



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, MONDAY, OCTOBER 20, 2003

No. 147

Senate

The Senate met at 1:30 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, who is, and was, and is to come, before whose face the generations rise and fall, give us that reverential awe which forms the root of wisdom. Let integrity and uprightness preserve us, for we wait on You. Lord, give us courage to listen to You and to receive strength from Your presence.

Stand by our Senators today, sustaining them in their going out and coming in. You have not failed them in the past, so we trust You with the future. May their love for You ripen as they lean upon Your strength.

Protect our military men and women from dangers seen and unseen. Remind us that You are the sole source of peace and righteousness.

We pray this in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. COCHRAN. Mr. President, at the request of the majority leader, I have been asked to announce that this afternoon there will be a period of morning business until 2 p.m. It had been the majority leader's hope, and the desire

of many Members on this side of the aisle, to begin consideration of the Healthy Forests issue during today's session. Unfortunately, there is an objection on the Democratic side of the aisle.

Given that objection, it had been the intent of the leader to begin consideration of the class action fairness legislation. Again, there was an objection to proceeding to that measure on Friday; and, therefore, a motion to proceed was made by the majority leader.

Today, at 2 p.m., the Senate will resume debate on the motion to proceed to the class action bill. Members are expected to come to the floor throughout the day to speak on this motion. If we are unable to proceed on the bill today, it may be necessary to file a cloture motion on that pending motion to proceed.

Under a previous order, at 5:15 today, the Senate will vote on the confirmation of Margaret Catharine Rodgers to be a U.S. district judge for the Northern District of Florida. This will be the first vote of today's session.

UNANIMOUS CONSENT REQUEST— H.R. 1904

Mr. COCHRAN. Mr. President, on behalf of the leader, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the minority leader, the Senate proceed to the consideration of H.R. 1904, the Healthy Forests bill, under the following limitations: that the following first-degree amendments be the only amendments in order, and that any listed first-degree amendments be subject to second-degree amendments which must be relevant to the first degree to which offered: managers' amendment; Leahy-Boxer, buyback provisions; Bingaman-Leahy-Boxer, appeals process; Bingaman-Leahy-Boxer, wildland-urban interface; Bingaman-Leahy-Boxer, NEPA; Boxer-Leahy-Cantwell-Murray, additional

area exclusion; Campbell-Inouye, tribal lands and hazardous fuels; Collins-Snowe, suburban sprawl; Kyl, wildfire research institutes; Kyl, wildland-urban interface; Leahy-Boxer judicial review; Smith, land grant universities; and Ensign, animals.

I further ask unanimous consent that following the disposition of these amendments, the bill be read a third time, and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, this is bringing a bill up that has some problems in that this matter has not gone before the Energy and Natural Resources Committee, at least as far as Senator BINGAMAN is concerned. I have spoken to him on a couple of occasions, and he has not been given any degree of consideration as to what this final piece of legislation is that is now coming before the Senate.

Additionally, a bill such as this should be brought to the Senate floor and debated like all bills are debated. I do not have a position on this piece of legislation at this time. Personally, I have not read it. I do not know if it is good or bad. But, for the reasons I have announced, in addition to the fact that a number of Senators on this side have some problems, I object.

The PRESIDENT pro tempore. Objection is heard.

The acting leader is recognized.

HEALTHY FORESTS RESTORATION ACT

Mr. COCHRAN. Mr. President, on July 24, the Committee on Agriculture, Nutrition, and Forestry reported to the Senate H.R. 1904, the Healthy Forests Restoration Act.

This bill reflects a comprehensive effort to improve forest health on both public and private lands. The bill provides Federal land managers the tools

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S12859

to implement scientifically supported management practices on Federal forests, in consultation with local communities, while establishing new conservation programs to improve water quality and regenerate declining forest ecosystem types on private lands.

The legislation will reduce the amount of time and expense required to conduct hazardous fuels projects. But it also will require rigorous environmental analysis of such projects.

Over the past few years, we have seen many communities destroyed and many firefighters' lives lost due to forest fires that could have been prevented. Instead of managing our national forest treasures, the U.S. Forest Service has been forced to spend great amounts of time and resources battling lawsuits. The result has been months and even years of delays in fuel reduction projects. Our forests have continued to suffer, and they have continued to burn.

I have also introduced, with 13 cosponsors, an amendment to title I of the bill which contains several modifications to the House bill the committee reported. This amendment embodies recommendations made by a bipartisan group of Senators who are committed to getting this legislation passed and signed by the President.

The amendment establishes a predecisional administrative review process. It allows an additional analysis under the National Environmental Policy Act. It directs the Secretary of Agriculture to give priority to communities and watersheds in hazardous fuel reduction projects. It contains new language protecting old growth stands. And it encourages the courts to expedite the judicial review process.

The reported legislation contains a biomass title authorizing grant programs to encourage utilization of certain forest waste materials. Another title in the bill provides financial and technical assistance to private forest landowners to encourage better management techniques to protect water quality.

The pest and remote sensing titles would authorize funding for the U.S. Forest Service, land grant institutions, and 1890 institutions to plan, conduct, and promote the gathering of information about insects that have caused severe damage to forest ecosystems.

Title V, the Healthy Forest Reserve Program, is a private forestland conservation initiative that would support the restoration of declining forest ecosystem types that are critical to the recovery of threatened, endangered, and other sensitive species.

Two additional titles were added to the House-passed bill by our committee. One would establish a public land corps to provide opportunities to young people for employment and at the same time provide a cost-effective and efficient means to implement rehabilitation and enhancement projects in local communities. The other new title will promote investment in forest-resource-dependent communities.

This legislation provides new legal authority to help us manage the Nation's forests in a safe and effective manner. The bill will help us do a better job of safeguarding these priceless national resources. I urge the Senate to support this bill.

RECOGNITION OF ACTING MINORITY LEADER

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, has morning business time started?

The PRESIDENT pro tempore. We have not instituted that as yet. I intend to do that now as soon as the Senator has spoken.

FINISHING APPROPRIATIONS BILLS

Mr. REID. If I may be heard briefly, the Presiding Officer is chairman of the Appropriations Committee. I know the chairman of the Appropriations Committee and Senator BYRD have worked very hard to get appropriations bills through this soon.

I want to respond to my friend from Mississippi to indicate we may not like what is proceeding—that is, the Healthy Forests initiative and the way it has been brought to the floor, and class-action legislation. They are important pieces of legislation; we understand that. But the most important business to be conducted in this body is to finish our appropriations bills. We simply are not doing that.

I am extremely concerned the House is out of session this week. They will be in one week. They have conferences that cannot be completed because they are not here. They are AWOL. In addition to the conference reports—and there are a significant number of those: military construction, Energy and water, Interior, and Labor-HHS—there are six other bills people on the majority side are talking about lumping into one big omnibus bill. That really doesn't work well. Those bills are so large and unwieldy, it is difficult to get the detail to find out what is in them. They become a mishmash of legislation.

I hope Members understand the best thing we can do is work to get these appropriations bills passed. There is no reason we cannot pass them. The bills that have come before the Senate have passed in a reasonably short period of time.

I hope in addition to the other things the majority leader wants to do, he will focus on these appropriations bills. They are important. It is not good to have large, unwieldy omnibus bills, and it appears it is being done for reasons I don't fully understand. Part of it is simply that the numbers are not there and there is some effort being made, especially in light of the \$87 billion and the attention focused on that, the \$21 billion spent on Iraq and very little being spent in America—the American

people are concerned. These bills being brought to the Senate would focus more direct attention on that.

The PRESIDENT pro tempore. The acting majority leader.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the time for morning business be extended to 2:15 p.m.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, I say to my friend, is there any way we could get a little more time on that?

Mr. COCHRAN. I am advised there are Senators who have been told they could come over and talk on the motion to proceed to consider the class action at 2:15.

Mr. REID. That will be fine. I ask that the time between now and 2:15 be equally divided, even though my friend gave a very fine speech and took a long time. But we won't count that against morning business.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, according to this unanimous consent request, there will be a period for the transaction of morning business until the hour of 2:15, with the time equally divided between the two leaders or their designees.

Mr. COCHRAN. Mr. President, I yield the Senator from Idaho such time as he may consume.

The PRESIDENT pro tempore. The Senator from Idaho.

FOREST HEALTH

Mr. CRAPO. Mr. President, I rise to speak for a moment on the Healthy Forests bill which, as we just heard from previous discussion, will not be brought up. I understand the points made by the Senator from Nevada with regard to the importance of the appropriations bills. None of us deny the fact that we have important work to do with regard to our budget and the appropriations process. However, there are other critical pieces of legislation this Senate must consider. Among the most critical of those is the Healthy Forests bill. I serve as chairman of the subcommittee of the Agriculture Committee which handles forestry issues. It was that committee to which this legislation was referred when it came to the Senate. Our distinguished chairman of the Agriculture Committee, Senator COCHRAN, has worked closely with me as we have crafted bipartisan legislation to bring before the Senate. We have also worked closely with the Energy Committee, Senator DOMENICI, and Senator CRAIG, my colleague from

Idaho, who happens by coincidence to chair the forestry subcommittee of the Energy Committee, and other Senators on the Republican side of the aisle as we worked to craft a meaningful piece of legislation.

We also reached out and worked closely in a bipartisan fashion with Senators from the Democratic side of the aisle because we knew this important legislation should not be stalled as a result of partisan politics. The result of those efforts, the initial effort in committee and subcommittee, was bipartisan legislation which Democratic Senator BLANCHE LAMBERT LINCOLN from Arkansas and I cosponsored to bring before the full Committee on Agriculture. The Agriculture Committee then made several amendments to the legislation, working in a bipartisan fashion with other Senators on the committee, and brought that legislation out to the floor. At that time there were still concerns being raised and, therefore, our leader, Senator COCHRAN, brought together a group of Republican and Democratic Senators with concerns about our forests and the conditions they face, and for several months we negotiated—again, on a bipartisan basis—to address the needs of our forests and the concerns raised by those who wanted to be sure we had a bipartisan, balanced bill.

We achieved that support. We came forward in a group of bipartisan Senators, Republicans and Democrats, with legislation that expanded the number of Democrats who would join with us on the legislation, including our minority leader and other leaders in the west from areas where serious forest fire problems are facing us.

Now after that long period and working in a bipartisan fashion, as we are prepared to bring the legislation forward, we are told it cannot be brought forward because there is objection to the unanimous consent request. We don't want to have a filibuster fight. We don't want to have a cloture vote. We have been working to build a balanced approach which can achieve support in the Senate.

It is my concern that what we see now is further delay, coming at a late time in the session, when we will jeopardize the ability of the Senate to meet its time considerations to address critical issues.

Our forests need support and help now. All anyone has to do with regard to the threat of fire danger is look back at the last 3 or 4 or 5 months to see the kind of threat our forests face. In addition, we expanded the legislation to deal not simply with fire threats but also threats from insect infestation—some of the most critical needs facing our forests in America today.

This legislation, as Senator COCHRAN indicated, is balanced. It is fair. It protects old-growth forests. It makes certain that public participation in the process of decisionmaking is preserved. It assures that the implementation of

management plans by experts on the forests has a meaningful chance to proceed so we aren't tied up in litigation paralysis, and it gives us an opportunity to move forward and develop a plan that will help us achieve our objective, which is healthy forests.

I commend all Senators who have been working together on this issue, Republicans and Democrats. I particularly thank my colleague from Idaho, Senator CRAIG, and our colleague from New Mexico, Senator DOMENICI, as they have worked so closely with us at the Energy Committee level; and especially my chairman, Senator COCHRAN, who also worked closely with us; Senator LINCOLN, who has worked with us from the start, Senators WYDEN, FEINSTEIN, BAUCUS, and others; Senator KYL, Senator MCCAIN. Many Senators have come together to work with us.

I am hopeful this critical, bipartisan, balanced legislation will not fall prey to the loss of time we face on the Senate floor at these late days in the session as we are moving forward. I urge Senators to come forward and help us find a path by which we can bring this legislation before the Senate and achieve its early consideration.

Mr. REID. I yield 5 minutes to the Senator from New Mexico.

Mr. BINGAMAN. Mr. President, over 6 weeks ago, the Senate appointed 13 conferees to the conference with the House on the Energy bill. Six of those conferees are Democrats. They were appointed to represent the 49 Democrats who serve in this body.

The day after our appointment, there was one meeting of the conference to allow for opening statements. Since then, there has been no opportunity for Democratic conferees to actually act as conferees. Some of the proposed text for the conference report, which was written without our involvement, has been circulated to us for comment by our staff.

On the most important issues before the conference—that being electricity and ethanol—we have not yet seen a draft text. Our concern about the way the conference has been conducted is not new information to this body. I have conveyed those concerns directly to the chairman of the conference. I have been joined publicly in expressing those concerns by other Democratic conferees, both in the Senate and House.

The blackout on information about the conference became even more complete during this past weekend. We understand there are agreements on most of the issues involved with the Energy bill. In fact, the settled energy provisions probably represent well over 500 pages of legislative text.

This text contains many details and it is important that we be able to view the text before we are called into a final conference meeting for an up-or-down vote. Our staff was standing by all weekend in hopes of getting to see this text. We were not able to do so. I personally cannot think of any valid

reason why the completed text—those portions that have been completed by the Republican conferees—should not be distributed to the rest of the conferees immediately.

There are numerous new sections on topics that have not been yet dealt with, as we understand it. We need to see those. Some of those may be provisions that were neither in the House nor the Senate bill. Others may entail spending of which we previously have not been informed.

I have spoken to the chairman of the conference in the last few minutes. He has informed me that he and our majority leader are insisting that this conference not be concluded until we are given the full text of this bill and until we have at least 24 hours to review the text and have a final meeting at which we can raise objections and offer amendments. I appreciate that courtesy.

This is far short of what I think would be required in an appropriate conference, but it is certainly some effort to accommodate, which I very much appreciate.

I do believe the sections that have not yet been released—that being the sections on electricity and ethanol—need to be released at the earliest possible moment, and hopefully today. These are very important sections. They are going to affect Americans in their pocketbook in very real ways. It is very important we get the provisions out so we can understand them, debate them, and consider them before we are called upon to finally pass on this conference.

The right thing to do is to make the documents—that is, the text of this proposed Energy legislation—public as soon as possible. There is no doubt in anybody's mind that this is what the Democratic conferees continue to ask for. I hope this is the course of action that will be taken by the leadership of the House and Senate at the earliest possible moment.

With that, I yield the floor.

The PRESIDENT pro tempore. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I yield 5 minutes to the distinguished Senator from Idaho, Mr. CRAIG.

Mr. DOMENICI. Will the Senator yield?

Mr. CRAIG. Yes.

Mr. DOMENICI. Senator BINGAMAN spoke to an issue to which I would like to respond.

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senator from New Mexico be granted 2 minutes, not to be taken from my time. I think it is critical that he speak to the issue of the energy conference.

Mr. REID. Reserving the right to object, whose time is it taken from?

The PRESIDENT pro tempore. The majority's time.

Mr. DOMENICI. Mr. President, I say to Senator BINGAMAN that I heard what he said. He and I have talked a number of times. I would like to share with

him the following so there is no misunderstanding. I have taken the position—although I have not been able to tell him every day and I have not issued a release about it every day—that the Senator must have the bill for 24 full hours prior to markup. We have taken that position with our leadership and with everyone who has to do with the hierarchy of this bill. That is where we are. That will be enforced. I now have the support I need for that to happen.

Secondly, I will do my very best to get you the portion of the bill that you would like to see on electricity even before that. I am working very hard on seeing if I can do that. There are a whole lot of people who want to look at that provision, and I want to get it to you as soon as possible.

I thank the Senator for his comments, and I understand his concern. I hope that, in the end, whatever your concerns are for that bill—let's hope you are for it, but I hope you will conclude that you have had a chance to review everything and offer amendments. I thank the Senator for yielding.

The PRESIDENT pro tempore. The Senator from Idaho is recognized for 5 minutes.

Mr. CRAIG. Mr. President, I had hoped that today I would be on the floor debating with my colleagues the issue of Healthy Forests and H.R. 1904. When the chairman of the Agriculture Committee brought the bill to the floor today asking unanimous consent to move forward, there was an objection heard from the other side. I must tell you it is phenomenally frustrating to me that we have worked on this issue in a totally bipartisan mode since the day it came from the House and, yet, there is still objection from the other side on this issue.

The bill brought to the floor today, chaired and lead-sponsored by the chairman of the Agriculture Committee, Senator COCHRAN, has Senator DASCHLE, Senator DOMENICI, Senator WYDEN, my colleague from Idaho, Senator CRAPO, who chairs the Forestry Subcommittee on Agriculture, Senators FEINSTEIN, LINCOLN, BURNS, JOHNSON, MCCAIN, and CRAIG, who chairs the Forestry Subcommittee in the Energy and Natural Resources Committee, together on this issue.

Yet the other side is saying no. Is it because the fire season is over? Is it because of the rains starting to hit the forests of the Great Basin West, and the smoke clouds that filled the air of the West this summer are depleted? Is that why there is objection now to this legislation?

I and others have been on this floor for the last 3 years pleading with the Congress of the United States, and especially this body, to craft a forest health bill that allows us to begin some active management of our forests, to change the character of our forests, and to improve their health. The House acted this year. The bill came to the Agriculture Committee. My colleague

from Idaho, Senator CRAPO, chaired the subcommittee, and the work began under the leadership of Senator COCHRAN. They produced a very good bill. We looked at it in the Energy and Natural Resources Committee. It is not that our committee has not seen it. You darn right we have seen it; for 3 years, this issue has been before the Energy and Natural Resources Committee and my forestry subcommittee. Now the ranking member, Senator WYDEN of Oregon, and I—myself chairing—have agreed this is the bill that ought to come to the floor. Yet we are still being told that, no, somehow it hasn't been vetted enough and somehow there is no understanding of this issue.

There is a lot of understanding of this issue. There is a fundamental disagreement between those who want the forests left alone to burn, to let Mother Nature take her course, and those of us who have said the economies of the West, the watersheds of the West, the wildlife of the West, and of all of our public land forests deserve a policy of active management so our forests can return to a state of good health, so our watersheds can produce clear and valuable water for our urban environments, and so the wildlife can flourish; they deserve that. Yet it is being denied by a select few who would see it in an entirely different way.

The President began to speak out on this issue a couple of years ago. He stood in the ashes hip deep in Oregon, where fires ravaged nearly a million acres, and said that somehow this country has to change its policy.

Guess what. Eighty-seven percent of Americans in a recent poll agree that something is wrong in our national forests. It looks something like this: 79 percent of the folks in the West say: Got to fix it. In the Midwest, 82 percent say: Got a problem, ought to fix it. In the South, 84 percent say—and this is the area the chairman of the Agriculture Committee is from—got a problem in our public forests, ought to fix it. And the chairman of the Agriculture Committee, Senator COCHRAN, set out to do that, along with the Senator from Idaho, Mr. CRAPO, and myself.

This is a national issue today. It is not an issue of the elitist or the select few of the environmental community who say nothing should happen on our public lands; that they should be a preserve only managed by Mother Nature. We have seen what Mother Nature has done in the last 5 years. She has burned 3 million to 5 million acres a year. She has destroyed watersheds. She has destroyed wildlife. In many instances, she has destroyed thousands of homes, and she has cost Americans their lives. Many Americans have died in the last few years just trying to fight these unusually hot and devastatingly damaging wildfires that have swept the West.

Here are the facts. The American public understands these fires are de-

stroying our forests. They understand that we need to do more thinning.

Eighty-three percent of the wildland firefighters have told this Congress and the public that the most important step we can take to increase their safety—is to thin these forests.

Because the Sierra Club and the Wilderness Society and other radical environmental groups want no timber harvesting in our Federal forests, we are destroying 6 to 7 million acres of land each year—6 to 7 million acres of wildlife habitat are being destroyed each year.

The bipartisan amendment that was reached as a compromise with 13 of my colleagues responds to the needs of the American public. It responds to those who are concerned about the loss of wildlife habitat. It responds to the wildland firefighters who tell us we need to increase the number of acres thinned each year. And, most importantly it responds to the needs of our forests.

We have seen communities destroyed by fire and important wildlife habitats destroyed. Yet we, in this Senate, fiddle.

I am tired of our fiddling around. We all know that this body must address this issue. We all know that the bipartisan amendment is a good one that is fair and balanced and good for our forests.

Last year, all we asked for was an up-or-down vote on our amendment, but the minority would not allow that.

This year, a few Members seem to be saying no debate, no vote, and yes to the destruction of our forests. This simply has to stop.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. CRAIG. Mr. President, that is the issue before us today. It is an issue that this Senate ought to debate. I plead with my colleagues on the other side to work with us to get this bill to the floor for purposes of debate and passage.

Mr. COCHRAN. Mr. President, I yield the remainder of the time on this side to the Senator from Wyoming, Mr. THOMAS.

The PRESIDENT pro tempore. The Senator is recognized for 2 minutes 9 seconds.

Mr. REID. Mr. President, will the Senator yield?

The PRESIDENT pro tempore. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, Senator HATCH has been courteous as always. He is slated to speak at 2:30 p.m. He said the time for morning business can be extended until 2:35. It is OK with him that we extend morning business until 2:35 with the time equally divided. I ask unanimous consent that be the case.

The PRESIDENT pro tempore. Is there objection to extending the time

for morning business until 2:30 p.m. as under the previous order with the time equally divided?

Mr. REID. Mr. President, 2:35 p.m.

The PRESIDENT pro tempore. Is there objection to extending morning business until 2:35 p.m.?

Morning business is extended until 2:35 p.m.

The Senator from Wyoming is recognized for 2 minutes 9 seconds.

Mr. THOMAS. Under the new circumstances, perhaps I could have 5 minutes.

Mr. COCHRAN. I yield to the distinguished Senator 7½ minutes.

The PRESIDENT pro tempore. The Senator is recognized for 7½ minutes.

