

found any serious links between al-Qaida and Iraq. Those were the fundamental reasons we went to war with Iraq. I believe it was a mistake to attack Iraq at the time we did. I believe it was a priority that simply did not make sense given the threat to this country.

The imminent threat to this country is in the form of al-Qaida. The imminent threat to this country is the forces led by Osama bin Laden. It has now been 771 days since they attacked this country. Newsweek magazine reports they have a pretty good idea where Osama bin Laden is—right on the border between Pakistan and Afghanistan. Yet there is no large-scale military operation underway to take out Osama bin Laden. I think the American people deserve to know why not. Why not? Why aren't we launching massive forces into the area identified as the place where Osama bin Laden is hiding? Have we been distracted by Iraq? I hope not. But the evidence I see is that the resources and the attention, which I believe should have been first directed at taking out Osama bin Laden and al-Qaida, are going to Iraq.

I very much hope we will have answers to these questions in the coming days.

The Senator in the Chair, whom I count as a friend in this body, is the chairman of the Intelligence Committee. Obviously he has knowledge none of the rest of us possess. As one Senator, I saw Osama bin Laden on these tapes again over the weekend and read the stories in the news magazines that said we have a pretty good idea where Osama bin Laden is. But we have not found him, leading to the suggestion that we have been distracted by Iraq. That disturbs me a great deal. I believe the overriding priority for this country and the national security of America is in holding Osama bin Laden to account, finding him, and stopping him.

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

Mr. CONRAD. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Utah.

Mr. HATCH. Mr. President, I have heard a lot of speeches on the Senate floor about Osama bin Laden, about Iran, Iraq, and the Middle East. As a member of the Senate Intelligence Committee, I can only talk briefly about this matter, but I think it is important to note I was probably the first Member of Congress—at least to my knowledge and I believe anybody's knowledge—to mention the Clinton administration had better get on top of Osama bin Laden, or he is going to kill Americans. At one particular point in that period of time between that statement and when President Clinton left office, there was one time they could have captured Osama bin Laden, and he would have been turned over to them. They blew it, not realizing how important this matter was.

As a matter of fact, we now know he is behind terrorist activities all over the world, especially in our country and especially in the Middle East. We have had more than ample unclassified information, and person after person, group after group has tried to infiltrate our country to cause terrorist activities within this country, in each case tied back to Osama bin Laden.

We also know he has escaped Afghanistan and with the help of certain friends probably is residing somewhere in northeastern Pakistan but no one really knows. To make a long story short, we do not just have the right to go into northeastern Pakistan and conduct a major warfare search for Osama bin Laden without the permission of the Pakistanis. Everyone knows that. That relationship is a very important relationship.

We also know Osama bin Laden is not just dedicated against the United States of America but against anyone that stands for freedom. Particularly, he is against his own fellow Arabs in Saudi Arabia and other parts of the Middle East. It is apparent that many claims are made that some of the terrorism that happens in the Middle East is caused by al-Qaida, inspired by none other than Osama bin Laden. There is also no question that there have been ties to Saddam Hussein.

But be that as it may, anyone who tries to make out the case that we should not be in Iraq is ignoring decades of facts. Anyone who tries to pin the Iraqi matter strictly on whether or not Osama bin Laden had weapons of mass destruction is ignoring an awful lot of matters that indicate that if the United States did not act, it would be only a matter of time until it would be too late to act and there would be many thousands of others killed, networks set up, deterioration throughout the Middle East, which is, as a whole, strictly important to the United States of America, as well as other countries in the world.

I get a little tired of hearing people in the Senate criticizing President Bush for stopping these people for letting it be known throughout the world that we will not put up with acts of terrorism, that we will hit them where it hurts for doing what has been done in Iraq. Anyone with any brains has to realize there are so many facts there you do not even need weapons of mass destruction today to show what we have done there has placed a huge dent in terrorism around the globe and has rocked Osama bin Laden back on his heels. Yes, he is still capable of making an occasional television announcement. He is still capable of acting like he is more important than he is. But the fact is, we have put a big dent in his terrorist operations around the world.

That is not to say we should not stay vigilant, that we should not do everything in our power to make sure that terrorism is fought not just in our land but all around the world. One has to

look pretty far to look beyond the terrorist incidents of Saddam Hussein, his sons, and the Baathists in Iraq. All that is important in the Middle East as well as in other parts of the world. I will not take time to go through the fact that 10 years ago, the U.N. even verified he has the capacity to make weapons of mass destruction, was making weapons of mass destruction, used them against his own people, et cetera, et cetera.

It seems strange to me we have to go through this every day, with people lambasting the President, who literally has stood up the way he should stand up, ignoring the fact that many in the country of Iraq are thrilled we are there, bringing peace and stability, decency, honor, freedom, education, health care, infrastructure, and other matters to benefit that nation. Naturally, those who love terrorism, those who love hatred, are not going to like him. Instead of condemning the President for crass political reasons at that, we ought to be thanking him for having the guts to stand up and to take these actions that have long been overdue.

I have a lot more to say, but I let it go at that today. It is demoralizing to me to see a lack of support by some on the other side for what has been necessary for foreign affairs action. It used to be that offshore we supported whoever was President. I guess that was because most of the time the President was a Democrat. I guess it is different when there is a Republican President. All we have had are attempts to undermine everything President Bush is trying to do with probably the best foreign policy team I have seen in my 27 years in the Senate, composed of people who complement each other, who have cross-currents of belief, who basically come behind the President and support what is being done in ways that I don't think any other group of people could have done, certainly not as well as they have done.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 2:35 having arrived, the Senate will resume consideration of the motion to proceed to the consideration of S. 1751, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to consideration of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes of class members and defendants, and for other purposes.

Mr. HATCH. Mr. President, I note that Senator CORNYN is here. I ask unanimous consent he be permitted to

speak, and then I be granted the floor thereafter.

The PRESIDING OFFICER. The distinguished Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I thank the distinguished chairman of the Judiciary Committee, the Senator from Utah. It is because of his leadership on this issue, that of class action fairness, it has reached this stage in the proceedings. He is a true gentleman in the finest traditions of the Senate. He also happens to be the iron fist and the velvet glove who helps make things happen in the Senate Judiciary Committee, a place where, unfortunately, things do not always happen the way they should, notwithstanding his heroic, Herculean efforts.

Mr. CORNYN. Mr. President, I ask unanimous consent I be added as a cosponsor to the Class Action Fairness Act of 2003.

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

Mr. CORNYN. Mr. President, this bill is important for so many reasons. I will generally lay out what I believe to be some of the important reasons the Senate should take up this bill that was voted out of the Senate Judiciary Committee on a bipartisan basis, why the Senate should take this bill up, vote it out, and do everything in our power to see it enacted into law.

My colleague, the Senator from Iowa, Mr. GRASSLEY, deserves a great deal of credit for his hard work on this issue and for promoting this important legislation. I publicly acknowledge his leadership on the issue as well.

Like a number of the Members of this body, I have been a member of the bar, a lawyer, for a number of years. I have seen the ways in which the law and lawyers have contributed in a tremendous fashion both to the public administration of justice and to that maxim, that saying, that is engraved into the edifice of the U.S. Supreme Court, which is really a national value and ideal: Equal justice under law.

That is indeed one of the fundamental values upon which this Nation was founded. But I do not think it is news to anyone that that aspiration, that value, that we all agree is important, has suffered in the administration when it comes to class action lawsuits.

I wish to make clear, I believe class actions do have an important role in the administration of justice. In other words, the class action was created so that individuals with relatively small claims and who would not be able to bring those claims forward in an economical way—indeed, the economics would discourage them from doing so—would not be denied access to the courts and access to justice simply because their claims were rather small because, indeed, in fact that were the case and there were no mechanism to bring those small claims forward, there would be those who would abuse indi-

viduals and who would know they could continue in that posture because individuals would not be able to economically bring those claims forward.

So the class action mechanism provides a means for aggregating or collecting those claims so that it can be done in an economical fashion, in a way that will not deny those individuals who are aggrieved access to the courts so they may have access to that justice that I mentioned a moment ago.

So the intent of the class action mechanism was to provide consumers with access to the courts. The problem is, today, the reality is that our system has turned into one that now benefits the few at the expense of the many. In other words, the people who benefit from class actions today, too often, are the lawyers who bring those lawsuits rather than the consumers for whose benefit this whole procedure was first conceived.

I think it ought to be our goal in the policy of the U.S. Government and our courts to see that those with valid claims have a means to vindicate those claims, but it should not be a means by which the few can be enriched at the expense of consumers who may not even know they are involved in a class action lawsuit, where they receive token compensation whereas the class action lawyer receives millions, literally, in attorney's fees.

Modern class action litigation has brought forward what we have now come to recognize as the entrepreneurial lawyer. That is a lawyer who may not have a client but if they are smart enough to try to figure out a way to create a claim or find somebody who arguably has a claim, then they can go out and seek a class representative; that is, somebody whose claim is representative of perhaps hundreds or thousands or even millions of other people who might be in a similar situation and, thus, seek certification of a class action and settle the case because, frankly, class action lawsuits are almost never tried because the consequences of a trial and the loss are so devastating that the person who has been sued or the company that has been sued does not really want to risk an adversarial proceeding in a court of law.

So class action lawsuits are filed to be settled and to use the economic pressure that is created thereby because the number of claims that are aggregated and the amount of money that is at stake is literally a bet-the-ranch lawsuit or, I should say, bet-the-company or bet-your-life-savings lawsuit.

The problem is, our system of class action litigation is not just broken; it is falling apart. That is not right, and that is not justice, and that cries out for reform. I believe this bill is an important step forward in providing that reform.

Now, the truth is, as great as I believe this bill is that has passed out of

the Judiciary Committee, it, frankly, is not all we should strive for when it comes to class action fairness.

For example, many people find out only after they receive a coupon or something in the mail that they were, indeed, a member of a class; in other words, they were a party to a lawsuit, and they did not know it until they received some token compensation, whether it be a coupon or perhaps a few pennies.

I think if we were to engage in the sort of class action reform that I think would genuinely address part of the problem, we would have a system not where people are asked to opt out of a class but literally where consumers are given an opportunity to opt in; that is, I do not think we ought to presume somebody wants to be a party to a lawsuit unless they say: Count me in.

I do not think that is too much to ask. But that is not what this bill does yet. But that is where I think we need to go ultimately.

What this bill does is provide a means of access to a court and the kind of careful review of a legal claim that I think is important in order to preserve the goal of class action litigation; that is, to serve the interests of consumers and not the interests of entrepreneurial class lawyers.

I want to give just one or two examples from my own experience. As I said, like many in this body, I have been a practicing lawyer. I also happen to have been a judge in my earlier life and exposed to some of the abuses of class action litigation. And of one I will never forget, I want to just mention a few of those details.

Well, it seems that General Motors created a sidesaddle gasoline tank pickup truck, one that was the subject of or involved in a rather spectacular explosion and terrible injury and death in Georgia, which was obviously a personal injury and a wrongful death claim.

What happened in Texas, and elsewhere, was we saw that some lawyers realized this was perhaps a product design over which consumers may have a potential claim. So they brought a lawsuit, not for personal injury or death but for the economic loss incurred by consumers who owned sidesaddle gasoline tank pickup trucks.

Of course, they had a couple of problems. One, they had the problem of being able to establish a true measure of loss as a result of merely owning them because, in fact, the evidence seemed to be that there was no actual loss in value just by driving a truck that had a sidesaddle gasoline tank. But, moreover, what ultimately happened in this case was that the consumers got a coupon, redeemable upon the purchase of a new General Motors pickup truck, and the lawyers who filed the lawsuit got nearly \$10 million in cash.

As it turned out, the court on which I served, the Texas Supreme Court, unanimously reversed that decision—

that settlement really, the approval of that settlement, saying: Look, we have gotten this exactly backward. Class action lawsuits are brought for the benefit of consumers, not for the benefit of the lawyers who file them.

So in order to correct this abuse represented by the settlement, we said: Look, the consumers have to get something of value, and it has to be more than a coupon redeemable upon the purchase of a new General Motors pickup truck.

Now, frankly, what happened was, it looked as though the class lawyers, the class counsel, cut a deal that was good for them, and General Motors agreed to a deal that was pretty good for them under the circumstances, although I am sure they would have rather not been there. But they were able to basically effectuate a marketing scheme for the sale of more GM pickup trucks; in other words, make lemonade out of this lemon. The problem was, consumers in the process got nothing. Indeed, many consumers, because they were constrained by bidding requirements—for example, trucks owned in a motor pool by a municipality or otherwise constrained by those requirements—could not even take advantage of the coupon. Of course, others didn't have the money to buy a new pickup truck and so they couldn't use the coupon which gave them some money as against the purchase of another truck.

We can all testify, based on our own experience, how we have perhaps received a notice in the mail. I remember not too long ago when my wife and I went to a Blockbuster video rental store. We got an extra long tape when we rented our video that had a notification of a class action settlement attached to it. Of course, after reading the fine print, we found out that we had, unbeknownst to us, been involved in a lawsuit and had some nominal claim we could make to a few pennies, while the lawyers in the case received \$9 million in cash. The consumers got a coupon for about a buck, and the lawyers got \$9 million in cash.

I don't want to take long today because the chairman of the committee has graciously allowed me to say a few words now. I know we will be continuing to talk about this issue for some time this week, as well we should. But there is another part of class actions that we need to be careful about. It is not just the entrepreneurial lawyers who settle for cash while consumers get a coupon. Class actions can also be used by defendants—that is, people being sued for various claims—to preempt or to stop future claims by those who have them because there is what we lawyers call *res judicata*. That is, no one else can bring another claim if, in fact, they were notified they had a potential claim and failed to object and thus were included in the class. So some defendants will potentially go out and collude with an entrepreneurial lawyer in order to get a final class action set-

tlement which meets their bottom line but which basically precludes future claims by others who genuinely are aggrieved and harmed and whose rights are totally cut off.

This is not lawyer bashing, I assure you, as a lawyer myself. People need to have access to the courts. Consumers need to have a means to vindicate their just claims. But it cannot be through a method which rewards entrepreneurial lawyers with millions in cash and consumers with a coupon. It cries out for reform. I believe the class action liability reform bill Chairman HATCH has navigated through the Judiciary Committee, which enjoys bipartisan support in that committee, is a big step in the direction of reform.

With that, I thank the Senator from Utah for allowing me to say a few words. I will relinquish the floor from whence it came.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator BREUX be recognized and then I be recognized immediately following his remarks.

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

The Senator from Louisiana.

Mr. BREUX. Mr. President, I thank the chairman of the Judiciary Committee for yielding to me.

I will take a few moments to explain my position on this important legislative effort and point to the fact that I have worked on a substitute amendment that has the ability to bring both sides together in a way we have not yet achieved.

It is clear that in all difficult legislative areas, when you have a very closely divided Senate, the only way we will actually get legislation adopted and passed and sent to the President for his signature is if we aggressively work together to limit our differences and maximize the things we have in common in order to produce a legislative package that can sustain the rules of the Senate and allow a bill to actually pass and become law.

