Federation of Independent Business, I am writing to express our support for S. 852, "The Fairness in Asbestos Injury Resolution (FAIR) Act of 2005." The FAIR Act will help protect innocent small business owners from the asbestos litigation crisis that now threatens their business.

Asbestos lawsuits against small businesses are on the rise. After years of suing large corporations for multi-million dollar damage awards, "traditional" asbestos manufacturers and defendants are mostly bankrupt. As a result, asbestos litigation now targets companies far removed from any potential wrongdoing, including small businesses. This relatively untapped pool of defendants is an attractive target for trial lawyers since small-business owners and their insurers can be forced to pay millions of dollars in damages. Horrifying for a small-business owner is the prospect that they can be hauled into

court without having any relationship to asbestos or the plaintiff. Many small businesses are forced to settle because they don't have the money or time to be away from their businesses. Not only do they face the stigma of having to settle, and the loss of time and money, but they will likely also experience higher insurance rates.

By creating an alternative compensation system to resolve asbestos claims, S. 852 will fix a badly broken system that is not working and, in the process, compensate victims faster. In addition to lawsuit relief, the legislation relieves small businesses with either low or no asbestos liability from having to pay into the compensation fund. No business that meets the Small Business Administration description of a small business can be required to pay a penny into the fund. Nor will any small business that has carried less than \$1 million in asbestos expenditures before December 31, 2002 have to pay into the fund.

This legislation will help prevent small businesses from having to spend the time and money to defend themselves in asbestos lawsuits. It takes a significant step towards fixing part of our litigation crisis that hurts business, big and small, and ultimately keeps the victim from receiving compensation.

Thank you for your support of small business.

Sincerely,

DAN DANNER,  
*Executive Vice President,  
Public Policy and Political.*

JANUARY 26, 2006.

Hon. BILL FRIST,  
*Majority Leader, U.S. Senate, Capitol Building,  
Washington, DC.*

Hon. HARRY REID,  
*Minority Leader, U.S. Senate, Capitol Building,  
Washington, DC.*

DEAR MAJORITY LEADER FRIST AND MINORITY LEADER REID: We, the undersigned, urge you to bring the Fairness in Asbestos Injury Resolution Act of 2005 (the FAIR Act—S. 852) to the floor of the United States Senate for debate and consideration. Although we all come from a variety of perspectives, we agree it is time for Congress to enact meaningful asbestos reform through establishment of a well-constructed federal trust fund.

Our country faces an asbestos litigation crisis with claims rising exponentially and the backlog of cases ever increasing. To date, 74 companies have gone bankrupt due to asbestos litigation with 60,000 jobs lost and the cost to the U.S. economy estimated at \$343 billion. The continuing costs and uncertainties of the current situation are harmful not only to the asbestos victims with legitimate claims, but also to employees, retirees, shareholders, customers of defendant companies and insurers and to U.S. consumers.

The FAIR Act will go a long way toward solving many of the injustices of the current system. First, and most importantly, a well-constructed trust fund will provide sick victims of asbestos exposure with the fast, certain, and fair compensation they deserve. Such a trust fund will provide compensation to many sick veterans who are barred from seeking compensation through the courts. Additionally, the legislation includes significant protections for small businesses.

Indeed, our nation's governors working through the National Governors Association called for federal legislative action on the asbestos crisis in a resolution adopted at their annual meeting in July, 2005. S. 852 is a bipartisan compromise approved overwhelmingly by the Senate Judiciary Committee by a 13 to 5 vote. We believe that the time is now for the Senate's consideration of

this important legislation that will lead to the meaningful reform our country needs and deserves.

Please move forward on S. 852. It is a solution to the asbestos litigation crisis that will ensure fair and timely compensation for victims and certainty and finality for businesses, workers, and the U.S. economy. All Americans stand to benefit from the resolution of the asbestos crisis.

Sincerely,

A&I Parts Center.  
Air Force Sergeant Association.  
Alabama Voters Against Lawsuit Abuse.  
Albina Fuel.  
Alma Chamber, NE.  
American Architectural Manufacturers Association.  
American Boiler Manufacturers Association.  
American Ex-Prisoners of War.  
American Small Business Association.  
AMVETS, Albuquerque, NM, Post 7.  
AMVETS, Post 15, Los Ojos, NM.  
The Asbestos Alliance.  
Asbestos Study Group.  
AMT—The Association for Manufacturing Technology.  
Arizona Association of Industries.  
Associated Industries of Florida.  
Associated Industries of Kentucky.  
Associated Industries of Massachusetts.  
Associated Industries of Missouri.  
Associated Oregon Industries.  
Association of Builders and Contractors, NM Chapter.  
Association of Builders and Contractors, LA.  
Association of Washington Business.  
Austin Gene Rater.  
Automotive Parts and Service Association, TX.  
Banner Healthcare.  
Beatrice Chamber.  
Blinded American Veterans Foundation.  
Blinded Veterans Association.  
Brave Services.  
W.T. Butcher & Associates.  
California Manufacturers & Technology Association.  
Capital Home Realty.  
CBS Corporation.  
Center for Individual Freedom.  
Century Insurance.  
Cheyenne County Chamber, NE.  
Council for Citizens Against Government Waste.  
Crane Co.  
Crown Cork and Seal.  
CS Property Brokerage.  
Delta Mechanical.  
The Dow Chemical Company.  
H.E. Everson Company.  
Fleet Reserve Association.  
FMC Corporation.  
Freemont Area Chamber, NE.  
Ford Motor Company.  
S.A. Foster Lumber.  
G-I Holdings, Inc.  
Gage County Economic Development, Inc., NE.  
The Gasoline & Automotive Service Dealers of America, Inc.  
General Electric Company.  
General Motors Corporation.  
Georgia Industry Association.  
Grand Island Area Economic Development Corporation.  
Great American Insurance Company.  
Greater North Dakota Chamber of Commerce.  
Hanna Prime, Inc.  
Hedahls, Inc.  
Honeywell International Inc.  
Hurley Auto Parts.  
Illinois Manufacturers Association.  
Indiana Manufacturers Association.  
Industrial Fasteners Institute.

International Association of Heat & Frost Insulators & Asbestos Workers.

International Association of Plastics Distributors.

International Union of Painters and Allied Trades.

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America-UAW.

Irex Corporation.

Jewish War Veterans of the USA.

The Kansas Chamber of Commerce.

Kent Bork Consulting.

Lane McFerrin Partners.

Lansing Regional Chamber of Commerce, MI.

Les Schwab Tire Centers.

Linen King.

Louisiana Association of Business & Industry.

Louisiana Pulp and Paper Association.

Lumber Dealers Association of Connecticut.

MacDonald Direct Marketing, Inc.

McDermott International.

Marine Corps League.

Marketing and Promotion, Inc.

MetLife, Inc.

Michael Jordan Realty.

Michaels Menagerie.

Michigan Manufacturers Association.

Michigan Tooling Association.

Military Officers Association of America.

Military Order of the Purple Heart.

Motor Parts Distributors of Modesto, CA.

Nabholz Appraisal.

National Alliance of Wholesaler-Distributors.

National Association of Black Veterans.

National Association of State Directors of Veterans Affairs.

National Association of Uniformed Services.

National Black Chamber of Commerce.

Nebraska Chamber of Commerce & Industry.

Nebraska Lumber Dealers Association.

Nevada Manufacturers Association.

New Jersey Business & Industry Association.

Non-Commissioned Officers Association.

North Dakota National Federation of Independent Business.

Northern Colorado Legislative Alliance.

Ogallala/Keith Chamber, NE.

Ohio Manufacturers' Association.

Oregonians for Jobs and Power.

Owens-Illinois, Inc.

Pfizer Inc.

Paralyzed Veterans of America.

Paralyzed Veterans of America, Mid-America Chapter.

Pearl Harbor Survivors Association.

Pennsylvania Manufacturers' Association.

People Dynamics, Inc.

The Plumbers Association, AR.

Plumbing-Heating-Cooling Contractors Association of Nebraska.

Pneumo Abex LLC.

Preferred Utilities.

Realty Executives.

Red Drum Investments.

RPM International.

The Retired Enlisted Association.

RetireSafe.

River Country Economic Development, NE.

Sack Lumber.

Saint-Gobain Corporation.

Santa Fe Chamber of Commerce, NM.

Saulsbury Industries.

The Seniors Coalition.

Shreveport Rubber and Gasket.

Small Business & Entrepreneurship Council.

South Carolina Chamber of Commerce.

State Chamber of Oklahoma.

Steel Manufacturers Association.

Sterling Heights Area Chamber of Commerce, MI.

Tennessee Chamber of Commerce.  
 Textile Care Allied Trades Association.  
 USG Corporation.  
 U.S. Submarine Veterans, Inc.  
 U.S. Submarine Veterans Inc., RI Base.  
 U.S. Submarine Veterans WWII, Thames River Chapter.  
 U.S. Submarine Veterans WWII, Central CT Chapter.  
 U.S. Submarine Veterans, Inc., Groton Base.  
 Utah Manufacturers Association.  
 Veterans of Foreign Wars of the United States.  
 Veterans of the Vietnam War, Inc.  
 Wahoo Chamber, NE.  
 Waterloo Lending.  
 Whalen's Furniture.  
 Women Construction Owners & Executives, USA.  
 Women Entrepreneurs, Inc.  
 Women Impacting Public Policy.  
 Women in Military Service for America Memorial Foundation, Inc.  
 Wunderworks.