HEALTHY FORESTS

Mr. THOMAS. Mr. President, I join my colleagues in talking about the problems I guess particularly in the West, although not only in the West. When I was in high school, I lived near the Shoshone Forest in Cody, WY, and I would help the firefighters fight fires. I remember that so very well, particularly one mountain close to home. It was very steep. As the fire went up the rocks, it would loosen the rocks and they rolled down. Since that time, it has become even more of a problem.

I always think about those who say we ought to leave things the way they are, and I think about the wild horses. If we would get too many wild horses, what would happen to them in the old days? They starved to death. We don't let that happen anymore. We have to keep the numbers down. The same is true with the forests.

We are using the forests differently than we did in the past. More people live closer to the forests. People are using the forests differently. We have more insect problems to manage. We are talking about managing the resource.

There will be areas, of course, where we will not have forest protection—on roadless areas and wilderness areas. But much of the forests are areas where there are many people all the time, where there are roads and buildings, and we have to do something different than we have been doing.

Fires burn at naturally high temperatures and cause severe damage to the soil, watersheds, and air quality, as well as, of course, to the trees. Fires destroy habitat, including endangered species.

It is our responsibility to protect the health and safety of the community in neighboring lands. There is a lot we must do to do a better job.

In Wyoming—and we have not had as much fire as some other States—in the Shoshone Forest where I grew up, many of those trees are infected by insects. Yet only 1 percent of the corridor is available for any kind of treatment and care for these trees. In Big Horn National Forest, a fire burned for 3 weeks causing evacuation of dozens of cabins and loss of other facilities.

Black Hills National Forest—interestingly enough, we had some agreements before that were limited to the Black Hills to do forest fighting, clearing, and so on. We ought to extend that to some of the other forests because we have had experience in that area. Grand Teton, of course.

It is clear we need to have a program. Firefighting is extremely costly. It is expensive to suppress and control. It is much less expensive to seek to avoid fires.

The Forest Service this year has already spent \$1 billion in forest fighting. We passed nearly \$700 million to cover the cost of the shortfall; otherwise, it had to come from other projects. We cannot continue to have these kinds of resources consumed by the fire.

It has already been mentioned that the House has a bill and we have a bill and we will be taking up the differences. There are differences in view as to how different parts should be handled.

Between the House and the Senate, there has been a compromise on almost all the issues that are important: administrative appeals and all the suits that take place. We have an agreement to cut those down, so instead of having to do studies for a year before something can be done, it can be done in 30 days. We have wildlife-urban interface, with half a mile around facilities in which more of this control will take place.

We have the old-growth issues where there can be changes if old growth is in that interface close to buildings. There can be exemptions.

I am most disappointed that, having talked about this issues for years, knowing the impact of not doing something, here we are with objections to moving forward when we have an opportunity to create some solutions to the problem that exists and will continue to exist.

I hope we can do something this week. This is our chance to come together and pass a bill that will be usable. I hope we do that.

I yield the floor.

Mr. COCHRAN. Mr. President, how much time remains on the morning business allocation for this side of the aisle?

The PRESIDING OFFICER (Mr. ROBERTS). The distinguished Senator has 5 minutes 51 seconds remaining.

Mr. COCHRAN. Mr. President, I yield the remaining time to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair. I thank the Senator from Mississippi Mr. COCHRAN.

First, on the way to the floor, something very interesting happened to this bill. The Parliamentarian read it and said: Chairman DOMENICI—who had been waiting anxiously to do this bill—you don't have jurisdiction the way the bill is written and said the Agriculture Committee did.

For a little while I had a sourpuss look on me until I found out that, indeed, we were fortunate because Senator THAD COCHRAN and his committee, letting us help him, did a magnificent job. In fact, I can say so there will be no doubt on the record that they did a better job than we could have. So I am very pleased the bill came roundabout that way.

As always happens in a bill of this type, you cannot win on the floor with just a bill produced by committee because there are Senators who are not on any of the committees of jurisdiction who have big interests in the bill. Guess what. Those Senators are now supporting this bill. We must have somebody around here who is against this bill. Senator WYDEN is for it. He has had some of the biggest problems with forests and forest fires in his State of any Senator.

We met under Senator COCHRAN's leadership for weeks. And Senator WYDEN is for this bill. Surely, he is not for not bringing up this bill. Whoever is for not bringing it up—I don't understand.

California has so much of everything that we sometimes forget they have huge forests and huge forest fires, and it burns a lot of things down.

They need to fix the law. Guess what. She is not on the Agriculture Committee. Right?

Mr. COCHRAN. Right.

Mr. DOMENICI. So she came in and said: Let me help. She went to meeting after meeting. Of course, they invited me and my staff. I had more than a few things to do, and I probably was there less than the Senators I just mentioned, but I came. I was one who pursued it and pushed it.

On the Democrat side of the Agriculture Committee, the Senator from Arkansas, BLANCHE LINCOLN, was there all the time. She came to these meetings and she is for it. MAX BAUCUS, Democrat from Montana, a State with huge problems, he was there. He is for it.

Everybody knows the Senator from New Mexico is for it. I have been trying to do this for 10 or 12 years. I got one big bill through that nobody thought could happen in the midst of the forest fires. It passed in an amendment on the floor. We got \$250 million times 2—that is \$500 million—for each agency. We named that bill "happy forests." We named it happy forests because we thought if it works, these forests that cannot see sunlight may see sunlight and they might be happy when they look up at the sun.

So I nicknamed the bill the happy forests, with the trees of America once again being unclogged. The clogging makes the trees limp but also makes them burn like wildfire. We got that one through and it did a lot of good, but we are stuck with the problem that this bill tries to solve; namely, we cannot get anything done in a reasonable period of time. That is the issue.

We do not have to talk about the fancy words, jurisdiction, courts, and

all of that. The truth is, for those who do not want things to happen, they have an inordinate amount of time that they can make everybody waste without doing anything. At least in this bill, for instance, if there is an infested forest—and I do not know anyone that does not have one around—they are ugly, they burn like tinder, and at least in this bill that would be handled very expeditiously.

People wonder why that is not the case right now. In a few months, why can't there be a contract to cut those trees down? Well, those kind of things are getting fixed in this bill.

I am grateful to have these few minutes. I am thankful that this bill went to the Agriculture Committee. The staff did most of the work, and I am very grateful the outsiders came in and helped. I do not want to fail to mention, on the Republican side, the distinguished Senator from Arizona, JOHN MCCAIN, who was not on the committee of jurisdiction, also came with his competent staff. They presented their views and some of the bill was adjusted their way.

So I say to the leadership, I hope when some Senators come and say let's delay this bill, let's not take it up, I hope they would ask, what is this about? When are we going to do it? When are we going to stop destroying our forests or at least do some positive things that we all know are right?

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Under the order, how much time remains on this side?

The PRESIDING OFFICER. There is no time remaining.

Mr. REID. I yield the remaining time on this side to the Senator from North Dakota, Mr. CONRAD.

The PRESIDING OFFICER. The distinguished Senator from North Dakota is recognized.

OSAMA BIN LADEN AND SEPTEMBER 11

Mr. CONRAD. Mr. President, over the weekend, Osama bin Laden was again seen vowing that al-Qaida would launch suicide attacks against Americans and our allies. Frankly, it angered me to see these taped reports that again Osama bin Laden is threatening Americans.

It has now been 771 days since al-Qaida launched terrorist attacks on American targets on September 11, 2001. For me, this report raised the question of why is Osama bin Laden still able to threaten this country? Why have we not been able to find him and bring him to account?

I was reminded, in seeing these tapes, that just several weeks ago Newsweek magazine did a detailed analysis on where Osama bin Laden might be. They narrowed it down to Kunar province on the border between Afghanistan and Pakistan. They had detailed reports in that article of Osama bin Laden being seen in this area.

It struck me at the time, if we have a pretty good idea of where Osama bin Laden is, why are we not flooding that area with American forces to take him out? Newsweek went on to report that:

... bin Laden appears to be not only alive, but thriving. And with America distracted in Iraq and Pakistani President Pervez Musharraf leery of stirring up an Islamist backlash, there is no large-scale military force currently pursuing the chief culprit in the 9/11 attacks, U.S. officials concede.

I find that alarming. Osama bin Laden led the attacks on this country. We know that. There is no doubt about it. If we are being distracted by Iraq, in my view, that is a serious mistake. I must say it is one that I very much feared one year ago when we were considering whether to attack Iraq. I voted against attacking Iraq at that time because I believed our top priority ought to be going after al-Qaida and Osama bin Laden.

There has just recently been a report in the Boston Globe that says: As the hunt for Saddam Hussein grows more urgent, and the guerilla war in Iraq shows no signs of abating, the Bush administration is continuing to shift highly specialized intelligence officers from the hunt for Osama bin Laden in Afghanistan to the Iraq crisis.

I believe that is the wrong priority. I believe the priority ought to be al-Qaida and Osama bin Laden, and we ought to be going into this area that has been identified in seeking to find him and holding him to account.

When I reflect on the decision to go into Iraq, I am reminded that many in the public believe that Iraqis were part of the 9/11 operation. In fact, 69 percent of the American people believe Saddam was involved in the September 11 attacks. Half of Americans believe that Iraqis were among the 9/11 hijackers.

We know that is not the case. There were no Iraqis, none, zero, involved in the 19 who hijacked the planes in our country that turned them into flying bombs that attacked the World Trade Center and the Pentagon. Of the 19 hijackers, 15 were from Saudi Arabia, two were from the United Arab Emirates, one was from Egypt, and one was from Lebanon. Not a single one was from Iraq. Yet even now many Americans believe it was in fact Iraqis who attacked this country. In fact, more Americans believe most of the hijackers were Iraqis—21 percent—than the 17 percent who correctly stated none of the hijackers was Iraqi.

We are making decisions here, and the American people are supporting decisions, and apparently they do not have the accurate information.

Unfortunately, it is not hard to figure out why. In speech after speech, the President and his top officials have juxtaposed 9/11 with Saddam and Iraq, strongly implying there is a clear and direct link between Saddam and 9/11. To take only one of dozens of examples, as recently as last month Vice President CHENEY again linked 9/11 with Iraq, describing Iraq as the geographic

base of the terrorists who have had us under assault for many years, but most especially on 9/11.

This is the Vice President of the United States suggesting that Iraq was at the center of the attack on America on 9/11.

The President himself was forced to correct the record just a few days later, when he said we have had no evidence Saddam Hussein was involved on September 11; no evidence.

The record is overwhelmingly clear. We know who attacked us on September 11. It was not Iraq. There were no Iraqis. The people who attacked us on September 11 were al-Qaida, led by Osama bin Laden. In 770 days, we have not yet held him to account. That has to be our priority.

The President and his top officials have sought to link Saddam not just with 9/11 specifically but with al-Qaida more generally. They have cited three pieces of evidence to back that claim.

First, the administration stated that one of the 9/11 hijackers, Mohamed Atta, met with an Iraqi agent in Prague in the spring of 2001. For example, last year the Vice President asserted:

We have reporting that places him [Atta] in Prague with a senior Iraqi intelligence officer a few months before the attacks on the World Trade Center.

That is what the Vice President said then. But what do we know now? The fact is, the CIA and FBI have concluded this report was simply not accurate because Mohammed Atta was in this country, in Virginia Beach, VA, at the time the Vice President had asserted he was in Prague. As the Washington Post reported on September 29:

In making the case for war against Iraq, Vice President Cheney has continued to suggest that an Iraqi intelligence agent met with a September 11, 2001, hijacker months before the attacks, even as the story was falling apart under scrutiny by the FBI, the CIA, and the foreign government that first made the allegation.

Second, the administration has argued a senior al-Qaida operative, Al-Zarqawi, was seen in Baghdad. He may very well have been in Baghdad, but that doesn't prove anything about a formal link between Iraq and al-Qaida. We know senior operatives spent months in our own country prior to 9/11. That doesn't make the United States an ally of al-Qaida any more than the presence of an al-Qaida operative in Baghdad makes Saddam Hussein an ally of Al-Qaida.

Third, the administration said al-Qaida maintained a training camp in northern Iraq. Again, this sounds convincing, but as the former director of the Strategic Proliferation and Military Affairs Office at the State Department's intelligence bureau points out, one finds this is not a very honest explanation: "... I mean, you had terrorist activity described that was taking place in Iraq, without the mention that it was taking place in an area under the control of the Kurds rather

than an area under the control of Saddam Hussein."

On this map, this is the camp they were talking about. This is the Ansar al-Islam area. There was a terrorist camp here.

This is a map of Iraq that shows very clearly that is an area controlled by the Kurds. The Kurds are our allies. This is an area that was not under the control of Saddam Hussein.

If the American people are going to make sound judgments about who is responsible for what, and who we ought to hold responsible, and who we ought to prioritize for attack, it seems very clear to me the ones we ought to be attacking are al-Qaida. The ones we ought to be going after first and foremost are Osama bin Laden and his allies. Over and over, I believe the American people have been led to believe there is this strong link between al-Qaida and Saddam Hussein. I do not think the facts bear out that connection.

The President himself has now said Saddam Hussein has not been linked to September 11. Yet the majority of the American people believe that he was. That mistaken understanding is right at the core of what has been to me a serious mistake in the strategy in fighting this war on terror. Our first priority, our top priority, one we should not be distracted from, is going after Osama bin Laden and al-Qaida. I don't think we should be distracted, chasing the mirage of terrorism being fundamentally a product of Iraq. I don't think the record bears that out.

If there is not a strong connection between Iraq and al-Qaida, why have we repeatedly had that linkage made? I think there has been very little credible evidence of a direct connection between al-Qaida and Saddam Hussein. As a former State Department intelligence official said in the same Front Line interview:

His [Secretary Powell's] own intelligence officials and virtually everyone else in the terrorist community said there is no significant connection between al-Qaida and Saddam Hussein.

If there is not a strong connection, why have we heard so many references linking the two? That is a question we all need to ask and try to answer.

In addition to the link to al-Qaida, the President and his administration have also repeatedly indicated that Iraq had weapons of mass destruction. First the President suggested over and over there were close links between Saddam and al-Qaida, implying Saddam had something to do with the September 11 terrorist attack on this country. We now see that is a very weak case.

Is there better evidence to substantiate the second set of claims used to justify war with Iraq, that Saddam Hussein was about to acquire nuclear weapons, and was producing chemical and biological weapons, all of which could be used for an imminent attack against the United States?

First, on nuclear weapons, the President and top officials repeatedly warned of Saddam's efforts to acquire weapons of mass destruction. They buttressed these general claims with two very specific assertions. First, the President and his top officials said there was direct evidence of Saddam Hussein trying to buy uranium in Africa. In his State of the Union Address last January, President Bush told Congress and the American people:

The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.

That is what the President said then. But what do we know now? We now know that the CIA knew, months before the State of the Union Address, and months before the war on Iraq started, the allegation was simply not accurate; it was based on a crude forgery that did not pass the credibility test for CIA experts. Here is just one news story, "Bush Claim on Iraq Had Flawed Origin, White House Says."

The White House acknowledged for the first time today that President Bush was relying on incomplete and perhaps inaccurate information from American intelligence agencies when he declared in his State of the Union speech that Saddam Hussein had tried to purchase uranium from Africa.

Second, the President and his aides have repeatedly asserted Iraq had tried to purchase aluminum tubes that could be used to enrich uranium for nuclear weapons.

The President said:

Our intelligence sources tell us that he has attempted to purchase high-strength aluminum tubes, suitable for nuclear weapons production.

That's what the President said then.

But what do we know now?

The International Atomic Energy Agency's director concluded this spring, before the war on Iraq started, that the tubes were for conventional artillery rockets. As the Washington Post reported:

ElBaradei rejected a key Bush administration claim made twice by the President in major speeches and repeated by the Secretary of State that Iraq had tried to purchase high-strength aluminum tubes to use in centrifuges for uranium enrichment. . . . El Baradei's report yesterday all but ruled out the use of the tubes in a nuclear program. . . . "It was highly unlikely Iraq could have achieved the considerable redesign needed to use them in a centrifuge program," ElBaradei said.

But the Bush administration did not stop with these specifics. It repeatedly asserted there was an imminent danger of Saddam acquiring and using nuclear weapons.

In a speech 1 year ago, President Bush said:

The evidence indicates that Iraq is reconstituting its nuclear weapons program.

The Vice President last March went even further, stating that "we believe he has in fact reconstituted nuclear weapons."

That is what they said then. But what do we know now? We have occupied Iraq for 5 months. We have full,

unrestricted access to the whole country and more than 1,000 investigators looking for illegal weapons. The Bush administration's chief investigator leading the search for weapons of mass destruction has found no evidence of any serious recent effort to build nuclear weapons. I think this quote from the October 3 Washington Post sums up the most recent finding:

After searching for nearly six months, U.S. forces and CIA experts have determined that Iraq's nuclear program was only in the very most rudimentary state, the Bush Administration's chief investigator formally told Congress yesterday.

On nuclear weapons, specific allegations underlying the administration's claims had certainly been discredited before we went to war, and since the war we have found no evidence to support the more general claims of Iraqi efforts to reconstitute its nuclear weapons program.

What about chemical and biological weapons?

We all knew Iraq had possessed and had used chemical weapons in the 1980s. We all knew intelligence had not conclusively demonstrated that all of these weapons had been destroyed. In fact, I must say I believed Iraq was likely to have chemical and biological weapons because we knew they did at one point. The United Nations investigators found them. But those weapons have not been found since. We have searched high and low for biological and chemical weapons. We may still find them. I think we have to ask ourselves, would that have justified a preemptive attack on Iraq? My own judgment is it would not. Why? The Soviet Union had weapons of mass destruction; we never launched a preemptive attack on them. China has weapons of mass destruction; we never launched a preemptive attack on them. You can go through country after country where we have decided to use containment rather than military assault.

The President told us the Iraqi regime possesses and produces chemical and biological weapons. I believe he believed that, and there was reason to believe that. I don't diminish that argument. But the fact is we were wrong, or at least so far it appears we were wrong. I must say I believed—and I say it again—I believed they had chemical and biological weapons. But after searching for nearly 6 months, U.S. forces and the CIA experts have found no chemical or biological weapons in Iraq. We still may find them.

That still leaves us with the question: Did their mere possession of such weapons justify a preemptive attack? What did our own CIA tell us? I remember those briefings, elements of which have been made public. I am not revealing any secrets. The CIA told us there was a low likelihood of an Iraqi attack on us or our allies unless we attacked them first.

The point is simply this: We have not found biological and chemical weapons. We have not found evidence of a reconstituted nuclear program. We have not

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.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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.

Judge Rodgers currently serves the Northern District of Florida as a magistrate judge. She received a "well qualified" rating from the American Bar Association, having proven her qualifications in the district in which she will serve, on the bench, in private practice, and in her community. Prior to becoming a lawyer, Judge Rodgers served for several years in the United States Army and received several commendations for her service.

With tonight's vote on Judge Rodgers' nomination, the Senate will have confirmed a total of 165 judicial nominations of President George W. Bush. Despite all of the false charges of obstruction leveled by the White House and Republican Senators, we have now reached a historic level of confirmations of judicial nominations.

In less than 3 years, President Bush has now equaled the total number of judges appointed by President Reagan in his first 4 full years in office. Republicans tout President Reagan as the "all-time champ" in judicial appointments and yet he attained 165 confirmations at the conclusion of his first 4-year term in office, while President Bush has achieved the same benchmark in less than 3 years in office. President Reagan's entire first term saw a Republican Senate majority enabling the President to achieve that milestone. That Democrats in the Senate have cooperated with President Bush to exceed it is extraordinary and reveals the truth about the confirmation process. Only a few of the most extreme of President Bush's judicial nominees have been blocked.

Of course, you will not hear Republican Senators or the White House tell the public today that this historic level of appointments has been reached, that President Bush has matched President Reagan's first-term judicial appointments with 15 months remaining in his term. You will not hear that truth from this administration. The Senate has opposed only the most extreme nominees and has moved cooperatively and expeditiously on less controversial nominees.

The record will reflect that Democrats have worked hard to balance the need to fill vacancies on the Federal bench with the imperative that the judges chosen will be fair to all people. With this confirmation, there are now only 40 vacant seats in the Federal bench. Until this year, this mark had not been reached in 13 years or during the entire Clinton administration, when more than 50 judicial nominees were blocked from receiving confirmation votes. Had we not authorized almost 20 judgeships last year, the vacancies might be in the 20's.

President Bush is on pace to appoint judges far in excess of those of any other President in American history. In fact, this President has had so many vacant seats to fill because Senate Republicans did such an effective job of blocking scores of Clinton nominees with impunity. When I became chair-

man of the Judiciary Committee in mid-2001, we inherited 110 vacancies. In a little more than 2 years since then Democrats and Republicans have worked together to confirm 165 judicial nominees of President Bush. The White House and the Republicans in the Senate refuse to declare themselves victorious in their efforts to appoint a historic number of judges chosen by the President. They insist on seeing the glass half empty, when it is nearly full to the brim. They refuse to take any steps to address the fact that fully 20 percent of President Clinton's judicial nominees were blocked from getting votes when Republicans controlled the Senate. In those 6 years, they allowed only 248 judicial nominees to be confirmed and blocked another 63. Today, in less than 3 years, President Bush has achieved what it took President Reagan four full years to achieve 165 judicial confirmations.

Nominations from bipartisan selection commissions can proceed expeditiously. Judge Rodgers received a committee hearing within weeks of her paperwork being completed and she will be confirmed less than a month after her hearing. Her confirmation could have occurred even sooner since she has been pending on the floor for several weeks but I am happy that the majority leader has decided to turn to her confirmation this afternoon.

Judge Rodgers' appointment to the district court in the Northern District of Florida will bring her legal career full circle since her first job out of law school was as a judicial clerk on this very court. I am pleased to cast a vote for her confirmation today and I congratulate Judge Rodgers and her family.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. NELSON of Florida. 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. GRASSLEY. 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. GRASSLEY. Mr. President, am I in order to speak on the class action tort reform legislation?