There is room for reform in class action litigation. I do not think it is as bad as some portray the situation to be, but it is probably a problem that does need to be addressed. For those who think we should do nothing in this area, I would say there are some things we can do that improve the situation and, most importantly, get us a product that can actually become law.

Many times we in the Senate are faced with the question of, do I want to try to do everything I would like to do and risk getting nothing done, or would I like to try to reach a legitimate compromise and actually get something passed that may not be everything I would like but would be far superior to doing nothing at all. That is the situation we face with regard to the question of class action litigation.

My substitute bill, which would be offered, hopefully, as an amendment,

does the following: It builds on the committee report in the sense that what we do is say to those plaintiffs who file a class action case in a particular State, where one-third or less of the plaintiffs, the people who are injured in a State, happen to be from that State, that like the committee bill, that case would clearly be a matter of Federal jurisdiction. Where two-thirds or more of the plaintiffs who are injured or alleged to be injured reside in a particular State—say Louisiana—where the injuries were alleged to have occurred, if two-thirds or more of those injured citizens who have filed a case, two-thirds or more, happen to be from my State of Louisiana, then it is a State court in which the action should be brought.

As the committee bill, my bill also says that when you have a situation between one-third and two-thirds of the plaintiffs coming from a State, a particular State where the injury occurred, then the Federal judge would look at the circumstances, as the committee bill, and make a determination of whether that case more appropriately belongs in the Federal court or belongs in the State court.

What is the difference between the two approaches? One big difference is that in the committee bill it says, that even if two-thirds or three-fourths or 98 percent of the injured people reside in Louisiana, where the alleged injury occurred, if the defendant happens to be a citizen of some other State, as so many corporations are, then the case goes automatically to the Federal court to interpret as best they can the State laws, such as my State of Louisiana.

That is incorrect. If the majority of the injuries are in the State of Louisiana—say it is a meatpacking company that has sales in Louisiana and it has caused injuries in my State of Louisiana by selling tainted products of meat that cause real injuries in Louisiana—and 75 percent of the injured people are in Louisiana but because the company may be domiciled or a citizen of the State of Delaware, that all of a sudden the Federal court is better situated to handle that case. That defies logic. If the injured people are in my State, two-thirds or more, then logic says the case can best be handled and interpreted by the State courts and the State supreme court which would be interpreting the State tort law that the State legislature passed.

Why should we say merely because one defendant's cause for alleged injuries happened to be in Delaware, where so many companies are incorporated, that automatically means it should be in the Federal court? The Federal court does a great job of interpreting Federal law, but I suggest when it comes to interpreting State law, on which these plaintiffs would be judged, the State court is better situated to make those determinations. I will have more to say about that particular aspect.

Let me mention briefly when it comes to the so-called coupon settlements the distinguished Senator from Texas mentioned, our legislation addresses that, to the extent that we can, by saying where coupons are issued to many plaintiffs who may have bought a defective product, the situation in the past has been many plaintiffs' attorneys would have their fees set not on the number of coupons that were actually redeemed, but only on the number of coupons that were actually issued in terms of the settlement.

For instance, people buy a defective product and many times the resolution of the case is based on each plaintiff getting a coupon or discount on a future purchase. The problem was many attorneys were getting paid on the total number of coupons issued rather than the ones redeemed. Our legislation says their fees would only be based on the number of coupons actually redeemed, and I think that makes a great deal of sense as well. It also says you cannot run a merry-go-round and continue trying to take cases from one court to the next. Under our legislation, we say defendants have a right to try to remove a case to the Federal court, but they cannot do it an unlimited amount of times. Our legislation simply says such removal would occur in a timely fashion, and we suggest within 30 days after filing of the complaint. Surely the defendants know whether they want to be in Federal court or State court. They cannot wait up until the end of the case in the State court, after years of litigation, and say, oops, we want to move it to Federal court and have that as an absolute right. They ought to do it in a timely fashion. Our legislation addresses that as well.

Mr. President, I will conclude my remarks by saying the good Senator from Utah is a very respected chairman of the committee. I think he wants legislation to pass. My fear is, unless we sit down and work together, we are going to have a stalemate. Both sides will have an argument. Democrats will have one argument and Republicans will have another argument, but the result will be nothing will pass.

My approach is simply that we can say don't proceed to this bill until we have had serious discussions between both sides, such as we have done on asbestos. I think those asbestos cases have made progress. It is not quite there yet, but they have made progress. Why? Because they have been willing to sit and talk among all the parties. I think we should do the same thing with the class action litigation. We can say we are not going to proceed to this bill until we have had an opportunity to sit down and have good, legitimate discussions.

I think we can come to an agreement so that we will not have the bill passed by just one vote or lose by one vote, but rather have it pass by 75 or more votes in this body. I think that is possible, but it is going to take, first of

all, saying we are not going to proceed to the legislation until we have had those discussions. We are going to share what we have just outlined with my good friend, the chairman of the Judiciary Committee. Hopefully, they can look at it and see if there is room for legitimate talks and legitimate compromise. I think there is. The alternative is to do nothing. I think that is unacceptable.

I thank the chairman for yielding me a few moments to make some comments. I yield back my time.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks. We will certainly look at whatever he has to offer in this matter. We will keep an open mind and see if we can get together.

I rise in strong support of S. 1751, Class Action Fairness Act of 2003. It used to be S. 274, but now it is renumbered to S. 1751. This bill represents a carefully balanced legislative solution in response to the widespread abuse of the class action lawsuits in our State courts. Over the past decade, it has become painfully obvious that class action abuses have reached epidemic proportions. What began as occasional outrageous class action settlements, drawing light humor, has now become a routine occurrence that is just not funny anymore. It has become equally clear that the true victims of this epidemic have been every-day consumers who represent the silent majority of unnamed class members throughout the country.

It has become too common where plaintiff class members are not adequately informed of their rights or the terms and practical implications of a proposed class action settlement. Making matters worse, judges too often approve settlements that primarily benefit class counsel, the attorneys, rather than the class members or the victims. That is turning the law on its head.

In the coming days, we will hear numerous examples of egregious State court settlements, where class members habitually receive little or nothing of value, while their attorneys receive millions of dollars in fees. The cases are numerous, but just too extensive to list.

To put these settlements in perspective, allow me to share a recent class action settlement that one of my own staff members recently actually received in the mail. This settlement notice comes from a State court in Jefferson County, TX. It involves the settlement of a class action lawsuit brought on behalf of purchasers of Bridgestone and Firestone tires. This technical legal document informs my staffer—an apparent class member by virtue of owning a set of Firestone tires—of a proposed class action lawsuit settlement that will award the lawyers \$19 million in fees and costs. That is not a bad payday for lawyers when compared to what the clients get:

a promise from defendants that they will make safer tires and initiate a safety program.

It strikes me these class members are getting a so-called benefit they should be getting, anyway. It seems to me they should try to have safer tires and the benefit of a safety program.

But the laughable settlement terms don't end there. Unlike the unnamed class members who do not stand to gain a single penny, those lucky enough to be named plaintiffs get to walk away with a \$2,500 cash bounty. This proposed settlement, which will likely be approved by the State court, represents everything wrong with the class action system today and underscores the importance of reform—\$19 million, where no one really gets any benefits except a few they choose to be named plaintiffs, who get \$2,500. The attorneys walk off wealthy, happy, fat, and laughing.

The need to reform our class action system is not a new issue to the Senate. The Judiciary Committee conducted hearings in the 105th, 106th, and 107th Congresses, reporting a similar bill out of committee in the 106th Congress on a bipartisan basis. We have received mountains of evidence demonstrating the drastically increasing injustices caused by class action abuses.

After working extensively with numerous legislative proposals throughout the various Congresses, the committee reported a bill—again with bipartisan support—which I believe provides a measured response to the underlying class action problem.

This being said, I would not be surprised to hear somebody deny the existence of any problem at all. Others will try to confuse the issue with dubious claims that proposed reforms would somehow disadvantage victims with legitimate claims or further worsen class action abuses. Others may even contend past legislative reforms have contributed to recent financial debacles and that the proposed reforms will encourage more. Rest assured, Mr. President, such claims are nothing more than red herrings intended to divert the debate from the real issues.

In this regard, let me emphasize a few points regarding this bill. First, this bill doesn't eliminate all State court class action litigation. Class action suits brought in State courts have proven in many contexts to be an effective and desirable tool for protecting consumer interests and rights. Nor do the reforms we will discuss today in any way diminish the rights or practical ability of victims to band together to pursue claims against large corporations. In fact, we have included several consumer protection provisions in our legislation that I believe will substantially improve plaintiffs' chances of achieving a fair result in any settlement proposal.

There are three key components to our legislation. First, the bill implements consumer protections against abusive settlements by:

No. 1, requiring simplified notices that explain to class members the terms of proposed class action settlements and their rights with respect to the proposed settlement in "plain English."

No. 2, enhancing judicial scrutiny of the abhorrent coupon settlements.

No. 3, providing a standard for judicial approval of settlements that would result in a net monetary loss to plaintiffs.

No. 4, prohibiting bounties to class representatives.

No. 5, prohibiting settlements that favor class members based upon geographic proximity to the courthouse.

And No. 6, requiring notice of class action settlements be sent to appropriate State and Federal authorities to provide them with sufficient information to determine whether the settlement is in the best interest of the citizens they represent.

Second, the bill corrects a flaw in the current diversity jurisdiction statute that now prevents most interstate class actions from being adjudicated in Federal courts. Specifically, the Class Action Fairness Act amends the diversity-of-citizenship jurisdiction statute to allow larger interstate class actions to be adjudicated in Federal court by granting original jurisdiction in class actions where there is "minimal diversity" and the aggregate amount in controversy among all class members exceeds \$5 million.

The bill balances the State's interest in local disputes by providing that class actions filed in the home State of the primary defendants would remain in State court subject to a triple-tiered formula that looks at the composition of the plaintiffs' class membership. This formula has become known as the Feinstein Compromise.

To enforce the jurisdictional changes, the bill modifies the Federal removal statutes to ensure that qualifying interstate class actions initially brought in State courts may be heard by Federal courts if any of the real parties in interest so desire.

Although some critics have argued this amendment to diversity jurisdiction somehow violates the principles of federalism or is inconsistent with the Constitution, I think their concerns miss wide of their mark. I fully agree with Mr. Walter Dellinger, former Solicitor General, who previously testified at one of our Judiciary Committee hearings that it is "difficult to understand any objection to the goal of bringing to the Federal court cases of genuine national importance that fall clearly within the jurisdiction conferred on those courts by article III of the Constitution."

Finally, I wish to express my appreciation to the many individuals who have shared with me the details of their experiences of class action litigation. In particular, I am grateful to those victims of various abuses of the current system who have come forward and told their stories in the hope that

something positive might come out of their terrible experiences.

Among those who have come forward is Irene Taylor of Tyler, TX, who was bilked out of approximately \$20,000 in a telemarketing scam that defrauded senior citizens out of more than \$200 million. In a class action brought in Madison County, IL, a notorious county for these cases, a forum shop county where attorneys forum shop to get these big verdicts and these favorable court rulings, the attorneys purportedly representing Mrs. Taylor negotiated a proposed settlement which will exclude her from any recovery whatsoever.

Martha Preston of Baraboo, WI, provides another excellent example. Ms. Preston was involved in the famous BancBoston case brought in Alabama State court which involved the bank's alleged failure to post interest to mortgage escrow accounts in a prompt manner.

Although Ms. Preston received a settlement of about \$4, approximately \$95 was deducted from her account to help pay the class action counsel's legal fees of \$8.5 million. Notably, Ms. Preston testified before my committee 5 years ago asking us to stop these abusive class action lawsuits, but it appears that at least thus far her plea has not been heard. So I urge my colleagues to support this modest effort to reform the abuses in the current system, abuses that are actually hurting those the system is supposed to help.

Mr. President, I wish to take a minute or two with some charts to show how bad the system is. Under current law, in many State class action lawsuits, all of the money—every stinkin' dime—goes to the attorneys. I am not against attorneys. I am one myself. I think they deserve to be paid reasonable fees, but in these class action suits every bit of the money goes to attorneys.

In the BancBoston case, lawyers got \$8.5 million. In the case I just mentioned, some of the plaintiffs had to pay the attorneys additional moneys, getting nothing out of it, but the attorneys got \$8.5 million.

I don't know, but that just smells to me a little bit. Maybe I am just too critical, but when the attorneys who represent the clients get \$8.5 million and the clients have to again pay the attorneys even more, there is something wrong with that.

Take the second one, the Blockbuster case. The lawyers got \$9.25 million. What did the plaintiffs get? One dollar off their next movie. Come on. Doesn't that seem a little disproportionate to you, \$9.25 million for attorneys and \$1 for the client? Now, true, there are many clients, but it doesn't seem too right to me.

Take the frequent flier case. The lawyers got \$25 million. The plaintiffs got a coupon worth \$25 to \$75. Again, now I understand in that particular case—I may have it mixed up with another case—after getting a huge settlement,

they then turned around and sued the plaintiffs for more money.

Take the Coca Cola sweetener case. The lawyers got \$1.5 million and the plaintiffs get a 50-cent, a 50-penny coupon. I don't know about you, but that also smells to me. Again, I am not against attorneys getting reasonable fees, but it seems to me these are scams more than anything else. They will say they are correcting societal wrongs, but why then do they get all the money and the plaintiffs who have to put their names on the line get relatively nothing? Talk about class action abuse.

Let's go to that Blockbuster Video case. After being named in 23 class action lawsuits, Blockbuster agreed to provide class members with only \$1-off coupons, "buy one get one free" coupons, and free Blockbuster favorites video rentals . . . while attorneys are reported to receive around \$9.2 million in fees. That is according to the RockyMountainNews.com. It just does not seem right. But that is the way it is.

The class action abuse I mentioned in the BancBoston settlement over disputed accounting practices produced \$8.5 million in attorneys fees and actually cost class members around \$80 each. Later plaintiffs' attorneys in this case also sued the class members—the individuals who they brought the suit for—they sued them for an additional \$25 million. There is something wrong with that. I don't care what anybody says.

Take this one. This is a class action abuse, something this bill would correct. There was a settlement with Cheerios over food additives that produced \$2 million in attorneys fees while class members only received coupons for more Cheerios, something they complained about to begin with. I happen to like Cheerios. I have nothing against Cheerios. I eat them. But why would attorneys get \$2 million while class members get a coupon for another box of Cheerios? It does not seem right to me.

As my colleagues can see, this is a policy that is being abused, and we are only mentioning a few of the abuses. I have no problems with legitimate, honest class action suits where attorneys are acting in the best interests of their clients. But I do have problems with some of these phony approaches that it seems to me are blatantly wrong on their face, where the attorneys get huge fees and the class members get virtually nothing. That is what is happening in these particular cases.

This bill will correct some of those ills without taking away the right to pursue class actions, and in certain cases they will have to be pursued in Federal court. I remember when I practiced law—that was a long time ago, before I became a Senator—we would die to get into Federal court because everybody knew it was a more important case, that the Federal courts handle more important cases, people thought, and still do think that.

For some reason, these class action lawyers do not want to go to Federal courts. Now, why is that? Because they can forum shop into Madison County, IL, where they get judges and jurors to hammer the defendants with outrageous verdicts that benefit basically only the attorneys. Now, that is wrong.