Mr. SESSIONS. Mr. President, I appreciate very much the leadership of the chairman. We have been working on this idea for quite a few years. I believe more strongly than ever that it is time to fix this broken system. I will talk about that more.

If the chairman does not mind, our colleague, Senator BEN NELSON from Nebraska, wanted 2 minutes.

I yield the floor, and I ask unanimous consent I be recognized after Senator NELSON.

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

(The remarks of Mr. NELSON are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the asbestos litigation in America today is out of control. We have been working on fixing it for years. In a previous life, I represented two plaintiffs, people who were injured from asbestos, seriously injured, and adversely affected in their health. I was embarrassed by how long it took, and by how many fees and costs came out of those cases. I have been embarrassed over the years to see this spasm in our legal system continue daily, not dispensing justice in a fair and legitimate way.

We know from a Rand study and from our own experience that 58 percent of the money paid out by these defendants does not go to the people who are sick; it goes to lawyers. Somebody made an interesting point—I believe it was Senator DURBIN—that actually a slightly higher percentage of money goes to defense lawyers than to the plaintiffs' lawyers. Regardless which side receives the money, over half of it is going to lawyers.

If you are sued for \$50 million and your corporation hires the best legal team possible and spends all this money, and there are court costs and depositions and fees for experts, it eats you up. When the judgments come out, often after years of work, very little money goes to the victim. It is not right. It is the worst performance by

the legal system, in my view—other than discrimination based on race in our past—since the founding of the Republic. This cannot be justified, although it is happening this very day in courts all over America.

Over 700,000 individuals have filed asbestos claims, and as many as 300,000 of those claims are pending today. The number of asbestos defendants started out at 300. These defendants were the people who made the asbestos, who shipped it out, who at some point became aware that asbestos was damaging to their health—they put no warnings on it—and just sent it out. Those people were the original asbestos defendants. The original plaintiffs were directly harmed by their actions. For example, my client was in a submarine, sawing asbestos with an electric saw in that confined space, breathing untold amounts of asbestos. By his early fifties, he was on oxygen. That is reality. That happened.

Today, we have people who worked in a repair shop who claim somehow the brakes had asbestos in them and are now responsible for a disease they may have. And it may not be true. The damage is much less in many of these instances than it was for my client and others like him. Yet under the current system, these shaky claims get compensated. We need to sift through this mess and create a system that will work.

Mr. President, \$70 billion has been spent today to resolve asbestos-related claims. Of course, less than half of that \$70 billion got to the victims. Companies are settling claims filed by people who are not sick because they cannot afford to litigate. It is just that simple. People who are not sick now are getting money as almost a nuisance or extortion payment because the lawyers are filing so many of these cases. It has been driving companies into bankruptcy at an alarming rate.

There were 19 asbestos bankruptcies filed in the 1980s. Seventeen were filed in the 1990s. Between 2000 and mid-2004, there were an astonishing 36 asbestos-related bankruptcy filings, amounting to more filings in the first half of this decade than in the prior two decades combined.

We hear a lot of people saying: I would rather sue and go through the court system than have this national fund. But there may not be a defendant to sue at this rate because 77 companies have gone bankrupt. With those bankruptcies, American workers have lost 60,000 jobs, costing up to \$200 million in lost wages.

The money, as I indicated, is not getting to the victims. Some beneficiaries of the Manville asbestos trust fund received as little as 5 cents on the dollar for their claims. If there is a \$1 million verdict and you get 5 cents on the dollar, how fair is that?

In my hometown of Mobile, AL, the Mobile Register, which has done a considerable, superb investigative effort into some of the abuses in this system

which are prominent along the gulf coast because we have a lot of asbestos exposure in the shipyard industry, said:

The biggest beneficiaries of the asbestos-related lawsuits tend not to be people with health problems, but the lawyers and the for-profit lung testing companies they hire.

There has been a tremendous scandal over that. One courageous Federal judge has blown the whistle on it and perhaps broken that system up. But it is just one more example of the many abuses in the current system.

Now, the U.S. Supreme Court has seen this matter from the perspective of the legal system. They are looking down at the 300,000 claims that are pending all over America. They are seeing that things are not going as they should. So in 1991, the Judicial Conference Committee—this is the judges' committee that represents all the Federal judges in America, appointed by the Chief Justice of the United States—said the asbestos situation had "reached critical dimensions." Then they went on to say that the courts were "ill-equipped" to address these mass claims in any effective manner. This statement was significant because the Judicial Conference Committee does not write us very often about things like this.

In *AmChem Products v. Windsor*, in 1997, Justice Ginsburg, writing for the Supreme Court—I will note parenthetically that Justice Ginsburg, who was an ACLU lawyer, one of the more activist members of the Court, and certainly not a shill for the business industry—said this:

The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution.

The Supreme Court has in essence issued what is a challenge, a plea to us, really.

In *Ortiz v. Fibreboard Corp.*, Justice Souter, on the Supreme Court, said this:

The elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation. . . .

S. 852 is a response to the Supreme Court's concerns. The bill establishes a \$140 billion trust fund, privately funded, for the purpose of directing compensation to the individuals suffering identifiable injuries as they result from asbestos exposure. Instead of waiting years for their claims to go through the tort system, the trust fund will allow legitimate asbestos victims to be compensated faster and on a no-fault basis, meaning that the claimants no longer have to go into court and have a trial to prove that their injuries are the result of negligence or fault on another party; they just make a claim and get paid based on the severity of injury. They do not have to prove causation or negligence.

For asbestos victims who are the most ill, like those with mesothelioma, the bill provides for an expedited

claims process and payment system. It is really expedited. Fifty percent of the \$1.1 million a person with meso will be entitled to receive will be paid within 30 days, and the rest in 6 months.

Now, we have seen in the paper, we have heard here on the floor, and we have heard from people who have come to the Hill, like widows of persons who have died from mesothelioma, just how long it takes to get compensation under the tort system. Meso is a deadly disease that is, indeed, connected to asbestos. Of that I think there is little dispute. That is why this legislation says that if you have mesothelioma and you have been exposed to asbestos, you walk in with a doctor and they will pay you \$1.1 million, and you do not even need a lawyer. You get all of your compensation, and you do not have 60 percent of the money taken out for fees and costs, and the money will be paid promptly. Isn't that the way the system should work?

But we have had these widows and other victims coming here, telling us how long it takes to get their money. I began to think about it a little bit—I know Senator SPECTER has had the opportunity to deal with this issue, too—and how sad it is to see people who have been widowed as a result of asbestos. Let me say this. Widows are coming here asking for payment as the result of the death of a loved one because they have not yet gotten their money. Why haven't they been paid? Because it takes years in the current system to bring the case to judgment, and then there is only partial judgment. Some defendants settle, some do not settle, and the cases go on. And the people with fatal diseases such as mesothelioma die before the case is ever concluded. I am telling you that is the way it works in the real world. That will end with this process.

We have the ability to create in this Senate a legal scheme for handling these cases that will end a system where the real victims get pennies on the dollar and individuals with no real injuries clog up the system or get windfalls. It will end a system where lawyers are the big winners, often walking away with more than half the proceeds.

The FAIR Act will provide greater certainty to victims, defendant companies, and insurers. Under the fund, victims will be paid on a set schedule, according to their proven illness. Defendant companies and insurers will contribute a set amount of money to the fund on a predetermined timetable, allowing them to move forward and plan for their financial future. The money will go to victims, not to overhead and attorneys.

The Democratic leader has said this is some sort of corrupt process, and those who want to fix this system are somehow coming here with less than clean hands, that their judgment is clouded by K Street or money. I would ask the Democratic leader to defend this system, if you will. Come here and

justify what is going on in the courts of America.

Dickey Scruggs, who lives not too far from my hometown of Mobile, AL, was the architect of the asbestos litigation. He started the cases, and he established the legal principles that led to all of these suits around the country. He came with Senator SPECTER the other day and said it is time to bring it to an end, that this is not a legitimate legal process anymore. It is not working effectively. It is an embarrassment to us all.

It is an embarrassment to me that Congress cannot fix a system where billions of dollars are being paid out, billions of dollars—\$70 billion already, and 60 percent of it does not go to the victims. What kind of legal system is that?

Now, we have a lot of businesses that are opposing the legislation. I would suspect their views are that they have gotten a calculator out and they have had their accountants and lawyers get together, and they have calculated that they may not pay as much under the current system as under this bill, so they do not want the bill to pass.

We have plaintiffs' lawyers who are out there making millions of dollars every day on this system. And there are defense lawyers also making millions of dollars on this system. They object to the legislation because they have a special interest in it.

But we are Senators. We represent the public interest. We have a duty and an obligation to defend this American legal system, and to make sure the legal system has integrity. We are entitled and have a responsibility to superintend it. When we see things in the system that are plainly wrong, it is our responsibility to fix them. That is what we are setting about to do with this bill. It is not easy. I do not deny that.

We will continue to listen to the legitimate complaints of those who feel somehow this system will not be fair to them, and continue to make adjustments.

Senator SPECTER, Senator LEAHY, and others have—we have all promised to do that, to try to, in good faith, work in that way. But, again, our responsibility is not to plaintiffs' lawyers, who poured millions of dollars in campaign contributions to one side or another in these races, or businesses that pour out large contributions. What is that? Our responsibility is to integrity and to propriety and to justice. Justice is not being done in these cases. Dickey Scruggs himself says it should end. He supports this legislation. Does anybody say he does not care about victims? He has represented thousands of them, tens of thousands of them.

