

right has a consequence, a consequence that is both unintended and, I submit, undesirable.

There are cases in which the defense team decides not to put the defendant on the stand, which is fine, and then, though, attacks the victim's character and the victim when that victim, himself or herself, takes the stand and testifies. In effect, the defense lawyers put the victim on trial while at the same time being able to shield the defendant from questions about that defendant's own character.

I think it is time to end the free ride for these defendants. Let us simply say to the defendants and let us say to the defendants' lawyers this: If you, the accused or a lawyer, want to attack the character of a victim, then you can expect the prosecutor to call your character into question. It is only fair. It is only right. It is only just.

No. 4, let us make people who are accused of sexual assault be tested for HIV. If you, or one of your loved ones, was the victim of a sexual assault today, it is very difficult to find out if the attacker has HIV, and in today's society, is that not something that the victim should know? Is that not something that the court system should help the victim to determine?

Last year, the Senate version of the crime bill did have a provision mandating HIV testing of persons arrested for sexual assault. The Clinton administration supported this provision. But in the other body, for some reason, it was dropped.

My legislation would change that. My legislation would put that back in. My legislation would force the HIV testing of these defendants and the disclosure of the testing results to the victims of crime.

No. 5, a fifth way to make our system more fair and more just to the victims of crime, let us make the jury, the whole jury system, a level playing field. The O.J. Simpson trial has focused America's attention on the process of the selection of a jury. How do we make sure that the jury is a fair panel?

Mr. President, under today's Federal laws, prosecutors can challenge six potential jurors without giving cause, what in the courtroom they call "cause." Six jurors can be knocked off without giving any reason. Defense lawyers, however, can challenge 10 without giving a reason. These are called generally peremptory challenges where each side can excuse a juror without giving a reason.

I think that we should give victims an impartial trial, jury, and a fair shake. To do that, I think we need to give both the prosecution and the defense simply the same number of peremptory challenges. It only seems right, and it only seems fair.

Mr. President, all the provisions I have discussed today to protect victims have a common theme. In our judicial system, we cannot condone the revictimization of crime victims. Our

system is and must be impartial. It must be impartial between the prosecution and the defense, all the while recognizing the presumption of innocence on behalf of the defendant.

There is no reason that the presumption of the defendant's innocence should be construed in such a way that it condones heartless treatment of crime victims. The criminal law embodies some of the truly fundamental values of our society. One of these values is that we should console those who have been hurt. We should not victimize them further.

A number of years ago when I was a county prosecuting attorney, I would see the victims of murder and other violent crimes. I would interview people who had been abused, assaulted, and raped. I learned a lot from talking to these innocent people. I learned that we have to make the crime victim a full participant, not a forgotten person, in the criminal justice system.

The proposals I have just outlined would help us make some progress in turning the criminal justice system into a more victim-friendly enterprise. It is long past time that we stop treating the victims like they are criminals and the criminals like they are victims.

My legislation is an attempt to move the concerns of crime victims toward center stage in our Federal criminal justice policy.

Next week, I will continue my series of speeches on the crime bill that I intend to introduce next week. On Monday, I will explain what I think we ought to do to get more police officers on the streets, particularly to get more police officers on the streets where the crime is the highest, because if there is one thing that we know, it is this: Law enforcement officers who are well trained and who are deployed correctly on our streets will, in fact, reduce crime. That is a fact. That is the truth. I will talk more about this next week.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

#### MORATORIUM ON REGULATIONS

Mr. CHAFEE. Mr. President, in March of this year, just 2 months ago, this Senate considered a bill that would have imposed an across-the-board moratorium on the issuance of new major regulations. That across-the-board moratorium would have extended from last November's election up until the end of this year, the end of 1995. It would have encompassed all of 1995 and the last several months of 1994.

That bill came up before the Senate, and it was overwhelmingly rejected by this Senate. Instead, on this across-the-board moratorium, the Senate adopted a substitute amendment which was offered by the Senator from Oklahoma and the Senator from Nevada. And that provided for a 45-day review of major new rules coming up before

the new rules by the Congress. This 45-day review was agreed to by this Senate 100-0. Any time you can get a vote of 100-0, it is considered favorable; overwhelming is an understatement.

Before that bill was sent over to the House and to the conference of House and Senate Members, many of us here in the Senate made clear that if the conference report came back with an across-the-board moratorium, we would oppose it. We do not want these across the board moratoriums. We wanted the situation that was proposed by the Senator from Oklahoma which, principally, was for a 45-day review.