There are at least five States in this Nation where they forum shop class action cases. Grisham wrote a book about this. He is a great storyteller, but I can almost name every fictionalized attorney in that book.

Some of them are great lawyers. Some of them are leaders in bringing litigation to correct societal wrongs. Some of them deserve credit for doing that. But this is a system that is out of control. This bill will help to straighten it out, and I think resuscitate the respect for my profession because attorneys who bring these actions will have to do so pursuant to fairness and rules that make sense rather than forum shop to areas where they can get big verdicts and big legal fees but do injustice.

Now I will speak about "Let's Play Class Action Monopoly." Go. Come up with an idea for a lawsuit, it states on the top of the board. Find a plaintiff to pay off, or a set of plaintiffs. Make allegations. You do not need any proof to make allegations. Get out of rule 23 free. So you get out of the rule. Convince your magnet State court judge to certify the class, which is also another scam in some of these jurisdictions where the judges do not seem to appreciate the law or abide by the law.

File copycat lawsuits in State courts all over the country. Sue as many companies in as many States as possible even if they have no connection to the State.

It states in the bottom right: Who gets the money? Go left on the bottom. Columbia House case, \$5 million for lawyers, discount coupons for plaintiffs; Blockbuster case, \$9.25 million for lawyers, free movie coupons for plaintiffs, and not too many of them; BancBoston case, \$8.5 million for lawyers. Some plaintiffs pay more fees rather than get anything out of it.

So in the bottom left, what happens to me? Your employer takes a hit, maybe lays you off. Next one, your health and car insurance premiums go up. The lawyers win. You lose.

I have tried cases on both sides of the table. I started out as a defense lawyer, and I defended these types of cases. Then in the latter years of my practice, I became primarily a plaintiff's lawyer where I brought cases for and on behalf of individuals who were injured. I brought cases for injured people and got them big verdicts they deserved. They walked away with the bulk of the money, which is only right. Yes, they were happy to pay my fees because they always came out well.

In some of these cases, this is a scam. Now, there are legitimate class action cases, but there are many of them out there today that are not. It is a dis-

grace to our profession. This bill will clarify and straighten out some of the wrongs that are going on. It is high time we do this. The only reason we might not do it is because there is a filibuster on the motion to proceed. Normally, we never have a filibuster on a motion to proceed. Normally, we just go to the bill, and then if somebody wants to filibuster, they filibuster the bill, especially if they have the votes. Why not?

But a filibuster is happening even on the motion to proceed. Why is that? Why a filibuster to begin with, on something that really makes sense? Because there are trial lawyers in this country who pay big premiums. That is why they make a lot of this money, so they can pay big premium dollars to politicians who will vote for them no matter what the rules are.

I want to make it clear, not all class action lawyers are bad. Some of them do what is right, and they are not afraid to go to Federal court. They know they can get their big verdicts in Federal courts as well because they have cases where they should get verdicts. When we have these forum shop cases, something is wrong.

Why is it that we have to have a filibuster on the motion to proceed, or require a cloture vote on the motion to proceed to a bill? Why do they not just let us bring the bill up, and then if they want to filibuster, filibuster the bill? Because we are at the end of a session where every minute counts, every second counts, every hour counts, every day counts. By delaying, those who do not want this bill can help their trial lawyer friends who are very involved in the political process because they have millions of dollars that, in many cases, they do not deserve; that they can give for political purposes to keep these types of injustices going. That is why this bill is important. That is why there is a huge bipartisan vote for this bill.

The question is: Can we get 60 votes? I personally believe we can. I believe it would be a disgrace for this body to not overwhelmingly vote for this bill. It is a bipartisan bill. It has been well thought out. We have worked hard to accommodate various members on both sides of the aisle. I think it will redeem our profession from those fly-by-nights who are just in it for the money, without regard to helping their real clients.

I would like to see that happen because the law profession is a great profession, but in recent years it has been steadily eroded by people who are not doing what is right in the profession. These are just some egregious cases that are all too often happening because some lawyers do not do what is right.

I am for the good lawyers. But I am against those who are just in it for the money and not really helping their clients. This bill will not stop them from bringing litigation, but it will even up the situation so at least there will not be the same amount of forum shopping,

and better, more honest judges will be deciding these cases along with better and more honest juries.

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

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

Mr. LEAHY. Mr. President, we have heard discussion of the so-called Class Action Fairness Act. I oppose the Class Action Fairness Act for the simple reason that it is not fair. Actually, the legislation makes it more difficult for citizens to protect themselves against violations of State civil rights, consumer, health, and environmental protection laws. The way it would hurt them is it would force these cases out of convenient State courts, which have experience with the legal facts and issues involved in such cases; instead, it would push them into Federal courts with new barriers to lawsuits, with new burdens on plaintiffs.

For the many Americans who are watching this debate, we have to at least mention the first, basic question that scheduling this debate right now raises. Here we are, 3 weeks beyond October 1. October 1, of course, is the beginning of the new fiscal year. It is a deadline for passing the appropriations bills that fund the basic work of the Federal Government. It is the law that the House and the Senate must pass the 14 appropriations bills that fund our Nation and do it by October 1. We have not done that. The Congress has not lived up to the responsibility the law mandates. We are in the final few weeks, if not days, of this congressional session, but here we are, 3 weeks past the legal deadline to do what we are required to do, and what we are paid to do, and instead we are devoting these precious days not to acting on the people's priorities, but we will spend several days debating a bill which is a priority of some special interests.

Over the past several weeks, I have received call after call from Vermonters who are more and more anxious over Congress's ability—in fact, Congress's willingness—to finish appropriations for fiscal year 2004. I know other Senators, both Republicans and Democrats, are getting similar calls. I have told those Vermonters who call me to hang in there. I assure them that Congress will eventually get around to doing its work.

Then the Republican leadership decides to have us consider controversial special interest legislation such as this bill. Apparently the special interests can go to the front of the line. The people's interests go to the back of the line. I suggest we have it the wrong way around. Do the people's legislation first; do the appropriations bills first;

do the things we are required to do by law. Do the work that we go back home and tell everybody we are going to do, and if there is time left over for the special interests, let them come up then; don't put them ahead of the people.

My colleagues and I who serve on the Appropriations Committee worked long and hard to get the fiscal year 2004 bills voted out of our committee. We got them all out. They could go anytime they wanted. The Republican leadership has decided not to. The House has passed all 13 of the regular appropriations bills. They are waiting for the Senate to act. We are not acting. Instead, we are bringing up special interest legislation.

The new fiscal year began 3 weeks ago, but the Senate has not even bothered to take up the appropriations bills that fund Agriculture or Commerce, Justice, State, and, our Federal law enforcement, the FBI, the Department of Justice, the actions we take to counter terrorism.

As for Commerce, we might do that, so we might actually get us some jobs in this country at a time when we are losing a million a year.

Foreign operations? That hasn't been brought up.

Transportation? We all know our roads and bridges and rail system are falling apart. We ought at least to be voting. We may vote not to give any money to fix any of the problems of the Nation. We did vote, incidentally, to send \$87 billion to Iraq and we will fix their roads; we will fix their electrical system; we will fix their communication system; we will fix their postal system; we will even give them a new ZIP Code. But maybe we could take a few minutes and bring up those things that might actually pay for roads and transportation and electrical grids and ZIP Codes in the United States.

Veterans Affairs is in there. The administration is cutting veterans benefits all over the country. They are cutting our veterans hospitals. They are cutting out what is available to our veterans. At the same time we are asking our men and women to serve in Iraq, we are cutting out their money. We ought at least to bring that up. Let's vote on it.

We voted to send money to the veterans of the Iraqi army. We voted to send money there. We ought to spend some time here voting on veterans in the United States.

We have the Housing and Urban Development appropriations bills. We have a great housing shortage in this country. We just spent billions. We had plenty of time to vote billions of dollars to build houses in Iraq. We can't even bring up the housing bill for the United States, but this special interest legislation we do make time to address.

What I would say is: OK, we voted to do all these things now for the Iraqi people. Can we at least spend a day or two voting on the same bills that might help the American people at the national, State, and local levels?

Let me tell you about a few of these programs that are being pushed aside so we can take up this special interest legislation.

In the area of agriculture, there is more than \$1 billion in conservation assistance for farmers to help them improve water quality and stop sprawling development. Last year, the aid was delayed by more than 4 months. Each month is critical. The men and women who farm in this country are just barely getting by.

They stalled the Justice spending bill so we could get money as quickly as we possibly could to the police forces of Iraq. But because we stalled it, there is no money for the Bulletproof Vests Partnership Program which helps State and local police agencies buy armored vests to protect the lives of their officers. This is a good bipartisan program that Senator BEN NIGHORSE CAMPBELL and I put together.

I have had police officers come up to me all over the country, people I have never met, who want to shake hands and say, We really want to thank you and Senator CAMPBELL and those who joined you to help us get this money. Now I am going to have to tell them it is stalled. We had to wait to get the money for Iraq, that is fine, but now we have to stall again because we have special interest legislation that comes up.

Take the COPS Program; this puts new police officers on the community streets and in our schools; the Violence Against Women Act programs that provide services for victims of domestic violence, sexual assault and stalking. Those were all set aside so we could bring up this special interest legislation.

All funding for transportation and critical infrastructure projects was bottled up. In fact, the Senate has failed to pass the transportation reauthorization bill. We don't have time to bring that up. We can bring up special interest legislation, we can bring up highways in Iraq, but we can't bring up the highway transportation bill here in the United States. And what is the cost to us? It is 90,000 jobs here in America.

All foreign assistance to nations other than Iraq and Afghanistan are on hold. In fact, all the funding to combat HIV/AIDS and other infectious diseases is also on hold.

We have another group of Americans awaiting action by Congress. Those are our veterans. They need Congress to make basic decisions about their medical care and benefits, decisions that are being held in limbo, and they have no idea where we are going to go.

These are priorities. American priorities are being set aside, and we will take care of Iraq. We will take care of the special interest legislation. In fact, the special interest legislation is going to do more harm than help.

I think the American people are entitled to ask why we are bogged down considering this controversial and unfair class action bill when the Senate

has yet to take up and debate five important appropriations bills amounting to \$301 billion.

I hope the Senate gets down to the business of the people and carries out the responsibilities given to us by the Constitution: taking up, debating, and passing the remaining appropriations bills. And we can pass them. There will be a bipartisan majority of both Republicans and Democrats working together to pass them, if we are even allowed to vote on them. We were allowed to vote on Iraq and special interest legislation. Can we take a little bit of time to vote on legislation that actually helps the people of America?

The American people and the people around the world depend upon the funds and services supplied through the spending measures that are now held hostage. Let us do our job. Let us move these bills. Let us spend a couple of weeks on the floor of the Senate legislating for the people of America. It would be a nice refreshing time. We could pass these bills.

Earlier this year, I joined with Senators KENNEDY, BIDEN, FEINGOLD, DURBIN, and EDWARDS in requesting a hearing on class action litigation in order to help the Judiciary Committee develop consensus reforms—something that we could have done. Republicans and Democrats could have joined on it. But our request was ignored. Actually, our letter went unanswered.

I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC, March 25, 2003.*

Hon. ORRIN HATCH,  
*Chairman, Senate Judiciary Committee, Senate Dirksen Building, Washington, DC.*

DEAR CHAIRMAN HATCH: We were surprised by your announcement in last week's Executive Business Meeting of the Judiciary Committee that S. 274, the Class Action Fairness Act of 2003, would be marked up "in the next couple of weeks." This bill, and indeed the entire subject on the proper scope and disposition of class actions cases, has been the topic of intense and inconclusive debate for years. In fact, legislation similar to S. 274 has failed repeatedly to pass the Senate.

In light of this history and the far-reaching impact of this legislation, we respectfully request that the Committee hold a hearing on class action litigation to help the Committee develop consensus reforms to better serve defendants and plaintiffs before the Committee proceeds to a markup on the Class Action Fairness Act, S. 274. We look forward to working with you and other Members of the Committee on this effort, and appreciate your consideration of our request.

Sincerely,

PATRICK LEAHY.  
JOE BIDEN.  
DICK DURBIN.  
TED KENNEDY.  
JOHN EDWARDS.  
RUSSELL D. FEINGOLD.

Mr. LEAHY. Mr. President, I had hoped that the Judiciary Committee would undertake a deliberate and careful review of information from parties

actually involved in class action litigation to provide a realistic picture of the benefits and problems with class actions. But instead of doing the work for America, we are proceeding with a special interest piece of legislation which has repeatedly failed to pass the Senate in recent years. Our Judiciary Committee did not carry out the kind of thorough and thoughtful legal analysis of this difficult issue it should have. The committee did not provide our fellow Senators with the assistance that they may want and need in this complex area.

I acknowledge the hard work and dedication of my friend, the senior Senator from California, Mrs. FEINSTEIN, who took on an enormous task, attempting with her amendment to rectify some of the harms created by this bill. I appreciate the sincerity of her concern. I appreciate the genuine effort she made. But her amendment touches on only a sliver of the class action cases which this bill would affect—only when plaintiffs and primary defendants are from the same State—and even then it could cause harm.

At its core, this bill deprives citizens of the right to sue on State law claims in their own State courts if the principal defendant is a citizen of another State, even if that defendant has a substantial presence in the plaintiff's home State, and even if the harm done was in the plaintiff's home State. The amendment does not remedy that problem. It burdens the plaintiff even more.

I also want to recognize the sincere efforts made by my friend from Wisconsin, Senator KOHL. I may disagree with him about the nature of the problem. I may disagree with the appropriate solution in this area. But I do so respectfully. He has worked very hard, and I appreciate his efforts.

I would like to note the significant changes in the bill since it passed out of committee.

As originally drafted, this bill included mass tort claims along with class actions. It actually treated them like they were class actions.

One improvement the Judiciary Committee did manage to make to the bill was to strike that provision. We struck it. We voted on that, and we struck it. But somehow, mysteriously, after the bill left the committee with nobody voting, that was reversed. Now mass tort actions are again included in this bill.

Just in case anybody says this is what we voted out of committee, it is not. We changed that.

Now we find out how we actually get things changed in the committee because, apparently, our friends on the other side of the aisle could care less about what we actually did in committee. They just change it in the draft on the way over here. It is fascinating. I have never seen that in 29 years here. But I guess we live under new rules.

In the old days, we just lived under the Senator rules. But now we have rules outside the Senate rules. In fact,

this bill is not the bill reported by the Judiciary Committee, S. 274. It is another bill—S. 1751—which was introduced last week. We didn't have hearings on that. We didn't have votes on that. I guess the special interest says, OK, as soon as you finish with the roads in Iraq, as soon as you finish the schools in Iraq, as soon as you finish giving the power grid to Iraq, as soon as you finish paying for the police officers in Iraq, as soon as you are finished with veterans' benefits for Iraq, before you do anything for American citizens, give us our special interest legislation, and we can just drop it in and go forward.

The special interest legislation will be subjected to the same shunting to a Federal court, and plaintiffs will endure the same unnecessary difficulties in making their claims and pursuing their remedies. But these mass tort cases are not class actions. They have not been analyzed under rule 23 standards or State law.