I am glad to work with Chairman SPECTER and the others in support of this bill. I believe his work on it comes from the highest motives, the purest motives. We can disagree on the tactics, but it is offensive to me that we have Senators on this floor suggesting

that an effort to end this abusive and unjust system is somehow, in itself, a corrupt act. That is not true.

Senator SPECTER and Judge Becker of the Third Circuit Court of Appeals, a senior judge and capable person, have had meetings all over this country, listening to everybody who has an interest in this matter. Senator SPECTER has spent hours in these meetings—days, weeks, months, even. Senator HATCH, as chairman of the Judiciary Committee before Senator SPECTER, has also worked tirelessly to accommodate concerns.

For years we have been working on this legislation. It is an open process. The bill is out there. If it needs to be improved, I support that and will listen to that effort. But I do not think we need to drop the ball now. We are moving forward toward the goal line. We have an opportunity to provide relief to victims in a way that cannot help but be helpful to them, but they may not know that.

I am getting calls from victims, and they are saying things with written messages their trial lawyers have given them to say. It breaks my heart. To think, I used to be representing victims, so I know a little bit about this matter. I am sympathetic to them. They do not know. They have no idea this system is going to provide more money for victims, quicker and faster, with less cost than the current system. They are hearing it only from one side—their lawyer's.

So it is up to us to do the right thing and not play politics, not lose our nerve at this point in history.

I am glad to see Senator SPECTER here. If he would allow me, I wish to take a couple minutes at this point to say a few words on the passing of Coretta Scott King.

I say to Chairman SPECTER, if you wish to comment, I did want to have a few minutes to express my thoughts on the funeral today of Coretta Scott King.

Mr. SPECTER. Mr. President, if the Senator from Alabama will yield to me for a very brief comment about his presentation before moving on, I wish to thank him for those comments. I think he has accurately described the serious problem caused by asbestos in this country in terms of injuring workers, injuring people who are exposed to asbestos who are not workers but from materials carried home, the tremendous impact on the economy, the bankruptcies.

He has addressed in a very forceful way the spurious, unmeritorious allegation about lobbyists having bought their way on to the floor with this bill. I appreciated all of his speech, but I especially appreciated the passion there.

I ask unanimous consent that the printed RECORD reflect the passion. The printer is going to have to figure out some way to reflect the passion.

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

Mr. SPECTER. Is that unanimous consent request granted, Mr. President?



The PRESIDING OFFICER. I took it as such, and I granted it.

Mr. SPECTER. Good. But it was a terrific speech, I say to Senator SESSIONS, and I thank you for it and thank you for your leadership on this bill generally and for your strenuous, hard work and leadership on the Judiciary Committee.

Mr. SESSIONS. Thank you, I say to Senator SPECTER. You put your heart and soul into this effort. Nobody should think the effort you have gone forward with, and that Senator HATCH and Senator LEAHY and Judge Becker and others have gone forward with, is for any other purpose than trying to make this system better. We absolutely can improve the system. It is within our grasp to do so. If we cannot pass legislation that takes the 58 percent of compensation that is currently not getting to the victims and allow those victims to have larger amounts of money, it is our fault. We are pretty incompetent.

CORETTA SCOTT KING

Mr. SESSIONS. Mr. President, I want to take a moment to express some thoughts about the death of Coretta Scott King. She grew up in Perry County, AL. Her father ran a country store as did mine.

Mrs. King, in so many ways, epitomized the good background that she had and where she was raised. She carried those values forward throughout her life. She graduated from Lincoln High School in Marion, AL. It was an all-Black high school that educated the offspring of former slaves from 1867 and 1970. The late Jean Childs Young, wife of former Atlanta Mayor Andrew Young, was another distinguished Lincoln graduate.

After high school, where she was valedictorian of the Class of 1945, Mrs. King accepted a scholarship to Antioch College in Ohio, where she studied the violin, singing, and piano. After graduating from Antioch, she accepted a scholarship to attend the New England Conservatory of Music in Boston, where she met her future husband Martin, who was also a student in Boston.

They got married in 1953 and the very next year, they were at Dexter Avenue Baptist Church, within sight of the State Capitol of the State of Alabama. It was at this time that she and Dr. King came to know Rosa Parks, whose refusal to give up her seat on a Montgomery bus led to the civil rights movement. Rosa Parks was arrested and the Montgomery bus boycott ensued, sparking a movement to ensure that all citizens were treated equally under the law.

Dr. and Mrs. King and Rosa Parks truly changed a system that could not be defended. It was a system that treated people, because of the color of their skin, as second-class citizens and not equal. It was not a defensible system morally or legally.

Judge Frank Johnson got the bus boycott case, and he ruled that the equal protection clause of the U.S.

Constitution said people should be treated equally. Requiring someone to go to the back of the bus, despite a State statute to the contrary, did not represent equality. It was unconstitutional. The Supreme Court agreed, and that gave a real boost to the civil rights movement.

During her 78 years, Mrs. King represented the kind of character and integrity and commitment to right living that should inspire us all. And she has given her best full measure. She has seen the toils and snares of life. She moved through them through her full and complete time on this Earth. She has run the race and is fully entitled to the rewards of that successful race.

It is my honor and privilege to express, on behalf of the people of Alabama, my sympathy to the King family, to wish them well and to say to them how our State, our Nation, and, indeed, the world is better off for the courage they displayed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I associate myself with the eloquent remarks of the Senator from Alabama with respect to Coretta Scott King. I appreciate the opportunity to listen.

WARRANTLESS WIRETAPS

Mr. FEINGOLD. Last week the President of the United States gave his State of the Union Address, where he spoke of America's leadership in the world and called on all of us to "lead this world toward freedom." Again and again, he invoked the principle of freedom and how it can transform nations and empower people around the world.

Almost in the same breath, the President openly acknowledged that he has ordered the Government to spy on Americans on American soil without the warrants required by law. The President issued a call to spread freedom throughout the world, and then he admitted he has deprived Americans of one of their most basic freedoms under the fourth amendment—to be free from unjustified Government intrusion.

The President was blunt. He said he had authorized the NSA's domestic spying program, and he made a number of misleading arguments to defend himself. His words got rousing applause from Republicans and I think even from some Democrats.

The President was blunt so I will be blunt. This program is breaking the law, and this President is breaking the law. Not only that, he is misleading the American people in his efforts to justify this program.

How is that worthy of applause? Since when do we celebrate our Commander in Chief violating our most basic freedoms and misleading the American people in the process? When did we start to stand up and cheer for breaking the law? In that moment at the State of the Union, I felt ashamed.

Congress has lost its way if we don't hold this President accountable for his actions. The President, of course, sug-

gested that anyone who criticizes his illegal wiretapping program doesn't understand the threat we face. But we do. Every single one of us is committed to stopping the terrorists who threaten us and threaten our families. Defeating the terrorists is our top national priority. And we all agree that we need to wiretap them to do it. We all agree on that. In fact, it would be irresponsible not to wiretap terrorists. But we have yet to see any reason at all why we have to trample the laws of the United States to do it.

The President's decision that he can break the law says far more about his attitude toward the rule of law than it does about the laws themselves. This goes way beyond party and way beyond politics. What the President has done is to break faith with the American people.

In the State of the Union, he also said that we must always be clear in our principles "to get support from our friends and allies that we need to fight terrorism."

So let's be clear about a basic American principle: When someone breaks the law, when someone misleads the public in an attempt to justify their actions, they need to be held accountable. The President of the United States has broken the law. The President of the United States is trying to mislead the American people, and he needs to be held accountable.

Unfortunately, the President refuses to provide any real details about this domestic spying program. Not even the full Intelligence Committees know the details, and they were specifically set up to review classified information and oversee the intelligence activities of our Government. Instead, the President says, basically: Trust me.

Unfortunately, this is not the first time we have heard this. In the lead up to the Iraq war, the administration went on the offensive to get the American public, the Congress, and the international community to believe its theory that Saddam Hussein was developing weapons of mass destruction and even that he had close ties to al-Qaida and was somehow involved in 9/11. The President painted a dire and inaccurate picture of Saddam Hussein's capability and intent, and we invaded Iraq on that basis. To make matters worse, the administration misled the country about what it would take to stabilize and reconstruct Iraq after the conflict. We were led to believe that this was going to be a short endeavor and that our troops would be home soon.

We all recall the President's "mission accomplished" banner on the aircraft carrier on May 1, 2003. In fact, the mission was not even close to being complete. More than 2,100 total deaths have occurred after the President declared an end to major combat operations in May of 2003, and over 16,600 American troops have been wounded in Iraq. The President misled the American people and grossly miscalculated the true challenge of stabilizing and rebuilding Iraq.

In December, we found out that the President has authorized wiretaps of Americans without court orders required by law. He says he is only wiretapping people with links to terrorists. But how do we know? How do we know? We don't. The President is unwilling to let a neutral judge make sure that that is the case. He will not submit this program to an independent branch of Government to make sure he is not violating the rights of law-abiding Americans.

I don't want to hear again that this administration has somehow shown that it can be trusted. It hasn't. That is exactly why the law requires a judge to review these wiretaps. It is up to the Congress to hold the President to account. We held a hearing on the domestic spying program in the Judiciary Committee yesterday, where Attorney General Gonzalez was a witness. We expect there will be other hearings. That is a start. But it will take more than hearings to get the job done. We know that, in part, because the President's Attorney General has already shown a willingness to mislead Congress.