I want the Senate to know, as I indicated during the earlier debate, that I will oppose the conference report if it includes provisions of the type that I outlined, namely the restoration of these broad moratoriums that this bill had.

Now, yesterday, a Member of the House released a list of the rules that they have targeted in the House. They are not satisfied with a 45-day review. They have targeted some 30 rules—12 of them are EPA rules; 4 of them are worker safety rules to be issued by OSHA; 10 of the rules relate to food and drug safety. Almost all of the rules on the list that are targeted by the House are there to protect public health, worker safety, and the environment.

I notice that the occupant of the chair is the distinguished Senator from Minnesota. One of the rules that is targeted deals with the Great Lakes clean water quality guidance. I do not know the position of the occupant of the Chair on this. I suspect that most of the Senators from those States—Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin—are interested in the quality of the water in those Great Lakes.

The EPA has proposed an initiative dealing with that situation. The EPA has estimated a proposal that could cost from \$80 to \$500 million annually. This has to do with the cleanliness of those lakes. This is one of the rules that has been targeted by the House Members, one that would be subject to an extensive moratorium.

There are a host of others, Mr. President. One of them I will describe. It is a rule promulgated under the Safe Drinking Water Act. It would reduce the levels of so-called disinfection by-products in drinking water. These are the chemicals that form when water is chlorinated, as is done in most communities. It is chlorinated to kill bacteria and other organisms. The chlorine, in some instances, combines with other substances in the water to form new chemicals, such as chloroform, that may cause significant cancer risks for those using the water.

A recent article in the American Journal of Public Health indicated that up to 10,000—not 1,000, but 10,000—cases of cancer per year may be attributable to these chemicals in our water. EPA has been working on a rule to reduce this health risk.

Did EPA just conceive this rule as a bunch of bureaucrats sitting down at EPA headquarters? This is what they did. They convened a regulatory negotiation involving all of the parties that had an interest. The drinking water suppliers, the States, the cities, public health organizations—a very broad group worked for 2 years on this rule. With one exception, this broad range of interests all signed an agreement at the end of the process supporting the proposed rule. The proposed rule reflects a significant consensus across virtually the entire community of interests involved in drinking water. Now, under the House proposal this would be targeted; it would be suspended, you could not have the rule. You could not have the rule until some indefinite period—until certainly perhaps the end of this calendar year, and probably into the future likewise. Why should they do that? I am opposed to that type of action by the House of Representatives.

A second item on the list is a petition that EPA approved last December. It was a petition submitted by 13 States from the northeast—my State involved likewise—asking that cars with pollution controls such as those used in California also be sold in the Northeast to reduce our air pollution problems. This was not an EPA proposal. In fact, EPA was reluctant to approve this petition. It was required by the Clean Air Act because 13 States had made the request.

I was under the impression that many of those who support these regulatory reform efforts want to return more responsibility to the States. They say, "We believe in the States and States rights." Here we have a proposal that was made by the States that is targeted on this House list as being suspended.

Now, a third item on this list is the Federal implementation plan for California that was promulgated in February. EPA was ordered by the courts to produce this plan when California failed to come up with its own program. The EPA program has been controversial in California and Governor Wilson has asked that it be suspended. And this list would target it for suspension.

But this EPA clean air plan for California has already been overturned. The supplemental appropriation for the Defense Department enacted earlier this year already repealed the California plan, including this item on this list of 30 rules to be killed must be an error, because Congress has already acted to repeal this rule. I bring this item to the attention of the Senate to make that point. Where specific measures, including rules that are required by the courts because of laws enacted by the Congress, go too far, we should take action to correct the excess. We have done that in several cases. We do not need an across-the-board moratorium, as mandated by the House in the

legislation it passed and suggested for this conference.

Another item on this list is also from the Clean Air Act. It is the employee trip reduction program that requires large employers in most severe non-attainment areas to work with their employees to reduce the number of vehicle trips each day. In other words, this is a way, in nonattainment areas of the country where they have not attained the clean air requirements, goals, that large employers would work with their employees to reduce the number of vehicle trips. Six hundred employees, six hundred cars—is that necessary, or is there another way of doing it? EPA has not issued, nor is it about to, any rule implementing this requirement of the act. So there is no rule to suspend.

This is a requirement of the Clean Air Act that guides States in the development of their own implementation plans. It is carried out by the States without Federal regulation. This is an example where a mechanism called a regulatory moratorium, such as the House is suggesting, is being used to reach into the Clean Air Act and knock out a specific policy that some in the House apparently do not like.