Mass tort actions have entirely different procedural vehicles to reach justice than class actions. They shouldn't be lumped in with class actions in any kind of class action bill, either this misguided attempt or a better wrought piece of legislation.

Some special interest groups are distorting the state of class action litigation by relying on a few anecdotes and an ends-oriented attempt to impede plaintiffs bringing class action cases. If we really want to correct things, we can and should take necessary steps to correct the problems in class action litigation. But simply shoving most suits into Federal court with the new one-sided rules isn't going to correct the real problems faced by plaintiffs and defendants. It will clog up the Federal courts, but it won't accomplish anything.

We forget that our State-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world—no doubt around the world—as a vehicle for justice. It lets ordinary people band together to take on powerful corporations—sometimes even their own government.

Defrauded investors, deceived consumers, victims of defective products, and environmental torts, and thousands of other ordinary people have been able to rely on class action lawsuits in their State court systems to seek and receive justice.

I remember when the Soviet Union broke up. A group of legislators from the Duma came in to see me, as they did several other Senators. One of them asked a question. They said: We have heard it is actually possible that citizens in your country can band together and sue the government. I said that is true.

They said: We have heard further that not only do they sometimes sue the government, but there are times the government loses. They win.

I said: Oh, yes.

They said: You mean you don't fire the judge and make him do it over again?

I said: You don't understand our system. It is not the Soviet Union. Here in the United States, we are able to band together to take on the government. If the government is wrong, the government is going to lose.

It was an eye-opener to them. Actually, it was a bit of an eye-opener to me because I realized those things we take for granted other countries haven't had the opportunity to have.

I am old enough to remember the civil rights battles of the 1950s and the 1960s and the impact of class actions in vindicating basic rights through our courts. When Congress sat back and did nothing, when Presidents sat back and did nothing, it was class action lawsuits that won.

The landmark Supreme Court decision of *Brown v. Board of Education* was a culmination of appeals from four class action cases, three from Federal court decisions in Kansas, South Carolina, and Virginia, and one from a decision of the Supreme Court of Delaware.

Only the Supreme Court of Delaware, the State court, got the case right by deciding for the African-American plaintiffs.

The State court justices understood they were constrained by the existing Supreme Court law but nonetheless held that the segregated schools of Delaware violated the 14th amendment. The Federal courts did not get it right; before any Federal court did so, a State court rejected separate and unequal schools. The U.S. Supreme Court, to their credit, joined in a unanimous decision in *Brown v. Board of Education* and closed down the highly discredited separate but equal idea, *Plessie v. Ferguson*. There was no separate but equal in the schools and they knew it—separate and unequal. The State courts realized that first in a class action suit and then the U.S. Supreme Court followed.

Many civil rights advocates, including the Lawyers' Committee for Civil Rights Under Law, Leadership Council on Civil Rights, Mexican American Legal Defense and Education, and the National Asian Pacific Legal Consortium have written to Senators in opposition to this legislation. The civil rights advocates conclude this legislation "would discourage civil rights class actions, impose substantial barriers to settling class actions and render federal courts unable to provide swift and effective administration of justice."

I ask their letter, dated September 16, 2003, be printed in the RECORD.

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

LEADERSHIP CONFERENCE  
ON CIVIL RIGHTS,

Washington, DC, September 16, 2003.

OPPOSE THE CLASS ACTION FAIRNESS ACT OF  
2003: IT WOULD IMPOSE NEW AND SUBSTAN-  
TIAL LIMITATIONS ON ACCESS TO COURTS FOR  
VICTIMS OF DISCRIMINATION

DEAR SENATOR: We, the 42 undersigned civil rights organizations, write to express the opposition of the civil rights community to S. 274, the Class Action Fairness Act to 2003, a bill that would substantially alter the constitutional distribution of judicial power. If passed, this bill would: remove most state law class actions into federal court; clog the federal courts with state law cases and make it more difficult to have federal civil rights cases heard; deter people from bringing class actions; and impose barriers and burdens on settlement of class actions.

Class actions are essential to the enforcement of our nation's civil rights laws. They are often the only means by which individuals can challenge and obtain relief from systemic discrimination. Indeed, federal class actions were designed to accommodate, and have served as a primary vehicle for, civil rights litigation seeking broad equitable relief.

There are several reasons why the civil rights community is troubled by this particular legislation:

This bill will overburden and create further unnecessary delay in our federal courts. This bill will amend federal law to extend federal jurisdiction to most state class actions, overloading federal courts and inevitably delaying the resolution of all cases in federal court, including many civil rights claims. The effect of these provisions will be particularly damaging in cases where civil rights plaintiffs are seeking immediate injunctive relief to prohibit discriminatory practices of a defendant.

The bill will burden the federal judiciary, rendering it a less effectual mechanism by which plaintiffs may seek access to justice. We strongly believe that S. 274 is an unnecessary attempt to impose federal judicial regulation on matters of law clearly committed to the states under our Constitution. Indeed, the determination of state law tort, contract and consumer cases is, unequivocally, not the responsibility of the federal judiciary under the Constitution. The imposition of such substantial new responsibilities on the federal courts will further impair the ability of those courts to carry out the essential functions they are intended to serve under the Constitution—the determination of matters involving Federal interests, rights and responsibilities. In short, true access to the Federal courts and to the class action device to secure justice in matters where Federal issues are at stake would be severely curtailed by enactment of this legislation.

The bill could discourage people from bringing class actions by prohibiting settlements that provide named plaintiffs full relief for their claims. Now, for example, a named plaintiff who sues an employer can receive a full award of back pay, and in a proper case, obtain an order placing him or her in the job denied because of discrimination, while also affording all members of the class the opportunity to share in available relief. However, under the guise of protecting class members, the language of the proposed bill prohibits courts from approving settlements that "provide[] for the payment of a greater share the award to a class representative . . . than that awarded to the other class members." This language is susceptible to the interpretation that it prevents the award of positions or "rightful place" seniority to class representatives where the number of vacancies for which class members were pre-

vented from competing by discrimination is less than the total number of class members. If the price of trying to protect others is the loss of the full measure of individual relief, individuals will be deterred from becoming a class representative. Thus, this provision would hinder, rather than reform, civil rights class actions.

The bill could impose new, burdensome, and unnecessary requirements on litigants and the Federal courts. It seeks to impose inordinately difficult and costly notice requirements, which will needlessly complicate and delay the settlement of class actions. Specifically, the proposed bill would require notice to Federal and state officials based on the residence of all class members and would require a 120-day waiting period. These additional, substantial and costly notice requirements and built-in delays are not a matter of due process, but are overly burdensome and improperly assume that Federal and state officials have both proper interest in, and a capacity to respond to, each and every class action.

For the reasons stated above, the proposed Class Action Fairness Act of 2003 could discourage civil rights class actions, impose substantial barriers to settling class actions, and render Federal courts unable to provide swift and effective administration of justice. The bill also compromises delicate Federal/State relations by questioning the competency of the state judiciary and overburdening our already overworked Federal courts. In short, we believe the impact of this legislation would be profound, and would result in new and substantial limitations on access to the courts for victims of discrimination. We, therefore, urge you to reject this harmful legislation. If you have any questions, or need further information, please contact Nancy Zirkin, LCCR Deputy Director/Director of Public Policy, at 202/263-2880.

Sincerely,  
Leadership Conference on Civil Rights  
ADA Watch/National Coalition for Disability Rights  
AFL-CIO  
Alliance for Justice  
American Association of University Women  
American Civil Liberties Union  
American Federation of Government Employees  
American Federation of State, County and Municipal Employees  
American-Arab Anti-Discrimination Committee  
Americans for Democratic Action  
Bazelon Center for Mental Health Law  
Center for Women Policy Studies  
Commission on Social Action of Reform Judaism  
Disability Rights Education and Defense Fund  
Federally Employed Women  
Jewish Labor Committee  
Lawyers' Committee for Civil Rights Under Law  
Mexican American Legal Defense and Educational Fund  
NAACP Legal Defense and Educational Fund  
National Alliance of Postal and Federal Employees  
National Association for the Advancement of Colored People  
National Association for Equal Opportunity in Higher Ed  
National Bar Association  
National Center on Poverty Law  
National Coalition on Black Civic Participation  
National Committee on Pay Equity  
National Employment Lawyers Association  
National Fair Housing Alliance  
National Gay and Lesbian Task Force  
National Legal Aid and Defender Association

National Organization for Women  
National Partnership for Women and Families  
National Women's Law Center  
NOW Legal Defense and Education Funds  
People For the American Way  
Project Equality  
Religious Coalition for Reproductive Choice  
Sierra Club  
UNITE!  
United Food and Commercial Workers International Union  
United Steelworkers of America  
Women Employed

Mr. LEAHY. We all know without consolidating procedures, such as class action lawsuits, it might be impossible for plaintiffs to receive effective legal representation. Lawyers tend to be paid by the hour. They are well paid. But lawyers usually hope they get a portion of the proceedings to take on either the governmental or culprit defendants. They have to do so on a case-by-case individual basis. Sometimes that is what cheaters count on. That is how the cheaters get by on their schemes. If you cheat thousands of people just a little bit, you still cheat; if you only cheat them by \$3 or \$4, nobody will sue them. But if you are cheating a million people of \$3 or \$4 each, it adds up.

Class actions allow the little guys to band together and get a competent lawyer and address wrongdoing. The best class action made it possible for individual tobacco victims to take on the powerful tobacco conglomerates in ways individuals could not. It allows stockholders and small investors to join together and go after investment scams.

Another example of a class action litigation serving the public interest is the Firestone tire debacle. The national tire recall was started in part by the disclosure of internal corporate documents on consumer complaints of tire defects and design errors that were discovered in the litigation against Bridgestone/Firestone, Inc. Then the plaintiff's attorneys turned this information over to the National Highway Safety Administration. That started a Government investigation.

Months later, because some people had banded together, Bridgestone/Firestone finally did what they should have done right from the beginning: They recalled 6.5 million tires—but not until after there were 101 fatalities, 400 injuries, and 2,026 consumer complaints.

As reported by Time magazine at the time, it is doubtful that the internal corporate consumer complaint information would have ever seen the light of day absent the civil rights justice discovery process.

The bill before the Senate creates unique risks and obstacles to plaintiffs that are not in the current system. A particularly troubling aspect of S. 1751 is it allows the removal of a case at any time. Anybody who has ever practiced law, anybody who has ever litigated cases—and I, as many other Senators, have—knows the possibilities for abusing this provision are obvious.

As more than 100 legal experts, law professors, noted in a letter to the distinguished Republican leader and the distinguished Democratic leader, Senators FRIST and DASCHLE, they said:

This would give a defendant the power to yank a case away from a state-court judge who has properly issued pretrial rulings the defendant does not like, and would encourage a level of forum-shopping never before seen in this country. Moreover, this provision would allow an unscrupulous defendant, anxious to put off the day of judgment so that more assets could be hidden, to remove a case on the eve of a state-court trial, resulting in automatic delay of months or even years before the case would be tried in Federal courts.

I ask unanimous consent that the letter of the 100 law professors be printed in the RECORD.

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

JUNE 3, 2003.

Hon. WILLIAM FRIST,  
*Majority Leader, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. TOM DASCHLE,  
*Minority Leader, Hart Senate Office Building, U.S. Senate, Washington, DC.*

DEAR SENATORS FRIST AND DASCHLE: We are professors of constitutional law, civil procedure, and other subjects, at law schools across the nation. We are writing this letter because of grave concerns over the so-called "Class Action Fairness Act" (S. 274) and its House counterpart (H.R. 1115), specifically the effect these bills would have on the administration of justice in the United States and on the ability of American consumers, small businesses, and others to obtain relief for injuries done to them. We also have serious questions about the constitutionality of the Act. We urge the Senate to reject this legislation.

PRACTICAL EFFECT OF ENACTING THE BILL INTO LAW

As approved by the Senate Judiciary Committee, S. 274 would result in transferring to the federal courts jurisdiction over most class actions filed in state courts, under state law. The Federal courts do not have the resources to administer justice to both their present dockets and the large number of complex state-court cases that would be added if S. 274 or its House counterpart were to become law. Passage of the bill would lead to significant delays in all the business of the federal courts, harming the ability of the federal courts to decide cases that only they can decide, or in which there is a strong federal interest.

ENACTMENT OF THE BILL WOULD HARM THE ABILITY OF PLAINTIFFS TO OBTAIN JUSTICE

We believe that several specific provisions in the bill would be very unwise. The federal courts have responded to claims of abuse in class-action procedures by studying the claims, inviting comments from bar associations, attorneys and others, carefully considering the comments, proposing draft rules, receiving comments on the drafts, and fine-tuning their proposals. If a reform is inadequate to meet the need, they can propose refinements. A substantial set of changes to Rule 23, the class action rule, are expected to go into effect on December 1, 2003, in the event that Congress does not direct otherwise. All of these changes were made pursuant to the Rules Enabling Act, the process Congress created to try to keep politics out of the process of setting rules for the judiciary. Sec. 3 of S. 274 would override some of these changes, and eliminate the ability of

the Advisory Committee on the Civil Rules to deal with others. If it is enacted in its present form, the rulemaking process would become politicized, and lobbyists' demands would replace the careful consideration now given to these matters. In the event that Congress deems it necessary to legislate as to areas traditionally covered by court rules, we urge that the legislation be as limited as possible, that this part of the legislation be in the form of rules rather than freestanding statutes, and that the legislation expressly preserve the ability of the Advisory Committee on the Federal Rules, the U.S. Judicial Conference, and the Supreme Court to amend the new rules or procedures to the extent necessary to accomplish their purposes more effectively or to cure any unanticipated problems. Congress would, as always, have the final say under the Rules Enabling Act.

The administration of justice would also be harmed by removing much of the ability of state courts to construe their own laws. Many important questions are most likely to arise when the stakes make it worthwhile to litigate them, i.e., in class actions or other large cases. When the case is removed to federal court, the federal court cannot give a definitive interpretation of state law, but can only predict what the state supreme court would find state law to be, if the state supreme court had the same case. If there are other cases from other parts of the country against the same defendant, even without any overlapping classes, the Judicial Panel on Multidistrict Litigation may assign the case—and the task of interpreting state law—to a federal court thousands of miles away. Not every state has adopted procedures allowing a federal court to certify state-law questions so there may be no practical means by which a federal court in Topeka, for example, may be able to obtain guidance as to the law of California.

A further unwarranted provision in S. 274 would allow a defendant to remove state-law cases filed against it in the courts of its own home state, where it chose to be incorporated or chose to have its principal place of business. This type of removal has long been considered an abuse, and is forbidden by current law.

Equally troubling is a provision in S. 274 that allows removal of a case at any time. This would give a defendant the power to yank a case away from a state-court judge who has properly issued pretrial rulings the defendant does not like, and would encourage a level of forum-shopping never before seen in this country. Moreover, this provision would allow an unscrupulous defendant, anxious to put off the day of judgment so that more assets can be hidden, to remove a case on the eve of a state-court trial, resulting in an automatic delay of months or even years before the case can be tried in federal courts. The House bill creates an even further opportunity for delay, by overruling Rule 23(f)'s provision for obtaining permission from a court of appeals to appeal a class certification ruling, and providing for a right to trigger an automatic appeal and for an automatic stay of discovery while the appeal is pending, even if there is no legal basis for an appeal.