At the hearing yesterday, I reminded the Attorney General about his testimony during his confirmation hearings in January 2005, when I asked him whether the President had the power to authorize warrantless wiretaps in violation of criminal law. We didn't know it then, but the President had authorized the NSA program 3 years before, when the Attorney General was the White House counsel. At his confirmation hearing, the Attorney General first tried to dismiss my question as "hypothetical." He then testified that "it is not the policy or the agenda of the President to authorize actions that would be in contravention of our criminal statutes."

Wiretapping American citizens on American soil without the required warrant is in direct contravention of our criminal statutes. The Attorney General knew that, and he knew about the NSA program when he sought the Senate's approval for his nomination to be Attorney General. He wanted the Senate and the American people to think that the President had not acted on the extreme legal theory that the President has the power, as Commander in Chief, to disobey the criminal laws of this country. But he had.

The Attorney General had some explaining to do, and he didn't do it yesterday. Instead, he parsed words, argued that what he said was truthful because he didn't believe that the President's actions violated the law.

The Attorney General knew what I was asking. He knew he was misleading the committee in his response. If he had been straightforward, he would have told the committee that in his opinion, the President has the authority to authorize warrantless wiretaps. My question wasn't about whether such illegal wiretapping was going on. Similar to almost everybody else in Congress, I didn't know about the program

then. It was a question about how the nominee to be the Attorney General of the United States viewed the law. This nominee wanted to be confirmed. So he let a misleading statement about one of the central issues of his confirmation, his view of Executive power, stay on the record until the New York Times revealed the program.

The rest of the Attorney General's performance at yesterday's hearing certainly did not give me any comfort either. He continued to push the administration's weak legal arguments, continued to insinuate that anyone who questions this program doesn't want to fight terrorism, and he refused to answer basic questions about what powers this administration is claiming.

We still need a lot of answers from this administration. Let's put aside the Attorney General for now. The burden is not just on him to come clean. The President himself has some explaining to do. The President's defense of his actions is deeply cynical, deeply misleading, and deeply troubling. To find out that the President of the United States has violated the basic rights of the American people is chilling. And then to see him publicly embrace his actions and to see so many Members of Congress cheer him on is appalling.

The President has broken the law. He has made it clear that he will continue to do so. But the President is not a king, and the Congress is not a king's court. Our job is not to stand up and cheer when the President breaks the law. Our job is to stand up and demand accountability, stand up and check the power of an out-of-control executive branch.

That is one of the reasons the Framers put us here—to ensure balance between the branches of Government, not to act as a professional cheering section. We need answers, because no one—not the President, not the Attorney General, and not any of their defenders in this body have been able to explain why it is necessary to break the law to defend against terrorism. I think that is because they cannot explain it.

Instead, this administration reacts to anybody who questions this illegal program by saying that those of us who demand the truth and stand up for our rights and freedoms have a pre-9/11 view of the world. In fact, the President has a pre-1776 view of the world. That is the problem. Our Founders lived in dangerous times, and they risked everything for freedom. Patrick Henry said, "Give me liberty or give me death." The President's pre-1776 mentality is hurting America. It is fracturing the foundation on which our country has stood for 230 years.

The President cannot just bypass two branches of Government and obey only those laws he wants to obey, deciding unilaterally which freedoms still apply in the war against terrorism. That is unacceptable and needs to be stopped immediately.

Let's examine some of the President's attempts to defend his actions.

His arguments have changed over time because none of them hold up even under casual scrutiny. So he cannot rely on one single explanation. As each argument crumbles beneath him, he moves on to a new one, until that is, too, debunked, and on and on he goes.

In the State of the Union, the President referred to Presidents in American history who cited executive authority to order warrantless surveillance. But of course those past Presidents, as Wilson and Roosevelt, were acting before the Supreme Court decided in 1967 that our communications are protected by the fourth amendment, and before Congress decided in 1978 that the executive branch can no longer unilaterally decide which Americans to wiretap. The Attorney General yesterday was unable to give me one example of a President who, since 1978 when FISA was passed, has authorized warrantless wiretaps outside of FISA.

So that argument is baseless, and it's deeply troubling that the President of the United States would so obviously mislead the Congress and American public. That hardly honors the Founders' idea that the President should address the Congress on the state of our union.

The Foreign Intelligence Surveillance Act was passed in 1978 to create a secret court, made up of judges who develop national security expertise, to issue warrants for surveillance of terrorists and spies. These are the judges from whom the Bush administration has obtained thousands of warrants since 9/11. The administration has almost never had a warrant request rejected by those judges. They have used the FISA Court thousands of times, but at the same time they assert that FISA is an "old law" or "out of date" and they can't comply with it. Clearly, they can and do comply with it except when they don't. Then they just arbitrarily decide to go around these judges, around the law.

The administration has said that it ignored FISA because it takes too long to get a warrant under that law. But we know that in an emergency, where the Attorney General believes that surveillance must begin before a court order can be obtained, FISA permits the wiretap to be executed immediately as long as the Government goes to the court within 72 hours. The Attorney General has complained that the emergency provision does not give him enough flexibility, he has complained that getting a FISA application together or getting the necessary approvals takes too long. But the problems he has cited are bureaucratic barriers that the executive branch put in place and could easily remove if it wanted.

FISA also permits the Attorney General to authorize unlimited warrantless electronic surveillance in the United States during the 15 days following a declaration of war, to allow time to consider any amendments to FISA required by a wartime emergency. That

is the time period that Congress specified. Yet the President thinks that he can do this indefinitely.

In the state of the union, the President also argued that Federal courts had approved the use of Presidential authority that he was invoking. But that turned out to be misleading as well. When I asked the Attorney General about this, he could point me to no court—not the Supreme Court or any other court—that has considered whether, after FISA was enacted, the President nonetheless had the authority to bypass it and authorize warrantless wiretaps. Not one court. The administration's effort to find support for what it has done in snippets of other court decisions would be laughable if this issue were not so serious.

The President knows that FISA makes it a crime to wiretap Americans in the United States without a warrant or a court order. Why else would he have assured the public, over and over again, that he was getting warrants before engaging in domestic surveillance?

Here's what the President said on April 20, 2004:

Now, by the way, any time you hear the United States Government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so.

And again, on July 14, 2004: "The Government can't move on wiretaps or roving wiretaps without getting a court order."

The President was understandably eager in these speeches to make it clear that under his administration, law enforcement was using the FISA Court to obtain warrants before wiretapping. That is understandable, since wiretapping Americans on American soil without a warrant is against the law.

And listen to what the President said on June 9, 2005:

Law enforcement officers need a Federal judge's permission to wiretap a foreign terrorist's phone, a Federal judge's permission to track his calls, or a Federal judge's permission to search his property. Officers must meet strict standards to use any of these tools. And these standards are fully consistent with the Constitution of the U.S.

Now that the public knows about the domestic spying program, he has had to change course. He has looked around for arguments to cloak his actions. And all of them are completely threadbare.

The President has argued that Congress gave him authority to wiretap Americans on U.S. soil without a warrant when it passed the authorization for use of military force after September 11, 2001. Mr. President, that is ridiculous. Members of Congress did not think this resolution gave the President blanket authority to order these warrantless wiretaps. We all know that. Anyone in this body who would tell you otherwise either wasn't here at the time or isn't telling the truth. We authorized the President to

use military force in Afghanistan, a necessary and justified response to September 11. We did not authorize him to wiretap American citizens on American soil without going through the process that was set up nearly three decades ago precisely to facilitate the domestic surveillance of terrorists—with the approval of a judge. That is why both Republicans and Democrats have questioned this theory that somehow the Afghanistan resolution permitted this sort of thing.

This particular claim is further undermined by congressional approval of the PATRIOT Act just a few weeks after we passed the authorization for the use of military force. The PATRIOT Act made it easier for law enforcement to conduct surveillance on suspected terrorists and spies, while maintaining FISA's baseline requirement of judicial approval for wiretaps of Americans in the U.S. It is ridiculous to think that Congress would have negotiated and enacted all the changes to FISA in the PATRIOT Act if it thought it had just authorized the President to ignore FISA in the AUMF.

In addition, in the intelligence authorization bill passed in December 2001, we extended the emergency authority in FISA, at the administration's request, from 24 to 72 hours. Why do that if the President has the power to ignore FISA? That makes no sense at all.

The President has also said that his inherent executive power gives him the power to approve this program. But here the President is acting in direct violation of a criminal statute. That means his power is, as Justice Jackson said in the steel seizure cases half a century ago, "at its lowest ebb." A recent letter from a group of law professors and former executive branch officials points out that "every time the Supreme Court has confronted a statute limiting the Commander-in-Chief's authority, it has upheld the statute." The Senate reports issued when FISA was enacted confirm the understanding that FISA overrode any pre-existing inherent authority of the President. As the 1978 Senate Judiciary Committee report stated, FISA "recognizes no inherent power of the president in this area." And "Congress has declared that this statute, not any claimed presidential power, controls." Contrary to what the President told the country in the State of the Union, no court has ever approved warrantless surveillance in violation of FISA.

The President's claims of inherent executive authority, and his assertions that the courts have approved this type of activity, are baseless.

The President has argued that periodic internal executive branch review provides an adequate check on the program. He has even characterized this periodic review as a safeguard for civil liberties. But we don't know what this check involves. And we do know that Congress explicitly rejected this idea of unilateral executive decisionmaking in this area when it passed FISA.

Finally, the President has tried to claim that informing a handful of congressional leaders, the so-called Gang of Eight, somehow excuses breaking the law. Of course, several of these Members said they weren't given the full story. And all of them were prohibited from discussing what they were told. So the fact that they were informed under these extraordinary circumstances does not constitute congressional oversight, and it most certainly does not constitute congressional approval of the program. Indeed, it doesn't even comply with the National Security Act, which requires the entire memberships of the House and Senate Intelligence Committee to be "fully and currently informed of the intelligence activities of the United States."