The PRESIDING OFFICER. The Senator is in order.

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

Mr. GRASSLEY. I am pleased that the Senate is finally reaching the point

of moving ahead with this very important legislation. We call this the Class Action Fairness Act of 2003 because, quite frankly, everything dealing with class action lawsuits—maybe I should not say everything because I admit there is a very important role in some instances for class action lawsuits, but the way the regime is working out now is very unfair, particularly in instances where consumers get practically nothing and lawyers representing the class get millions.

That is not an occasional happening. That is happening quite regularly. So the current class action system is rife with problems which undermine the rights of both the plaintiffs and defendants alike; hence, our legislation. Class members are often in the dark about their rights, with class lawyers driving lawsuits and driving the settlement. Class members receive court and settlement notices in hard-to-understand legalese. Many class action settlements only benefit the lawyers, with little or nothing going to the class members. We are all familiar with class action settlements where the plaintiffs received coupons of little value or no value, and the lawyers received all the money available in the settlement agreements.

More and more, we are seeing lawyers bringing frivolous lawsuits which are of no real interest to class members but are just a bonanza of quick and easy legal fees for the class lawyers because companies want to settle those cases rather than expend lots of money in frivolous litigation defense.

I have been invited into class action lawsuits. One gets a notice in the mail, probably because they did business with a particular company. Maybe it is because I am in agriculture and a family farmer that I might get some notices of this, but I can speak to the fact that—and obviously I hope people know I am not a lawyer, but the legalese that comes in these notices informing you why you might possibly be a member of a class, or you might possibly benefit, quite frankly I do not give those notices much consideration. Maybe I should. Maybe there is a jackpot out there that I could get something out of. I do not know.

It really is not very inviting to the people who may have been injured. Even if it is inviting, and they join it and they win, they could get a coupon; whereas the lawyers are going to get millions of dollars.

In addition to current class action rules, the current ones are such that a majority of the large nationwide class actions can only proceed in our State courts, when these are clearly the kinds of cases that should, in fact, be heard in Federal courts. It makes sense that these class action cases have the opportunity to be heard in Federal courts because these cases involve lots of money, citizens from all across the country, and issues of nationwide interest.

To further compound the problem, the present rules are easily gamed by

unscrupulous lawyers who steer class actions to certain preferred State courts where judges are quick to certify a class and approve a settlement with little regard to class member interest and the parties' due process rights. For example, class lawyers manipulate pleadings to avoid removal of the lawsuit to Federal court by claiming that their client suffered under \$75,000 in damages in order to avoid meeting a Federal threshold, even though their client may have suffered greater injury. Class lawyers craft lawsuits to defeat the complete diversity requirements by ensuring that at least one named class member is from the same State as the defendant.

These are just a few of the games that are played and the gamesmanship tactics that we have heard of that lawyers like to utilize to bring down the entire class action legal system.

The Class Action Fairness Act that is before us will address some of the most egregious problems with the class action system; yet preserving class action lawsuits is an important tool which brings representation to the unrepresented.

I will briefly summarize what this bipartisan bill does. First, the act requires that notice of proposed settlements in all class actions, as well as all class notices, must be in clear, easily understood English and must include all material settlements, including amounts and sources of attorney's fees.

When that happens, and I get one of those notices, I am going to read it and maybe I can make a decision that I ought to join that class. But I am not going to mess around with trying to have some lawyer interpret to me whether or not I ought to be in a class action lawsuit when I get those notices.

These notices that most plaintiffs receive are written in small print and in confusing legal jargon. Since plaintiffs are giving up their right to sue, it is important that they understand what they are doing and the ramifications of their actions.

Second, this act requires that State attorneys general, or other responsible State government officials, be notified of any proposed class settlement that would affect the residents of their State. This provision helps protect class members because such notice would provide these State officials with an opportunity to object if the settlement terms are unfair for their citizens.

Third, this act disallows bounty payments to lead plaintiffs so lawyers looking for victims cannot promise them unwarranted payoffs to be their excuse for filing a suit. The bill also prevents class action settlements that discriminate on the basis of geography so that one plaintiff does not receive more money than other class members who have been equally injured just because that plaintiff lives near the courthouse.

Fourth, the act requires that courts closely scrutinize settlements where

the plaintiffs only receive coupons or noncash awards while the lawyers get the bulk of the money. The bill requires the judge to make a written finding that the settlement is fair and reasonable for class members. A court will still be able to find that a noncash settlement, as in the case of injunctive relief banning some type of bad conduct, is fair and reasonable, but a court would also be able to throw out sham settlements where lawyers get big paychecks while the plaintiffs get nothing or, as I have said before, worthless or almost worthless coupons.

The bill also requires the judicial conference to report back to Congress on best practices in class action cases and how to best ensure fairness of a class action settlement. Finally, the Class Action Fairness Act allows more class action lawsuits to be removed from State court to Federal court, either by a defendant or even by an unnamed class member. However, the bill is drafted to ensure that truly local disputes would continue to be litigated in State court. Current law provides that class lawyers can avoid removal of a class action to Federal court if the individual claims are \$75,000 or less, even if hundreds of millions of dollars in total are at stake, or if just one class member is from the same State as the defendant.

Our bill would eliminate the "complete diversity" rule but leave in State court class actions with fewer than 100 plaintiffs, class actions that allow less than \$5 million, class actions in which a State entity is a primary defendant, and class actions brought against a company in its home State if two-thirds or more of the class members are residents of that State.

We have been working on finding a fair solution to the class action problem for several years. For the past four Congresses, Senator KOHL, Senator HATCH, and others have joined me, as the main sponsor of this bill, in studying the problems with the class action system and working on a way to deal with such egregious abuses of our tort system.

Over the years, the House and Senate Judiciary Committees have convened numerous hearings on these class action abuses, making very obvious the need for reform. The House has passed similar versions of the class action bill in several Congresses, and they have done it with strong bipartisan support, so frankly I don't understand why we are running up against opposition on the other side to even bringing this bill up for discussion.

In the Senate, in the 105th Congress, I held hearings in the Judiciary Committee's Administrative Oversight Subcommittee and then marked up the first Grassley-Kohl class action bill. In the 106th Congress my subcommittee held another hearing on class actions and the Judiciary Committee marked up and reported out class action legislation. The Judiciary Committee held a hearing on class actions in the 107th

Congress, and in this Congress the Judiciary Committee marked up the language of the bill we are considering today.

Chairman HATCH, Senator KOHL, and I worked closely with Senator FEINSTEIN of California to make sure that more in-State class actions stayed in State court. We also worked with Senator SPECTER to make sure his concerns relative to class actions were also addressed.

The bill then was approved by the Judiciary Committee and it was approved on a solid, bipartisan vote. I wanted to elaborate on the history of this bill to show how much time Congress has spent on the problems with our class action system and all the work and all the compromises that have been put into this bipartisan bill.

The Class Action Fairness Act has garnered increasing support over the years and I expect it will receive even greater support now with the significant changes we have made in the Judiciary Committee several months ago. We need class action reform badly. Both plaintiffs and defendants alike are calling for change in the area of tort and class actions. The Class Action Fairness Act is a good, modest bill that will help curb many problems that have plagued the class action system. The bill will help class members know what their rights are, increase their members' protection, and ensure the approval of fair settlements. It will allow nationwide class actions to be heard in the proper forum, and that is the Federal courts, but keep primarily State class actions where they ought to be, in State court.

It will preserve the process, but put a stop to the more egregious abuses. It will also help to put a stop to the more frivolous lawsuits that are very much a drag on the economy.

I hope we can proceed to this bill. We are very happy to consider amendments. This bill is something that has had so much work on it over the last four Congresses that it should move ahead. The situation has not improved any during that period of time. In fact, TV magazine-type programs are full of stories about continuous abuse of the tort class action system. We have situations where someone, a lowly county judge in some State, is making a decision that is applicable to all 50 States in a way that should not be done by one isolated judge. These are cases that should be decided at the Federal level and have something that is going to be a Federal policy applying to all 50 States done by a Federal court as opposed to a county court system.

There are a lot of things we can say about this bill, but it is about time. I would think there would be some embarrassment on the other side of the aisle, considering the fact of the bipartisan support of this bill in the House of Representatives and how it has come out of our Senate Judiciary Committee with solid, bipartisan support, considering modifications that have been

made for Democratic Senators who were not part of the original bipartisan coalition putting this bill together, that the legislative process is working, the Senate is working its will, and now we are up against what could be a stone wall of resistance that is unjustified.

I hope we can move forward. We will find out with votes very shortly.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. 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. McCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 1751, with all first-degree amendments relevant to the bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, this is a very important piece of legislation. A significant majority of Senators on this side of the aisle want to do something about this legislation which is known as the class action legislation. But we are terribly disappointed with the procedure that has been used to get us to where we are. For example, Senator BREAUX has been one of our point people on this and has worked very hard to try to get the issues resolved. Everyone knows how fair he is and how he is the dealmaker here in the Senate.

For this and many other reasons, on behalf of many Senators on this side, we reluctantly object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. McCONNELL. Mr. President, on behalf of the majority leader, I send a cloture motion to the desk to the pending motion to proceed.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Bill Frist, Orrin G. Hatch, Charles Grassley, George Allen, Kay Bailey Hutchison, Rick Santorum, Susan M. Collins, Elizabeth Dole, Lindsey Graham of South Carolina, Wayne Alard, Pat Roberts, John Ensign, Thad Cochran, John Warner, Jon Kyl, John E. Sununu, Saxby Chambliss.

Mr. McCONNELL. Mr. President, the vote on the motion to invoke cloture will occur on Wednesday of this week.

I now ask unanimous consent that the live quorum as required under rule XXII be waived.

Mr. REID. No objection.

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

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that there be a period of morning business with Senators speaking for up to 10 minutes each.

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

LVMPD VOLUNTEER PROGRAM

Mr. REID. Mr. President, I rise today to pay tribute to a group of people who are giving their time and energy to make southern Nevada a better place to live.

Like every other city in the Nation, the city of Las Vegas faces the challenge of providing essential services on a tight budget. And the most essential service of all is public safety.

This challenge is particularly difficult in the Las Vegas area, which is adding more than 6,000 new residents a month. While the national average is about 2.5 police officers for every thousand residents, we have only 1.7 officers per thousand in Clark County.

Simply put, we need more police officers in Las Vegas and Clark County. There is no easy answer to this problem—but fortunately there are hundreds of people who have become part of the solution.

The Las Vegas police department sponsors a Metro Volunteer Program that allows citizens to assist police officers in a variety of tasks, from assisting tourists to arranging for abandoned vehicles to be towed.

Some of these volunteers visit schools to present programs on safety and crime prevention, while others compile databases that are used to track crimes and solve cases.

For every hour that a volunteer performs one of these tasks, that is another hour that a sworn police officer is out on the street fighting crime.

Over the past year, 318 volunteers contributed more than 42,000 hours of service to the Las Vegas Metro Police Department. That is the equivalent of 21 full-time police officers on the street, who would not be there otherwise.

In this way, the Metro Volunteer Program is making our community safer. So I salute the volunteers on behalf of all of the citizens of Clark County. I also salute Sharon Harding, the coordinator of the Metro Volunteer Program, and Sheriff Bill Young, who is always looking for ways to better protect and serve the citizens of Clark County.

ELECTIONS IN AZERBAIJAN

Mr. McCain. Mr. President, on October 15, citizens of Azerbaijan went to

the polls to elect their next president. The months and days leading up to the election were characterized by extremely biased media attention for the pro-presidential Yeni Azerbaijan Party, YAP, and government-sponsored intimidation and harassment of the opposition parties. The U.S. Government and the OSCE expressed serious concern about the preelection environment to the highest levels of Azerbaijan's Government. Our advice went largely unheeded, and grave levels of government interference and intimidation continued through election day.

I traveled to Azerbaijan just before the election to meet with Azerbaijani political leaders to discuss these concerns. I told then-Prime Minister Ilham Aliyev in the clearest possible terms that the international community was carefully watching his actions and expected a democratic outcome. I also met with a range of opposition leaders and assured them that we shared their concerns and were working to encourage the government to hold elections consistent with internationally recognized standards.

On election day, the OSCE and U.S. government brought in over 600 international election observers and deployed them nationwide. Although a number of areas were peaceful and orderly, observers noted many violations of the new Unified Election Code, UEC. Violations included ballot stuffing, multiple voting, harassment at the polling station by authorities, incomplete voter lists, and a lack of regard for the procedural process of ballot tabulation.

The undemocratic and blatant disregard for the UEC in both the preelection period and on election day led to civil unrest in Baku as the final ballot counts were being made public. The night of the election and the following days showed citizens coming together in protest in large numbers in response to the election's failure to meet international standards. Reports continue to come in of severe and sometimes fatal violence against journalists and political activists. Not only has the government has not met its obligation to uphold law and order, but the government's security forces are largely responsible for the violence.

This presidential election was a chance for Azerbaijan to demonstrate its commitment to the democratic process. Despite the new election code, the ruling party chose to retain power at all costs and to ensure that its candidate received nothing short of an overwhelming victory. The United States will have to review its interest in deepening strategic relations with an Azerbaijani regime that does not enjoy the full legitimacy a free and fair election confers. We should step up American assistance to the democratic opposition in Azerbaijan and continue to work to deepen civil society as a bulwark against the state. The government in Baku must know that the United States values our relations with

the people of Azerbaijan but cannot turn a blind eye to an election that demonstrated such shortcomings, including state-directed violence against political opponents. Improved U.S.-Azerbaijan relations require a new commitment to political pluralism, and a rejection of political violence, on the part of a government that has failed this important test of democratic legitimacy.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in my own backyard in Portland, OR. Early in the morning on Sunday, September 21, 2003, two men who identified themselves as skinheads, stabbed one African-American man and threatened another with a gun. Sadly, these two racially motivated crimes were committed by young men—both in their early twenties—with hate in their hearts.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

IN RECOGNITION OF PHILIP BONGIORNO

Mr. SPECTER. Mr. President, I rise today to recognize Philip Bongiorno, a Pennsylvania native and church leader of the Assemblies of God whose life work has been to serve the people of his state, of his country, and of the world.

Born in Erie, PA, on September 22, 1932, Reverend Bongiorno entered Eastern Bible Institute in Green Lane, PA, in 1951 and subsequently graduated in 1955. In 1952, Reverend Bongiorno married his wife of 51 years and began his ministry as an Assemblies of God evangelist.

Numerous Pennsylvania communities have been the beneficiaries of Reverend Bongiorno's dedicated service. From 1956 to 1978, he led congregations in Milesburg, Punxsutawney, Sarver, and Harrisburg. In 1961, colleagues recognized his leadership by electing Reverend Bongiorno as Sectional Presbyter. He was elected to the Board of Directors of Teen Challenge in 1971, where he continues to serve, and again in 1976 to the Board of Trustees of Valley Forge Christian College, the successor college of his alma mater. It

was there that he faithfully served until 2002. In addition, Reverend Bongiorno, as District Superintendent, was the denominational leader from 1978 to 2002 for all English-speaking Assemblies of God congregations in Pennsylvania and Delaware.

In his honor, the Penn-Del District of the Assemblies of God has named its Carlisle, PA—based conference center after him and in recognition of his 26 years of service and leadership, the Valley Forge Christian College has affixed his name to the first new student residence hall constructed on the campus grounds.

Philip Bongiorno is honored today in the U.S. Senate because he has been faithful to his calling, he has served selflessly and widely, and he has led with distinction.

VOTE EXPLANATION

Mr. JOHNSON. Mr. President. I was unavoidably detained and absent from the Senate on the evening of Thursday, October 2, and I missed one voting during that time. I would like to state for the RECORD how I would have voted.

I would have voted "nay" on rollcall vote No. 376, a Stevens motion to table the Dodd-Corzine amendment which provided an additional \$322 million for battlefield clearance and safety equipment for U.S. forces in Iraq; and offsets by reducing the amount provided for reconstruction in Iraq by \$322 million.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 1758. A bill to require the Secretary of the Treasury to analyze and report on the exchange rate policies of the People's Republic of China, and to require that additional tariffs be imposed on products of that country on the basis of the rate of manipulation by that country of the rate of exchange between the currency of that country and the United States dollar; to the Committee on Finance.

By Mr. BUNNING:

S. 1759. A bill to amend the Internal Revenue Code of 1986 to reduce the holding period to 12 months for purposes of determining whether horses are section 1231 assets; to the Committee on Finance.

By Mr. COLEMAN:

S. 1760. A bill to amend title 35, United States Code, with respect to patent fees, and for other purposes; to the Committee on the Judiciary.

By Ms. CANTWELL (for herself, Mr. SMITH, Mrs. MURRAY, Mrs. FEINSTEIN, and Mr. WYDEN):

S. 1761. A bill to provide guidelines for the release of Low-Income Home Energy Assistance Program contingency funds; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRAPO (for himself, Mr. BAYH, and Mr. ROCKEFELLER):

S. 1762. A bill to amend title II of the social Security Act to eliminate the five-month

waiting period in the disability insurance program, and for other purposes; to the Committee on Finance.

ADDITIONAL COSPONSORS

S. 59

At the request of Mr. INOUE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 59, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 300

At the request of Mr. KERRY, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 560

At the request of Mr. CRAIG, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 560, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 854

At the request of Mr. COLEMAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 854, a bill to authorize a comprehensive program of support for victims of torture, and for other purposes.

S. 982

At the request of Mrs. BOXER, the names of the Senator from North Carolina (Mrs. DOLE) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 982, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and hold Syria accountable for its role in the Middle East, and for other purposes.

S. 985

At the request of Mr. DODD, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1414

At the request of Mr. HAGEL, his name was added as a cosponsor of S.

1414, a bill to restore second amendment rights in the District of Columbia.

S. 1465

At the request of Mr. FRIST, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1465, a bill to authorize the President to award a gold medal on behalf of Congress honoring Wilma G. Rudolph, in recognition of her enduring contributions to humanity and women's athletics in the United States and the world.

S. 1531

At the request of Mr. HATCH, the names of the Senator from New Hampshire (Mr. SUNUNU), the Senator from Indiana (Mr. BAYH), the Senator from New Hampshire (Mr. GREGG), the Senator from Montana (Mr. BAUCUS), the Senator from Florida (Mr. NELSON), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1558

At the request of Mr. ALLARD, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1558, a bill to restore religious freedoms.

S. 1612

At the request of Ms. COLLINS, the names of the Senator from Georgia (Mr. MILLER) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 1612, a bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

S. 1708

At the request of Mr. KENNEDY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1708, a bill to provide extended unemployment benefits to displaced workers, and to make other improvements in the unemployment insurance system.

S. 1751

At the request of Mr. CORNYN, his name was added as a cosponsor of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 1756

At the request of Mr. CONRAD, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from Mississippi (Mr. LOTT) were added as cosponsors of S. 1756, a bill to amend the Internal Revenue Code of 1986 to protect the health benefits of retired miners and to restore stability and equity to the financing of the United Mine Workers of America Combined Benefit Fund by providing additional sources of revenue to the Fund, and for other purposes.

S. CON. RES. 21

At the request of Mr. BUNNING, the name of the Senator from Maine (Ms.

SNOWE) was added as a cosponsor of S. Con. Res. 21, a concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 1758. A bill to require the Secretary of the Treasury to analyze and report on the exchange rate policies of the People's Republic of China, and to require that additional tariffs be imposed on products of that country on the basis of the rate of manipulation by that country of the rate of exchange between the currency of that country and the United States dollar; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, today Senator DEWINE and I have introduced legislation that will help level the playing field for American manufacturers futilely struggling to keep pace with their Chinese competitors. My legislation, the Currency Harmonization Initiative Through Neutralizing Action (CHINA) Act of 2003, would allow for the use of tariffs to punish China for unfair trade practices that makes Chinese exports cheaper, in effect subsidizing them, and U.S. exports more expensive. Representatives ENGLISH, BALLENGER, and MARK GREEN, my colleagues on the other side of the Capitol, have already introduced this legislation in that body.

I am deeply concerned with the harm that the People's Republic of China (China) is doing to our economy by pegging the value of its currency, the renminbi, to the U.S. dollar because Ohio is a manufacturing State. Manufacturing contributes to the quality of life in Ohio by providing more than one million jobs for Ohio workers, an annual payroll of more than \$45 billion, the second highest weekly earnings of any economic sector, support for local communities and schools with more than \$1 billion in corporate franchise and personal property taxes, and more than \$26 billion in products to more than 196 countries.

After a significant recession in 2001, the 2002–2003 manufacturing recovery has been the slowest on record; during this time, roughly 2.7 million jobs have been lost. In Ohio, we have lost 170,000 manufacturing jobs since July 2000—that's nearly 16 percent or one out of six. Over the past year, I have held numerous listening sessions throughout the State of Ohio to hear from these manufacturers and see what they attribute this loss of jobs to. Overwhelming, I have heard that China, and particularly its policy of pegging its

currency to the dollar, is one of their top concerns and is costing Ohio manufacturing jobs. It is these concerns which have led me to introduce this legislation.

If the value of the renminbi is allowed to float freely, as the currencies of our other major trading partners do, it would reflect China's enormous trade surplus and increase significantly in value. China's systematic undervaluation of its currency makes its exports less expensive and puts U.S. workers at a severe disadvantage. This is both unfair and unacceptable.

I have long advocated free trade, provided it is fair trade. China's currency policy clearly tilts the international playing field against workers in Ohio and across the entire United States. This is unacceptable. As a major international trading nation, China's currency should be allowed to float and to have its value reflect its net trade positions with other nations. This is only fair.

