

and substantive determinations that would have no binding force in subsequent Y2K litigation in the states in question.

In addition to the potential adverse docket impact on the federal courts, the proposed bills infringe upon the traditional authority of the states to manage their own judicial business. State legislatures and other rule-making bodies provide rules for the aggregation of state-law claims into class-wide litigation in order to achieve certain litigation economies of scale. By providing for class treatment, state policymakers express the view that the state's own resources can be best deployed not through repetitive and potentially duplicative individual litigation, but through some form of class treatment. The proposed bills could deprive the state courts of the power to hear much of this class litigation and might well create incentives for plaintiffs who prefer a state forum to bring a series of individual claims. Such individual litigation might place a greater burden on the state courts and thwart the states' policies of more efficient disposition.

Federal jurisdiction over class action litigation is an area where change should be approached with caution and careful consideration of the underlying relationship between state and federal courts. The Judicial Conference Advisory Committee on Civil Rules has recently devoted several years of study to the rules in class action litigation. One outgrowth of that study was the appointment by the Chief Justice of a Mass Torts Working Group. The Working Group undertook a study which revealed the complexities of litigation that aggregates large numbers of claims and illustrates the need for a deliberative review of the issues that must be addressed in attempting to improve the process for resolution of such litigation. Such issues involve not only procedural rules, but also the jurisdiction of federal and state courts and the interaction between federal and state law. Y2K class action litigation implicates the same complex and fundamental issues that the Working Group identified. Even for familiar categories of litigation, these issues can be satisfactorily resolved only by further study. An attempt to address them in isolation, for an unfamiliar category of cases that remains to be developed only in the future, is unwise.

It may well be that extending minimal diversity to mass torts may be appropriate if accompanied by suitable restrictions. The Judicial Conference, for example, has endorsed in principle the use of minimal diversity jurisdiction in single-event, mass tort situations, like airplane crash litigation, and there may be other situations in which the efficiencies to be gained from consolidating mass tort litigation in federal courts are justified. Expansion of class action jurisdiction over Y2K class actions in the manner provided in the pending bills, however, would be inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction and the reality that the federal courts are staffed and supported to function as tribunals of limited jurisdiction.

Judicial federalism relies on the principle that state and federal courts together comprise an integrated system for the delivery of justice in the United States. There appears to be no substantial justification for the potentially massive transfer of workload under these bills, and such a transfer would seem to be counterproductive. State courts provide most of the nation's judicial capacity, and a decision to limit access to this capacity in the face of the burden that Y2K litigation may impose could have significant consequences for the efficient resolution of Y2K disputes.

PLEADING REQUIREMENTS

S. 461, as well as S. 96 and H.R. 775, sets forth specific pleading provisions in Y2K litiga-

tion that would require a plaintiff to state with particularity certain matters in the complaint regarding the nature and amount of damages, material defects, and the defendant's state of mind. These requirements are inconsistent with the general notice pleading provisions found in the Federal Rules of civil Procedure (i.e., Rule 8), which apply to civil cases. The bills' provisions bypass the rule-making provisions in the rules Enabling Act (28 U.S.C. §§2071-77). They have not been subjected to bench, bar, and public scrutiny envisioned under the Rules Enabling Act and are inconsistent with the policies underlying the Act, which the Judicial Conference has long supported.

Not only do the statutory pleading requirements bypass the Rules Enabling Act, they do so in a particularly objectionable way because they are contained in stand-alone statutory provisions outside the federal rules. This will cause confusion and traps for unwary lawyers who are accustomed to relying on the Federal Rules of civil Procedure for pleading requirements. It also would signal yet another departure from uniform, national procedural rules, following closely in the wake of similar pleading requirements contained in the Private Securities Reform Litigation Act.

On behalf of the federal judiciary, I appreciate your consideration of these views. If you or your staff have any questions, please contact Mike Blommer, Assistant Director, Office of Legislative Affairs (202-502-1700).

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

MORNING BUSINESS

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 15 minutes each.

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

Mr. VOINOVICH. I further ask unanimous consent that Senator BINGAMAN be recognized to speak following my remarks, but that before I speak, Senator STEVENS be recognized for a couple of minutes.

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

The Senator from Alaska.

BEYOND THE BOUNDS OF PROPRIETY

Mr. STEVENS. Mr. President, in the past several months when radio personalities—sometimes known as “shock jocks”—have gone beyond the bounds of propriety, their employers have been quick to dismiss them.

For example, the Charlotte, NC, station just yesterday fired a radio talk show host who made an on-the-air joke about this week's tragedy in Littleton, CO. There was also a Washington, DC, station that immediately fired the “Greaseman” for his racist remarks after the tragic dragging death of a Texas man that we all remember.

Now in Chicago we learn of another one of these offensive on-the-air personalities who has stepped over the line. He made insulting remarks against Special Olympians. What he said about these brave athletes is inde-

fensible. What he said was—and it bothers me even to repeat it—

Watch them run, watch them fall, watch them try to catch a ball. Olympics, Special Olympics. Watch them laugh, watch them drool, watch them fall into the pool. That's diving at the Special Olympics. And I know full well that I will burn in Hell, but those guys playing wheelchair basketball gotta be about the funniest—

And the expletive is deleted; they took that out—

thing I've ever seen in my life. [And it is all] at the Special Olympics.

Mr. President, these young men and women have overcome obstacles that we cannot understand. They deserve our applause and admiration. They should not be the targets of juvenile jokes on the public airwaves.

Instead, despite this disgusting display of ill-manners and bad taste, this radio station has refused to fire that shock jock.

Mr. President, I urge all of those who listen to this man in Chicago to call for his immediate dismissal.

I yield the floor.

NATO, KOSOVO AND SLOVENIA

50 YEARS OF NATO & KOSOVO

Mr. VOINOVICH. Mr. President, on Friday, the official recognition of the 50th anniversary of the North Atlantic Treaty Organization, NATO, will begin.

And even as the participants acknowledge 50 years of NATO achievements, a cloud of war hangs over the proceedings.

No doubt NATO's involvement today in Yugoslavia will be the most talked about topic among the attendees.

And as I have stated on this floor, I oppose the introduction of ground troops. I reiterate that opposition today.

As the members gather, it is my fervent hope that they will give their full devotion to those actions that can be done to prevent further bloodshed. I believe there is no greater challenge facing the United States, NATO, and the United Nations than finding a peaceful solution to this current crisis.

NATO must also look to the future to determine what its role will be in the world and what will be the responsibility of its respective members.

And, Mr. President, I would like to draw attention to a recent Washington Post article that gives an excellent historical reference for my colleagues and NATO on the perils of introducing ground troops into the Balkan region. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, Apr. 14, 1999]

U.S. NATO STUDY WWII YUGOSLAV REBELS

(By John Diamond)

WASHINGTON, (AP).—Pentagon and NATO officials considering ground troop options for Yugoslavia are studying the history of Yugoslav resistance during World War II, when hundreds of thousands of German soldiers