In addition, we now know that some of these Members expressed concern about the program. The administration ignored their protests. Just last week, one of the eight Members of Congress who has been briefed about the program, Congresswoman JANE HARMAN, ranking member of the House Intelligence Committee, said she sees no reason why the administration cannot accomplish its goals within the law as currently written.

None of the President's arguments explains or excuses his conduct or the NSA's domestic spying program. Not one. It is hard to believe that the President has the audacity to claim that they do. It is a strategy that really hinges on the credibility of the office of the Presidency itself. If you just insist that you didn't break the law, you haven't broken the law. It reminds me of what Richard Nixon said after he had left office: "Well, when the President does it that means that it is not illegal." But that is not how our constitutional democracy works. Making those kinds of arguments is damaging the credibility of the Presidency.

And what's particularly disturbing is how many Members of Congress have responded. They stood up and cheered. They stood up and cheered.

Justice Louis Brandeis once wrote:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

The President's actions are indefensible. Freedom is an enduring principle. It is not something to celebrate in one breath, and ignore the next. Freedom is at the heart of who we are as a Nation, and as a people. We cannot be a beacon of freedom for the world unless we protect our own freedoms here at home.

The President was right about one thing. In his address, he said "We love our freedom, and we will fight to keep it."

Yes, Mr. President. We do love our freedom, and we will fight to keep it.

We will fight to defeat the terrorists who threaten the safety and security of our families and loved ones. And we will fight to protect the rights of law-abiding Americans against intrusive Government power.

As the President said, we must always be clear in our principles. So let us be clear. We cherish the great and noble principle of freedom. We will fight to keep it, and we will hold this President and anyone who violates those freedoms accountable for their actions.

In a nation built on freedom, the President is not a king, and no one is above the law.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT *pro tempore*. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, there is a compelling need to reform the current asbestos litigation process. This process is not fair to workers, including many who have become ill through exposure to asbestos. There are people who are not impaired who have received compensation, and there are many claimants that have been injured by asbestos exposure who have not received compensation. It is not fair to businesses for a host of reasons. The status quo is not acceptable.

I do have several substantive issues with S. 852, The FAIR Act. I have spent a great deal of time over the past few months working with the sponsors of S. 852, including Senators SPECTER and LEAHY, seeking to make changes that would improve the bill from my perspective.

For instance, I wanted to see more money go to mesothelioma victims who have dependents and to ensure that in a budget neutral manner, the money didn't come from other terminally ill victims. The sponsors of the bill have agreed to support the following language to address my concerns:

The Administrator may increase awards for Level IX claimants who have dependent children so long as this provision is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

Another issue for me was to protect companies that might be required to contribute to an asbestos trust fund, and have their insurers contribute, but that have no assurance that the company's own claims will be satisfied. The sponsors have agreed to an added criteria which would allow a company to apply for a decreased payment for their annual assessment into the trust to protect again that outcome. That criteria would be:

When measured against the likely cost of past and potential future claims in the absence of the Act.

A third problem I wanted to see addressed related to companies that should not be required to participate in the asbestos trust fund because they have disposed of all of their known previous claims. The sponsors of the bill have agreed to support the following language to address my concern:

... subject to the discretion of the Administrator, [a company may] be exempt from any payment obligation if such defendant participant establishes with the Administrator that it has satisfied all past claims and that there is no reasonable likelihood in the absence of the Act of any future claims for whose costs the defendant participant might be responsible. . . .

A fourth issue that concerns me is in the area of attorney's fees in both (a) past cases that are moved into the trust fund from the tort system and (b) new administrative claims in the asbestos trust fund. The former situation could be highly unfair and even confiscatory while in the case of the latter the fee is so low as to constitute as a deterrent to both filing future claims and appeals. The sponsors of the bill have agreed to language relative to (b) that reads in part that attorneys will be able to "obtain a reasonable attorney's fee, which shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the individual's claim." My concern relative to (a) remains unaddressed.

I have additional concerns about S. 852. I am concerned about the current severability provision in the bill. There are many contentious issues in S. 852 that many observers expect will be litigated including the constitutionality of incorporating existing asbestos trust funds into this one. There are also restrictions on tort cases in this bill, which if triggered by the fund's nonviability will limit the possible venues for filing future asbestos claims. The availability of such restrictions may lead companies to resist payments to the fund, thereby contributing to its nonviability because they obtain restrictions on tort claims in that event. That is not a wise incentive. Therefore, I support a nonseverability clause for certain sections of the bill and the sponsors have indicated a willingness to consider it.

There are other issues that have been raised by a number of colleagues with this bill. Some of those issues include the constitutional issues involved in the of "taking" the existing asbestos trust funds; the lack of a contribution structure for the \$46 billion of insurance industry contributions; the special consideration given in this bill to the residents of one community; the lack of an adequate startup provision which would trigger a return to the tort system if the trust fund never gets going and the lack of an appropriate sunset trigger which would also provide for the fund to dissolve if claims go unpaid and allow people to go back to court.

Based on my discussions with the managers, I will support the motion to proceed to S. 852. My future position on the legislation will depend on the content of the bill after it is amended.

Mr. LEAHY. Mr. President, this evening, Senators will finally have the opportunity to vote to consider legislation which has been publicly debated and considered for several years. It is a bipartisan bill that is the product of lengthy and conscientious negotiation. We have held dozens of public hearings and committee markups. It has been an exemplary process.

I see the distinguished Senator from Pennsylvania in the Chamber. He has arranged—I have lost count of the number of meetings where people from across the spectrum, political and otherwise, have had a chance to be heard—businesses, victims, labor, industry, everybody. It has been a great process. But with every day we delay consideration of this bill, victims are dying and more companies are going bankrupt. Both are tragedies for the families and victims, as well as for the workers and retirees and for the families who built these companies.

The time has now come to pass this legislation. Victims have been waiting long enough for a comprehensive national solution. I hope all Senators will support the motion to proceed to this legislation. It has earned the support of many organizations that represent the victims of serious asbestos exposures.

Asbestos disease has tragically weighed heavily on one group in particular—our Nation's war veterans. These brave veterans are unable to receive compensation under our current system, and they have asked Members of Congress—both parties—over and over again for help. The Military Order of the Purple Heart noted in its last letter of support that "the FAIR Act is the only viable solution for sick veterans."

We all speak of our support of veterans, as we should; all Americans should. That should not be partisan. But here is one way to help a class of veterans who are not going to get any help otherwise.

More than 30 organizations representing veterans, as I noted on the floor yesterday, have supported this piece of legislation. But we have also received renewed letters of support from the International Association of Heat and Frost Insulators and Asbestos Workers Union, the International Union of United Automobile, Aerospace and Agricultural Implement Workers, otherwise known as the UAW, and the International Union of Painters and Allied Trades. They represent literally hundreds of thousands of families who have suffered. They support this because, as they say, they are "firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases."

It has not been easy getting to this point. It has taken years and years of

work. It is not line for line the bill I would have written; it is not line for line the bill the distinguished Senator from Pennsylvania, Mr. SPECTER, would have written. Both of us went in with the idea that we would find a bill that would get the broadest support possible but also a bill that would help as many victims as possible. I believe this does it.

Think of what is going to happen if you are going to have thousands of people who never get help and dozens more companies go bankrupt on top of the 70 that have already gone bankrupt.

Supreme Court Justices as diverse in philosophy as the late Chief Justice William Rehnquist and Justice Ruth Bader Ginsburg have pled, publicly pled with the Congress to come up with legislation to solve this problem. Right now, litigation—many times—helps only those litigators, both defense and plaintiff, and very little help to the companies or the victims.

The problems we are addressing are complex. This bill necessarily reflects these complexities. Drafting was not easy. The compromises we had to make were difficult but necessary to ensure that we created a trust fund that would provide adequate compensation to the thousands of workers who have suffered and continue to suffer the devastating health effects of asbestos.

The tragic history of asbestos use in our country has to come to an end. We Senators first and the other body next have the chance to bring this to an end. The President has said he would sign such legislation if we can pass it. This is not a Democratic or Republican issue; this is an issue for all Americans.

I join with the President, I join with my Republican colleagues, and I join with my Democratic colleagues who have supported this. In fact, under a provision authored by Senator MURRAY of Washington State which we have included, which was accepted during the last Congress by the Judiciary Committee, this bill will ban the maintenance and distribution of asbestos. This whole thing can come to an end so victims can get help.

We have to halt the harm asbestos creates, and we have to ameliorate the harm it has already caused. The industrial and insurer participants in the trust fund will gain the benefits of financial certainty and relief from the stresses of litigation in the tort system, and victims will have a quicker and more efficient path to recovery.

Chairman SPECTER, Senator FEINSTEIN, Senator BAUCUS, and my colleagues from both sides of the aisle on the Judiciary Committee are working hard with me on this bipartisan legislation. Let this go forward today. Let us bring this to a halt. Help us bring sur-ety.