My bill will help level the playing field by requiring the Secretary of the Treasury, within sixty days of enactment, to analyze and report to Congress whether China is manipulating its currency to achieve an advantage in trade. If the Secretary finds manipulation, the report to Congress will indicate the degree of manipulation against the dollar. Within thirty days after reporting manipulation to Congress, the Secretary is required to levy tariffs equal to the percentage of manipulation found. This is in addition to tariffs currently in place on Chinese imports.

Furthermore, the Treasury Secretary is directed to report to Congress thereafter on a yearly basis from date of enactment. Finally, the legislation expresses the sense of Congress that the Administration should pursue all means available (WTO, IMF and Sections 301–310 of the Trade Act of 1974) to remedy China's currency manipulation.

If we are to stop the hemorrhaging of American manufacturing jobs, we must take strong measures to persuade China to abandon its peg policy and allow its currency to be set in the free and open marketplace. This is exactly what my legislation does.

I would ask that my colleagues, especially from those States that are feeling the effects of this manufacturing crisis deeply, support this legislation and consider cosponsoring it.

By Mr. COLEMAN:

S. 1760. A bill to amend title 35, United States Code, with respect to patent fees, and for other purposes; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I introduce today to amend title 35, U.S. Code, to modernize patent and trademark fees, be printed in the RECORD.

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

S. 1760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Patent and Trademark Fee Modernization Act of 2003".

SEC. 2. FEES FOR PATENT SERVICES.

(a) GENERAL PATENT FEES.—Section 41(a) of title 35, United States Code, is amended to read as follows:

"(a) GENERAL FEES.—The Director shall charge the following fees:

"(1) FILING AND BASIC NATIONAL FEES.—

"(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

"(B) On filing each application for an original design patent, \$200.

"(C) On filing each application for an original plant patent, \$200.

"(D) On filing each provisional application for an original patent, \$200.

"(E) On filing each application for the reissue of a patent, \$300.

"(F) The basic national fee for each international application filed under the treaty defined in section 351(a) of this title entering the national stage under section 371 of this title, \$300.

"(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), \$250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

"(2) EXCESS CLAIMS FEES.—In addition to the fee specified in paragraph (1)—

"(A) on filing or on presentation at any other time, \$200 for each claim in independent form in excess of 3;

"(B) on filing or on presentation at any other time, \$50 for each claim (whether dependent or independent) in excess of 20; and

"(C) for each application containing a multiple dependent claim, \$360.

For the purpose of computing fees under this paragraph, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131 of this title. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

"(3) EXAMINATION FEES.—

"(A) For examination of each application for an original patent, except for design, plant, provisional, or international applications, \$200.

"(B) For examination of each application for an original design patent, \$130.

"(C) For examination of each application for an original plant patent, \$160.

"(D) For examination of the national stage of each international application, \$200.

"(E) For examination of each application for the reissue of a patent, \$600.

The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under

section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

"(4) ISSUE FEES.—

"(A) For issuing each original patent, except for design or plant patents, \$1,400.

"(B) For issuing each original design patent, \$800.

"(C) For issuing each original plant patent, \$1,100.

"(D) For issuing each reissue patent, \$1,400.

"(5) DISCLAIMER FEE.—On filing each disclaimer, \$130.

"(6) APPEAL FEES.—

"(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$500.

"(B) In addition, on filing a brief in support of the appeal, \$500, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$1,000.

"(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,500, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$500.

"(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

"(A) on filing a first petition, \$120;

"(B) on filing a second petition, \$330; and

"(C) on filing a third or subsequent petition, \$570."

(b) PATENT MAINTENANCE FEES.—Section 41(b) of title 35, United States Code, is amended to read as follows:

"(b) MAINTENANCE FEES.—The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

"(1) 3 years and 6 months after grant, \$900.

"(2) 7 years and 6 months after grant, \$2,300.

"(3) 11 years and 6 months after grant, \$3,800.

Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force."

(c) PATENT SEARCH FEES.—Section 41(d) of title 35, United States Code, is amended to read as follows:

"(d) PATENT SEARCH AND OTHER FEES.—

"(1) PATENT SEARCH FEES.—(A) The Director shall charge a fee for the search of each application for a patent, except for provisional applications. The Director shall establish the fees charged under this paragraph to recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search author-

ity, or by causing a search by Office personnel to be made, of each application for patent.

"(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be—

"(i) \$500 for each application for an original patent, except for design, plant, provisional, or international applications;

"(ii) \$100 for each application for an original design patent;

"(iii) \$300 for each application for an original plant patent;

"(iv) \$500 for the national stage of each international application; and

"(v) \$500 for each application for the reissue of a patent.

"(C) The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

"(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

"(E) For purposes of subparagraph (A), a 'qualified search authority' may not include a commercial entity unless—

"(i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications—

"(I) are accurate; and

"(II) meet or exceed the standards of searches conducted by and used by the Patent and Trademark Office during the patent examination process;

"(ii) the Director submits a report on the results of the pilot program to the Congress and the Patent Public Advisory Committee that includes—

"(I) a description of the scope and duration of the pilot program;

"(II) the identity of each commercial entity participating in the pilot program;

"(III) an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and

"(IV) an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on—

"(aa) patentability determinations;

"(bb) productivity of the Patent and Trademark Office;

"(cc) costs to the Patent and Trademark Office;

"(dd) costs to patent applicants; and

"(ee) other relevant factors;

"(iii) the Patent Public Advisory Committee reviews and analyzes the Director's report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes—

"(I) an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and

“(II) an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

“(iv) the Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

“(2) OTHER FEES.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

“(A) For recording a document affecting title, \$40 per property.

“(B) For each photocopy, \$.25 per page.

“(C) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.”

(d) ADJUSTMENTS.—Section 41(f) of title 35, United States Code, shall apply to the fees established under the amendments made by this section, beginning in fiscal year 2005.

(e) CONFORMING AMENDMENTS.—

(1) Section 41 of title 35, United States Code, is amended—

(A) in subsection (c), by striking “(c)(1)” and inserting “(c) LATE PAYMENT OF FEES.—(1)”;

(B) in subsection (e), by striking “(e)” and inserting “(e) WAIVERS OF CERTAIN FEES.—”;

(C) in subsection (f), by striking “(f)” and inserting “(f) ADJUSTMENTS IN FEES.—”;

(D) in subsection (g), by striking “(g)” and inserting “(g) EFFECTIVE DATES OF FEES.—”;

(E) in subsection (h), by striking “(h)(1)” and inserting “(h) REDUCTIONS IN FEES FOR CERTAIN ENTITIES.—(1)”;

(F) in subsection (i), by striking “(i)(1)” and inserting “(i) SEARCH SYSTEMS.—(1)”.

(2) Section 119(e)(2) of title 35, United States Code, is amended by striking “subparagraph (A) or (C) of”.

SEC. 3. ADJUSTMENT OF TRADEMARK FEES.

(a) FEE FOR FILING APPLICATION.—The fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for filing an electronic application for the registration of a trademark shall be \$325. If the trademark application is filed on paper, the fee shall be \$375. The Director may reduce the fee for filing an electronic application for the registration of a trademark to \$275 for any applicant who prosecutes the application through electronic means under such conditions as may be prescribed by the Director. Beginning in fiscal year 2005, the provisions of the second and third sentences of section 31(a) of the Trademark Act of 1946 shall apply to the fees established under this section.

(b) REFERENCE TO TRADEMARK ACT OF 1946.—For purposes of this section, the “Trademark Act of 1946” refers to the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.”, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 4. CORRECTION OF ERRONEOUS NAMING OF OFFICER.

(a) CORRECTION.—Section 13203(a) of the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107-273; 116 Stat. 1902) is amended—

(1) in the subsection heading, by striking “COMMISSIONER” and inserting “DIRECTOR”; and

(2) in paragraphs (1) and (2), by striking “Commissioner” each place it appears and inserting “Director”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as of the date of the enactment of Public Law 107-273.

SEC. 5. PATENT AND TRADEMARK OFFICE FUNDING.

Section 42 of title 35, United States Code, is amended—

(1) in subsection (b), by striking “Appropration”; and

(2) in subsection (c), in the first sentence—

(A) by striking “To the extent” and all that follows through “fees” and inserting “Fees”; and

(B) by striking “shall be collected by and shall be available to the Director” and inserting “shall be collected by the Director and shall be available until expended”.

SEC. 6. EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.

(a) EFFECTIVE DATE.—Except as provided in section 4 and this section, this Act and the amendments made by this Act shall take effect on October 1, 2003, or the date of the enactment of this Act, whichever is later.

(b) APPLICABILITY.—

(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by section 2 shall apply to all patents, whenever granted, and to all patent applications pending on or filed after the effective date set forth in subsection (a) of this section.

(B)(i) Except as provided in clause (ii), sections 41(a)(1), 41(a)(3), and 41(d)(1) of title 35, United States Code, as amended by this Act, shall apply only to—

(I) applications for patents filed under section 111(a) of title 35, United States Code, on or after the effective date set forth in subsection (a) of this section, and

(II) international applications entering the national stage under section 371 of title 35, United States Code, for which the basic national fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(ii) Section 41(a)(1)(D) of title 35, United States Code as amended by this Act, shall apply only to applications for patent filed under section 111(b) of title 35, United States Code, before, on, or after the effective date set forth in subsection (a) of this section in which the filing fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(C) Section 41(a)(2) of title 35, United States Code, as amended by this Act, shall apply only to the extent that the number of excess claims, after giving effect to any cancellation of claims, is in excess of the number of claims for which the excess claims fee specified in section 41 of title 35, United States Code, was paid before the effective date set forth in subsection (a) of this section.

(2) The amendments made by section 3 shall apply to all applications for the registration of a trademark filed or amended on or after the effective date set forth in subsection (a) of this section.

(c) TRANSITIONAL PROVISIONS.—

(1) SEARCH FEES.—During the period beginning on the effective date set forth in subsection (a) of this section and ending on the date on which the Director establishes search fees under the authority provided in section 41(d)(1) of title 35, United States Code, the Director shall charge—

(A) for the search of each application for an original patent, except for design, plant,

provisional, or international application, \$500;

(B) for the search of each application for an original design patent, \$100;

(C) for the search of each application for an original plant patent, \$300;

(D) for the search of the national stage of each international application, \$500; and

(E) for the search of each application for the reissue of a patent, \$500.

(2) TIMING OF FEES.—The provisions of section 111(a)(3) of title 35, United States Code, relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in paragraph (1) with respect to an application filed under section 111(a) of title 35, United States Code. The provisions of section 371(d) of title 35, United States Code, relating to the payment of the national fee shall apply to the payment of the fee specified in paragraph (1) with respect to an international application.

(3) REFUNDS.—The Director may by regulation provide for a refund of any part of the fee specified in paragraph (1) for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of title 35, United States Code, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

(d) EXISTING APPROPRIATIONS.—The provisions of any appropriation Act that make amounts available pursuant to section 42(c) of title 35, United States Code, and are in effect on the effective date set forth in subsection (a) shall cease to be effective on that effective date.

SEC. 7. DEFINITION.

In this Act, the term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

SEC. 8. CLERICAL AMENDMENT.

Subsection (c) of section 311 of title 35, United States Code, is amended by aligning the text with the text of subsection (a) of such section.

By Ms. CANTWELL (for herself,
Mr. SMITH, Mrs. MURRAY, Mrs.
FEINSTEIN, and Mr. WYDEN):

S. 1761. A bill to provide guidelines for the release of Low-Income Home Energy Assistance Program contingency funds; to the Committee on Health, Education, Labor, and Pensions.

Ms. CANTWELL. Mr. President, I rise today to introduce the Low-Income Home Energy Assistance Program (LIHEAP) Emergency Reform Act, which will put in place guidelines for the release of LIHEAP contingency funds.

The LIHEAP program, created in 1981, is the primary vehicle by which the Federal Government, through block grants to States, provides energy assistance to low-income families. I applaud the provisions contained in pending energy legislation that will raise the LIHEAP authorization from \$2 billion to \$3.4 billion for Fiscal Years 2004 through 2006. As in most parts of the country, demand for LIHEAP dollars far outpaces the supply in my home State of Washington, where, even when fully funded under the current authorization, only 19 percent of eligible families receive home energy assistance.

The legislation I'm introducing today, however, deals not with the

block-grant portion of the current program, in which allocations to States are determined via formula. Rather, it applies to the contingency fund, which was also authorized in 1981 "to meet the additional home energy assistance needs of one or more States arising from a natural disaster or other emergency." As my colleagues are aware, this money is not released according to formula but solely at the discretion of the Health and Human Services Secretary.

The LIHEAP Emergency Reform Act does four things, designed to provide clarity to States that are in the unfortunate position of suffering from an emergency, as defined in the LIHEAP statute. My legislation: gives Governors the explicit authority to apply to the HHS Secretary for the release of LIHEAP contingency funds; adds transparency to the release of emergency money by directing HHS, in cooperation with the States and Department of Energy, to put in place procedures for the equitable consideration of these applications; requires HHS to include in these procedures the consideration of regional differences in sources of energy supply for low-income households, relative energy price trends and relevant weather-related factors such as drought; and finally, directs HHS to grant States' applications within 30 days unless the Secretary certifies that an emergency, as defined in the statute, has not been demonstrated.

Since 1990, a total of \$2.67 billion in LIHEAP contingency funds have been distributed. And while there is no doubt in my mind that, in all cases, this money has helped meet the needs of low-income families across this Nation, I believe there have also been widely varying eligibility rules leading to instances in which HHS has overlooked very real energy emergencies.

In the Pacific Northwest, for example, we have over the past two years suffered from an unprecedented rise in retail energy rates, the burden of which has fallen disproportionately on low-income families. In fact, today, Washington State families at or below the 50 percent Federal poverty level spend 34 percent or more of their annual income on home energy bills. That is a huge burden, especially in view of our rising unemployment rate and the severe downturn in our economy.

Unfortunately, Northwest States have not received emergency LIHEAP funds consistent with their needs. In part, I believe this is because of the perception that our rates will, notwithstanding any increases we might suffer, always be lower, and because this money has traditionally been used to defray the costs of natural gas and home heating oil in the Midwest and Northeast.

This legislation requires HHS to consider regional factors such as the fact that home heating oil prices are not relevant to Washington State's low-income families, 77 percent of which have homes reliant on electricity.

In addition, it directs HHS to consider regional rather than absolute, price trends. This is a very important point, because, regardless of how low a State's prices might be compared to its neighbor's, a drastic run up in rates has devastating impacts when its manufacturing base, residential homes and truly its entire economy are built upon access to an affordable power supply.

In summary, LIHEAP Emergency Reform Act provides additional certainty to states across the country.

I understand that the Senate Health, Education, Labor and Pensions (HELP) Committee will soon consider legislation to reauthorize the LIHEAP program. As my colleagues may recall, the provisions of the LIHEAP Emergency Reform Act were originally included in the Senate energy bill, now the subject of conference committee deliberations. During floor debate on that bill, I was pleased that the distinguished Chairman and Ranking Member of the HELP Committee, Senators GREGG and KENNEDY, agreed to examine the contingency fund issue during reauthorization of the LIHEAP program. I believe that clear rules for the release of LIHEAP contingency funds will ensure that, in the unfortunate event of an energy emergency, low-income families will receive much-needed assistance in keeping the lights and the heat turned on, which is precisely what Congress intends when it appropriates money to the LIHEAP contingency fund. I believe the LIHEAP Emergency Reform Act will help provide this additional certainty.

AUTHORITY FOR COMMITTEES TO MEET

SPECIAL COMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Monday, October 20, 2003, from 1:30 p.m.–4 p.m., in Dirksen 628 for the purpose of conducting a hearing.

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

PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent the following staffers be granted privilege of the floor during the pendency of the class action fairness debate: Rebecca Seidel, Harold Kim, Ryan Triplette, Jay Greissing from Senator HATCH's staff; and Rita Lari and Matt Reed from Senator GRASSLEY's staff.

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

Mr. CORNYN. I ask unanimous consent Lindsey Kiser and Chip Roy, members of my staff, be given floor privileges during the duration of my remarks.

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

Mr. COCHRAN. Mr. President, I ask unanimous consent that Doug

MacCleery, an employee of the Department of Agriculture who has been detailed to the Agriculture Committee, and Eric Steiner, a fellow on the committee staff, be granted privileges of the floor during today's session.

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR IRAQ AND AFGHANISTAN SECURITY AND RECONSTRUCTION ACT, 2004

On Friday, October 17, 2003, the Senate passed H.R. 3289, as amended, as follows:

H.R. 3289

Resolved, That the bill from the House of Representatives (H.R. 3289) entitled "An Act making emergency supplemental appropriations for defense and for the reconstruction of Iraq and Afghanistan for the fiscal year ending September 30, 2004, and for other purposes.", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, and for other purposes, namely:

TITLE I—NATIONAL SECURITY

CHAPTER 1

DEPARTMENT OF DEFENSE

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For an additional amount for "Military Personnel, Army", \$12,858,870,000.

MILITARY PERSONNEL, NAVY

For an additional amount for "Military Personnel, Navy", \$816,100,000.

MILITARY PERSONNEL, MARINE CORPS

For an additional amount for "Military Personnel, Marine Corps", \$753,190,000.

MILITARY PERSONNEL, AIR FORCE

For an additional amount for "Military Personnel, Air Force", \$3,384,700,000.

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for "Operation and Maintenance, Army", \$24,946,464,000: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004: Provided further, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

OPERATION AND MAINTENANCE, NAVY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Operation and Maintenance, Navy", \$1,976,258,000, of which up to \$80,000,000 may be transferred to the Department of Homeland Security for Coast Guard Operations.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for "Operation and Maintenance, Marine Corps", \$1,198,981,000.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and Maintenance, Air Force", \$5,516,368,000.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For an additional amount for "Operation and Maintenance, Defense-Wide", \$4,218,452,000, of which—

(1) not to exceed \$15,000,000 may be used for the CINC Initiative Fund account, to be used primarily in Iraq and Afghanistan; and

(2) \$1,000,000,000, to remain available until expended, may be used, notwithstanding any other provision of law, for payments to reimburse Pakistan, Jordan, and other key cooperating nations, for logistical, military, and other support provided, or to be provided, to United States military operations: Provided, That such payments may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State, and in consultation with the Director of the Office of Management and Budget, may determine, in his discretion, based on documentation determined by the Secretary of Defense to adequately account for the support provided, and such determination is final and conclusive upon the accounting officers of the United States, and 15 days following notification to the appropriate congressional committees: Provided further, That the Secretary of Defense shall provide quarterly reports to the Committees on Appropriations on the use of these funds.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for "Operation and Maintenance, Marine Corps Reserve", \$16,000,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for "Operation and Maintenance, Air Force Reserve", \$53,000,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for "Operation and Maintenance, Air National Guard", \$214,000,000.

OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

For an additional amount for "Overseas Humanitarian, Disaster, and Civic Aid", \$35,500,000.

IRAQ FREEDOM FUND
(TRANSFER OF FUNDS)

For "Iraq Freedom Fund", \$1,988,600,000, to remain available for transfer until September 30, 2005, for the purposes authorized under this heading in Public Law 108-11: Provided, That the Secretary of Defense may transfer the funds provided herein to appropriations for military personnel; operation and maintenance; Overseas Humanitarian, Disaster Assistance, and Civic Aid; procurement; military construction; the Defense Health Program; and working capital funds: Provided further, That funds transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation or fund to which transferred: Provided further, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That the Secretary of Defense shall, not fewer than 5 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: Provided further, That the Secretary shall submit a report no later than 30 days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation: Provided further, That not less than \$4,000,000 shall be transferred to "Office of the Inspector General" for financial and performance audits of funds apportioned to the

Department of Defense from the Iraq Relief and Reconstruction Fund.

PROCUREMENT

MISSILE PROCUREMENT, ARMY

For an additional amount for "Missile Procurement, Army", \$6,200,000, to remain available until September 30, 2006.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For an additional amount for "Procurement of Weapons and Tracked Combat Vehicles, Army", \$104,000,000, to remain available until September 30, 2006: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004: Provided further, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

OTHER PROCUREMENT, ARMY

For an additional amount for "Other Procurement, Army", \$1,078,687,000, to remain available until September 30, 2006: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004: Provided further, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft Procurement, Navy", \$128,600,000, to remain available until September 30, 2006.

OTHER PROCUREMENT, NAVY

For an additional amount for "Other Procurement, Navy", \$76,357,000, to remain available until September 30, 2006.

PROCUREMENT, MARINE CORPS

For an additional amount for "Procurement, Marine Corps", \$123,397,000, to remain available until September 30, 2006.

AIRCRAFT PROCUREMENT, AIR FORCE

For an additional amount for "Aircraft Procurement, Air Force", \$40,972,000, to remain available until September 30, 2006.

MISSILE PROCUREMENT, AIR FORCE

For an additional amount for "Missile Procurement, Air Force", \$20,450,000, to remain available until September 30, 2006.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other Procurement, Air Force", \$3,441,006,000, to remain available until September 30, 2006.

PROCUREMENT, DEFENSE-WIDE

For an additional amount for "Procurement, Defense-Wide", \$435,635,000, to remain available until September 30, 2006.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for "Research, Development, Test and Evaluation, Navy", \$34,000,000, to remain available until September 30, 2005.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For an additional amount for "Research, Development, Test and Evaluation, Air Force",

\$39,070,000, to remain available until September 30, 2005.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for "Research, Development, Test and Evaluation, Defense-Wide", \$265,817,000, to remain available until September 30, 2005.

REVOLVING AND MANAGEMENT FUNDS

WORKING CAPITAL FUND, DEFENSE-WIDE

For an additional amount for "Working Capital Fund, Defense-Wide", \$600,000,000.