I am not here to defend the employee trip reduction program. In fact, earlier this year I asked EPA Administrator Carol Browner to look for other approaches to the problem of the increasing number of vehicle trips and miles that are traveled that we might substitute for this measure in the Clean Air Act. I am not arguing policy grounds one way or the other. My point is that in the guise of regulatory moratorium, some in the House are seeking to repeal the provision of the Clean Air Act that is not even implemented through Federal rulemaking. This proposal is not to freeze a rule. There is no rule to freeze. This is a proposal to change the law.

This list reflects an attack on 30 specific policies that some Members of the House would like to see reversed. These policies are intended to protect public health, worker safety, and the environment. I am familiar with the rules on the list that would come from EPA. They cannot be characterized as rules written by out-of-control bureaucrats without regard for cost or risk reduction. To the extent that rulemakings are actually involved, they have all been subject to cost-benefit analysis under existing regulatory review requirements. In some cases the rules have either been painstakingly developed in consultation with State or local governments are actually written by the States themselves.

Mr. President, the House is no longer proposing a regulatory moratorium. What we have here is a fishing expedition. They have thrown out a long list of policies they want killed to see how many the Senate will take in the name of compromise to get a bill. I hope our Senate conferees will not engage the House in this discussion.

Mr. President, the Senate voted overwhelmingly to reject an across-the-board moratorium on new rules. I trust the Senate conferees will not allow the conference to produce a bill that makes 30 specific changes in law without hearings, without debate in either body on the specific policies, and without the opportunity for Members to exercise their rights to offer amendments and have votes on the substantive questions at stake. That would be an extraordinary abuse of the standards that are to be observed by a conference committee between the House and the Senate.

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

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

The legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, let me state to my colleagues who are wondering about votes today, we believe we may have a unanimous-consent agreement. If it is approved, there will be no additional votes today. We should have word on that, hopefully, in the next few minutes. I know many of my colleagues have other things to do so we will try to keep everybody apprised.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### AMENDMENT NO. 1074

(Purpose: To promote local and regional planning for effective solid waste collection and disposal and for reducing the amount of solid waste generated per capita through the use of solid waste reduction strategies)

Mr. CHAFEE. Mr. President, I send an amendment to the desk on behalf of Senator MCCONNELL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. MCCONNELL, proposes an amendment numbered 1074.

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

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

The amendment is as follows:

At the end of the amendment add the following:

TITLE —STATE OR REGIONAL SOLID WASTE PLANS

#### SEC. 01. FINDING.

Section 1002(a) of the Solid Waste Disposal Act (42 U.S.C. 6901(a)) is amended—

(1) by striking the period at the end of paragraph (4) and inserting “; and”; and

(2) by adding at the end the following:

“(5) that the Nation’s improved standard of living has resulted in an increase in the amount of solid waste generated per capita, and the Nation has not given adequate consideration to solid waste reduction strategies.”.

**SEC. 02. OBJECTIVE OF SOLID WASTE DISPOSAL ACT.**

Section 1003(a) of the Solid Waste Disposal Act (42 U.S.C. 6902(a)) is amended—

(1) by striking “and” at the end of paragraph (10);

(2) by striking the period at the end of paragraph (11) and inserting “; and”; and

(3) by adding at the end the following:

“(12) promoting local and regional planning for—

“(A) effective solid waste collection and disposal; and

“(B) reducing the amount of solid waste generated per capita through the use of solid waste reduction strategies.”.

**SEC. 03. NATIONAL POLICY.**

Section 1003(b) of the Solid Waste Disposal Act (42 U.S.C. 6902(b)) is amended by inserting “solid waste and” after “generation of”.

**SEC. 04. OBJECTIVE OF SUBTITLE D OF SOLID WASTE DISPOSAL ACT.**

Section 4001 of the Solid Waste Disposal Act (42 U.S.C. 6941) is amended by inserting “promote local and regional planning for effective solid waste collection and disposal and for reducing the amount of solid waste generated per capita through the use of solid waste reduction strategies, and” after “objectives of this subtitle are to”.

**SEC. 05. DISCRETIONARY STATE PLAN PROVISIONS.**

Section 4003 of the Solid Waste Disposal Act (42 U.S.C. 6943) is amended by adding at the end the following:

“(e) DISCRETIONARY PLAN PROVISIONS RELATING TO SOLID WASTE REDUCTION GOALS, LOCAL AND REGIONAL PLANS, AND ISSUANCE OF SOLID WASTE MANAGEMENT PERMITS.—Except as provided in section 4011(a)(4), a State plan submitted under this subtitle may include, at the option of the State, provisions for—

“(1) establishment of a State per capita solid waste reduction goal, consistent with the goals and objectives of this subtitle; and

“(2) establishment of a program that ensures that local and regional plans are consistent with State plans and are developed in accordance with sections 4004, 4005, and 4006.”.