I urge Senators to let us move toward solving this problem by considering our bipartisan bill to at long last help solve the asbestos problem by providing fair compensation to victims of asbestos exposure.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Vermont, the ranking member on the Judiciary Committee, for his comments. I compliment him on his comments and on his work on the asbestos bill—on his entire career in the U.S. Senate, 31 years, but especially in the past year and 1 month, 13 months, where he and I have been ranking member and chairman of the Judiciary Committee, and the cooperation which we have had. We have had some disagreements, but very few, and when there have been disagreements, they have been on matters of policy as opposed to anything to undercut the collegiality of the work of the Judiciary Committee. I can think of some votes—there are bound to be differences on votes—but I think we have carried the committee a long way with class action, bankruptcy, and moving through the disagreements and filibuster versus the nuclear option on the circuit judges and Chief Justice Roberts and Justice Alito not all agreements but in large measure—and then coming to the asbestos bill, which has been as tough as any legislation I have ever seen.

I made a statement yesterday which may have been a little excessively sweeping, but the asbestos bill is a complicated bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the time between 5:40 and 5:50 is reserved for the Democratic leader, and 5:50 until 6:00 is reserved for the majority.

Mr. SPECTER. Mr. President, I ask unanimous consent that I have the last 10 minutes as the surrogate of the majority leader. I will yield and conclude my comments when my time comes.

Mr. LEAHY. Mr. President, will the distinguished Democratic leader allow me 20 seconds to refer to what the distinguished Senator from Pennsylvania just said?

Mr. President, the distinguished Senator from Pennsylvania is my friend—a friend from the days when we were prosecutors together. I am very touched by what he said. The Judiciary Committee handles some of the most difficult issues there are. I enjoy working with him because of his own ability and because of that friendship.

The ACTING PRESIDENT pro tempore. The Democratic leader.

Mr. REID. Mr. President, will my 10 minutes start running from this time?

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

Mr. REID. Mr. President, we have a crisis facing the American people, a

crisis which causes the death of 10,000 people each year. In addition to the 10,000 deaths each year, hundreds of thousands of people are suffering from lung conditions that are most debilitating.

The crisis which confronts us is not an asbestos litigation crisis; it is an asbestos-induced disease crisis. We are told by experts that the problem will get worse, not better. It will peak about 10 years from now. Litigation has not caused the deaths, the pain, the suffering, the lost wages, the medical bills; asbestos has caused the deaths and the suffering.

I have said on a number of occasions—I say it today—that of course I would support a fair and equitable piece of legislation, legislation which would favor the victims, not a few very large corporations.

Senators LEAHY and SPECTER have worked very hard on this legislation and on things they do on the Judiciary Committee. I understand that. But hard work doesn't always lead to good legislation.

I have served in Congress 24 years. There may be an occasion when Senator LEAHY and I have voted opposite one another; I just do not remember when that was. We virtually agree on everything we do. So I am sorry that on this piece of legislation we must disagree.

Powerful corporate interests have fought throughout this process to escape responsibility—a paradigm shift from what they should pay to what they are willing to pay. This is not the American way. The bill before us is based on faulty and questionable guesses, not estimates. To make it even worse, little relevant information has been made public.

The legislation before the Senate is unfair to the victims, to the veterans—they would be much better off without this legislation—to the insurance industry, most businesses, the American taxpayer, and, of course, our judicial system. I rise again to express my strong opposition to the asbestos bill before the Senate. As I have just said, it is unfair to victims, veterans, the insurance industry, most businesses, and, of course, the American taxpayers.

I oppose this legislation because it will not buy justice regarding asbestos exposure. It deprives victims of their legal rights and gives them a trust fund that will not work and will not provide adequate compensation. One would have to search long and hard to find a bill, in my opinion, as bad as this.

Asbestos disease kills thousands of Americans every year—10,000 to be exact. The cases of disease and death caused by asbestos exposure are not abstractions. I have received countless letters from victims of asbestos-related diseases and their families. Each shares another story of loss and pain.

All the leading organizations representing asbestos victims oppose this bill—the Committee to Protect Mesothelioma Victims, asbestos disease

awareness organizations, the Asbestos Victims Organization. The White Lung Association wrote a letter February 1 to me and to Senator FRIST. It said:

We do not want this proposed government policy forced upon us. We believe the program will fail to treat victims fairly while benefitting the very companies that cause the problem.

It was for the sake of these victims that today I introduced a Senate resolution designating April 1 of this year as National Asbestos Awareness Day. Introducing this resolution was one small step in an effort to raise awareness of this dangerous substance and the painful effects that exposure to asbestos has caused throughout the country.

It is my hope that designating another National Asbestos Awareness Day will serve as a reminder that exposure to asbestos remains a very bad problem in this country. Asbestos-induced illnesses continue to kill or disable Americans at alarming rates. Our resolve to adequately protect the rights of these victims must not falter.

One thing we should do for asbestos victims is to defeat the flawed legislation now before the Senate. Approximately 150,000 individual victims of asbestos exposure and their families have petitioned the Senate to communicate their opposition to this legislation. I have a few of the 150,000 names. We have boxes and boxes of these petitions. These petitions say:

We, the undersigned, hereby petition the United States Senate on behalf of the victims of asbestos poisoning.

We are the victims of asbestos poisoning and families and friends of the victims who are opposed to Senate bill 852, the "FAIR ACT."

Although the Bill's Senate sponsors intend to help victims, this bill only helps a few large companies at the expense of the victims of asbestos poisoning and most businesses.

In addition to our opposition, we observe that the bill is also opposed by most insurance companies, numerous businesses, and most labor unions.

The reasons we oppose S. 852 are as follows:

(1) The bill does not provide a reliable mechanism for providing compensation quickly to the victims of asbestos poisoning. If anything, the Bill backtracks on protections already promised by the Senate in an earlier version which passed in the Judiciary Committee with substantial bipartisan support.

(2) If the Trust Fund runs out of money, as predicted by some experts, the Bill does not contain reliable sunset provisions. Victims will be left in limbo.

(3) In many instances, the compensation for victims is far less than victims' actual damages and far less than we currently receive in the judicial system.

(4) The Bill allows companies to renege on settlement commitments and settlement trust amounts already promised and set aside for victims and their families.

(5) The Bill does not have reliable, transparent funding mechanisms. Instead, it sets up a complex system of administrative challenges and court challenges that will allow companies to contest their funding obligations.

(6) Contrary to prior Senate commitments contained in earlier versions of the Bill, this

Bill will stop the current system of compensation before an up and running reliable system is established to take its place.

(7) This Bill was written to benefit a group of companies who have spent a fortune lobbying for its passage to the detriment of other companies and insurers who have promised to fight the Bill in the courts. This will result in further delays all to the further detriment of all victims of asbestos poisoning.

Mr. President, there are 150,000 signatures with their names and addresses. I will not ask it be made part of the record, of course.

I will use leader time now. I mentioned yesterday on the Senate floor that there were some businesses that were not being treated fairly. I mentioned them by name, and I will run over a couple of them again: Foster Wheeler Company, an international engineering and construction company with 4,000 U.S. employees, has stated in recent SEC filings the company does not expect to fund any asbestos-related costs from the company's cash flow. Yet as a Tier II defendant participant would be required to pay at least \$19.5 million per annum into the trust fund. This requirement, along with the separation of the company from its insurance assets, jeopardizes its long-term financial viability.

The A.W. Chesterton Company, founded in 1884, would also file bankruptcy. They have 2,000 employees.

Hopeman Brothers, in Waynesboro, VA, is still privately owned by the Hopeman family. It has finished the interiors and outfitted ships since it first worked in Sun Shipyard in Chester, PA, in 1916. Hopeman bought significant liability insurance, much of which remains unused today. Stripping Hopeman of its insurance coverage and then imposing a cash-pay obligation will drive the company into bankruptcy.

Okonite Company, founded in 1876, is the only company in America that makes wire. They will be forced to file bankruptcy if this bill passes.

These are only four of hundreds and hundreds of companies that will be forced into bankruptcy.

Each one of the 150,000 signatories on these petitions are a real concern. Each one of the 10,000 Americans who will die from asbestos exposure this year have tragic stories. Each will leave behind a family which will never be whole again. Each one is counting on us in the Senate to preserve their right to obtain compensation for the harm caused to them and their families by asbestos exposure, just as these companies want fairness.

Opposition to the FAIR Act is not limited to individual victims. Many workers have been exposed to asbestos, as I outlined yesterday, and their unions have been fighting to ensure fair treatment for them. Virtually every major union has concluded that this bill does not meet the needs of their workers: The AFL-CIO, the Change to Win Federation, Steelworkers, International Brotherhood of

Boilermakers, Laborers International, and on and on.

Beyond unions, most small- and medium-sized businesses oppose this bill, as do the vast majority of insurance companies. They know it will not work.

This bill deprives victims of their legal rights and replaces the tort system with a trust fund that is doomed to failure. Experts who have reviewed the bill conclude that the trust fund will be underfunded and will quickly become insolvent.

This morning, the Bates White Research Firm, a prominent, eminent consulting firm offering services to Fortune 500 companies and government agencies—Dr. Bates developed a computer model of the incidence of asbestos-related diseases. Without going into their resume, I 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:

#### BATES WHITE

Bates White, LLC (Bates White) is a national consulting firm offering services in economics, finance, and business analytics to leading law firms, FORTUNE 500 companies, and government agencies.

Their Environmental & Product Liability (EPL) practice offers economic consulting, litigation support, class certification, and liability estimation services. The business is based on the use of analytical tools to help clients understand and quantify potential liabilities. They have extensive experience in asbestos and provide expert testimony in both bankruptcy and coverage litigation, as well as expert opinions with regard to insurance valuation, due diligence evaluations, and financial reporting services. Through the course of this work, Bates White has seen claims data from numerous defendants and insurance companies. The knowledge gained across all of those matters has been invaluable in assessing the financial viability of S. 852.