NATIONAL DEFENSE SEALIFT FUND

For an additional amount for "National Defense Sealift Fund", \$24,000,000, to remain available until expended.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for "Defense Health Program", \$658,380,000 for Operation and maintenance.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

For an additional amount for "Drug Interdiction and Counter-Drug Activities, Defense", \$73,000,000: Provided, That these funds may be used only for such activities related to Afghanistan: Provided further, That the Secretary of Defense may transfer the funds provided herein only to appropriations for military personnel; operation and maintenance; procurement; and research, development, test, and evaluation: Provided further, That the funds transferred shall be merged with and be available for the same purposes and for the same time period, as the appropriation to which transferred: Provided further, That the transfer authority provided in this paragraph is in addition to any other transfer authority available to the Department of Defense: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

RELATED AGENCIES

INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Intelligence Community Management Account", \$21,500,000, to remain available until September 30, 2005; of which \$3,000,000 may be transferred to and merged with the Department of Energy, "Other Defense Activities", and \$15,500,000 may be transferred to and merged with the Federal Bureau of Investigation, "Salaries and Expenses".

CHAPTER 2

MILITARY CONSTRUCTION

MILITARY CONSTRUCTION, ARMY

For an additional amount for "Military Construction, Army", \$119,900,000, to remain available until September 30, 2008: Provided, That such funds may be obligated and expended to carry out military construction projects not otherwise authorized by law.

MILITARY CONSTRUCTION, AIR FORCE

For an additional amount for "Military Construction, Air Force", \$292,550,000, to remain available until September 30, 2008: Provided, That such funds may be obligated and expended to carry out military construction projects not otherwise authorized by law.

CHAPTER 3

GENERAL PROVISIONS, THIS TITLE

SEC. 301. Section 202(b) of the Afghanistan Freedom Support Act of 2002 (Public Law 107-327) is amended by striking "\$300,000,000" and inserting "\$450,000,000".

SEC. 302. Upon his determination that such action is necessary in the national interest, the

Secretary of Defense may transfer between appropriations up to \$2,500,000,000 of the funds made available in this title, and in addition such funds as necessary, not to exceed \$5,000,000,000, as approved by the House and Senate Appropriations Committees, Subcommittees on Defense: Provided, That the Secretary shall notify the Congress promptly of each transfer made pursuant to this authority: Provided further, That the transfer authority provided in this section is in addition to any other transfer authority available to the Department of Defense: Provided further, That the authority in this section is subject to the same terms and conditions as the authority provided in section 8005 of the Department of Defense Appropriations Act, 2004.

SEC. 303. Funds appropriated in this title, or made available by transfer of funds in or pursuant to this title, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

SEC. 304. None of the funds available to the Department of Defense may be obligated to implement any action which alters the command responsibility or permanent assignment of forces until 90 days after such plan has been provided to the congressional defense committees.

SEC. 305. Sections 1318 and 1319 of Public Law 108-11 shall remain in effect during fiscal year 2004.

SEC. 306. From October 1, 2003 through September 30, 2004, (a) the rates of pay authorized by section 310(a) of title 37, United States Code, shall be increased to \$225; and (b) the rates of pay authorized by section 427(a)(1) of title 37, United States Code, shall be increased to \$250.

SEC. 307. (a) Section 1313 of Public Law 108-11 is amended by adding the word, "unobligated", before "balances".

(b) After October 31, 2003, adjustments to obligations that would have been properly chargeable to the Defense Emergency Response Fund shall be charged to any current appropriation account of the Department of Defense available for the same purpose.

SEC. 308. Within 30 days after the enactment of this Act, the Secretary of Defense shall report to the Committees on Appropriations on progress to implement the terms of section 8082 of the Department of Defense Appropriations Act, 2004.

SEC. 309. None of the funds provided in this title may be used to finance programs or activities denied by Congress in fiscal year 2003 or 2004 appropriations to the Department of Defense or to initiate a procurement or research, development, test and evaluation new start program without prior notification to the congressional defense committees.

SEC. 310. During the current fiscal year, funds available to the Department of Defense for operation and maintenance may be used, notwithstanding any other provision of law, to provide supplies, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operations in Iraq: Provided, That the Secretary of Defense shall provide quarterly reports to the Committees on Appropriations regarding support provided under this section.

SEC. 311. Notwithstanding any other provision of law, from funds available to the Department of Defense for operation and maintenance in fiscal year 2004, not to exceed \$200,000,000 may be used by the Secretary of Defense, with the concurrence of the Secretary of State, to provide assistance only to the New Iraqi Army and the Afghan National Army to enhance their capability to combat terrorism and to support U.S. military operations in Iraq and Afghanistan: Provided, That such assistance may include the provision of equipment, supplies, services, training and funding: Provided further, That the authority to provide assistance under this section is in addition to any other authority to provide assistance to foreign nations: Provided further, That the Secretary of Defense shall notify Congress

not less than 15 days before providing assistance under the authority of this section.

SEC. 312. (a) REPORT ON MILITARY READINESS IMPLICATIONS OF OPERATION IRAQI FREEDOM.—(1) The Secretary of Defense shall submit to the congressional defense committees a report assessing the implications for United States military readiness of the participation of United States ground combat forces in Operation Iraqi Freedom.

(2) The report shall be submitted not later than 30 days after the date of the enactment of this Act.

(b) MATTERS TO BE INCLUDED.—The report under subsection (a) shall include the following:

(1) An estimate of the total number of forces required to carry out Operation Iraqi Freedom, including forces required for a rotation base.

(2) An estimate of the expected duration of the operation.

(3) An estimate of the cost of the operation together with an explanation of how the Secretary will use the funds provided for the operation, and an assessment of how such proposed funding plan would affect overall military readiness.

(4) An assessment of how readily forces participating in the operation could be redeployed to additional overlapping major conflicts while providing for the President the option to call for victory in one of those conflicts, as well as to conduct a limited number of smaller-scale contingency operations, including an analysis of the availability of strategic lift, the likely condition of equipment, and the extent of retraining necessary to facilitate such a redeployment.

(5) An assessment of the effect of the operation on the general combat readiness and deployability of combat units to defend the homeland and for the Global War on Terrorism.

(6) An assessment of the effect of the operation on the four 2001 Quadrennial Defense Review defense policy goals, namely assuring allies and friends, dissuading future military competitors, deterring threats and coercion against United States interests and, if deterrence fails, decisively defeating any adversary.

(7) An assessment of the effect the operation would have on the general combat readiness and deployability of combat units not designated to be part of the operation including active forces, reserve, and National Guard.

(8) For current deployment and subsequent rotations, an assessment of the number and type of combat support and combat service support units required from active forces, reserve, and National Guard, and the expected duration of each rotation.

(9) An assessment of the degree to which the operation will require the use of reserve component units and personnel and the use and timing of involuntary Selected Reserve callup authority as provided by section 12304 of title 10, United States Code.

(10) An assessment of the anticipated annual cost of equipment refurbishment and replacement resulting from the operation.

(11) An assessment of how the increased operational tempo associated with the operation would affect the mission capable readiness rates and overall health of both strategic and theater airlift assets.

(12) An assessment of the effect the operation will have on the ability of the United States Armed Forces, including the active forces, reserve, and National Guard, to meet recruiting goals.

(13) An assessment of the effect of the operation on training infrastructure and instrumentation of United States training ranges, including the active forces, reserve, and National Guard.

(14) An assessment of the effect the operation will have on retention among active forces, reserve, and National Guard.

(15) An assessment of the effect of the operation on quality of life issues for active forces, reserve, and National Guard.

(c) FORM OF REPORT.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this section, the term "congressional defense committees" means—

(1) the Committees on Armed Services and Appropriations of the Senate; and

(2) the Committees on Armed Services and Appropriations of the House of Representatives.

SEC. 313. (a) Section 1075 of title 10, United States Code, is amended—

(1) by inserting "(A) IN GENERAL.—" before "When"; and

(2) by striking the second sentence and inserting the following:

"(b) EXCEPTIONS.—Subsection (a) shall not apply to any of the following:

"(1) An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay or equivalent pay.

"(2) An officer or former officer of a uniformed service, or an enlisted member or former enlisted member of a uniformed service not described in paragraph (1), who is hospitalized under section 1074 of this title because of an injury or disease incurred (as determined under criteria prescribed by the Secretary of Defense)—

"(A) as a direct result of armed conflict;

"(B) while engaged in hazardous service;

"(C) in the performance of duty under conditions simulating war; or

"(D) through an instrumentality of war."

(b) Section 1075(b) of title 10, United States Code, as added by subsection (a), shall take effect as of September 11, 2001, and shall apply with respect to injuries or diseases incurred on or after that date.

SEC. 314. (a) TRANSFER AUTHORITY.—Subject to subsection (b), the Secretary of Defense may transfer not more than \$150,000,000 of the funds appropriated in this title to the contingency construction account, authorized under section 2804 of title 10, United States Code, to carry out military construction projects not otherwise authorized by law. Funds so transferred shall be merged with and be available for the same purposes and the same time period as the appropriation to which transferred. The transfer authority under this section is in addition to any other transfer authority available to the Department of Defense.

(b) CONDITIONS ON TRANSFER.—A transfer of funds under subsection (a) may not be made until the end of the 7-day period beginning on the date the Secretary of Defense submits written notice to the appropriate committees of Congress certifying that the transfer is necessary to respond to, or protect against, acts or threatened acts of terrorism or to support Department of Defense operations in Iraq, and specifying the amounts and purposes of the transfer, including a list of proposed projects and their estimated costs.

(c) NOTICE OF OBLIGATIONS.—Notwithstanding section 2804(b) of title 10, United States Code, when a decision is made to carry out a military construction project using funds transferred to the contingency construction account under subsection (a), the Secretary of Defense shall submit written notice to the appropriate committees of Congress no later than 15 days after the obligation of the funds for the project, specifying the source of the transferred funds and the estimated cost of the project, including form 1391.

(d) DEFINITIONS.—For purposes of this section, the terms "appropriate committees of Congress", "military construction", and "military installation" have the meanings given such terms in section 2801 of title 10, United States Code, except that, with respect to military construction in a foreign country, the term "military installation" includes not only buildings, structures, and other improvements to real property under the operational control of the Secretary of a military department or the Secretary of Defense, but also any building, structure, or other improvement to real property to be used by the Armed Forces, regardless of whether such

use is anticipated to be temporary or of longer duration; and further excepting that "appropriate committees of Congress" shall include the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and House of Representatives.

SEC. 315. COMMENDING THE ARMED FORCES FOR EFFORTS IN OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM. (a) PURPOSE.—Recognizing and commending the members of the United States Armed Forces and their leaders, and the allies of the United States and their armed forces, who participated in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom in Iraq and recognizing the continuing dedication of military families and employers and defense civilians and contractors and the countless communities and patriotic organizations that lent their support to the Armed Forces during those operations.

(b) FINDINGS.—The Senate finds that—

(1) the September 11, 2001, terrorist attacks on the United States, which killed thousands of people from the United States and other countries in New York, Virginia, and Pennsylvania, inaugurated the Global War on Terrorism;

(2) the intelligence community quickly identified Al Qaeda as a terrorist organization with global reach and the President determined that United States national security required the elimination of the Al Qaeda terrorist organization;

(3) the Taliban regime of Afghanistan had long harbored Al Qaeda, providing members of that organization a safe haven from which to attack the United States and its friends and allies, and the refusal of that regime to discontinue its support for international terrorism and surrender Al Qaeda's leaders to the United States made it a threat to international peace and security;

(4) Saddam Hussein and his regime's long-standing sponsorship of international terrorism, active pursuit of weapons of mass destruction, use of such weapons against Iraq's own citizens and neighboring countries, aggression against Iraq's neighbors, and brutal repression of Iraq's population made Saddam Hussein and his regime a threat to international peace and security;

(5) the United States pursued sustained diplomatic, political, and economic efforts to remove those threats peacefully;

(6) on October 7, 2001, the Armed Forces of the United States and its coalition allies launched military operations in Afghanistan, designated as Operation Enduring Freedom, that quickly caused the collapse of the Taliban regime, the elimination of Afghanistan's terrorist infrastructure, and the capture of significant and numerous members of Al Qaeda;

(7) on March 19, 2003, the Armed Forces of the United States and its coalition allies launched military operations, designated as Operation Iraqi Freedom, that quickly caused the collapse of Saddam Hussein's regime, the elimination of Iraq's terrorist infrastructure, the end of Iraq's illicit and illegal programs to acquire weapons of mass destruction, and the capture of significant international terrorists;

(8) in those two campaigns in the Global War on Terrorism, as of September 27, 2003, nearly 165,000 members of the United States Armed Forces, comprised of active, reserve, and National Guard members and units, had mobilized for Operation Enduring Freedom and Operation Iraqi Freedom;

(9) success in those two campaigns in the Global War on Terrorism would not have been possible without the dedication, courage, and service of the members of the United States Armed Forces and the military and irregular forces of the friends and allies of the United States;

(10) the support, love, and commitment from the families of United States service personnel participating in those two operations, as well as that of the communities and patriotic organiza-

tions which provided support through the United Services Organization (USO), Operation Dear Abby, and Operation UpLink, helped to sustain those service personnel and enabled them to eliminate significant threats to United States national security while liberating oppressed peoples from dictatorial regimes;

(11) the civilian employees of the Department of Defense, through their hard work and dedication, enabled United States military forces to quickly and effectively achieve the United States military missions in Afghanistan and Iraq;

(12) the commitment of companies making their employees available for military service, the creativity and initiative of contractors equipping the Nation's Armed Forces with the best and most modern equipment, and the ingenuity of service companies assisting with the global overseas deployment of the Armed Forces demonstrates that the entrepreneurial spirit of the United States is an extraordinarily valuable defense asset; and

(13) the Nation should pause to recognize with appropriate tributes and days of remembrance the sacrifice of those members of the Armed Forces who died or were wounded in Operation Enduring Freedom and Operation Iraqi Freedom, as well as all who served in or supported either of those operations.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that the Senate—

(1) conveys its deepest sympathy and condolences to the families and friends of the members of United States and coalition forces who have been injured, wounded, or killed during Operation Enduring Freedom and Operation Iraqi Freedom;

(2) commends President George W. Bush, Secretary of Defense Donald H. Rumsfeld, and United States Central Command commander General Tommy Franks, United States Army, for their planning and execution of enormously successful military campaigns in Operation Enduring Freedom and Operation Iraqi Freedom;

(3) expresses its highest commendation and most sincere appreciation to the members of the United States Armed Forces who participated in Operation Enduring Freedom and Operation Iraqi Freedom;

(4) commends the Department of Defense civilian employees and the defense contractor personnel whose skills made possible the equipping of the greatest armed force in the annals of modern military endeavor;

(5) supports the efforts of communities across the Nation—

(A) to prepare appropriate homecoming ceremonies to honor and welcome home the members of the Armed Forces participating in Operation Enduring Freedom and Operation Iraqi Freedom and to recognize their contributions to United States homeland security and to the Global War on Terrorism; and

(B) to prepare appropriate ceremonies to commemorate with tributes and days of remembrance the service and sacrifice of those service members killed or wounded during those operations;

(6) expresses the deep gratitude of the Nation to the 21 steadfast allies in Operation Enduring Freedom and to the 49 coalition members in Operation Iraqi Freedom, especially the United Kingdom, Australia, and Poland, whose forces, support, and contributions were invaluable and unforgettable; and

(7) recommits the United States to ensuring the safety of the United States homeland, to preventing weapons of mass destruction from reaching the hands of terrorists, and to helping the people of Iraq and Afghanistan build free and vibrant democratic societies.

SEC. 316. (a) In addition to other purposes for which funds in the Iraq Freedom Fund are available, such funds shall also be available for reimbursing a member of the Armed Forces for the cost of air fare incurred by the member for any travel by the member within the United

States that is commenced during fiscal year 2003 or fiscal year 2004 and is completed during either such fiscal year while the member is on rest and recuperation leave from deployment overseas in support of Operation Iraqi Freedom and Operation Enduring Freedom, but only for one round trip by air between two locations within the United States.

(b) It is the sense of Congress that the commercial airline industry should, to the maximum extent practicable, charge members of the Armed Forces on rest and recuperation leave as described in subsection (a) and their families specially discounted, lowest available fares for air travel in connection with such leave and that any restrictions and limitations imposed by the airlines in connection with the air fares charged for such travel should be minimal.

SEC. 317. (a) Section 1074a of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

“(2) The Secretary concerned shall promptly transmit to each member of the Ready Reserve eligible for screening and care under this subsection a notification of eligibility for such screening and care.

“(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

“(4) Screening and care may not be provided under this section after September 30, 2004.”

(b) The benefits provided under the amendment made by subsection (a) shall be provided only within funds available under this Act.

SEC. 318. (a) Chapter 55 of title 10, United States Code, is amended by inserting after section 1076a the following new section:

“§1076b. TRICARE program: coverage for members of the Ready Reserve

“(a) ELIGIBILITY.—Each member of the Selected Reserve of the Ready Reserve and each member of the Individual Ready Reserve described in section 10144(b) of this title is eligible, subject to subsection (h), to enroll in TRICARE and receive benefits under such enrollment for any period that the member—

“(1) is an eligible unemployment compensation recipient; or

“(2) is not eligible for health care benefits under an employer-sponsored health benefits plan.

“(b) TYPES OF COVERAGE.—(1) A member eligible under subsection (a) may enroll for either of the following types of coverage:

“(A) Self alone coverage.

“(B) Self and family coverage.

“(2) An enrollment by a member for self and family covers the member and the dependents of the member who are described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(c) OPEN ENROLLMENT PERIODS.—The Secretary of Defense shall provide for at least one open enrollment period each year. During an open enrollment period, a member eligible under subsection (a) may enroll in the TRICARE program or change or terminate an enrollment in the TRICARE program.

“(d) SCOPE OF CARE.—(1) A member and the dependents of a member enrolled in the TRICARE program under this section shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively.

“(2) Section 1074(c) of this title shall apply with respect to a member enrolled in the TRICARE program under this section.

“(e) PREMIUMS.—(1) The Secretary of Defense shall charge premiums for coverage pursuant to

enrollments under this section. The Secretary shall prescribe for each of the TRICARE program options a premium for self alone coverage and a premium for self and family coverage.

“(2) The monthly amount of the premium in effect for a month for a type of coverage under this section shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate actuarial basis as being reasonable for the coverage.

“(3) The premiums payable by a member under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums by members not entitled to such basic pay or compensation.

“(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subparagraph (B) of such section for such fiscal year.

“(f) OTHER CHARGES.—A person who receives health care pursuant to an enrollment in a TRICARE program option under this section, including a member who receives such health care, shall be subject to the same deductibles, copayments, and other nonpremium charges for health care as apply under this chapter for health care provided under the same TRICARE program option to dependents described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

“(g) TERMINATION OF ENROLLMENT.—(1) A member enrolled in the TRICARE program under this section may terminate the enrollment only during an open enrollment period provided under subsection (c), except as provided in subsection (h).

“(2) An enrollment of a member for self alone or for self and family under this section shall terminate on the first day of the first month beginning after the date on which the member ceases to be eligible under subsection (a).

“(3) The enrollment of a member under this section may be terminated on the basis of failure to pay the premium charged the member under this section.

“(h) RELATIONSHIP TO TRANSITION TRICARE COVERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A member may not enroll in the TRICARE program under this section while entitled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section.

“(2) A member who enrolls in the TRICARE program under this section within 90 days after the date of the termination of the member's entitlement or eligibility to receive health care under subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

“(i) CERTIFICATION OF NONCOVERAGE BY OTHER HEALTH BENEFITS PLAN.—The Secretary of Defense may require a member to submit any certification that the Secretary considers appropriate to substantiate the member's assertion that the member is not covered for health care benefits under any other health benefits plan.

“(j) ELIGIBLE UNEMPLOYMENT COMPENSATION RECIPIENT DEFINED.—In this section, the term ‘eligible unemployment compensation recipient’ means, with respect to any month, any individual who is determined eligible for any day of such month for unemployment compensation under State law (as defined in section 205(9) of the Federal-State Extended Unemployment Compensation Act of 1970), including Federal unemployment compensation laws administered through the State.

“(k) REGULATIONS.—The Secretary of Defense, in consultation with the other administering

Secretaries, shall prescribe regulations for the administration of this section.

“(1) TERMINATION OF AUTHORITY.—An enrollment in TRICARE under this section may not continue after September 30, 2004.”.

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1076a the following new item:

“1076b. TRICARE program: coverage for members of the Ready Reserve.”.

(c) The benefits provided under section 1076b of title 10, United States Code (as added by subsection (a)), shall be provided only within funds available under this Act.

SEC. 319. (a)(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

“§ 1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents

“(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (j).

“(b) ELIGIBLE MEMBER.—A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a) while serving on active duty pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or national emergency declared by the President or Congress.

“(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for a member called or ordered to active duty is qualified health benefits plan coverage if—

“(1) the coverage was in force on the date on which the Secretary notified the member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

“(2) on such date, the coverage applied to the member and dependents of the member described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

“(3) the coverage has not lapsed.

“(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage in the case of a member is the amount of the premium payable by the member for the coverage of the member and dependents.

“(e) MAXIMUM AMOUNT.—The total amount that the Department of Defense may pay for the applicable premium of a health benefits plan for a member under this section in a fiscal year may not exceed the amount determined by multiplying—

“(1) the sum of one plus the number of the member's dependents covered by the health benefits plan, by

“(2) the per capita cost of providing TRICARE coverage and benefits for dependents under this chapter for such fiscal year, as determined by the Secretary of Defense.

“(f) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage in the case of a member called or ordered to active duty is the period that—

“(1) begins on the date of the call or order; and

“(2) ends on the earlier of—

“(A) the date on which the member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section;

“(B) the date on which the member elects to terminate the continued qualified health bene-

fits plan coverage of the dependents of the member; or

“(C) September 30, 2004.

“(g) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

“(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for a member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

“(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

“(h) NONDUPLICATION OF BENEFITS.—A dependent of a member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of a member by the Secretary concerned under this section is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

“(i) REVOCABILITY OF ELECTION.—A member who makes an election under subsection (a) may revoke the election. Upon such a revocation, the member's dependents shall become eligible for benefits under the TRICARE program as provided for under this chapter.