LACK OF JUSTIFICATION FOR A REMEDY THIS SWEEPING

We understand that the supporters of the bill base its justification on assertions that the courts in one or two counties in the United States have too freely granted class certifications in some cases. The bill is not limited to curing claimed abuses in one or two counties, but applies equally to the 3,066 counties in which there is not even a claimed problem. In general, courts have been very

responsive to complaints of abuses, and have instituted corrective measures, such as allowing petitions for interlocutory appeal from orders granting or denying class certification. The Federal courts have adopted Rule 23(f) of the Federal Rules of Civil Procedure, and many State courts have followed suit.

The need for a state court to interpret the law of a different state has never been seen as an adequate justification for removal. Article III of the Constitution does not recognize this as a basis for federal-court jurisdiction and the Full Faith and Credit clause already requires state courts to accord respect to the laws of their sister states. As a practical matter, state courts frequently have to interpret the law of different states even in individual cases properly brought in state courts. This is part of the normal business of the state courts, not a reason for federal jurisdiction.

CONSTITUTIONAL ISSUES

There is substantial cause to doubt the constitutionality of a massive transfer of state-court cases to federal courts. This transfer would effectively substitute federal-court Rule 23 class certification standards for the class certification standards set forth in the statutes, court rules, and case law of the various states. Unbelievably, such a substitution would provide for dismissal of cases that do not meet the federal standards even though they may meet the standards of the states, and even though the standards of the states may meet every requirement of due process. The Supreme Court has not devoted nearly as much attention to construing the Tenth Amendment to the Constitution as it has devoted to the Eleventh Amendment, but passage of S. 274 or its House counterpart may change that comparative lack of attention.

Similarly, the "minimal diversity" trigger for removal under S. 274 and its House counterpart creates an untested and unprecedented expansion of diversity jurisdiction under Article III of the Constitution. Congress certainly has the power to expand diversity jurisdiction to reach cases in which one party on one side of a case is diverse from any adverse party, see 28 U.S.C. §1335(a)(1) (the interpleader statute). There is, however, substantial cause to doubt the constitutionality of these bills' approach, in which diversity is based on the citizenship of any potential class members. We say "potential" because the bill allows removal of a case before the state court has even decided that the case should go forward as a class action, or what the scope of the class should be. While class members are to be protected by the court, and while their rights may be determined by the class action, they are not full parties to the action. Prior to the determination of liability and a proceeding on class members' individual remedies, unless they intervene and become parties, they do not individually have the right to take discovery from the defendants, to file motions in court, to question witnesses, to introduce evidence, or even to take an appeal from an adverse ruling. Yet, under this legislation they would be allowed to remove a complex state law class action into federal court.

At the very least, litigation over the constitutionality of the bill is likely to embroil the courts for years and is yet a further reason to oppose the enactment of this misguided legislation. We urge you to consider our concerns about the unwarranted changes this legislation mandates as well as the very troubling aspects of the legislation that undermine fair administration of justice in the federal and state judicial systems in the United States.

Respectfully submitted.

Mr. LEAHY. Added to the "removal-at-any-time" problems in the legislation are the hurdles established by Senator FEINSTEIN's amendment adopted in committee. I know it is well intentioned, but the amendment does set up cumbersome requirements for determining whether an action is to be heard in State or Federal court. It provides that a Federal judge may use five factors in deciding jurisdiction of a class action where between one-third and two-thirds of the plaintiffs are from the same State as primary defendants; and if two-thirds of the plaintiffs are from the same State as the primary defendants, then the case will stay in State court.

The bill fails to determine when this measurement takes place during the litigation. It has been my experience that membership in class actions frequently changes. So the two-thirds provision or the middle-third provision which is subject to judicial discretion could open up easily to judicial gamesmanship. The defendant could try to remove a case from State court at the discovery stage. Someone takes a deposition and finds, oops, this is going against us, let's get it out of here. Or the judge has made a ruling they do not like and they know they can never win on appeal, let's get it out of here, even after all the evidence is presented, or after closing arguments.

Actually, the way the bill is currently written, it could be done while the jury is deliberating. Considering the vast resources of defendants in many class actions as compared to plaintiffs, it will make it more difficult for class members to ever have a final ruling, where the bill will cause unnecessary and expensive litigation. It favors corporate defendants.

I like to think the scale of justice is even. This tilts the scale of justice and it will bounce right off the stand.

If there were ever a time to think about protecting the consumers, the investors, and the employees, think of Enron, WorldCom, and other corporate scandals. Think of the employees who worked so hard and were told to put their money in the corporate pension program. Look what has happened. Look at the employee investors. I am not too concerned about some of the leaders of a company like that. They might have to sell one of the \$50 million homes or they no longer will have several billions of dollars but rather several hundred million, but I am worried about the people who truly had their lifesavings or their pension destroyed or their company destroyed.

This bill does nothing to make the Enrons of the world more accountable for their actions. Actually, the bill undercuts Congress's other efforts to make the companies more responsible or accountable for their misdeeds or more susceptible to penalties when they do wrong. The legislation makes it more difficult for the victims of corporate wrongdoing to join to make those companies accountable. It seems

to me that is the exact opposite to the approach we should be taking.

Now, not surprisingly, consumers and those representing consumers object strongly to the enactment of this legislation.

I ask unanimous consent to have printed in the RECORD letters from numerous consumer advocates in opposition to this bill.

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

CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA, U.S. PUBLIC INTEREST RESEARCH GROUP,

February 5, 2003.

DEAR SENATOR: we are writing to you as organizations dedicated to working on behalf of the rights and interests of consumers to express our opposition to S. 274, the "Class Action Fairness Act of 2003." This legislation will deny consumers access to adequate redress against corporate wrongdoers and will undermine the ability of state courts to hear cases primarily concerned with their own citizens. While class actions are an important and efficient legal tool for consumers to use in order to obtain redress from wrong doing, we are concerned about abuses of the class action process and agree that these abuses should be curtailed. However, S. 274 will not eliminate these abuses, but rather would create barriers to a consumer's effort to obtain redress. S. 274 is unfair to consumers and we urge you to oppose it.

Congress should work to prevent unjust enrichment by lawyers at the expense of consumers in class action settlements. This legislation however, will not solve this problem. Instead, while purporting to curtail class action abuses, S. 274 will virtually wipe out state class actions and thus remove an important venue for redress of injury or fraud for consumers. The bill will make it more difficult for consumers to obtain effective and efficient judicial relief for injuries caused by defective products, fraud in the marketplace, or discrimination.

Congress should seek to hold negligent wrongdoers accountable for their actions. Yet this bill does just the opposite: it places obstacles to accountability by providing fewer incentives for companies to keep their products safe and their action fair.

S. 274 will create numerous barriers to participating in class actions by permitting defendants to remove most state class action suits to federal court. This removal from state court to federal court would leave consumers shuttling back and forth between state and federal court because while a consumers' class could meet state law class certification requirements, it could fail to meet the class certification requirements set forth in federal law. This will result in the federal courts' denial of class certification and dismissal (not remand) of the case. A consumer would not have two options, none of which would result in access to a court proceeding. A consumer could bring the claim in state court as an individual action. However, individual cases would be impractical to litigate, would not have the same deterrent effect, and would have the potential to overwhelm state courts. In the alternative, consumers could re-file an amended class certification in state court. This re-filing again opens the door created by S. 274 for the defendant to remove the case to federal court.

S. 274 will also clog an already overburdened and understaffed federal judiciary and slow the pace of certifying class action cases. This considerable delay will likely result in the denial of justice to injured consumers. In addition, this removal to federal court takes

away an important and traditional function of state courts and will slow—and in some cases thwart—the continual interpretation of state law. Federal court decisions on issues of state law solve the narrow legal issue of the particular case without providing legal precedent for future state court cases of the particular state law in question. Further, class actions are among the most resource-intensive cases before the federal judiciary. U.S. Supreme Court Chief Justice William Rehnquist has expressed concern that this bill will result in further overloading an already-backlogged federal docket.

We agree that class actions can be made a more effective means of consumer redress; we support changes to the class action system that would prevent unjust enrichment and act as a deterrent to future wrongdoing, including modification of notice requirements and simplification of certification procedures and standards; but the jurisdictional changes mandated by S. 274 are designed to impede class actions, not to make them fairer or more efficient.

This class action "reform" legislation is especially inappropriate in light of recent events. Just last year in the scandals of Enron, WorldCom and others, we saw how corporations need to be held accountable for their actions. Class actions effectively hold corporations accountable.

S. 274 does not provide the right solution to a class action system in need of reform; rather it makes it more difficult for consumers to obtain redress, to hold bad actors accountable for the harms they caused, and to deter future misconduct. The Class Action Fairness Act will substantially reduce the effectiveness of one of the most important legal tools consumers now have.

We strongly urge you to oppose S. 274. We urge you to do the right thing for American consumers.

Sincerely,

SALLY GREENBERG,  
Senior Product Safety  
Counsel, Consumers  
Union.

RACHEL WEINTRAUB,  
Assistant General  
Counsel, Consumers  
Federation of Amer-  
ica.

CHRIS PETERSON,  
Consumer Attorney,  
U.S. Public Interest  
Research Group.

JUDICIAL CONFERENCE OF  
THE UNITED STATES,  
Washington, DC, March 26, 2003.

Hon. ORRIN G. HATCH,  
Chair, Committee on the Judiciary, U.S. Senate,  
Dirksen Senate Office Building, Wash-  
ington, DC.

DEAR CHAIRMAN HATCH: I write to provide you with the recently adopted views of the Judicial Conference of the United States, the policymaking body for the Federal judiciary, on class action legislation, including S. 274, the "Class Action Fairness Act of 2003," introduced by you and other cosponsors.

On March 18, 2003, the Judicial Conference unanimously adopted the following recommendation: "That the Judicial Conference recognize that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-State class action litigation in the Federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the Federal

courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that Federal courts are not unduly burdened and States' jurisdiction over in-State class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the State courts in the handling of in-State class actions. Such exceptions for in-State class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single State, the relationship of the defendants to the forum State, or whether the claims arise from death, personal injury, or physical property damage within the State. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude on State courts or burden Federal courts."

The Conference in 1999 opposed the class action provisions in legislation then pending (S. 353; H.R. 1875, 106th Cong.). That opposition was based on concerns that the provisions would add substantially to the workload of the Federal courts and are inconsistent with principles of Federalism. The March 2003 position makes clear that such opposition continues to apply to similar jurisdictional provisions.

The Conference recognizes, however, that Congress may decide to base a statutory approach to remedy current problems with class action litigation by using minimal diversity jurisdiction. The Conference position recognizes that the use of minimal diversity may be appropriate to the maintenance of significant multi-State class action litigation in the Federal courts. The use of the term "significant multi-State class action litigation" focuses on the possibility of multi-State membership within the plaintiff class. The actions to which this term applies are nationwide class actions, as well as class actions whose members include claimants from States within a smaller region or section of the country. Minimal diversity in these cases would facilitate the disposition of litigation that affects the interest of citizens of many States and, through their citizens, affects the many States themselves.

Parallel in-State class actions in which the plaintiff class is defined as limited to the citizens of the forum State are not included within the term "significant multi-State class action litigation." Parallel in-State class action might share common questions of law and fact with similar in-State actions in other States, but would not, as suggested herein, typically seek relief in one State on behalf of the citizens living in another State. Accordingly, parallel in-State class actions would not present, on a broad or national scale, the problems of State projections of law beyond its borders and would present few of the choice of law problems associated with nationwide class action litigation. In addition, to the extent problems arise as a result of overlapping and duplicative in-State class actions within a particular State, the State legislative and judicial branches could address the problem if they were to create or utilize an entity similar to the Judicial Panel on Multidistrict Litigation, as some States have done.

Further, the position seeks to encourage Congress to include sufficient limitations and threshold requirements so as not to unduly burden the Federal courts and to fashion exceptions to the minimal diversity regime that would preserve a role for the State courts in the handling of in-State class actions. The position identifies three such factors that may be appropriately considered in

crafting exceptions to minimal diversity jurisdiction for class actions. These factors are intended to identify those class actions in which the forum State has a considerable interest, and would not likely threaten the coordination of significant multi-State class action litigation through minimal diversity. (The factors do recognize certain situations where plaintiffs from another State may be included in an otherwise in-State action.)

The first factor would apply to class actions in which citizens of the forum State make up substantially all of the members of the plaintiff class. Such an in-State class action exception could include consumer class action claims, such as fraud and breach of warranty claims. The second factor would apply to a class action in which plaintiff class members suffered personal injury or physical property damage within the State, as in the case of a serious environmental disaster. It would apply to all individuals who suffered personal injuries or losses to physical property, whether or not they were citizens of the State in question. The third factor recognizes that it may be appropriate to consider the relationship of the defendants to the forum State. Such consideration is not intended to embrace the term "primary defendants" (or a similar term), which language has been used in past and present class action bills as part of an exception to minimal diversity. Such a reading could extend minimal diversity jurisdiction to cases in which a single important defendant lacked in-State citizenship. While the relationship of the defendant to the forum may have some bearing on State adjudicatory power, an insistence that all primary defendants maintain formal in-State citizenship is too limiting and may preclude in-State class actions where a defendant has sufficient contacts with the forum State, regardless of citizenship.

We would appreciate your consideration of these comments and the position of the Judicial Conference. Should you or your staff have any questions, please contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,

LEONIDAS RALPH MECHAM,

Secretary.

Mr. LEAHY. Last year a group of investors recovered millions of dollars in lost investments under State corporate fraud laws and a State class action case in Baptist Foundation of Arizona v. Arthur Andersen. These investors, mostly elderly, banded together to successfully recoup \$217 million from Arthur Andersen. Why? Because of questionable accounting practices surrounding an investment trust. The case is just one example of how a State-based class action litigation holds corporate wrongdoers accountable and helps defrauded investors recoup their losses.

Like most Vermonters, I am a strong supporter of the environment. But I look at this bill and I think, what a green light for polluters and others responsible for environmental damages to avoid accountability in court. So many polluters, who would fear class action suits if they were to violate the law, now know they could get caught. With this legislation, they might take the old idea of: Go ahead and pollute; nobody gives a hoot. They are going to get away with it.

This legislation removes almost all important environmental class actions

from State to Federal court. Not only does this deny State courts the opportunity to interpret their own State's environmental protection laws, but it also hampers and deters plaintiffs in pursuing important environmental litigation. It means we Vermonters would not have a say in our own courts—or those in Utah or in any other State.

Under this bill, environmental class action suits may not get litigated, reducing the incentive to keep our environment clean. Plaintiffs' attorneys may not be willing to take these high-risk, high-cost, and time-consuming cases, particularly when what they are looking for is injunctive relief. That is an injunction to stop the polluter from polluting. Intentionally or not, this bill protects polluters and ignores innocent victims of their negligence.

Just a few months ago, as I recall, we read about a horrible toxic dumping situation in Alabama and a monumental settlement in State court to clean up an entire community. It was in State court, though—in State court.