As part of our work in asbestos-related matters, Bates White has led the development of several highly sophisticated, customized analytical tools that estimate clients' future asbestos liability from personal injury and property damage lawsuits. In the early 1990s, Dr. Charles Bates developed a computer model of the incidence of asbestos-related malignant diseases. Over the years, Bates White has performed ongoing research to improve this model. This state-of-the-art model became the industry standard. More recently, Bates White has pioneered research on the recruitment of non-malignant claimants, and challenged epidemiological-based forecasts of future non-malignant claims.

In addition to research on asbestos matters, Bates White has analyzed the historical U.S. usage of tobacco from 1920 through 2002. This research provides us the smoking history of potential lung cancer patients who could qualify under S. 852.

Mr. REID. They found that the CBO underestimated the number of cancer victims who will likely file claims with the fund. Based on this and other factors, Bates White concluded that the real cost estimate for the trust fund should be double what it now is.

During floor debate this morning, the distinguished senior Senator from Pennsylvania, the chairman of the Judiciary Committee, explained what will



happen if the trust fund runs out of money. He said:

We have within the structure of the bill a vision that the administrator can make a reevaluation going through certain preconditions so if it looks like we will exceed the \$140 billion we can make modifications in medical standards and criteria and stay within the \$140 billion.

In other words, if the fund runs short, fewer victims are eligible or those who are eligible will get less money. So there are real consequences to this underfunded trust fund. It will hurt victims. The only alternative is that taxpayers will be left to fund the shortfall.

Even if the trust fund was adequately funded, the claim system established by the FAIR Act is fraught with defects that would prevent many victims from recovering what they deserve.

First, startup provisions are unfair. As soon as the bill is enacted, the ability of asbestos victims to claim compensation in the court system is cut off. There is no better example of this than what happens to veterans. Also, the bankruptcy court trust funds that are now compensating victims will be shut down, depriving victims of needed compensation.

Second, the bill is unfair to victims with pending or settled court cases. Rather than permit asbestos claims to continue in court while the fund is being established, the bill imposes an immediate 2-year stay of nearly all asbestos cases. The bill's language is so broad that a trial about to begin would be stopped and an appellate ruling about to be handed down would be barred.

Third, the sunset process under the legislation leaves too much uncertainty. If the fund fails to operate as promised, instead of allowing victims to return to court, this legislation allows the administrator of the fund to allow or recommend any number of measures he feels important to salvage the program. As Senator SPECTER said this morning, this means that fewer victims may recover.

Fourth, the bill requires some victims to prove that asbestos was a "substantial contributing factor" to their disease, a higher burden than victims must meet in court, where it is sufficient to show that asbestos exposure was a contributing factor, no matter how substantial a factor.

I want to make sure Senator SPECTER has time to complete his statement, so I ask the time for the vote, which is now set for 6 o'clock, not begin at that time so Senator SPECTER is allowed time to finish his statement.

The ACTING PRESIDENT pro tempore. That is the result of the Senator using his leader time.

Mr. REID. I want to make sure the Senator from Pennsylvania understood that.

The whole concept of no-fault trust fund is that it is nonadversarial, but the higher burden of proof creates the very likely potential for endless litigation and a high number of rejected cases.

These are a few of the problems that make the FAIR Act—and again, as I said yesterday, the FAIR Act? We should be used to these Orwellian terms after naming legislation "Leave No Child Behind," "The Clear Skies Initiative," "Healthy Forests," "Budget Deficit Reduction Act," all of which do the opposite of what they say. It is my opinion, to which I am entitled, that the FAIR Act is part of that, again.

I have always favored improvements in the way asbestos victims were compensated. This bill does not accomplish that goal.

We have heard a lost talk about the managers' amendment to this bill. Apparently, the sponsors are telling Senators that we will take care of your concerns in the managers' amendment. The problem with this approach is that no one except the sponsors can know how the pieces of the managers' amendment will fit together. Since the sponsors are trying to satisfy Senators with conflicting concerns, there is every reason to believe that different elements of the managers' amendment will move in different directions.

For example, one Senator may want to expand eligibility under the trust fund for compensating asbestos victims. A different Senator may want to limit the amount of money paid into the trust fund. The first part of the managers' amendment may expand the number of victims, but the second part may limit the amount of money available to all victims. Both Senators may have their language included, but the final result may be completely unworkable and unsatisfactory.

This is not the right way to legislate. These amendments should be offered individually so that all Senators can evaluate them on their individual merits, and after all the amendments are offered and voted on, Members can evaluate the total product when they vote on final passage. Certainly, Members should not commit their support to the final bill until they see how the conflicting pieces to the managers' amendment fit together.

I believe it has been good for the Senate to spend time debating the motion to proceed. We focused attention on what some believe are flaws in the process leading to the Senate consideration of the bill and the flaws of the bill itself. Now we are ready to debate the bill on its merits. I welcome that debate.

I offered to vitiate this vote and begin consideration of amendments to the bill on Thursday. This was rejected. I will now support cloture and encourage Senators to do the same.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I note the Senator from Nevada has spoken for 18 minutes, taking some leader time, and the 10 minutes allocated under the unanimous consent. I ask unanimous consent Senator MCCONNELL and I may be accorded the same amount of time.

Mr. REID. No objection.

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

Mr. REID. That is together, not individually—not 36 minutes?

Mr. MCCONNELL. Right.

Mr. REID. No problem.

Mr. SPECTER. Mr. President, when I yielded the floor as 5:40 arrived, I was in the middle of commenting about the work which the distinguished ranking member, Senator LEAHY, and I had done on this bill and the spirit of collegiality and the spirit of bipartisanship which has characterized the work of the Judiciary Committee the past 13 months.

Senator LEAHY and I have worked together as ranking member and as chairman. This bill represents very substantial work and analysis as to how we have gotten there.

When the Senator from Nevada talks about the debate being useful up to the present time, I tabulate three Senators who spoke in opposition to the bill. And a good bit of what they have had to say is in error factually on the merits.

This bill has been subjected to more analysis, more discussions—I was saying before I yielded the floor when time had arrived for the minority leader—than any bill in the history of legislation. I acknowledge that as a very grandiose statement because I do not know all of the legislative bills that have been considered in the history of the legislative process. But I make that assertion based upon what has been done, which I detailed yesterday, with Judge Becker, a senior Federal judge, and I hosting some 36 meetings, attended by 20, 30, 40, sometimes as many as 60 people, and the numerous meetings which Judge Becker has had on a volunteer basis, and the many meetings I have had with individual Senators.

I have talked to many Senators, several dozen Senators, perhaps a majority of the Senators, on an individual basis, either visiting in their offices or on the Senate floor or in the corridors, in order to acquaint Senators with what is going on.

The assertions which have been made simply are not factual. I am pleased to note the Senator from Nevada has stated his intention to vote for cloture and that we are going to be going on to debate the bill on the merits. Yesterday, the Senator from Nevada was more than firm in his opposition to the bill. And I think it fair to say I was at least equally firm in what I had to say by way of response. But there are the votes present without the vote of the Senator from Nevada to invoke cloture and to proceed to a discussion on the merits. When we do proceed to a discussion on the merits, we will have a chance to answer in detail the misunderstandings which have been articulated in the debate so far.

One Senator who spoke in opposition to the bill talked about secrecy, that

nobody knew who was going to pay the money. The language—there was a quote—“contained in a secret list known only to the asbestos study group. . . .” “None of the relevant information has ever been made public.” Well, factually that is just not correct.

The Judiciary Committee had to issue a subpoena, but we know who is paying how much money. That is a matter that can be looked at by Senators or by their staffs. But it has been retained on a confidential basis because there could be a problem for the companies if these factors were disclosed.

Then another comment made by one of the three Senators who spoke in opposition to the bill, that the “United States Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims. . . .” Well, that is factually just not correct.

This bill is airtight that the Federal Government has no financial obligation, and that if there is an effort to impose a budget point of order, and it is considered on the merits, that it will not impede the movement of this bill forward. The budget point of order will not be sustained because there is no Federal money. Technically, it goes through the Department of Labor, so it is calculated as a Federal expenditure, but there is no Federal money involved.

The Senator from Nevada has gone through a list of objections he has, and as we are now moving to debate—after this evening’s vote—the bill on the merits, we will have a chance to explore those in detail.

When the Senator from Nevada talks about Foster Wheeler, illustratively, I personally have met with Foster Wheeler on a number of occasions, as recently as 10 days ago. And we are still seeing if we can accommodate the concerns of Foster Wheeler.

We have gone a long way to see to it that companies will not be adversely affected financially, on exclusion of small business, a matter detailed at some length by Senator FEINSTEIN in her comments on the floor today, and on a hardship fund of some \$300 million a year, and by an amendment which we are in the final stages of negotiation to limit the amount of money that companies with lesser gross revenues will have to pay, all of which is directed—

The ACTING PRESIDENT pro tempore. The Senate is not in order.

The Senator from Pennsylvania.

The Senate will be in order.

Mr. SPECTER. I am not going to ask for any additional time, Mr. President, because of the interruptions and the disorder—all of which is directed—to finish my sentence—to the companies which sustained financial hardship.

I made a repeated offer, yesterday and today, in speaking about the bill, inviting any Senator who has a constituent who has a problem to come talk to us. We will try to work to a solution of the problem. And you do not

have to have a Senator if you are a constituent. If anybody is watching these proceedings on C-SPAN2, come to my office. My staff and I, Senator LEAHY and his staff, and the Judiciary Committee generally, will try to find an accommodation and an answer.