**SEC. 06. PROCEDURE FOR DEVELOPMENT AND IMPLEMENTATION OF STATE PLANS.**

Section 4006(b) of the Solid Waste Disposal Act (42 U.S.C. 6946(b)) is amended by inserting “and discretionary plan provisions” after “minimum requirements”.

Mr. MCCONNELL. Mr. President, I rise today to offer an amendment to help States get a handle on their local waste flows and to ensure that States are not precluded from establishing regional solid waste reduction plans. Next year, the subtitle D regulations affecting landfills will go into effect. These new regulations will force States to closely reevaluate their disposal needs and develop their own comprehensive plans on how they might implement the more stringent regulations.

Kentucky has already taken the initiative in establishing one of the most comprehensive solid waste reduction

plans of any State. The Kentucky plan mandates that regional and local authorities establish a waste collection and disposal plan as well as regional waste reduction strategies. These efforts have proven effective in stopping illegal dumping, increasing recycling, and reducing the overall need for landfill space.

Unfortunately, without Federal legislation these plans are open to constitutional challenge. Mr. President, where does that leave us? How can States effectively meet the goals of reducing waste flows, increasing recycling, and improving landfill standards if they are prohibited from establishing an effective waste management plan?

Those of us who have been involved in the interstate waste issue know, this legislation is necessitated by the commerce clause of the Constitution. A number of State and local initiatives that attempted to deal with solid waste issues have wound up in court, and eventually been struck down based on this provision of the Constitution. Consequently, it is virtually impossible for a State to effectively deal with their own waste flows without a specific delegation of Congress’ plenary commerce power.

In every Congress since 1990 there has been an attempt to provide States the authority to keep the interstate flow of solid waste in check. Over the past 6 years, I have fought hard with Senator COATS to ensure that States like Kentucky and Indiana do not become dumping grounds for those States that have refused to control their own waste flows.

Mr. President, my amendment will correct this by authorizing States to establish a comprehensive plan for waste reduction. This is essential if communities are to get a handle on their own waste flows through plans that promote local planning and are consistent with the objectives of subtitle D, of the Solid Waste Disposal Act passed by Congress in 1991.

One will be the days of open dumps and multitudes of cheap landfills when the new standards are implemented in 1996. These standards will mandate liners, leachate collection and treatment, groundwater and gas monitoring, and new corrective action. The EPA has estimated that nearly half of the Nation’s 6,000 landfills will close. In Kentucky, new landfill standards have already gone into effect and the number of landfills has declined dramatically from 29 to just 6. Mr. President, these new regulations will compel many States to rethink their disposal needs and how they should plan for the future.

Many States may find they do not have an effective plan for disposing of their waste. States will need to establish a plan for consolidation, reduction, and recycling programs mandated by the Resource Conservation and Recovery Act. Again, my amendment will help States plan for the inevitable and

protect already established plans from legal challenge.

Mr. President, this amendment will not eliminate existing host community agreements, nor will it ban the interstate flow of waste. In fact, in Kentucky a special landfill was recently authorized to accept waste from out-of-state. A number of Kentucky counties continue to ship and accept nominal amounts of waste from our neighboring States of West Virginia, Ohio, Indiana, and Illinois. My amendment will not disturb these arrangements.

Mr. President, my amendment is entirely consistent with the export reduction strategies contained in this bill.

I have worked with the officials of the Kentucky Department of Natural Resources and Environmental Protection Cabinet and officials in Magoffin County to ensure that State and regional waste plans are protected in this legislation. I am appreciative of their assistance.

Today, Congress will clarify whether States have the authority to establish their own plan for the disposal of waste. Only with the explicit delegation of this authority can States be certain that they are acting within a constitutional framework.

I would like to thank the managers of this bill for accepting this amendment.

Mr. CHAFEE. Mr. President, I congratulate Senator MCCONNELL for the work he has done in connection with solid waste. It is a subject he has been interested in for a good number of years.

Kentucky is a State that has established one of the most comprehensive solid waste reduction plans of any State and the Senator was very conscious of that in his dealing with the legislation before us.

Mr. President, I again congratulate the distinguished Senator from Kentucky, Senator MCCONNELL, for the work he has done.

Mr. BAUCUS. Mr. President, we have reviewed the amendment on our side and urge its adoption.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1074) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. 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. BAUCUS. Mr. President, I ask unanimous consent to proceed as in morning business.

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