In Anniston, AL, the Monsanto Company manufactured PCBs—carcinogens—from 1929 to 1971. For more than 40 years, in arrogant—arrogant—disgusting disregard of people's health and the environment, Monsanto dumped untreated, unfiltered waste from its PCB plant into the streams and landfills of Anniston. They never let the residents—many of whom actually worked, and worked very hard, for Monsanto—they never let them know of the horrific risk to their environment and their health.

When the undeniable truth of Monsanto's malfeasance became clear, several thousand residents of Anniston sued in State court. They recently won a liability jury verdict. When the case moved into the damages phase, Monsanto was not out there defending and saying: Well, we did not do something bad. They knew they did something terrible. They did not start arguing about: Well, people were not injured by it. They knew they were injured by it.

So what did they do? They tried to get the judge removed. That is what they tried to do. Although the Alabama Supreme Court, a conservative supreme court, had already held that the trial judge was acting properly, Monsanto continued to oppose his participation. They tried everything they possibly could do to confuse people and escape facing up to the issues. They then had to focus on the merits of the case and settled with the local residents for \$600 million and pledged to pay additional cleanup costs for the town.

The Alabama Supreme Court, the Alabama State court, did this very well. Not under this bill. Under this bill, it would have been yanked away from those courts, yanked away from the Alabama State court, yanked away from the Alabama Supreme Court, and stuck into Federal court.

Why? More than 100 people lived in Anniston. Even though all the people

suffered, they lived just a block or a driveway from each other. We, those of us who say we really care about States having their rights, would reach down and yank it right out of the State and say: You are not good enough to handle the case that involves your own people.

Cases such as this one would provide hard evidence that our State-based civil justice system is working—it is working—to protect the environment and to protect victims of polluters, and there is no reason to prefer a Federal reform for resolution of their claims. State courts, unlike the Federal courts, have a sound understanding of evolving local law and the open dockets to resolve conflicts in a manner that would protect our society from polluters.

In fact, we ought to at least ask, Do the Federal courts want this? The Judicial Conference, headed by Chief Justice William Rehnquist, wrote a letter in March of this year opposing this bill because its “provisions would add substantially to the workload of the federal courts and are inconsistent with principles of federalism.”

They singled out serious environmental disasters as an example of class actions that should remain in State courts.

Chief Justice Rehnquist and the Judicial Conference said: What are you doing to us? Why are you sending these cases over there? State courts can handle them better.

I would be a very wealthy person if I had a couple dollars for every time I heard speeches or statements from my fellow Senators about how we have to better respect our individual States. After all, that is why we have a Senate. Each one of the 50 States has equal representation here to make sure the States are not subsumed in the Federal system. Those who would support this bill are giving the back of their hand to their States and saying: You are not smart enough, you are not good enough to take care of the laws of your own State.

Numerous organizations devoted to the protection of the environment oppose this bill, including Clean Water Action, Earthjustice, the Environmental Working Group, Friends of the Earth, Greenpeace, the Mineral Policy Center, the Natural Resources Defense Council, the Sierra Club, and the U.S. Public Interest Research Group.

These advocates conclude, in a letter, this bill “would benefit polluters at the expense of people and communities harmed by public health and environmental disasters.” I ask unanimous consent their letter be printed in the RECORD.

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

APRIL 2, 2003.

Hon. ORRIN HATCH, Chair,  
Hon. PATRICK LEAHY, Ranking Member,  
*Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN HATCH AND RANKING MEMBER LEAHY: We are writing to express our op-

position to S. 274, the so-called “Class Action Fairness Act of 2003.” This legislation would not be fair to citizens bringing class action cases based on state environmental or public health protection laws who wish to have their cases heard by their state’s courts. The bill would allow corporate defendants in pollution class actions to remove virtually any type of state environmental law case from state court to federal court, placing such cases in a forum that could be more costly, less timely, and disadvantageous to the citizen plaintiffs. We urge you to oppose this anti-environmental legislation.

Class actions protect the public’s health and the environment by allowing people with similar injuries to join together for more efficient and cost-effective adjudication of their cases. All too often, hazardous spills or toxic contamination from one source affects large numbers of people, not all of whom may be citizens of the same state. In such cases, a class action lawsuit based on state common law doctrines of negligence or nuisance, or upon rights and duties created by state statutes, is often the best way of resolving the claims. Recent examples of such incidents include the Asarco lead contamination in eastern Omaha, the Nicor Gas mercury spills in suburban Chicago, and emissions from an illegally operated rock quarry in San Rafael, California—incidents that harmed thousands of people—as well as many cases in which injured plaintiffs have sought access to medical monitoring in the wake of a community’s toxic exposure.

S. 274 would benefit polluters in state environmental class actions by allowing them to remove these claims from state courts that may be better equipped to handle them to federal courts where the judges are likely to be less familiar with state law. This removal could occur even if the citizen plaintiffs object.

The bill would even allow polluters to remove to federal courts cases brought by more than one hundred plaintiffs even if the citizens do not seek certification as a class. One such case is underway now in Anniston, Alabama, where a state court jury is currently deciding damages to be paid by Monsanto and Solutia for injuring more than 3,500 people the jury found were exposed, with the companies’ knowledge, to cancer-causing PCBs over many years. There is little doubt in the Anniston case that, had S. 274 been law, the defendants would have tried to remove the case from the state court serving the community that suffered this devastating harm.

Allowing defendants to remove to cases such as these that properly belong in state court—even cases based solely on state law—is not only unfair to the injured parties in the state law cases, it will needlessly delay justice for all in the overburdened federal courts, creating delays for those parties in environmental cases whose claims must be heard in federal court, as well as for other parties who require a federal forum.

Last month, the Judicial Conference of the United States wrote to your committee stating the continued opposition of the Judicial Conference to broadly written class action removal legislation. Their letter states that, even if Congress determines that some “significant multistate class actions” should be brought within the removal jurisdiction of the federal courts, Congress should include certain limitations and exceptions, including for class actions “in which plaintiff class members suffered personal injury or personal property damage within the state, as in the case of a serious environmental disaster.” The letter explains that this “environmental harm” exception should apply “to all individuals who suffered personal injuries or losses to physical property, whether or not

they were citizens of the state in question.” S. 274 does not provide any exception for environmental harm cases.

As U.S. Supreme Court Chief Justice Rehnquist has stated in the past, “Congress should commit itself to conserving the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined national interests, leaving to the state courts the responsibility for adjudicating all other matters.” The so-called “Class Action Fairness Act” does not conserve the federal forum but would allow corporate polluters who harm the public’s health and welfare to exploit that forum whenever they perceive an advantage to defending class actions in federal court, regardless of whether the class action would be better adjudicated in a state court.

We urge you to oppose S. 274, legislation that would benefit polluters at the expense of people and communities harmed by public health and environmental disasters.

Sincerely,

Joan Mulhern, Senior Legislative Counsel,  
Earthjustice Legal Defense Fund.

Debbie Sease, Legislative Director, Sierra Club.

Lexi Shultz, Legislative Director Mineral Policy Center.

Sara Zdeb, Legislative Director, Friends of the Earth.

Paul Schwartz, National Campaigns Director, Clean Water Action.

Richard Wiles, Senior Vice President, Environmental Working Group.

Erik Olson, Senior Attorney, Natural Resources Defense Council.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Rick Hind, Legislative Director, Greenpeace.

Mr. LEAHY. Mr. President, as colleagues may have gathered, I am not in favor of this piece of legislation, the Class Action Fairness Act. Man, I have heard things. There ought to be a law against misleading labels on legislation we pass because this would break the law. These many injured parties who have valid claims would have no effective way to seek relief. Class action suits have helped win justice and expose wrongdoing by the polluters, the big tobacco companies, and the civil rights violators, and brought about *Brown v. Board of Education*, as I said earlier. It gives average Americans at least a chance for justice. We should not take that chance for justice away from the American people.

So I hope Senators will consider the harm this bill would do the American people and to their constituents and join me in opposition.

Lastly, Mr. President, as I said, we found time to get highway money for Iraq, but we do not have time to pass the highway bill for America. We had time to get money to improve police departments and law enforcement in Iraq, but we do not have time to pass a bill to do the same here for Americans.

We had time to pass legislation to help military veterans in Iraq, but we can’t find time to pass legislation for veterans in the United States.

Mr. REID. Will the Senator yield for a question?

Mr. LEAHY. Of course, I yield to my friend from Nevada.

Mr. REID. As I am here in the Chamber today, there are four members of the Appropriations Committee: The Presiding Officer, the senior Senator from Vermont, the Senator from Nevada, and the Senator from Illinois. This morning I asked, Why aren't we able to do appropriations bills? The House has gone home. They are AWOL. So matters that we have to resolve in conference we can't do either. We have six that have not passed this body. The Senator from Vermont hit the nail on the head.

I commented this morning, we can think of a lot of reasons that the bills haven't passed. One is what the President has done with the monetary functions of this country. The economy is in disastrous shape. If we did these appropriations bills now, there would be a focus on each bill. The people of America would say: Well, they can't do that for us. Look at what they have just done for Iraq with \$21 billion.

So the Senator from Vermont hit the nail on the head. I compliment him for recognizing the problem we have. What are we going to do? I think the Senator from Vermont will agree, we are going to have an omnibus bill with as many as 10 appropriations bills jammed into it.

Mr. LEAHY. Did the Senator say omnibus or ominous?

Mr. REID. The Senator is correct. We are going to have an ominous omnibus bill. It is too bad we are going to do that because it will be a massive document. It will be done at the last minute. There will be a lot of little things jammed in there by the leadership. And then, of course, as the Senator knows, conferences that we do have are just one-sided. They don't include us in them. It is a funny way to run the country. This decision has been made by a Republican President, a Republican-controlled House and Senate.

I appreciate very much the Senator yielding.

Mr. LEAHY. I appreciate the comments of my friend from Nevada. I can't think of any person who has worked harder to help get legislation through. The senior Senator from Nevada has a good reputation of working with both Republicans and Democrats. There are two primary reasons. One is the fact that he knows legislation better than anybody else around here. Secondly, he is totally honest and truthful to everybody.

It is frustrating because, again, there is legislation for highways in Iraq, but not in the United States, all these other things. We passed a transportation bill. That would mean 90,000 jobs right there that we could put Americans back to work.

I thank him for saying that. I don't care if people want to spend time on this bill. It is a terrible bill. If they want to spend time on it, let's at least get the appropriations bills done. Let's answer the questions of our veterans, whether the benefits will be there or not; answer the questions police offi-

cers have about benefits; answer the questions those in education have, whether the money will be there.

I see my good friend, the senior Senator from Illinois. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the ranking Democrat in the Senate Judiciary Committee, Senator LEAHY, as well as Senator REID of Nevada, for coming to the floor today to discuss the agenda of Congress. It is worthy of reflection.

Some of us went home last week after the vote dispirited because this administration was afraid to offer the Iraq reconstruction package as an up-or-down vote. They believed—and I think they were right—they couldn't pass it. So many Members of Congress had so many questions and reservations, the only way it could pass was to combine it with the money for our troops. Many of us, looking at this terrible Faustian bargain, had to vote for the bill to support the troops, believing that, frankly, if it were my child, someone near or dear to my family, as it is for so many people in Illinois, I wouldn't want to shortchange the troops one penny. So we ended up passing about \$15 or \$16 billion in reconstruction for Iraq.

Trust me, stories are already pouring in about some of the questionable contracting that is going on over there. There is real doubt among some as to whether this money will achieve the goal we are seeking. We want peace in Iraq. We want stability. We want our troops to come home. But we want to do it in the right way.

So far, this administration, since the declaration of the military victory, has seen a long string of embarrassments and defeats and setbacks. There have been pretty pictures painted by some on the other side who have gone there, but they can't overcome the reality of every morning's newscast which tells about another soldier being killed or another 10 soldiers being maimed.

I have visited with some of those soldiers who have returned from Iraq. Their lives will never be the same. To say they got by because they were simply wounded is to overlook the obvious. Many of them will carry scars for the rest of their lives because of a policy of this administration which, frankly, has not stood the test of time.

The reason I think it is important to reflect on that is to consider where we are today. Now that we have moved from the issue of Iraq, we are back on an issue which is near and dear to the Republican leadership in Congress as well as to the White House. Take a look at the agenda of this Congress and particularly what we are discussing today. It is an agenda which attempts to slow down the legitimate responsibilities of government directly through Executive orders and indirectly with historic deficits.

Yes, this fiscal conservative, compassionate Republican President has stood

by and watched as we have reached record depths in terms of debt in America. Although he can point to a recession which he blames on the previous President, which is fair game in Washington, he can point to a war on terrorism, the fact is, most of this deficit is his own creation.

President Bush's tax policy, his economic plan has been a failure for America's economy. But it has been a dramatic success for those who were praying for a bigger deficit. I don't know who that might be, but if you were looking for a President to deliver the biggest deficit in the history of the United States, this President has done it. That deficit, of course, shortchanges us when we need to really pursue the valuable and vital functions of government.

There are some things which only government can do. I know my friends from the conservative side of the political spectrum hate to concede this point, but there are certain things only government can do. Certainly military defense is one. Defense against terrorism is another. But there are others, and they will come to our attention as we consider the debate before us on a bill related to class action lawsuits.

The agenda of the Republicans in Congress and the President is one that is guided by the naive belief that the balance of power within our Government is outdated. It is an agenda which would close the courthouse doors to ordinary Americans in the name of penalizing trial lawyers but continue to protect the most politically powerful. This is nothing new in government. The people who have the power to line the Halls of Congress with their lobbyists in their three-piece suits and fancy shoes are well represented. They are the voices you hear when you come to vote for a bill.

The voices that are not heard are those of consumers and families and working people who are disadvantaged time and again by these special interests. The Class Action Fairness Act is a special interest piece of legislation designed exclusively to protect those who are wealthy and powerful from even being held accountable in court.

When you look at the options available to us, if you have a President who really doesn't care to work for consumers and working families, and a Government which is unresponsive because of that President or the lack of funds, and a Congress unwilling to address these same issues, there is only one place for an American to turn. That is the court system. So what this Congress tries to do time and time again is to close the doors of the courthouse so that that family, that consumer, that small business, that individual doesn't have a chance to go into the courthouse and ask for justice. They are doing that with this class action bill.

Whether the agenda is driven by the White House, the leadership of the House of Representatives, the committees on the floor of the Senate, the not

so invisible hand of the right-wing agenda is busily at work. We see it in the nominees sent up for lifetime appointments to the Federal judiciary, men and women who are not even close to the center stripe of political thinking, in the hopes that if you cannot close the courthouse door, make sure there is a judge on the bench who will rule consistently on behalf of the wealthy and powerful in America.

Some will say what I am saying sounds a lot like class warfare. I can recall what Warren Buffet, one of the wealthiest men in America, told us a few weeks ago. He came to a luncheon on Capitol Hill and spoke to a group of Senators and talked about President Bush's tax cuts for the wealthy. This wealthy man from Omaha, NE, said, "Some people say this is class warfare." He said, "I want to tell you something. It is true, and my class is winning the war."