The Senator from Vermont is back on the floor. I am glad he has come back because I wanted to make this comment about the bipartisanship of the Judiciary Committee, what we have accomplished, as a sign for what this body can do.

It is an open secret that the rancor and the partisanship and the bickering is at an all-time high in the Senate—an all-time high. And there is much talk about the good old days when there was comity and there was collegiality in the Senate.

Well, Senator LEAHY and I have restored that to the Judiciary Committee. And we have produced this bipartisan bill on asbestos reform. We do not make any representation that it is a perfect bill or that it is a bill which cannot be improved. We are open for business to improve and change the bill.

But that brings me to a New York Times editorial which I think is of note as to what PAT LEAHY and ARLEN SPECTER have accomplished with our committee and what this body can accomplish. This is what the New York Times had to say. In a complimentary line, they refer to the assiduous effort that PAT LEAHY and ARLEN SPECTER made, and then say: That makes it a 21st-century rarity: a thoughtful bipartisan compromise on a vexing national problem.

I think it is a sad day for the Senate, a very sad day, when it is a 21st-century rarity that there is a thoughtful, bipartisan compromise on a vexing national problem.

We have a great many vexing national problems. I believe they can be solved on a bipartisan effort so it does not become a 21st-century rarity. I am glad to see that however we have gotten there, that the votes were present by mid-afternoon to shut off this filibuster and that we can now go forward to debate on the merits so the American people can see our analysis of the problems and our proposed solutions and our openness to modifications to produce the best possible bill because the system which we have at the present time is an anathema and a travesty and unworthy of the American judicial system.

I thank the Chair and yield to my distinguished colleague, the assistant majority leader.

The ACTING PRESIDENT pro tempore. The assistant majority leader.

Mr. MCCONNELL. Mr. President, we are about to have the cloture vote, and it is going to take a minute to thank Senator SPECTER and Senator LEAHY for this extraordinary compliment from the New York Times. I do not think it is an experience the Senator from Kentucky has ever had.

This cloture vote is going to be approved. We learned about an hour ago that the Democratic leader has decided to support the cloture vote, and I think that is good. We would prefer to have been on this bill last Friday. Senator SPECTER was here and ready to work, ready to process amendments last Friday. But here we are on Tuesday night.

So let me say I think it is good for the Senate that this cloture is going to be invoked. We are ready to get on the bill. I heard the Democratic leader offer to begin tomorrow. I think that is a good idea. Senator SPECTER will be here in the hopes that amendments will be offered and processed. We are prepared to deal with that tomorrow and through the days until we can reach a point of conclusion.

So, Mr. President, I do not know how much time I have remaining, but so that we may move forward and vote, I am prepared to yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

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. 131, S. 852: A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Arlen Specter, Jeff Sessions, Pat Roberts, Lamar Alexander, Lisa Murkowski, Johnny Isakson, Richard M. Burr, Wayne Allard, Mitch McConnell, Mike DeWine, George V. Voinovich, Jim Talent, David Vitter, Bob Bennett, Mel Martinez, Ted Stevens.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Oklahoma (Mr. COBURN).

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

The yeas and nays resulted—yeas 98, nays 1, as follows:

[Rollcall Vote No. 12 Leg.]

#### YEAS—98

Akaka	Bennett	Bunning
Alexander	Biden	Burns
Allard	Bingaman	Burr
Allen	Bond	Byrd
Baucus	Boxer	Cantwell
Bayh	Brownback	Carper

Chafee	Harkin	Nelson (NE)
Chambliss	Hatch	Obama
Clinton	Hutchison	Pryor
Cochran	Inouye	Reed
Coleman	Isakson	Reid
Collins	Jeffords	Roberts
Conrad	Johnson	Rockefeller
Cornyn	Kennedy	Salazar
Craig	Kerry	Santorum
Crapo	Kohl	Sarbanes
Dayton	Kyl	Schumer
DeMint	Landrieu	Sessions
DeWine	Lautenberg	Shelby
Dodd	Leahy	Smith
Dole	Levin	Snowe
Domenici	Lieberman	Specter
Dorgan	Lincoln	Stabenow
Durbin	Lott	Stevens
Ensign	Lugar	Sununu
Enzi	Martinez	Talent
Feingold	McCain	Thomas
Feinstein	McConnell	Thune
Frist	Menendez	Vitter
Graham	Mikulski	Voinovich
Grassley	Murkowski	Warner
Gregg	Murray	Wyden
Hagel	Nelson (FL)	

NAYS—1

Inhofe

NOT VOTING—1

Coburn

The PRESIDING OFFICER. On this vote, the yeas are 98, the nays are 1. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. NELSON of Florida. Mr. President, although I voted to proceed to the bill I have strong concerns with this legislation.

I am concerned that this bill will take away the rights of asbestos victims to have their day in court while providing no guarantees that they will receive fair and prompt compensation. This bill and its payment structure could bankrupt small businesses, with many of them shouldering a larger financial burden under the bill than they currently do in the court system. Many of these small businesses are not the evildoers here, but due to the payment structure of the bill, they will find themselves shouldering a large portion of the liability.

I support the concept of a nonadversarial process to provide compensation to victims but a process that is fair to all the parties involved. I believe that this bill falls short, and while I voted for cloture I intend to vote against final passage of this bill unless significant changes are made.

## THE FUNERAL OF CORETTA SCOTT KING

Mr. FRIST. Mr. President, in a few moments, we will be closing down for the evening. But I did want to comment very briefly upon the wonderful experience that I and nine other of our colleagues had over the course of today as we attended the funeral of Coretta Scott King at the New Birth Missionary Baptist Church, down right just outside of Atlanta.

We had a bipartisan delegation that left early this morning, joined by a House delegation, joined also, as most people know, by the President and the First Lady and three prior Presidents, for what was, indeed, a memorial service in many ways but, in truth, a great celebration for a great woman. She leaves a legacy of leading with grace. Few people have ever had the opportunity of knowing someone like that. That was reflected in many comments over the course of the day at the funeral.

As a wife, as a mother, as a civil rights leader, Mrs. King joins this large pantheon of great Americans whose courage and whose dignity, whose boldness, whose tireless pursuit of social justice transformed not only a generation but the dreams and expectations of generations to follow. Over the course of the statements and having the opportunity to circulate among people who attended, the real global impact of this woman, as I said, leading by grace, focused on freedom and opportunity and social justice, was so apparent.

Born in April of 1927 on a family farm down in Marion, AL, she grew up during the Depression in the segregated South and early on experienced firsthand the unfairness and the racial injustice that had coursed through American life.

As a child—and we learned through many stories over the course of today—she would walk miles every day to attend a poor, one-room elementary school where her neighbors, White neighbors, road the bus in comfort to an all-White school that was close by. She was walking 5 miles a day.

But as Coretta herself would say in later years, before she was a King, she was a Scott, Coretta Scott King. As a Scott growing up in segregated Alabama, her parents taught her strength, taught her boldness, sharing that wisdom with her. It was this strength translated through great dignity over the course of her life that came to define her and to radiate from her from the very beginning and throughout her life.

There was much discussion and reflection on her faith, her innate strength and graciousness, all of which supported her through times, as many of the speakers and presenters today talked about, of extraordinary trials and suffering.

Today, while millions of people around the world watched, there were four U.S. Presidents, I believe there

were 13 colleagues—14 Senators, 13 of my colleagues—dozens of Congressmen, clergy, community leaders, thousands of admirers, people from around the world, from South Africa, who spoke today, also celebrating the life and contributions of Coretta Scott King, the first lady of the civil rights movement and, as we heard from South Africa, the first international lady of the civil rights movement.

I think all of us who went, and many people who shared this service on their televisions today, were humbled by her example. You can't help but to be lifted by her spirit. Oprah Winfrey observed yesterday at the Ebenezer Baptist Church in Atlanta—and I did have the opportunity to share one Martin Luther King Day with the King family and with Coretta Scott King; I believe it was 3 years ago, at the Ebenezer Baptist Church—that the great Reverend Martin Luther King, Jr., often preached that Mrs. King, “leaves us all a better America than the America of her childhood.”

She leaves behind a tremendous legacy and a great challenge to all of us; that is, to lead our lives—and very much the thematic today was a real celebration but what are we all going to be doing tomorrow? Are all our thoughts going to be similar to what her thoughts were the day after her husband was assassinated, that bold decision to go up to Memphis and to return there 3 days later to be with her people? That as we look ahead, how do we translate all this so that we all look to our own lives to be led with courage and with grace and with the boldness and dignity that she has shown, and to realize the dream to which she and her husband devoted their lives; that one day, one day soon, in their words, “this Nation will rise up and live out the true meaning of its creed”—“that all men are,” indeed “created equal.”

## ASBESTOS

Mr. FRIST. Mr. President, we had a very important vote today on asbestos, and we will be proceeding to that bill tomorrow. It is a bill that I feel passionately about, a bill—as I shared with my colleagues who were with me earlier today in Atlanta at the funeral—that reflects, to me, the very best of what this body should be reflecting; that is, compassion for those victims who today are not being compensated, who suffer from asbestos exposure with mesothelioma, with lung cancer, with asbestosis; who today are not getting taken care of. In a sense, they are not getting appropriate compensation, just compensation, either in terms of time in which the decisions are made or in the amount of resources that are to be directed to them.

So now is the time for us to address this important issue. It is a jobs issue. We talk about 150,000 people who have lost their jobs. We talk about the 77 companies that have gone bankrupt—not as companies but as employers.