“(j) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents.”.

(b) Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department before, on, or after the date of the enactment of this Act, but only with respect to qualified health benefits plan coverage (as described in subsection (c) of such section) that is in effect on or after the date of the enactment of this Act.

(c) The benefits provided under section 1078b of title 10, United States Code (as added by subsection (a)), shall be provided only within funds available under this Act.

SEC. 320. (a) Section 1074 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(d)(1) For the purposes of this chapter, a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, shall be treated as being on active duty for a period of more than 30 days beginning on the later of the date that is—

“(A) the date of the issuance of such order; or

“(B) 90 days before date on which the period of active duty is to commence under such order for that member.

“(2) In this subsection, the term ‘delayed-effective-date active-duty order’ means an order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

“(3) This section shall cease to be effective on September 30, 2004.”.

(b) The benefits provided under the amendment made by subsection (a) shall be provided only within funds available under this Act.

SEC. 321. (a) Subject to subsection (b), during the period beginning on the date of the enactment of this Act and ending on September 30, 2004, section 1145(a) of title 10, United States Code, shall be administered by substituting for paragraph (3) the following:

“(3) Transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty.”

(b)(1) Subsection (a) shall apply with respect to separations from active duty that take effect on or after the date of the enactment of this Act.

(2) Beginning on October 1, 2004, the period for which a member is provided transitional health care benefits under section 1145(a) of title 10, United States Code, shall be adjusted as necessary to comply with the limits provided under paragraph (3) of such section.

(c) The benefits provided under the amendment made by subsection (a) shall be provided only within funds available under this Act.

SEC. 322. (a) Of the funds provided in this title under the heading “IRAQ FREEDOM FUND” up to \$191,100,000 be available for the procurement of Up-Armored High Mobility Multipurpose Wheeled Vehicles in addition to the number of such vehicles for which funds are provided within the amount specified under such heading.

(b) The Secretary of the Army shall reevaluate the requirements of the Army for armored security vehicles and the options available to the Army for procuring armored security vehicles to meet the validated requirements.

SEC. 323. (a) Of the amounts appropriated by chapter 1 of this title under the heading “OPERATION AND MAINTENANCE, ARMY” and available for the operating expenses of the Coalition Provisional Authority (CPA), \$10,000,000 shall be available for the establishment of the Office of the Inspector General of the Coalition Provisional Authority and for related operating expenses of the Office.

(b) The Office of the Inspector General of the Coalition Provisional Authority shall be established not later than 30 days after the date of the enactment of this Act.

(c)(1) The head of the Office of the Inspector General of the Coalition Provisional Authority shall be the Inspector General of the Coalition Provisional Authority.

(2) The Inspector General shall be appointed by the President in accordance with, and shall otherwise be subject to the provisions of, section 3 of the Inspector General Act of 1978 (5 U.S.C. App.), except that the person nominated for appointment as Inspector General may assume the duties of the office on an acting basis pending the advice and consent of the Senate.

(3) The Inspector General shall have the duties, responsibilities, and authorities of inspectors general under the Inspector General Act of 1978. In carrying out such duties, responsibilities, and authorities, the Inspector General shall coordinate with, and receive the cooperation of, the Inspector General of the Department of Defense.

(d)(1) Except as provided in paragraph (2), not later than 75 days after the date of the enactment of this Act, and every 10 days thereafter, the Inspector General of the Coalition Provisional Authority shall submit to the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives a report that sets forth—

(A) an assessment of the financial controls of the Coalition Provisional Authority;

(B) a description of any financial irregularities that may have occurred in the activities of the Authority;

(C) a description of—

(i) any irregularities relating to the administration of laws providing for full and open competition in contracting (as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))); and

(ii) any other irregularities related to procurement;

(D) a description of any actions taken by the Inspector General to improve such financial controls or address such financial irregularities;

(E) a description of the programmatic goals of the Coalition Provisional Authority; and

(F) an assessment of the performance of the Coalition Provisional Authority, including progress made by the Coalition Provisional Authority in facilitating a transition to levels of security, stability, and self-government in Iraq sufficient to make the presence of the Coalition Provisional Authority no longer necessary.

(2) The Inspector General of the Department of Defense shall prepare and submit the reports otherwise required to be submitted by the Inspector General of the Coalition Provisional Authority under paragraph (1) until the earlier of—

(A) the date that is 150 days after the date of the enactment of this Act; or

(B) the date on which a determination is made by the Inspector General of the Coalition Provisional Authority that the Office of the Inspector General of the Coalition Provisional Authority is capable of preparing timely, accurate, and complete reports in compliance with the requirements under paragraph (1).

(3) The reports under this subsection are in addition to the semiannual reports required of the Inspector General by section 5 of the Inspector General Act of 1978 and any other reports required of the Inspector General by law.

(4) The Inspector General of the Coalition Provisional Authority (or the Inspector General of the Department of Defense, as applicable) shall publish each report under this subsection on the Internet website of the Coalition Provisional Authority.

(e) The Office of the Inspector General of the Coalition Provisional Authority shall terminate on the first day that both of the following conditions have been met:

(1) the Coalition Provisional Authority has transferred responsibility for governing Iraq to an indigenous Iraqi government; and

(2) a United States mission to Iraq, under the direction and guidance of the Secretary of State, has undertaken to perform the responsibility for administering United States assistance efforts in Iraq.

SEC. 324. REPORT ON REPLACEMENT OF U.S. TROOPS. (a) FINDINGS.—The Senate finds that:

(1) The Coalition Provisional Authority states that 80 percent of Iraq is a permissive environment with people returning to a normal pace of life, while 20 percent is less permissive with entrenched Saddam loyalists, international terrorists and general lawlessness hindering recovery efforts.

(2) On September 9, Deputy Secretary of Defense John Wolfowitz testified, “. . . the predominantly Shia south [of Iraq] has been stable and I would say far more stable than most pre-war predications would have given you. And the mixed Arab, Turkish, Kurdish north has also been remarkably stable, again, contrary to fears that many of us had that we might face large-scale ethnic conflict.”

(3) On September 14, Secretary of State Colin Powell stated, “We see attacks against our coalition on a daily basis . . . but in many parts of the country things are quite secure and stable.”

(4) The Coalition Provisional Authority states that a major focus of its security efforts has been to increase Iraqi participation in and responsibility for a safe and secure Iraq.

(5) On September 14, Secretary of Defense Donald Rumsfeld stated, “90 percent of the people in Iraq are now living in an area that’s governed by a city council, or a village council.”

(6) The Coalition Provisional Authority reports that 60,000 Iraqis are now assisting in security, including 46,000 Iraqi police nationwide.

(7) Of the 160,000 coalition military personnel serving in Iraq, 20,000 are comprised of non-United States forces.

(b) REPORT.—Beginning 30 days after the enactment of this Act, the President or his designee shall submit a monthly report to Congress detailing—

(1) the areas of Iraq determined to be largely secure and stable; and

(2) the extent to which United States troops have been replaced by non-United States coalition forces, United Nation forces, or Iraqi forces in the areas determined to be largely secure and stable under this subsection.

SEC. 325. (a) Congress makes the following findings:

(1) During Operation Desert Shield and Operation Desert Storm (in this section, collectively referred to as the “First Gulf War”), the regime of Saddam Hussein committed grave human rights abuses and acts of terrorism against the people of Iraq and citizens of the United States.

(2) United States citizens who were taken prisoner by the regime of Saddam Hussein during the First Gulf War were brutally tortured and forced to endure severe physical trauma and emotional abuse.

(3) The regime of Saddam Hussein used civilian citizens of the United States who were working in the Persian Gulf region before and during the First Gulf War as so-called human shields, threatening the personal safety and emotional well-being of such civilians.

(4) Congress has recognized and authorized the right of United States citizens, including prisoners of war, to hold terrorist states, such as Iraq during the regime of Saddam Hussein, liable for injuries caused by such states.

(5) The United States district courts are authorized to adjudicate cases brought by individuals injured by terrorist states.

(b) It is the sense of Congress that—

(1) notwithstanding section 1503 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 117 Stat. 579) and any other provision of law, a citizen of the United States who was a prisoner of war or who was used by the regime of Saddam Hussein and by Iraq as a so-called human shield during the First Gulf War should have the opportunity to have any claim for damages caused by the regime of Saddam Hussein and by Iraq incurred by such citizen fully adjudicated in the appropriate United States district court;

(2) any judgment for such damages awarded to such citizen, or the family of such citizen, should be fully enforced; and

(3) the Attorney General should enter into negotiations with each such citizen, or the family of each such citizen, to develop a fair and reasonable method of providing compensation for the damages each such citizen incurred, including using assets of the regime of Saddam Hussein held by the Government of the United States or any other appropriate sources to provide such compensation.

SEC. 326. (a) FINDINGS.—Congress makes the following findings:

(1) The National Guard and Reserves have served the Nation in times of national crises for more than 200 years. The National Guard and Reserves are a critical component of homeland security and national defense.

(2) The current deployments of many members of the National Guard and Reserve have made them absent from their communities for an abnormally long time. This has diminished the ability of the National Guard to conduct its State missions.

(3) Many members of the National Guard and Reserves have been on active duty for more than a year, and many more have had their tours of active duty involuntarily extended while overseas.

(b) REPORT ON UTILIZATION OF NATIONAL GUARD AND RESERVES.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and

House of Representatives a report on the utilization of the National Guard and Reserves in support of contingency operations during fiscal year 2004.

(2) The report under this subsection shall include the following:

(A) Information on each National Guard and Reserve unit currently deployed, including—

- (i) the unit name or designation;
- (ii) the number of personnel deployed;
- (iii) the projected return date to home station; and
- (iv) the schedule, if any, for the replacement of the unit with a Regular or multinational unit.

(B) Information on current operations tempo, including—

(i) the length of deployment of each National Guard and Reserve unit currently deployed, organized by unit and by State;

(ii) in the case of each National Guard and Reserve unit on active duty during the two-year period ending on the date of the report, the aggregate amount of time on active duty during such two-year period; and

(iii) the percentage of National Guard and Reserve forces in the total deployed force in each current domestic and overseas contingency operation.

(C) Information on current recruitment and retention of National Guard and Reserve personnel, including—

(i) any shortfalls in recruitment and retention;

(ii) any plans to address such shortfalls or otherwise to improve recruitment or retention; and

(iii) the effects on recruitment and retention over the long term of extended periods of activation of National Guard or Reserve personnel.

(3) The report under this subsection shall be organized in a format that permits a ready assessment of the deployment of the National Guard and Reserves by State, by various geographic regions of the United States, and by Armed Force.

(C) REPORT ON EFFECTS OF UTILIZATION OF NATIONAL GUARD AND RESERVES ON LAW ENFORCEMENT AND HOMELAND SECURITY.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall, in consultation with the chief executive officers of the States, submit to Congress a report on the effects of the deployment of the National Guard and Reserves on law enforcement and homeland security in the United States.

(2) The report under this subsection shall include the following:

(A) The number of civilian first responders on active duty with the National Guard or Reserves who are currently deployed overseas.

(B) The number of first responder personnel of the National Guard or Reserves who are currently deployed overseas.

(C) An assessment by State of the ability of the States to respond to emergencies without currently deployed National Guard personnel.

SEC. 327. (a) FINDINGS.—Congress makes the following findings:

(1) The Iraq Survey Group is charged with investigating the weapons of mass destruction programs of Iraq.

(2) The Special Advisor to the Director of Central Intelligence for Strategy and Iraq heads the efforts of the Iraq Survey Group.

(b) QUARTERLY REPORTS ON STATUS OF EFFORTS OF IRAQ SURVEY GROUP.—Not later than January 1, 2004, and every three months thereafter through September 30, 2004, the Special Advisor to the Director of Central Intelligence for Strategy and Iraq shall submit to the appropriate committees of Congress a comprehensive written report on the status of the efforts of the Iraq Survey Group to account for the programs of Iraq on weapons of mass destruction and related delivery systems.

(c) FORM OF REPORT.—Each report required by subsection (b) shall be submitted in both classified and unclassified form.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Select Committee on Intelligence and the Subcommittee on Defense of the Committee on Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

SEC. 328. (a) In the administration of laws and policies on the period for which members of reserve components of the Armed Forces called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, are deployed outside the United States, the deployment shall be considered to have begun on the first day of the active-duty service to which called or ordered and shall be considered to have ended on the last day of the active-duty service to which called or ordered.

(b) The Secretary of Defense may waive the requirements of subsection (a) in any case in which the Secretary determines that it is necessary to do so to respond to a national security emergency or to meet dire operational requirements of the Armed Forces.

SEC. 329. Of the amounts appropriated by this title, \$10,000,000 shall be available only for the Family Readiness Program of the National Guard.

SEC. 330. (a) FINDINGS.—Congress makes the following findings:

(1) The Committee on Armed Services of the Senate specified in Senate Report 107-151 to accompany S. 2514 (107th Congress) that the Chief of Naval Operations submit to the congressional defense committees a report, not later than June 2, 2003, on the plans of the Navy for basing aircraft carriers through 2015.

(2) As of October 16, 2003, the report has not been submitted.

(b) REPORT ON AIRCRAFT CARRIER BASING PLANS THROUGH 2020.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the plans of the Navy for basing aircraft carriers through 2020.

SEC. 331. (a) In addition to the strengths authorized by law for personnel of the Army as of September 30, 2004, pursuant to paragraphs (1) and (2) of section 115(a) of title 10, United States Code, the Army is hereby authorized an additional strength of 10,000 personnel as of such date, which the Secretary of the Army may allocate as the Secretary determines appropriate among the personnel strengths required by such section to be authorized annually under subparagraphs (A) and (B) of paragraph (1) of such section and paragraph (2) of such section.

(b) The additional personnel authorized under subsection (a) shall be trained, incorporated into an appropriate force structure, and used to perform constabulary duty in such specialties as military police, light infantry, civil affairs, and special forces, and in any other military occupational specialty that is appropriate for constabulary duty.

(c) Of the amount appropriated under chapter 1 of this title for the Iraq Freedom Fund, \$409,000,000 shall be available for necessary expenses for the additional personnel authorized under subsection (a).

SEC. 332. (a) SHORT TITLE.—This section may be cited as the “Reservists Pay Security Act of 2003”.

(b) NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.—

(1) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

“§5538. Nonreduction in pay while serving in the uniformed services or National Guard

“(a) An employee who is absent from a position of employment with the Federal Govern-

ment in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

“(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee’s civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

“(2) the amount of pay and allowances which (as determined under subsection (d))—

“(A) is payable to such employee for that service; and

“(B) is allocable to such pay period.

“(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted)—

“(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

“(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee’s civilian employment with the Government.

“(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

“(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

“(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of the service on active duty to which called or ordered as described in subsection (a).

“(c) Any amount payable under this section to an employee shall be paid—

“(1) by such employee’s employing agency;

“(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

“(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee’s civilian employment had not been interrupted.

“(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

“(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

“(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

“(f) In this section—

“(1) the terms ‘employee’, ‘Federal Government’, and ‘uniformed services’ have the same respective meanings as given them in section 4303 of title 38;

“(2) the term ‘employing agency’, as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

“(3) the term ‘basic pay’ includes any amount payable under section 5304.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

“5538. Nonreduction in pay while serving in the uniformed services or National Guard.”

(3) *EFFECTIVE PERIOD.*—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this section and ending September 30, 2004.

SEC. 333. (a) *FINDINGS.*—Congress makes the following findings:

(1) That on October 7, 2001, the Armed Forces of the United States and its coalition allies launched military operations in Afghanistan, designated as Operation Enduring Freedom, that quickly caused the collapse of the Taliban regime, the elimination of Afghanistan's terrorist infrastructure and the capture of significant and numerous members of Al Qaeda.

(2) That on March 19, 2003, the Armed Forces of the United States and its coalition allies launched military operations, designated as Operation Iraqi Freedom, that quickly caused the collapse of Saddam Hussein's regime, the elimination of Iraq's terrorist infrastructure, the end of Iraq's illicit and illegal programs to acquire weapons of mass destruction, and the capture of significant international terrorists.

(3) That success in those two campaigns in the Global War on Terrorism would not have been possible without the dedication, courage, and service of the members of the United States Armed Forces and their coalition partners.

(4) That throughout the proud military history of our Nation, we have recognized our brave men and women of the Armed Forces by awarding them service medals for personal bravery and other leadership actions and for their service in military operations abroad and for support operations at home and abroad.

(5) That historically the President has relied on senior military officers to recommend the personal and theater campaign medals and that, in keeping with these longstanding traditions, the Joint Chiefs of Staff and the combatant commanders, including General Tommy Franks, United States Army, former Commander of the United States Central Command, recommended the awards described below in recognition of the worldwide nature of the current conflict.

(6) That following the advice of his senior military and civilian defense leaders, President Bush, by Executive Order 13289 on March 12, 2003, established the Global War on Terrorism Expeditionary Medal to be awarded to service members who serve in military operations to combat terrorism on or after September 11, 2001, including, but not limited to actions in Operation Enduring Freedom and Operation Iraqi Freedom, in such locations as Afghanistan, Iraq, the Republic of the Philippines, and elsewhere in Southwest Asia, in recognition of the sacrifice and contributions military members make in the global war on terrorism.

(7) That eligibility for the Global War on Terrorism Expeditionary Medal is predicated on deployment abroad for 30 days or more in support of Global War on Terrorism operations on or after September 11, 2001.

(8) That by the same Executive Order, the President established the Global War on Terrorism Service Medical recognizing duty in Operation Noble Eagle and the homeland defense mission against further terrorist attacks, and which recognizes duty in support of military operations performed in areas that do not qualify for the Global War on Terrorism Expeditionary Medal.

(9) That implementing regulations for eligibility have not been issued by the Secretary of Defense.

(b) *SENSE OF THE SENATE ON THE AWARD OF CAMPAIGN MEDAL.*—It is the sense of the Senate that the Secretary of Defense should, on an expedited basis, issue the necessary regulations to implement these awards and ensure that any person who renders qualifying service with the Armed Forces in those phases of the Global War on Terrorism including Operation Iraqi Freedom, Operation Enduring Freedom and Oper-

ation Noble Eagle should promptly receive these awards.

SEC. 334. Notwithstanding any other provision of law, the Federal share of the cost of any disaster relief payment made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for damage caused by Hurricane Isabel shall be 90 percent.

SEC. 335. Of the funds appropriated by this Act, \$500,000,000 shall be available for repair or replacement of Department of Defense and National Aeronautics and Space Administration infrastructure damaged or destroyed by Hurricane Isabel, related flooding, or other related natural forces: Provided, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of House Concurrent Resolution 95 (108th Congress): Provided further, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes the designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

TITLE II—INTERNATIONAL AFFAIRS
CHAPTER 1

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS
DIPLOMATIC AND CONSULAR PROGRAMS
(INCLUDING RESCISSION)

Of the funds provided under this heading in Public Law 108–11 (117 Stat. 561), \$35,800,000 are rescinded.

For an additional amount for "Diplomatic and Consular Programs", \$35,800,000, to remain available until September 30, 2005.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

For an additional amount for "Emergencies in the Diplomatic and Consular Service", \$90,500,000, to remain available until expended: Provided, That of the funds made available under this heading, \$50,000,000 shall only be available for rewards: Provided further, That of the funds made available under this heading, \$32,000,000 is for the reimbursement of the City of New York for costs associated with the protection of foreign missions and officials during the heightened state of alert following the September 11, 2001, terrorist attacks on the United States: Provided further, That of the funds made available under this heading, \$8,500,000 is for costs associated with the 2003 Free Trade Area of the Americas Ministerial meeting: Provided further, That of the funds previously appropriated under this heading, \$2,000,000 is for rewards for an indictee of the Special Court for Sierra Leone: Provided further, That of prior year unobligated balances available under this heading, \$8,451,000 shall be transferred to and merged with the appropriation for "Diplomatic and Consular Programs" and shall be available only for the Border Security Program: Provided further, That the entire amount shall be available only to the extent that an official budget request for \$90,500,000, that includes designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

CHAPTER 2

BILATERAL ECONOMIC ASSISTANCE
FUNDS APPROPRIATED TO THE
PRESIDENT

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

For an additional amount for "Operating Expenses of the United States Agency for Inter-

national Development", \$40,000,000, of which not less than \$4,000,000 shall be transferred to and merged with "Operating Expenses of the United States Agency for International Development Office of Inspector General" for financial and performance audits of the Iraq Relief and Reconstruction Fund and other assistance to Iraq, to remain available until September 30, 2005.