That is a fact. They have won the war with the President's tax cuts. They will continue to win the war when it comes to closing the courthouse doors. The agenda is being driven by President Bush and his gang of compassionate conservatives. It is not just this issue of litigation and tort reform. It stretches in so many directions. This is an administration that wants to drill for oil in the Arctic National Wildlife Refuge rather than to demand that automobile manufacturers in Detroit make more fuel-efficient cars, which they can do. The technology is available. But this administration would much rather invade a pristine wildlife refuge set aside by President Eisenhower 50 years ago than pick up the phone and say to the Big Three in Detroit that you have to do better. We need more fuel-efficient cars and we are going to support legislation to make it happen.

That shows you where they are coming from. They would much rather drill in a wildlife refuge than to ask for more fuel efficiency from the automobile manufacturers. This is an administration that cuts education funding for schoolchildren to pay for tax benefits for the wealthiest people in America. It is an administration that would restrict background checks on gun purchasers while protecting gun manufacturers from liabilities. Rather than to make certain that we keep guns out of the hands of people with criminal records or a history of mental illness, they say instead, in the name of a second amendment, we cannot ask those questions and, if we do, we cannot keep the records long enough for law enforcement to use them. It is a constitutional right as far as they are concerned under the second amendment.

Yet when it comes to gun manufacturers making defective products and dangerous products and selling them, this administration falls over backward in an effort to protect them from any liability in court, this administration which would cap the compensation

of injured victims of medical negligence, medical malpractice, and never question the insurance companies that continually make mistakes and charge the most outrageous premiums. Now we are forced to debate a bill that divides instead of unifies us.

It is especially troubling at a time when so many appropriations bills have not even been considered in the Senate and we are going to work on this bill for special interest groups. The majority leader brought this bill before us instead of an appropriations bill. Here we are after October 1, at a time when we should have passed all of our appropriations bills, but instead of addressing the immediate needs of Government, we are going to address the immediate needs of the special interest groups.

I find it interesting that the bill before us is not the bill that passed the Judiciary Committee, which I served on a little earlier this year. There is a provision back in the bill called a mass tort provision. I will not go into all the details of it other than to tell you the special interests have won again. There was a bipartisan motion in the Judiciary Committee—I am not sure there was debate—to delete a section of the bill for so-called mass tort actions. It was a motion by Senator SPECTER, a Republican, and Senator FEINSTEIN, a Democrat. It was removed without controversy.

Guess what happened. That bill was thrown away. The bill before us today reinstates this prohibition against mass tort actions. That is fundamentally unfair, and we knew that. The special interest groups prevailed again.

How fair is the Class Action Fairness Act before us? It is not about fairness or justice. It is about protecting the powerful against legal challenges from the little guy. Who wants this bill? Who wants this class action bill? I will tell you those who line up on the side of this bill. It is the major tobacco companies, including Philip Morris, which is sick and tired of being sued by those who have been damaged by their deadly tobacco products. They have come to the Republican Congress and prevailed on them to make it more difficult for the victims of those tobacco products to come to court. So the tobacco companies want this bill to pass. Gun manufacturers, understanding their exposure to liability by selling defective guns, selling them in quantities where they knew or should have known they would fall in the hands of criminals, don't want to be sued in court anymore. Even though the death rate in America—on the streets of Chicago, New York, and Washington—continues to climb from gun murders, this bill says the victims are going to have a tougher time suing the gun manufacturers.

Those who pollute want this bill. Those involved in environmental pollution are less likely to be sued because of this bill.

Others include the pharmaceutical companies, every insurance company

in America that I know of, the National Association of Manufacturers, and Financial Services Roundtable. The list of special interest groups is very lengthy.

There is another group on the other side who oppose this bill—an interesting coalition. Listen to those who have come out in opposition to the bill. The first name on the list may be the most curious. It is Chief Justice of the U.S. Supreme Court, William Rehnquist. Why? Because this bill shifts a lot of class action lawsuits from State courts to Federal courts. Chief Justice Rehnquist understands that the Federal courts are not in a position to deal with these lawsuits. He said this is a bad bill; it is bad for the administration of justice in America. He is not a bleeding heart when it comes to consumer cases. His precedents and rulings will speak for themselves. But he says this bill is bad, and he is right.

Then the list of organizations—which I will not read—is two pages long. These groups are a clear indication of why it should not be passed. I will say generically that many of the leading medical groups, including the American Cancer Society, the Heart and Lung Society, many leading environmental groups in America, and almost every one of the major consumer groups in America, say this is a bad bill. It will keep ordinary Americans from having their day in court.

I ask unanimous consent that the list be printed in the RECORD.

NATIONAL ORGANIZATIONS OPPOSED TO  
FEDERAL CLASS ACTION LEGISLATION

AARP.  
AFL-CIO.  
Alliance for Justice.  
Alliance for Retired Americans.  
American Association of People with Disabilities.  
American Cancer Society.  
American Heart Association.  
American Lung Association.  
Brady Campaign to Prevent Gun Violence  
United with the Million Mom March.  
Campaign for Tobacco Free Kids.  
Center for Disability and Health.  
Center for Responsible Lending.  
Clean Water Action.  
Coalition to Stop Gun Violence.  
Consumer Federation of America.  
Consumers for Auto Reliability and Safety.  
Consumers Union.  
Earthjustice.  
Environmental Working Group.  
Families USA.  
Friends of the Earth.  
Gray Panthers.  
Greenpeace.  
Homeowners Against Deficient Dwellings.  
Lawyers' Committee for Civil Rights Under Law.  
Leadership Conference on Civil Rights.  
Mexican American Legal Defense and Educational Fund.  
Mineral Policy Center.  
National Asian Pacific Legal Consortium.  
National Association for the Advancement of Colored People.  
National Association of Consumer Advocates.  
National Association of Protection and Advocacy Systems.  
National Campaign for Hearing Health.

National Partnership for Women & Families.

Natural Resources Defense Council.  
National Workrights Institute.  
National Women's Health Network.  
National Women's Law Center.  
People for the American Way.  
Public Citizen.  
Service Employees Union International.  
Sierra Club.  
Tobacco Control Resource Center.  
Tobacco Products Liability Project.  
USAction.  
U.S. Public Interest Research Group.  
Violence Policy Center.  
Women Employed.

GOVERNMENT ORGANIZATIONS OPPOSED TO  
FEDERAL CLASS ACTION LEGISLATION

Judicial Conference of the United States.  
Conference of Chief Justices.  
Attorney General of California, Bill Lockyer.  
Attorney General of Illinois, Lisa Madigan.  
Attorney General of Maryland, J. Joseph Curran, Jr.  
Attorney General of Minnesota, Mike Hatch.  
Attorney General of Missouri, Jeremiah W. Nixon.  
Attorney General of Montana, Mike McGrath.  
Attorney General of New Mexico, Patricia A. Madrid.  
Attorney General of New York, Eliot Spitzer.  
Attorney General of Oklahoma, W.A. Drew Edmondson.  
Attorney General of Vermont, William H. Sorrell.  
Attorney General of West Virginia, Darrell Vivian McGraw, Jr.

Mr. DURBIN. This is a classic battle between the biggest companies in America, that don't want to face legal responsibilities, and the most vulnerable people in America, who have no other recourse but the courts. Consumers, environmentalists, gun control advocates, and civil rights champions often turn to the class action process of our civil justice system because the Government—beholden to the special interest groups and the corporate agenda—simply is unwilling to take on these same big corporations.

Unfortunately, when you pit these two sides together on Capitol Hill, consumers don't have a chance. This bill is a clear indication of that.

The bill is fundamentally unfair and unnecessary. How can you be sure it is only the plaintiffs who are guilty of abusing forum shopping but never the defendant? That is the argument being made. They say we have to restrict the people who can bring lawsuits in court.

The argument on the other side is that there are so many frivolous lawsuits. The honest answer is that there are some frivolous lawsuits, and there always will be in a system open for any individual to file a lawsuit. On the other hand, we know many of these lawsuits—and I will recount several later on—give clear indications and evidence of the fact that many people who are sued in class action lawsuits have a real responsibility to the consumers and the American people that they don't meet.

I am concerned when they tell me the bill will restrict their ability to fight

for rights of consumers and victims of corporate malfeasance, and I hope the sponsors can carry their burden in explaining to the American people why they believe this bill will not tilt the advantage to the corporate defendants.

To the extent there are abuses in the class action process, it should be addressed with a scalpel, not a sledgehammer, which this bill does. If the problem is concentrated only in a handful of State courts, the solution isn't to remove every case to Federal court. That is what this bill does.

The American Tort Reform Association, which represents all of the special interest groups that would close the courthouse doors, obviously championed this bill. They released a study recently which I find amazing and, in a way, offensive.

In their report, entitled, "Bringing Justice to Judicial Hellholes 2002," this organization identified 13 counties or cities that they define as "judicial hellholes," because they supposedly attract lawsuits from around the Nation to plaintiff-friendly courts.

What does that mean? If you are a lawyer in some part of the country and want to file a class action suit, this association argues that you can shop around to find the friendliest judges who will certify your class. That is the first step in a class action suit. The court has to basically certify under State law whether you can gather together the individuals you call your "plaintiffs' class" to sue a defendant. They argue that in some parts of America it is more likely to be certified than not. They characterize those as judicial hellholes. One of them is near and dear to me because it is in my home State, in Madison County, IL. I was born in St. Clair County, the adjoining county. I am familiar with Madison County and most of the people who practice law there and the judges on the bench.

Well, with all of their valiant and well-funded national research, the American Tort Reform Association came up with about a dozen "hellhole" counties, and a few more they call "honorable mentions."

That is about a total of 20 counties they have identified out of over 3,000 counties in the United States and more than 18,000 cities, villages, and towns—20 problem counties out of 21,000 cities and counties. That is fewer than .0001 percent of all the counties and cities in the country.

Clearly, if that is where the problem lies, with 20 places, why would we pass Federal legislation to affect every county and every city in America? Yet the solution the sponsors seek is exactly that.

Let me speak for a moment about the real story of Madison County because it has been recounted over and over by the advocates of tort reform as an outrageous, out-of-control situation.

It is said there have been hundreds of consumer class action cases filed in the last few years and rarely are any not

certified for trial. That is what the American Tort Reform Association says. Yet while the number of filings increased, the number of consumer class action certifications in that county has actually declined over the last 2 years.

State judges, including those in Madison County, are disposing of frivolous consumer class action cases by refusing to certify them for trial. Moving them to Federal court simply transfers the responsibility for making that determination.

Let me give some numbers so we can get a feel for one of these judicial "hellholes" from the groups that advocate this legislation.

Madison County, IL: Consumer class actions filed—1999, 12; 2000, 39; 2001, 60; 2002, 76; 2003, 44 as of July 2.

Let's go back for each of those years and find out how many were actually certified to go forward and be tried. In 1999, 12 were filed, 6 were certified; in 2000, 39 filed, 14 certified; in 2001, 60 filed, 2 certified; in 2002, 76 filed, 1 certified; in 2003 so far, 44 filed, none certified.

Does this sound like a situation out of control? The sum total of all the class action lawsuits for these 5 years so far is 23 over 5 years—23 class action lawsuits in Madison County, IL, the so-called judicial "hellhole." Frankly, the arguments made on the floor just are not borne by the facts.

Additionally, of 166 verdicts that were reached in all cases filed in Madison County, 55 resulted in no monetary verdicts to plaintiffs. Only 11 verdicts in the 166 cases tried resulted in verdicts in excess of \$1 million. The median verdict for all cases in Madison County, IL, is \$28,649.

If there are problems in any jurisdiction or any State, they can be solved there. In Alabama, for example, one of the favorite targets for criticism by tort reformers, the State supreme court reprimanded a few State judges who had certified numerous classes.

In Mississippi, another jurisdiction frequently mentioned by supporters of class action reform, the State legislature recently repealed Mississippi's venue and joinder statutes, making it more difficult to bring mass tort claims.

Removing these cases to Federal court does not solve the problem. In fact, it is going to heap more of a burden and demand for more specialization and responsibility on our Federal courts, many of which are already overburdened.

I see my colleagues are on the floor. I am going to take a few minutes to point out the kinds of lawsuits about which we are talking.

When the average person hears "class action lawsuit," they may not have an idea of what it is about. I would like to give a few examples of class action lawsuits and understand, I hope, for a moment that those who are coming to the floor trying to restrict the rights of plaintiffs to come into a class and file

a lawsuit have to face the reality of the history of class action legislation. We will find in these cases some recurring themes, but the most recurring theme is this:

The plaintiffs in a class action lawsuit were usually damaged a very slight amount or in a very limited way individually or as families, but when you take together the sum total of all the damage done by the defendant, it becomes substantial. If someone—Senator LEAHY used this example in committee—if someone overcharges a person 2 cents a gallon for gasoline so that each time they fill up they lose 40 cents, there is not a great loss to an individual. But when you put that together in terms of the millions of people buying gasoline, one can understand that if the defendant corporation has been guilty of fraud or wrong dealing, they have made millions of dollars at the expense of 40 cents a fill-up of individual consumers. So class action lawsuits bring all these consumers in one group against a corporation that may have harmed them only a slight amount individually.

Let me give some examples. Foodmaker, Inc., the parent company of Jack-in-the-Box restaurants, agreed to pay \$14 million in a class action settlement in the State of Washington. The class included 500 people, mostly children, who became sick in early 1993 after eating undercooked hamburgers tainted with *E. coli*. The victims suffered from a wide range of illnesses, from more benign sicknesses to those that required kidney dialysis. Three children died. The settlement was approved in 1996. So 500 individual families, instead of suing Jack-in-the-Box and its parent company Foodmaker, came together as a class because that corporation was selling products so tainted and adulterated that it led to death and serious illness—500 people, \$14 million, but deaths were involved in the process.

Let me give another example. General Chemical of Richmond, CA. On July 26, 1993, the chemical oleum, a sulfuric acid compound, leaked from a railroad tank car. The leak caused a cloud to spread directly over North Richmond, CA, a heavily populated community. Over 24,000 people sought medical treatment because of that leak. General Chemical entered into a \$180 million settlement with 60,000 northern California residents who were injured and sought treatment for the effects of that pollution. Individual plaintiffs received up to \$3,500.

What is the likelihood that if you personally or a member of your family ended up going to a hospital or a doctor and had \$500 or \$600 or \$1,000 in medical bills that you would turn around and hire a lawyer and sue General Chemical responsible for that illness in your family? I don't think the likelihood is very strong. But when they brought together the 60,000 people who were damaged because of this environmental leak of a sulfuric acid com-

pound, the company agreed to pay \$180 million to some 60,000 people.

Let me give another example. Beech-Nut Corporation, and its parent company Nestle, were accused of deceptive business practices, guilty of selling—listen to this—Beech-Nut and Nestle were found guilty of selling sugar water labeled as pure apple juice for infants. After passing blame back and forth between companies and suppliers, they eventually agreed to settlements of \$3.5 million to reimburse consumers who unknowingly fed their babies sugar water instead of apple juice. Is that the kind of thing that merits a lawsuit? In an individual situation you may ask, How sick is the baby?

The bottom line is, these companies were trying to make money by deceiving parents into believing they were selling a nutritious product and ended up paying \$3.5 million because of it.

Class action lawsuits by consumers who as individuals would never have a day in court, but coming together finally found justice in their State courts, a justice which is threatened by the so-called class action fairness bill which is before us today.

There was a class action lawsuit brought against Ford Motor Company for defective ignition systems in millions of cars that stalled on highways, and Mobile Corporation paid a \$14 million settlement because of a class of residents in New Orleans who, after a fire at a Mobile Oil refinery and scattered debris sent volatile and hazardous compounds in the air, were forced to evacuate. The settlement was \$13.4 million to those exposed to this pollution from the Mobil Oil refinery.

It was a class action lawsuit against a corporate giant. How many of those individual families would stand together seeking justice? In this case, they did stand together successfully. Individually would they have gone to court? Highly unlikely.

Blue Cross and Blue Shield of Iowa paid a \$14.6 million settlement in three class action lawsuits because of fraudulent billing practices. Blue Cross apparently negotiated secret discounts with hospital and providers and failed to pass those along to those who should have received them—their customers. The list goes on and on.

I see several of my colleagues on the floor. I will close and say I am sure we are going to return to this issue in a short time. I ask my colleagues in the Senate who may not have practiced law, who may not be familiar with class action lawsuits to please do the following: Read these cases. Understand class action lawsuits are not always frivolous ideas.

I can recall some that were. There was a lawsuit brought by a class, not certified, for all the people who bought Milli Vanilli records, and then came later to learn that those two people were not even singing on the records. To me, that is a joke, a bad one. It is a fraud on the public but certainly not deserving of a class action suit.

How can one compare that to companies that sell tainted and adulterated food, to companies that deceive parents about the nutritious value of the foods they sell, or companies that are engaged in pollution that endangers the lives of individuals? Those companies need to be held accountable.

This bill tries to absolve them from liability, to move the cases to Federal court, to make it more difficult to push the classes together, and make it more difficult to recover. These are real live stories of ordinary families and people who will ultimately lose if this bill passes.

I hope the Senate has the good sense to stop this in its tracks, stand up for consumers and working families who need a voice in this Chamber even if they cannot afford a lobbyist in the hallway.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Illinois.

Mr. FITZGERALD. Mr. President, I thank my colleague from Illinois for yielding the floor for a few moments. The Senator may wish to resume debate following my remarks.

I want to present a counterpoint, I guess, to the opinions of my distinguished colleague. I think he made a very eloquent case in favor of why we should have class action lawsuits in this country, and I would simply point out to my colleagues that this bill does not in any way diminish our ability to have worthwhile class action lawsuits. In fact, I think the intent of the bill that is passed out of the Judiciary Committee and which Senator HATCH spoke about earlier this afternoon is, in fact, to make the process for class action suits better, fairer, and more beneficial to the plaintiffs.

One of the things the bill would do is create a consumer bill of rights to protect the class action plaintiffs, the actual clients of the class action lawyers. We have all heard about cases in which a class action lawsuit is filed, and in the end, the defendant corporation settles for millions of dollars paid to the lawyer and all the clients, or the plaintiffs get a coupon or something of insignificant value. So contrary to the impression created by Senator DURBIN, I want to make it clear to my colleagues that this bill does not in any way seek to do away with class action lawsuits. In fact, we seek to make them better and more beneficial to the plaintiffs, the clients themselves, and cut down on some of the abuses.

I rise to support S. 1751, the Class Action Fairness Act of 2003, and I do so today with a special interest in the commonsense fairness of this legislation. There is, in my State of Illinois, as mentioned by Senator DURBIN, one of the infamous venues that have come to be commonly described as "judicial hellholes." State courts where plaintiffs' lawyers know they can file abusive, frivolous, and even extortionate class action lawsuits against defendant companies operating nationwide and

get results they could not get in the vast majority of fair jurisdictions elsewhere in the United States.

It is an abuse that must stop. Under S. 1751, every person's right to file a lawsuit is preserved. Every current legal theory for relief may still be advanced. Under S. 1751, a class action lawsuit can be filed just as easily as it can be today. S. 1751 is a limited and commonsense approach to a widely recognized abuse in our judicial system. It simply makes truly national lawsuits easier to hear in Federal court, and it simply requires judges to take a close look before approving some of the greedier and more abusive features of class action litigation, such as coupon settlements that I mentioned at the outset, where lawyers get millions of dollars and class action members get virtually worthless coupons.

My State has the dubious distinction of hosting one of the judicial hellholes to which Senator DURBIN was referring. In fact, if anyone has been following the editorial page in the Wall Street Journal, they have written several editorials about this county. It is Madison County, IL. It is in southwestern Illinois, across the Mississippi River from St. Louis. If my colleagues have never been to Madison County, it is a suburban county with a surge in shuttered plants and steel mills and a new cottage industry in abusive class action litigation.

Several recent studies have looked at class actions in the Madison County courts, and here is what they found: Over a 2-year period, the number of class actions in the county increased by 1,850 percent. In 1998, there were only two class actions filed in Madison County, a number consistent with a community with Madison County's size and economic base.

During 2000, the number rose to 39. During 2001, 43 new class action lawsuits were filed, another 10-percent increase, and the upward trend is increasing.

As of the middle of this year, Madison County was already up to 39—I think Senator DURBIN said 43 cases—as of July of this year. That puts it on pace to break its own record.

These findings suggest that Madison County has one of the highest class action filing rates in the country. Indeed, according to an article in the St. Louis Post Dispatch, Madison County has developed a nationwide reputation as the place to file nationwide class actions, even though it only has one-tenth of 1 percent of the U.S. population. It has about 259,000 people.

Here is another troubling statistic: In recent years, only a few thousand class actions were filed annually in the entire Federal court system. That amounts to a per capita rate of about 7.6 class actions for every million residents. In Madison County in 1999, the per capita rate of State court class actions was nearly 9 times higher, with about 61 class actions filed per million people.

These are not local disputes. The vast majority of class actions in Madison County were brought on behalf of nationwide classes. The percentage seeking nationwide class action status is a whopping 81 percent. In Madison County, lawyers have sought to certify classes over the last 3 years that included all Sprint customers nationwide who have ever been disconnected on a cell phone call—I am sure that has happened to all of us—all RotoRooter customers nationwide whose drains were repaired by allegedly unlicensed plumbers, and all consumers in the Nation who purchased limited edition Barbie dolls that were later allegedly offered for a lower price elsewhere.

Why were all these suits filed in Madison County? Why were they not filed in Utah, Idaho, Arizona, or State courts elsewhere in Illinois? Well, because a few lawyers have figured out that the judges in Madison County are very friendly to plaintiffs. It is no surprise that the same five firms appeared as counsel in approximately 45 percent of the cases filed during the 1999-to-2000 period, and that most of these firms are not located in Madison County.

Of the 66 plaintiffs' firms that appeared in the Madison County cases filed during 1999 and 2000, 56, or 85 percent, listed office addresses outside of Madison County.

These studies present a real mystery. Lawyers from all over the country are flocking to Madison County, IL, to file class actions on behalf of people who do not live in Madison County, against companies that do not reside in Madison County, concerning events that did not occur in Madison County.

What is wrong with this picture? Does anybody really think that it is just an accident that these lawyers from all over the country are flocking into Madison County with their cases?

As the Washington Post recently noted in an editorial criticizing class action abuses, having invented a client, the lawyers also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country.

Large, nationwide class actions should be in Federal court, not in some small county court in some remote location that has nothing to do with the parties or the case. This is an abuse of the system, plain and simple. We are nowhere near the outer perimeter of tort reform here. This is an easy one. This is common sense, a simple, honest, straightforward reform narrowly tailored to achieve fairer results in cases of truly national significance.

I urge you, Mr. President, and all my colleagues, to support S. 1751.

I yield the floor.

If none of my other colleagues wishes to speak at this time, 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. BENNETT. 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. BENNETT. Mr. President, it was my privilege to be in the chair during the exchange of views between the two Senators from Illinois. I could not resist the opportunity to take the floor now and add my experience to that which has been referred to.

The senior Senator from Illinois spoke of those who did not have a legal background, and I fit into that category. I have never been in court, except as a juror and occasionally as a witness. I have never been to law school. However, I would just share this one experience with the Senate with respect to class action lawsuits and how they can be abused.

When my father left the Senate, he was invited, as is often the case for those who have senior experience in business, to serve on a number of boards of directors. He went on one particular board, thinking it was a relatively safe kind of activity for him, only to be distressed at the beginning of the next calendar year when he was served with this pile of papers. There was a lawsuit being filed on behalf of the shareholders of that particular company, and my father was named as the principal defendant.

Somewhat disturbed by this, he called the general counsel of the firm and asked what was going on.

Oh, said the general counsel, nothing to worry about. You are named because members of the board of directors are listed alphabetically and Bennett comes ahead of any other name. So you are named: Bennett et al. Don't worry, we will take care of this.

He said: Of what am I being accused? Of what is the board being accused?

Well, said the general counsel, this happens every year. He said: The members of the board have a compensation plan that is tied to the profitability of the company. Whenever the company increases its profitability by formula, the directors' pay increases by a similar formula amount.

My father said: That's very clear. It's outlined. What is the cause of this class action lawsuit being brought on behalf of all of the shareholders of the company?

Well, said the general counsel, this lawyer every year files a lawsuit on behalf of the shareholders, claiming that the board of directors is looting the company for its own purposes. That is, members of the board are trying to enrich themselves on the basis of this increase in compensation at the expense of the shareholders.

My father said: What do we do? Do you go to court and prove that this is a legitimate activity?

No, said the general counsel, that costs too much money. For us to go to court would cost us more in legal fees than the amount the lawyer will settle for.

What amounts are we talking about, my father asked.

He was told by the general counsel: The lawyer who files this suit will settle for \$100,000. It would cost us more

than \$100,000 to defend our position, so every year when the formula kicks in and the directors' compensation is increased, the lawyer files his lawsuit, we send him a check for \$100,000, the lawsuit goes away, and we forget this until the next year.

That is extortion, plain and simple. Yet the general counsel would say, with some accuracy, the shareholders are better served if we simply pay him his \$100,000 than if we go to court and defend ourselves. Even though we would win, we would end up paying \$200,000 or \$250,000 or some number like that. So, he said, we have come to the conclusion the best thing to do for the shareholders is simply settle this class action lawsuit every year for \$100,000. The lawyer knows we will do that. So every year he files the lawsuit, we send him the check, the plaintiffs in whose behalf he is suing get nothing because his legal fee for filing the suit is \$100,000, and we simply go through this charade every year.

I am happy to report that this particular lawyer, as I understand it, decided to do this in some other instances and Merrill Lynch, the large brokerage firm, took him to court. They spent close to \$1 million in legal fees proving he was wrong and, furthermore, proving he had acted in a frivolous manner and ultimately put him out of business. The shareholders of Merrill Lynch were paying for an action that benefited the shareholders of the company on whose board my father sat, and many others.

We can be grateful that Merrill Lynch was willing to accept that financial burden in order to put a stop to this practice. But it demonstrates that standing on the floor of the Senate and deciding how valuable class action lawsuits are does not properly address the problem that this, and similar legislation, has sought to solve.

I wanted to add that personal experience to the debate that has been going on here so anybody who is following the debate will understand that it is not a question of whether one should allow class action lawsuits. It is not a question of whether plaintiffs are entitled to relief as a result of joining a class. It is a question of cleaning up abuses that are carried on by lawyers who say, in the words of one of them: I have a perfect law practice. I have no clients.

They file class action lawsuits on behalf of classes, but they are not in fact real clients. The lawyers benefit, ultimately to the detriment of the shareholders of the companies that are being sued. These shareholders are individuals. We are not talking about companies as if they were abstract entities. They are individuals who are being hurt by improper practices. Those are the kinds of practices this legislation seeks to resolve.

I yield the floor.

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

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

#### EXECUTIVE SESSION

#### NOMINATION OF MARGARET CATHARINE RODGERS, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA

The PRESIDING OFFICER. Under the previous order, the hour of 5:15 p.m. having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 401, which the clerk will report.

The legislative clerk read as follows: Nomination of Margaret Catharine Rodgers, of Florida, to be United States District Judge for the Northern District of Florida.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on the confirmation of the nomination.

Mr. THOMAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Margaret Catharine Rodgers, of Florida, to be United States District Judge for the Northern District of Florida? The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Texas (Mr. CORNYN), the Senator from Tennessee (Mr. FRIST), the Senator from Nebraska (Mr. HAGEL), the Senator from Texas (Mrs. HUTCHISON), the Senator from Indiana (Mr. LUGAR), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Missouri (Mr. TALENT) and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from New York (Mr. SCHUMER) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) would each vote "yea".

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

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 401 Ex.]

YEAS—82

Akaka	Dayton	Lincoln
Alexander	DeWine	Lott
Allard	Dodd	McCain
Allen	Dole	McConnell
Baucus	Domenici	Miller
Bayh	Dorgan	Murray
Bennett	Durbin	Nelson (FL)
Bingaman	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Boxer	Feingold	Pryor
Breaux	Feinstein	Reed
Brownback	Fitzgerald	Reid
Bunning	Graham (FL)	Roberts
Burns	Graham (SC)	Rockefeller
Byrd	Grassley	Santorum
Campbell	Gregg	Sarbanes
Cantwell	Harkin	Sessions
Carper	Hatch	Shelby
Chafee	Hollings	Smith
Chambliss	Inhofe	Snowe
Clinton	Inouye	Specter
Coleman	Jeffords	Stabenow
Collins	Johnson	Stevens
Conrad	Kennedy	Sununu
Corzine	Kohl	Thomas
Craig	Kyl	Voinovich
Crapo	Leahy	
Daschle	Levin	

NOT VOTING—18

Biden	Hutchison	Mikulski
Cochran	Kerry	Murkowski
Cornyn	Landrieu	Schumer
Edwards	Lautenberg	Talent
Frist	Lieberman	Warner
Hagel	Lugar	Wyden

The nomination was confirmed.

Mr. HATCH. Mr. President, I am pleased today to speak in support of Margaret Catharine Rodgers, who has been confirmed to the United States District Court for the Northern District of Florida.

Judge Rodgers has had an impressive legal career. After graduating magna cum laude from California Western School of Law, she clerked for Judge Lacey Collier on the U.S. District Court for the Northern District of Florida. She then entered private practice with the Pensacola law firm of Clark, Partington & Hart as an associate. After 4 years, she went to work for the West Florida Medical Center Clinic as its general counsel and director of human resources. She then returned to private practice, where her areas of expertise focused on medical liability and employment law. Last year she was appointed as a Federal magistrate judge in the Northern District of Florida, which reflects the high regard in which the judges of that court hold her.

I am confident that Judge Rodgers will continue to serve with compassion, integrity, and fairness as a Federal district court judge.

Mr. LEAHY. Mr. President, the selection of Margaret Catharine Rodgers to be the nominee for the Northern District of Florida serves as an example of how the judicial nominations process should work. Judge Rodgers was interviewed and recommended by Florida's bipartisan judicial selection commission. This selection commission was created by Senators GRAHAM and NELSON in negotiated agreement with the White House and it has produced a consistent stream of talented and well-respected attorneys for the lifetime appointments on the district courts in Florida.