CAPITAL INVESTMENT FUND

For an additional amount for "Capital Investment Fund", \$60,500,000, to remain available until expended: Provided, That the entire amount shall be available only to the extent that an official budget request for \$60,500,000, that includes designation of the entire amount of the request as an emergency requirement as defined in House Concurrent Resolution 98 (108th Congress), the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

OTHER BILATERAL ECONOMIC ASSISTANCE
FUNDS APPROPRIATED TO THE
PRESIDENT

IRAQ RELIEF AND RECONSTRUCTION FUND
(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for security, rehabilitation and reconstruction in Iraq, \$18,449,000,000, to remain available until expended, to be allocated as follows: \$3,243,000,000 for security and law enforcement; \$1,318,000,000 for justice, public safety infrastructure, and civil society; \$5,560,000,000 for the electric sector; \$1,900,000,000 for oil infrastructure; \$4,332,000,000 for water resources and sanitation; \$500,000,000 for transportation and telecommunications; \$370,000,000 for roads, bridges, and construction; \$793,000,000 for health care; \$153,000,000 for private sector development; and \$280,000,000 for education, refugees, human rights, democracy, and governance: Provided, That of the funds made available pursuant to the previous proviso, not less than \$100,000,000 shall be made available for democracy building activities in Iraq: Provided further, That none of the funds appropriated under this heading may be allocated for any capital project, including construction of a prison, hospital, housing community, railroad, or government building, until the Coalition Provisional Authority submits a report to the Committees on Appropriations describing in detail the estimated costs (including the costs of consultants, design, materials, shipping, and labor) on which the request for funds for such project is based: Provided further, That in order to control costs, to the maximum extent practicable Iraqis with the necessary qualifications should be consulted and utilized in the design and implementation of programs, projects, and activities funded under this heading: Provided further, That the Administrator of the United States Agency for International Development (USAID) shall seek to ensure that programs, projects, and activities administered by USAID in Iraq and Afghanistan comply fully with USAID's "Policy Paper: Disability" issued on September 12, 1997: Provided further, That the Administrator shall submit a report to the Committees on Appropriations not later than December 31, 2004, describing the manner in which the needs of people with disabilities were met in the development and implementation of USAID programs, projects, and activities in Iraq and Afghanistan in fiscal year 2004: Provided further, That the Administrator, not later than 180 days after enactment of this Act and in consultation, as appropriate, with other appropriate departments and agencies, the Architectural and Transportation Barriers Compliance Board, and nongovernmental organizations with expertise in the needs of people with disabilities, shall develop and implement appropriate standards for access for people with disabilities for construction projects funded by USAID: Provided further, That of the funds appropriated under this heading, assistance shall

be made available for Iraqi civilians who have suffered losses as a result of military operations: Provided further, That not later than 90 days after enactment of this Act the Secretary of State, in consultation with the Secretary of Defense, shall submit a report to the Committees on Appropriations describing the progress made toward indicting and trying leaders of the former Iraqi regime for war crimes, genocide, or crimes against humanity: Provided further, That notwithstanding any provision of this chapter, none of the funds appropriated under this heading may be made available to enter into any contract or follow-on contract that uses other than full and open competitive contracting procedures as defined in 41 U.S.C. 403(6): Provided further, That the President may waive the requirements of the previous proviso if he determines that it is necessary to do so as a result of unforeseen or emergency circumstances: Provided further, That the President may reallocate funds provided under this heading: Provided further, That these funds may be transferred to any Federal account for any Federal Government activity to accomplish the purposes provided herein: Provided further, That upon a determination that all or part of the funds so transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That contributions of funds for the purposes provided herein from any person, foreign government, or international organization, may be credited to this Fund and used for such purposes: Provided further, That funds appropriated under this heading or transferred or reallocated under provisions of this chapter or section 632 of the Foreign Assistance Act of 1961 that are made available for assistance for Iraq shall be subject to notifications of the Committees on Appropriations, except that the notifications shall be transmitted at least 5 days in advance of the obligation of funds: Provided further, That the Coalition Provisional Authority shall work, in conjunction with relevant Iraqi officials, to ensure that a new Iraqi constitution preserves full rights to religious freedom for all individuals, including a prohibition on laws that would criminalize blasphemy and apostasy: Provided further, That not later than 90 days after enactment of this Act and every 90 days thereafter until the ratification of a new Iraqi constitution, the President shall report to the appropriate Committees of the Congress, on efforts by the Coalition Provisional Authority and relevant Iraqi officials to ensure that the Iraqi constitution preserves religious freedom: Provided further, That funds appropriated under this heading shall be made available to the General Accounting Office for an audit of all funds appropriated under this Act, including tracking the expenditure of appropriated funds, a comparison of the amounts appropriated under this Act to the amount actually expended, and a determination of whether the funds appropriated in this Act are expended as intended by Congress: Provided further, That of the funds appropriated under this heading, up to \$13,000,000 may be made available to facilitate inter-ethnic and inter-religious dialogue, conflict resolution activities, support rule of law programs, and train Iraqi leaders in democratic principles.

ECONOMIC SUPPORT FUND

For an additional amount for "Economic Support Fund", \$422,000,000, to remain available until September 30, 2005, for accelerated assistance for Afghanistan: Provided, That these funds are available notwithstanding section 660 of the Foreign Assistance Act of 1961, and section 620(q) of that Act or any comparable provision of law: Provided further, That these funds may be used for activities related to disarmament, demobilization, and reintegration of militia combatants, including registration of such combatants, notwithstanding section 531(e) of the Foreign Assistance Act of 1961: Provided

further, That not to exceed \$200,000,000 appropriated under this heading in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, may be used for the costs, as defined in section 502 of the Congressional Budget Act of 1974, of modifying direct loans and guarantees for Pakistan: Provided further, That amounts that are made available under the previous proviso for the cost of modifying direct loans and guarantees shall not be considered "assistance" for the purposes of provisions of law limiting assistance to a country.

UNITED STATES EMERGENCY FUND FOR COMPLEX FOREIGN CRISES

For necessary expenses to enable the President to respond to or prevent unforeseen complex foreign crises, \$200,000,000, which shall be made available for assistance for Liberia, of which \$100,000,000 shall be derived by transfer from funds appropriated under any other heading of this Chapter: Provided, That funds appropriated under this heading, shall remain available until expended, and may be made available only pursuant to a determination, after consultation with the Committees on Appropriations, by the President that it is in the national interest to furnish assistance on such terms and conditions as he may determine for such purposes, including support for peace and humanitarian intervention operations: Provided further, That none of these funds shall be available to respond to natural disasters: Provided further, That from these funds the President may make allocations to Federal agencies to carry out the authorities provided under this heading: Provided further, That funds appropriated under this heading shall be subject to the same conditions as those contained under the same heading in chapter 5 of title I of S. 762, as reported by the Committee on Appropriations on April 1, 2003: Provided further, That the President may furnish assistance under this heading notwithstanding any other provision of law: Provided further, That the provisions of section 553 of Division E of Public Law 108-7, or any comparable provision of law enacted subsequent to the enactment of that Act, shall be applicable to funds appropriated under this heading: Provided further, That funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations, except that notifications shall be transmitted at least 5 days in advance of the obligations of funds: Provided further, That the requirements of the previous proviso may be waived if failure to do so would pose a substantial risk to human health and welfare: Provided further, That in case of any such waiver, notification to the Committees on Appropriations shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of such circumstances necessitating such waiver: Provided further, That any notification provided pursuant to such waiver shall contain an explanation of the emergency circumstances.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For an additional amount for "International Narcotics Control and Law Enforcement", \$120,000,000, to remain available until September 30, 2004, for accelerated assistance for Afghanistan.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For an additional amount for "Nonproliferation, Anti-Terrorism, Demining and Related Programs", \$35,000,000, for accelerated assistance for Afghanistan.

MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

FOREIGN MILITARY FINANCING PROGRAM

For an additional amount for the "Foreign Military Financing Program", \$222,000,000, for accelerated assistance for Afghanistan.

PEACEKEEPING OPERATIONS

For an additional amount for "Peacekeeping Operations", \$50,000,000, to support the global war on terrorism.

CHAPTER 3

GENERAL PROVISIONS, THIS TITLE

SEC. 2301. In addition to transfer authority otherwise provided in chapter 2 of this title, any appropriation made available in chapter 2 of this title may be transferred between such appropriations, to be available for the same purposes and the same time as the appropriation to which transferred: Provided, That the total amount transferred pursuant to this section shall not exceed \$200,000,000: Provided further, That the Secretary of State shall consult with the Committees on Appropriations prior to exercising the authority contained in this section: Provided further, That funds made available pursuant to the authority of this section shall be subject to the regular notification procedures of the Committees on Appropriations, except that notification shall be transmitted at least 5 days in advance of the obligation of funds.

SEC. 2302. Assistance or other financing under chapter 2 of this title may be provided for Iraq, notwithstanding any other provision of law: Provided, That funds made available for Iraq pursuant to this authority shall be subject to the regular reprogramming notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961, except that notification shall be transmitted at least 5 days in advance of obligation: Provided further, That the notification requirements of this section may be waived if failure to do so would pose a substantial risk to human health or welfare: Provided further, That in case of any such waiver, notification to the appropriate congressional committees shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of circumstances necessitating such waiver: Provided further, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

SEC. 2303. Funds made available in chapter 2 of this title are made available notwithstanding section 10 of Public Law 91-672 and section 15 of the State Department Basic Authorities Act of 1956, as amended.

SEC. 2304. Section 1503 of Public Law 108-11 is amended by, in the last proviso, striking "2004" and inserting in lieu thereof "2005".

SEC. 2305. Section 1504 of Public Law 108-11 is amended by—

(1) in the first proviso, striking the first proviso, and inserting in lieu thereof: "Provided, That subject to the determination and notification requirements of this section, exports are authorized to Iraq of lethal military equipment designated by the Secretary of State for use by a reconstituted (or interim) Iraqi military, private security force, other official Iraqi security forces or police forces, or forces from other countries in Iraq that support United States efforts in Iraq"; and

(2) in the last proviso, striking "2004" and inserting in lieu thereof "2005".

SEC. 2306. Public Law 107-57 is amended—

(1) in section 1(b), by striking "2003" wherever appearing (including in the caption), and inserting in lieu thereof "2004";

(2) in section 3(2), by striking "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, as is" and inserting in lieu thereof "annual foreign operations, export

financing, and related programs appropriations Acts for fiscal years 2002, 2003, and 2004, as are"; and

(3) in section 6, by striking "2003" and inserting in lieu thereof "2004".

SEC. 2307. Notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of the Foreign Assistance Act of 1961 in Iraq.

SEC. 2308. Funds appropriated by chapter 2 of this title under the headings "Economic Support Fund", "International Narcotics Control and Law Enforcement", "Peacekeeping Operations", and "Foreign Military Financing Program" shall be subject to the regular notification procedures of the Committees on Appropriations.

SEC. 2309. (a) The Coalition Provisional Authority (CPA) shall, on a monthly basis, submit a report to the Committees on Appropriations which details, for the preceding month, Iraqi oil production and oil revenues, and uses of such revenues.

(b) The first report required by subsection (a) shall be submitted not later than 30 days after enactment of this Act.

(c) The reports required by this section shall also be made publicly available in both English and Arabic, including through the CPA's Internet website.

SEC. 2310. (a) **REPORTS OF COALITION PROVISIONAL AUTHORITY.**—Not later than January 1, 2004, and every 90 days thereafter, the Administrator of the Coalition Provisional Authority (CPA) shall submit to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a report on all obligations, expenditures, and revenues associated with reconstruction, rehabilitation, and security activities in Iraq during the preceding 90 days, including the following:

(1) Obligations and expenditures of appropriated funds.

(2) A project-by-project and program-by-program accounting of the costs incurred to date for the reconstruction of Iraq, together with the estimate of the Authority of the costs to complete each project and each program.

(3) Revenues attributable to or consisting of funds provided by foreign nations or international organizations, and any obligations or expenditures of such revenues.

(4) Revenues attributable to or consisting of foreign assets seized or frozen, and any obligations or expenditures of such revenues.

(5) Operating expenses of the Authority and of any other agencies or entities receiving funds appropriated by title.

(b) **COMPTROLLER GENERAL AUDIT, INVESTIGATIONS, AND REPORTS.**—(1) The Comptroller General of the United States shall conduct an ongoing audit of the Coalition Provisional Authority, and may conduct such additional investigations as the Comptroller General, in consultation with the Committees on Appropriations, considers appropriate, to evaluate the reconstruction, rehabilitation, and security activities in Iraq.

(2) In conducting the audit and any investigations under paragraph (1), the Comptroller General shall have access to any information and records created or maintained by the Authority, or by any other entity receiving appropriated funds for reconstruction, rehabilitation, or security activities in Iraq, that the Comptroller General considers appropriate to conduct the audit or investigations.

(3) Not later than 120 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a report on the audit and any investigations conducted under paragraph (1). The report shall include information as follows:

(A) A detailed description of the organization and authorities of the Authority.

(B) A detailed description of the relationship between the Authority and other Federal agen-

cies, including the Department of Defense, the Department of State, the Executive Office of the President, and the National Security Council.

(C) A detailed description of the extent of the use of private contractors to assist in Authority operations and to carry out reconstruction, rehabilitation, or security activities in Iraq, including an assessment of—

(i) the nature of the contract vehicles used to perform the work, including the extent of competition used in entering into the contracts and the amount of profit provided in the contracts;

(ii) the nature of the task orders or other work orders used to perform the work, including the extent to which performance-based, cost-based, and fixed-price task orders were used;

(iii) the reasonableness of the rates charged by such contractors, including an assessment of the impact on rates of a greater reliance on Iraqi labor or other possible sources of supply;

(iv) the extent to which such contractors performed work themselves and, to the extent that subcontractors were utilized, how such subcontractors were selected; and

(v) the extent to which the Authority or such contractors relied upon consultants to assist in projects or programs, the amount paid for such consulting services, and whether such consulting services were obtained pursuant to full and open competition.

(D) A detailed description of the measures adopted by the Authority and other Federal agencies to monitor and prevent waste, fraud, and abuse in the expenditure of appropriated funds in the carrying out of reconstruction, rehabilitation, and security activities in Iraq.

(E) A certification by the Comptroller General as to whether or not the Comptroller General had adequate access to relevant information to make informed judgments on the matters covered by the report.

(4) The Comptroller General shall from time to time submit to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a supplemental report on the audit, and any further investigations, conducted under paragraph (1). Each such report shall include such updates of the previous reports under this subsection as the Comptroller General considers appropriate to keep Congress fully and currently apprised on the reconstruction, rehabilitation, and security activities in Iraq.

SEC. 2311. None of the funds made available by this Act or any unexpended funds provided in Public Law 108-11 may be made available to pay any costs associated with debts incurred by the former government of Saddam Hussein.

SEC. 2312. Title III of Public Law 107-327 is amended as follows by inserting the following new section:

"SEC. 304. REPORTS.

"The Secretary of State shall submit reports to the Committees on Foreign Relations and Appropriations of the Senate, and the Committees on International Relations and Appropriations of the House of Representatives on progress made in accomplishing the 'Purposes of Assistance' set forth in section 102 of this Act utilizing assistance provided by the United States for Afghanistan. The first report shall be submitted no later than December 31, 2003, and subsequent reports shall be submitted in conjunction with reports required under section 303 of this title and thereafter through December 31, 2004."

SEC. 2313. (a) **NEW OFFENSE.**—

(1) **IN GENERAL.**—Chapter 47 of title 18, 5 United States Code, is amended by adding at the end the following:

"SEC. 1037. WAR PROFITEERING AND FRAUD RELATING TO MILITARY ACTION, RELIEF, AND RECONSTRUCTION EFFORTS IN IRAQ.

"(a) Whoever, in any matter involving a contract or the provision of goods or services, directly or indirectly, in connection with the war, military action, or relief or reconstruction activities in Iraq, knowingly and willfully—

"(1) executes or attempts to execute a scheme or artifice to defraud the United States or Iraq;

"(2) falsifies, conceals, or covers up by any trick, scheme or device a material fact;

"(3) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; or

"(4) materially overvalues any good or service with the specific intent to excessively profit from the war, military action, or relief or reconstruction activities in Iraq;

shall be fined not more than \$1,000,000 or imprisoned not more than 20 years, or both. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense under this section may be fined not more than twice the gross profits or other proceeds.

"(b) **EXTRATERRITORIAL JURISDICTION.**—There is extraterritorial Federal jurisdiction over an offense under this section.

"(c) **VENUE.**—A prosecution for an offense under this section may be brought—

"(1) as authorized by Chapter 211 of Title 18;

"(2) in any district where any act in furtherance of the offense took place; or

"(3) in any district where any party to the contract or provider of goods or services is located."

(2) **CHAPTER ANALYSIS.**—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting at the end the following:

"1037. War profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq."

(b) **FORFEITURE.**—Section 981(a)(1)(C) of title 18, United States Code, is amended by inserting after "1032," the following: "1037."

(c) **MONEY LAUNDERING.**—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting before "section 1111" the following: "section 1037 War Profiteering and Fraud Relating to Military Action, Relief, and Reconstruction Efforts in Iraq)".

(d) **EXPIRATION OF AUTHORITIES.**—The authorities contained in this amendment shall expire upon the date that major combat operations in Iraq cease and desist, the Coalition Provisional Authority transfers responsibility for governing Iraq to an indigenous Iraqi government, and a U.S. mission to Iraq, under the direction and guidance of the Secretary of State, is responsible for U.S. assistance efforts in Iraq.

SEC. 2314. Not later than 120 days after the date of the enactment of this Act, the President shall submit to Congress a report on the efforts of the Government of the United States to increase the resources contributed by foreign countries and international organizations to the reconstruction of Iraq and the feasibility of repayment of funds contributed for infrastructure projects in Iraq. The report shall include—

(1) a description of efforts by the Government of the United States to increase the resources contributed by foreign countries and international organizations to the reconstruction of Iraq;

(2) an accounting of the funds contributed to assist in the reconstruction of Iraq, disaggregated by donor;

(3) an assessment of the effect that—

(A) the bilateral debts incurred during the regime of Saddam Hussein have on Iraq's ability to finance essential programs to rebuild infrastructure and restore critical public services, including health care and education, in Iraq; and

(B) forgiveness of such debts would have on the reconstruction and long-term prosperity in Iraq;

(4) a description of any commitment by a foreign country or international organization to forgive any part of a debt owed by Iraq if such debt was incurred during the regime of Saddam Hussein; and

(5) an assessment of the feasibility of repayment by Iraq—

(A) of bilateral debts incurred during the regime of Saddam Hussein; and

(B) of the funds contributed by the United States to finance infrastructure projects in Iraq.

SEC. 2315. (a) Not later than April 30, 2004, the Secretary of Defense shall submit a certification to Congress of the amount that Iraq will pay, or that will be paid on behalf of Iraq, during fiscal year 2004 to a foreign country to service a debt incurred by Iraq during the regime of Saddam Hussein, including any amount used for the payment of principal, interest, or fees associated with such debt. Such certification shall include—

(1) the actual amount spent for such purpose during the period from October 1, 2003 through March 31, 2004; and

(2) the estimated amount that the Secretary reasonably believes will be used for such purpose during the period from April 1, 2004 through September 30, 2004.

(b) On May 1, 2004, the Director of the Office of Management and Budget shall administratively reserve, out of the unobligated balance of the funds appropriated in this title under the subheading "IRAQ RELIEF AND RECONSTRUCTION FUND" under the heading "OTHER BILATERAL ECONOMIC ASSISTANCE FUNDS APPROPRIATED TO THE PRESIDENT", the amount that is equal to the sum of the amount certified under paragraph (1) of subsection (a) and the estimated amount certified under paragraph (2) of such subsection. The amount so reserved may not be obligated or expended on or after such date.

(c) The Director of the Office of Management and Budget shall impose such restrictions and conditions as the Director determines necessary to ensure that, in the apportionment of amounts appropriated as described in subsection (b), the balance of the total amount so appropriated that remains unobligated on May 1, 2004, exceeds the amount that is to be reserved under subsection (b).

(d) It is the sense of Congress that each country that is owed a debt by Iraq that was incurred during the regime of Saddam Hussein should forgive such debt, including any amount owed by Iraq for the principal, interest, and fees associated with such debt.

SEC. 2316. (a) Congress finds that—

(1) in a speech delivered to the United Nations on September 23, 2003, President George W. Bush appealed to the international community to take action to make the world a safer and better place;

(2) in that speech, President Bush emphasized the responsibility of the international community to help the people of Iraq rebuild their country into a free and democratic state;

(3) for a plan for Iraq's future to be appropriate, the provisions of that plan must be consistent with the best interests of the Iraqi people;

(4) premature self-government could make the Iraqi state inherently weak and could serve as an invitation for terrorists to sabotage the development of a democratic, economically prosperous Iraq.

(b) It is the sense of Congress that—

(1) arbitrary deadlines should not be set for the dissolution of the Coalition Provisional Authority or the transfer of its authority to an Iraqi governing authority; and

(2) no such dissolution or transfer of authority should occur until the ratification of an Iraqi constitution and the establishment of an elected government in Iraq.

SEC. 2317. GENERAL ACCOUNTING OFFICE REVIEW. (a) The Comptroller General of the United States shall—

(1) review the effectiveness of relief and reconstruction activities conducted by the Coalition Provisional Authority (hereafter in this section "CPA") from funds made available under the "Iraq Relief and Reconstruction Fund" in this title, including by providing analyses of—

(A) the degree to which the CPA is meeting the relief and reconstruction goals and objectives in the major sectors funded under this title, and is enhancing indigenous capabilities;

(B) compliance by the CPA and the Government departments with Federal laws governing competition in contracting; and

(C) the degree to which the CPA is expending funds economically and efficiently, including through use of local contractors;

(2) report quarterly to the appropriate congressional committees on the results of the review conducted under paragraph (1).

(b) In this section, the term "appropriate congressional committees" means—

(1) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

(2) the Committees on Appropriations, Armed Services, and International Relations of the House of Representatives.

SEC. 2318. None of the funds appropriated or otherwise made available by this Act under the heading "IRAQ RELIEF AND RECONSTRUCTION FUND", or under any other heading, may be obligated or expended for the purpose of arming, training, or employing individuals under the age of 18 years for the Facilities Protection Service, to carry out any function similar to the functions performed by the Service, or for any other security force.

SEC. 2319. (a) Of the amounts appropriated under the subheading "IRAQ RELIEF AND RECONSTRUCTION FUND"—

(1) the \$5,136,000,000 allocated for security, including public safety requirements, national security, and justice shall be used to rebuild Iraq's security services;

(2) \$5,168,000,000 shall be available for the purposes, other than security, set out under such subheading; and

(3) \$10,000,000,000 shall be available to the President to use as loans to Iraq for the purposes, other than security, set out under such subheading until the date on which the President submits the certification described in subsection (c).

(b) The President shall submit a notification to Congress if, of the amounts referred to in paragraphs (1) and (2) of subsection (a), an amount in excess of \$250,000,000 is used for any single purpose in Iraq.

(c)(1) The certification referred to in subsection (a)(3) is a certification submitted to Congress by the President stating that not less than 90 percent of the total amount of the bilateral debt incurred by the regime of Saddam Hussein has been forgiven by the countries owed such debt.

(2) On the date that the President submits the certification described in paragraph (1)—

(A) the unobligated balance of the \$10,000,000,000 referred to in subsection (a)(3) may be obligated and expended with no requirement that such amount be provided as loans to Iraq; and

(B) the President may waive repayment of any amount made as a loan under subsection (a)(3) prior to such date.

(d) The head of the Coalition Provisional Authority shall ensure that the amounts appropriated under the subheading "IRAQ RELIEF AND RECONSTRUCTION FUND", are expended, whether by the United States or by the Governing Counsel in Iraq, for the purposes set out under such subheading and in a manner that the head of the Coalition Provisional Authority does not find objectionable.

(e) It is the sense of Congress that each country that is owed bilateral debt by Iraq that was incurred by the regime of Saddam Hussein should—

(1) forgive such debt; and

(2) provide robust amounts of reconstruction aid to Iraq during the conference of donors scheduled to begin on October 23, 2003, in Madrid, Spain and during other conferences of donors of foreign aid.

(f) In this section:

(1) The term "amounts appropriated under the subheading 'IRAQ RELIEF AND RECONSTRUCTION FUND'" means the amounts appropriated by chapter 2 of this title under the subheading "IRAQ RELIEF AND RECONSTRUCTION FUND" under the heading "OTHER BILATERAL ECONOMIC ASSISTANCE FUNDS APPROPRIATED TO THE PRESIDENT".

(2) The term "Coalition Provisional Authority" means the entity charged by the President with directing reconstruction efforts in Iraq.

SEC. 2320. (a) Congress makes the following findings:

(1) A coalition of allied countries led by the United States entered Iraq on March 19, 2003, to liberate the people of Iraq from the tyrannical rule of Saddam Hussein and the Baathist party and to remove a threat to global security and stability.

(2) Achieving stability in Iraq will require substantial monetary investments to develop a secure environment and improve the physical infrastructure.

(3) A stable and prosperous Iraq is important to peace and economic development in the Middle East and elsewhere.

(4) As of October 2003, the United States has provided the majority of the personnel and financial contributions to the effort to rebuild Iraq.

(5) Congress fully supports efforts to establish a stable economic, social, and political environment in Iraq.

(6) The President is currently seeking to increase global participation in the effort to stabilize and reconstruct Iraq.

(7) While the United States should aid the people of Iraq, the participation of the people of Iraq in the reconstruction effort is essential for the success of such effort.

(b) It is the sense of Congress that the President should—

(1) make every effort to increase the level of financial commitment from other nations to improve the physical, political, economic, and social infrastructure of Iraq; and

(2) seek to provide aid from the United States to Iraq in a manner that promotes economic growth in Iraq and limits the long-term cost to taxpayers in the United States.

SEC. 2321. (a) INITIAL REPORT ON RELIEF AND RECONSTRUCTION.—Not later than 60 days after the date of enactment of this Act, the President shall submit to Congress a report on the United States strategy for activities related to post-conflict security, humanitarian assistance, governance, and reconstruction to be undertaken as a result of Operation Iraqi Freedom. The report shall include information on the following:

(1) The distribution of duties and responsibilities regarding such activities among the agencies of the United States Government, including the Department of State, the United States Agency for International Development, and the Department of Defense.

(2) A plan describing the roles and responsibilities of foreign governments and international organizations, including the United Nations, in carrying out such activities.

(3) A strategy for coordinating such activities among the United States Government, foreign governments, and international organizations, including the United Nations.

(4) A strategy for distributing the responsibility for paying costs associated with reconstruction activities in Iraq among the United States Government, foreign governments, and international organizations, including the United Nations, and for actions to be taken by the President to secure increased international participation in peacekeeping and security efforts in Iraq.

(5) A comprehensive strategy for completing the reconstruction of Iraq, estimated timelines for the completion of significant reconstruction milestones, and estimates for Iraqi oil production.

(b) **SUBSEQUENT REPORTS ON RELIEF AND RECONSTRUCTION.**—(1) Not later than 60 days after the submittal of the report required by subsection (a), and every 60 days thereafter until all funds provided by this title are expended, the President shall submit to Congress a report that includes information as follows:

(A) A list of all activities undertaken related to reconstruction in Iraq, and a corresponding list of the funds obligated in connection with such activities, during the preceding 60 days.

(B) A list of the significant activities related to reconstruction in Iraq that the President anticipates initiating during the ensuing 60-day period, including—

(i) the estimated cost of carrying out the proposed activities; and

(ii) the source of the funds that will be used to pay such costs.

(C) Updated strategies, objectives, and timelines if significant changes are proposed regarding matters included in the report required under subsection (a), or in any previous report under this subsection.

(2) Each report under this subsection shall include information on the following:

(A) The expenditures for, and progress made toward, the restoration of basic services in Iraq such as water, electricity, sewer, oil infrastructure, a national police force, an Iraqi army, and judicial systems.

(B) The significant goals intended to be achieved by such expenditures.

(C) The progress made toward securing increased international participation in peacekeeping efforts and in the economic and political reconstruction of Iraq.

(D) The progress made toward securing Iraqi borders.

(E) The progress made toward securing self-government for the Iraqi people and the establishment of a democratically elected government.

(F) The progress made in securing and eliminating munitions caches, unexploded ordnance, and excess military equipment in Iraq.

(G) The measures taken to protect United States troops serving in Iraq.

SEC. 2322. REQUIREMENTS RELATING TO UNITED STATES ACTIVITIES IN AFGHANISTAN AND IRAQ. (A) **GOVERNANCE.**—Activities carried out by the United States with respect to the civilian governance of Afghanistan and Iraq shall, to the maximum extent practicable—

(1) include the perspectives and advice of women's organizations in Afghanistan and Iraq, respectively;

(2) promote the inclusion of a representative number of women in future legislative bodies to ensure that the full range of human rights for women are included and upheld in any constitution or legal institution of Afghanistan and Iraq, respectively; and

(3) encourage the appointment of women to high level positions within ministries in Afghanistan and Iraq, respectively.

(b) **POST-CONFLICT RECONSTRUCTION AND DEVELOPMENT.**—Activities carried out by the United States with respect to post-conflict stability in Afghanistan and Iraq shall, to the maximum extent practicable—

(1) encourage the United States organizations that receive funds made available by this Act to—

(A) partner with or create counterpart organizations led by Afghans and Iraqis, respectively; and

(B) to provide such counterpart organizations with significant financial resources, technical assistance, and capacity building;

(2) increase the access of women to, or ownership by women of, productive assets such as land, water, agricultural inputs, credit, and property in Afghanistan and Iraq, respectively;

(3) provide long-term financial assistance for education for girls and women in Afghanistan and Iraq, respectively; and

(4) integrate education and training programs for former combatants in Afghanistan and Iraq,

respectively, with economic development programs to—

(A) encourage the reintegration of such former combatants into society; and

(B) promote post-conflict stability in Afghanistan and Iraq, respectively.

(c) **MILITARY AND POLICE.**—Activities carried out by the United States with respect to training for military and police forces in Afghanistan and Iraq shall—

(1) include training on the protection, rights, and particular needs of women and emphasize that violations of women's rights are intolerable and should be prosecuted; and

(2) encourage the personnel providing the training described in paragraph (1) to consult with women's organizations in Afghanistan and Iraq, respectively, to ensure that training content and materials are adequate, appropriate, and comprehensive.

TITLE III—LEAVE FOR MILITARY FAMILIES

SEC. 3001. SHORT TITLE. This title may be cited as the "Military Families Leave Act of 2003".

SEC. 3002. GENERAL REQUIREMENTS FOR LEAVE. (a) **ENTITLEMENT TO LEAVE.**—Section 102(a) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)) is amended by adding at the end the following:

"(3) **ENTITLEMENT TO LEAVE DUE TO FAMILY MEMBER'S ACTIVE DUTY.**—

"(A) **IN GENERAL.**—Subject to section 103(f), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period because a spouse, son, daughter, or parent of the employee is a member of the Armed Forces—

"(i) on active duty in support of a contingency operation; or

"(ii) notified of an impending call or order to active duty in support of a contingency operation.

"(B) **CONDITIONS AND TIME FOR TAKING LEAVE.**—An eligible employee shall be entitled to take leave under subparagraph (A)—

"(i) while the employee's spouse, son, daughter, or parent (referred to in the subparagraph as the 'family member') is on active duty in support of a contingency operation, and, if the family member is a member of a reserve component of the Armed Forces, beginning when such family member receives notification of an impending call or order to active duty in support of a contingency operation; and

"(ii) only for issues relating to or resulting from such family member's—

"(I) service on active duty in support of a contingency operation; and

"(II) if a member of a reserve component of the Armed Forces—

"(aa) receipt of notification of an impending call or order to active duty in support of a contingency operation; and

"(bb) service on active duty in support of such operation.

"(4) **LIMITATION.**—No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period."

(b) **SCHEDULE.**—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following: "Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule."

(c) **SUBSTITUTION OF PAID LEAVE.**—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by inserting "or subsection (a)(3)" after "subsection (a)(1)".

(d) **NOTICE.**—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following:

"(3) **NOTICE FOR LEAVE DUE TO FAMILY MEMBER'S ACTIVE DUTY.**—An employee who intends to take leave under subsection (a)(3) shall provide such notice to the employer as is practicable."

(e) **CERTIFICATION.**—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following:

"(f) **CERTIFICATION FOR LEAVE DUE TO FAMILY MEMBER'S ACTIVE DUTY.**—An employer may require that a request for leave under section 102(a)(3) be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe."

SEC. 3003. LEAVE FOR CIVIL SERVICE EMPLOYEES. (a) **ENTITLEMENT TO LEAVE.**—Section 6382(a) of title 5, United States Code, is amended by adding at the end the following:

"(3)(A) Subject to section 6383(f), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period because a spouse, son, daughter, or parent of the employee is a member of the Armed Forces—

"(i) on active duty in support of a contingency operation; or

"(ii) notified of an impending call or order to active duty in support of a contingency operation.

"(B) An eligible employee shall be entitled to take leave under subparagraph (A)—

"(i) while the employee's spouse, son, daughter, or parent (referred to in the subparagraph as the 'family member') is on active duty in support of a contingency operation, and, if the family member is a member of a reserve component of the Armed Forces, beginning when such family member receives notification of an impending call or order to active duty in support of a contingency operation; and

"(ii) only for issues relating to or resulting from such family member's—

"(I) service on active duty in support of a contingency operation; and

"(II) if a member of a reserve component of the Armed Forces—

"(aa) receipt of notification of an impending call or order to active duty in support of a contingency operation; and

"(bb) service on active duty in support of such operation.

"(4) No employee may take more than a total of 12 workweeks of leave under paragraphs (1) and (3) during any 12-month period."

(b) **SCHEDULE.**—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following: "Leave under subsection (a)(3) may be taken intermittently or on a reduced leave schedule."

(c) **SUBSTITUTION OF PAID LEAVE.**—Section 6382(d) of such title is amended by inserting "or subsection (a)(3)" after "subsection (a)(1)".

(d) **NOTICE.**—Section 6382(e) of such title is amended by adding at the end the following:

"(3) An employee who intends to take leave under subsection (a)(3) shall provide such notice to the employing agency as is practicable."

(e) **CERTIFICATION.**—Section 6383 of such title is amended by adding at the end the following:

"(f) An employing agency may require that a request for leave under section 6382(a)(3) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe."

TITLE IV—DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

For an additional amount for medical care and related activities under this heading for fiscal year 2004, \$1,300,000,000, to remain available until September 30, 2005.

TITLE V—GENERAL PROVISION, THIS ACT

SEC. 5001. Not later than 30 days after the date of the enactment of this Act, and every 90 days thereafter until December 31, 2007, the President shall submit to each Member of Congress a report on the projected total costs of United States operations in Iraq, including military operations and reconstruction efforts, through fiscal year 2008. The President shall include in each report after the initial report an explanation of any change in the total projected costs since the previous report.

SEC. 5002. The amounts provided in this Act are designated by the Congress as an emergency

requirement pursuant to section 502 of H. Con. Res. 95 (108th Congress).

SEC. 5003. (a) None of the funds appropriated by this Act may be obligated or expended by the head of an executive agency for payments under any contract or other agreement described in subsection (b) that is not entered into with full and open competition unless, not later than 30 days after the date on which the contract or other agreement is entered into, such official—

(1) submits a report on the contract or other agreement to the Committees on Armed Services, on Governmental Affairs, and on Appropriations of the Senate, and the Committees on Armed Services, on Government Reform, and on Appropriations of the House of Representatives; and

(2) publishes such report in the Federal Register and the Commerce Business Daily.

(b) This section applies to any contract or other agreement in excess of \$1,000,000 that is entered into with any public or private sector entity for any of the following purposes:

(1) To build or rebuild physical infrastructure of Iraq.

(2) To establish or reestablish a political or societal institution of Iraq.

(3) To provide products or services to the people of Iraq.

(4) To perform personnel support services in Iraq, including related construction and procurement of products, in support of members of the Armed Forces and United States civilian personnel.

(c) The report on a contract or other agreement of an executive agency under subsection (a) shall include the following information:

(1) The amount of the contract or other agreement.

(2) A brief discussion of the scope of the contract or other agreement.

(3) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(4) The justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(d) The limitation on use of funds in subsection (a) shall not apply in the case of any contract or other agreement entered into by the head of an executive agency for which such official—

(1) either—

(A) withholds from publication and disclosure as described in such subsection any document or other collection of information that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; or

(B) redacts any part so classified that is in a document or other collection of information not so classified before publication and disclosure of the document or other information as described in such subsection; and

(2) transmits an unredacted version of the document or other collection of information, respectively, to the chairman and ranking member of each of the Committees on Governmental Affairs and on Appropriations of the Senate, the Committees on Government Reform and on Appropriations of the House of Representatives, and the committees that the head of such executive agency determines has legislative jurisdiction for the operations of such executive agency to which the document or other collection of information relates.

(e)(1)(A) In the case of any contract or other agreement for which the Secretary of Defense determines that it is necessary to do so in the national security interests of the United States, the Secretary may waive the limitation in subsection (a), but only on a case-by-case basis.

(B) For each contract or other agreement for which the Secretary of Defense grants a waiver under this paragraph, the Secretary shall sub-

mit a notification of the contract or other agreement and the grant of the waiver, together with a discussion of the justification for the waiver, to the committees of Congress named in subsection (a)(1).

(2)(A) In the case of any contract or other agreement for which the Director of Central Intelligence determines that it is necessary to do so in the national security interests of the United States related to intelligence, the Director may waive the limitation in subsection (a), but only on a case-by-case basis.

(B) For each contract or other agreement for which the Director of Central Intelligence grants a waiver under this paragraph, the Director shall submit a notification of the contract or other agreement and of the grant of the waiver, together with a discussion of the justification for the waiver, to the Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Governmental Affairs of the Senate and to the Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Governmental Reform of the House of Representatives.

(f) Nothing in this section shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

(g) In this section—

(1) the term “full and open competition” has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403);

(2) the term “executive agency” has the meaning given such term in section 105 of title 5, United States Code, and includes the Coalition Provisional Authority for Iraq; and

(3) the term “Coalition Provisional Authority for Iraq” means the entity charged by the President with directing reconstruction efforts in Iraq.

SEC. 5004. (a) Congress finds that—

(1) Israel is a strategic ally of the United States in the Middle East;

(2) Israel recognizes the benefits of a democratic form of government;

(3) the policies and activities of the Government of Iraq under the Saddam Hussein regime contributed to security concerns in the Middle East, especially for Israel;

(4) the Arab Liberation Front was established by Iraqi Baathists, and supported by Saddam Hussein;

(5) the Government of Iraq under the Saddam Hussein regime assisted the Arab Liberation Front in distributing grants to the families of suicide bombers;

(6) the Government of Iraq under the Saddam Hussein regime aided Abu Abass, leader of the Palestinian Liberation Front, who was a mastermind of the hijacking of the Achille Lauro, an Italian cruise ship, and is responsible for the death of an American tourist aboard that ship; and

(7) Saddam Hussein attacked Israel during the 1990-1991 Persian Gulf War by launching 39 Scud missiles into that country and thereby causing multiple casualties.

(b) It is the sense of Congress that the removal of the Government of Iraq under Saddam Hussein enhanced the security of Israel and other United States allies.

SEC. 5005. (a) The Comptroller General shall conduct studies on the effectiveness and efficiency of the administration and performance of contracts in excess of \$40,000,000 that are performed or are to be performed in, or relating to, Iraq and are paid out of funds made available under this Act or the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11). The studies shall specifically examine the profits, administrative overhead, management fees, and related expenditures for the management of subcontracts (and further subcontracting) under any such contract. In conducting studies under this section, the Comptroller General shall have access to any infor-

mation and records created or maintained by the United States, or by any entity receiving funds for contracts studied under this section that the Comptroller General considers appropriate.

(b) Not later than 6 months after the date of enactment of this Act and again 4 months thereafter, the Comptroller General shall submit to the Committees on Appropriations of the Senate and the House of Representatives a report that includes—

(1) an evaluation of the studies conducted under this section; and

(2) any recommendations for the improvement of the contracting process for contracts performed or to be performed in Iraq and for contracts generally, including the selection process, contract content, and oversight of the administration and performance of contracts.

SEC. 5006. Section 1605 of title 28, United States Code, is amended by adding a new subsection (h) as follows:

“(h) Notwithstanding any provision of the Algiers Accords, or any other international agreement, any United States citizen held hostage during the period between 1979 and 1981, and their spouses and children at the time, shall have a claim for money damages against a foreign state for personal injury that was caused by the foreign state’s act of torture or hostage taking. Any provision in an international agreement, including the Algiers Accords that purports to bar such suit is abrogated. This subsection shall apply retroactively to any cause of action cited in section 1605(a)(7)(A) of title 28, United States Code.”.

SEC. 5007. (a) The Senate finds the following:

(1) When Saddam Hussein came to power in the 1970’s Iraq was a prosperous county with no foreign debt and significant foreign cash reserves.

(2) Iraq’s reserves were exhausted during the Iran-Iraq War in the 1980’s and Iraq became a debtor nation.

(3) Today, the debts incurred by Saddam Hussein’s regime are estimated to be as much as \$150,000,000,000.

(4) A process has been put in place that will establish a new representative Iraqi government based on a democratic political system with a free market economy. The goal is a prosperous Iraq that is not a threat to its neighbors.

(5) For Iraq to be prosperous it must rebuild. In the near term the United States and other donor countries will provide grants to begin the process. In the longer term Iraq must be able to fully participate in the international financial system.

(6) It is impossible for Iraq to borrow funds in international financial markets based on its existing debt. Eliminating that debt will make possible Iraq’s continued rebuilding toward a prosperous and stable nation. A prosperous nation is less likely to be a threat to its neighbors and to be a breeding ground for terrorists. A prosperous Iraq is more likely to be a positive force in the region and participant in the world economy.

(b) It is the sense of the Senate that all countries that hold debt from loans to the former Iraqi regime of Saddam Hussein should be urged to forgive their debt.

SEC. 5008. (a) FINDINGS.—The Senate finds that—

(1) in May 2002, the Federal Bureau of Investigation (FBI) issued a warning to law enforcement personnel to be alert to the potential use of shoulder-fired missiles against United States aircraft;

(2) in May 2002, Al Qaeda was suspected of firing a shoulder-fired missile at United States military aircraft near Prince Sultan Air Base in Saudi Arabia;

(3) in November 2002, an Israeli commercial jetliner was fired upon by a shoulder-fired missile shortly after take-off in Mombasa, Kenya;

(4) in August 2003, a weapons smuggler was arrested after agreeing to sell a Russian SA-18 to an undercover FBI agent posing as a Muslim extremist;

(5) during recent operations in Iraq, United States commercial airlines—as part of the Civil Reserve Air Fleet (CRAF)—flew nearly 2,000 flights carrying United States troops and supplies into Kuwait, Saudi Arabia, the United Arab Emirates, Qatar, and Bahrain;

(6) no United States commercial airliners are currently equipped with defenses against shoulder-fired missiles.

(b) **PRIORITIZATION.**—When counter measures against the threat of shoulder-fired missiles are deployed, the Secretary of Homeland Security, in conjunction with the Secretary of Defense and the Secretary of Transportation, shall make it a priority to equip the aircraft enrolled in the Civil Reserve Air Fleet.

SEC. 5009. Paragraph (1) of section 1314 of Public Law 108-11 is amended by inserting “without fiscal year limitation” after “available” the first place it appears.

This Act may be cited as the “Emergency Supplemental Appropriations for Iraq and Afghanistan Security and Reconstruction Act, 2004”.

ORDERS FOR TUESDAY, OCTOBER 21, 2003

Mr. McCONNELL. Mr. President, I ask unanimous consent that at 10:30 a.m. on Tuesday, October 21, the Senate proceed to the conference report to accompany S. 3, the partial-birth abortion ban legislation, and that it be considered under the following terms: 4 hours for debate equally divided between the two leaders or their designees, provided that following the use or yielding back of time, the Senate proceed to a vote on the adoption of the conference report with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I only ask that the distinguished Senator modify

his consent request to have that time on our side under Senator BOXER’s control.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 tomorrow morning. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 10:30 a.m., with the first half of that time controlled by the Democratic leader or his designee, and the second half of the time under the control of Senator HUTCHISON or her designee. I further ask unanimous consent that at 10:30 a.m., the Senate begin consideration of the conference report to accompany S. 3 as under the earlier consent. I also ask unanimous consent that the Senate recess from 12:30 until 2:15 p.m. for the weekly party conferences to meet. I further ask unanimous consent that following the vote on the conference report to accompany S. 3, the Senate resume debate on the motion to proceed to S. 1751.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. McCONNELL. Mr. President, tomorrow morning following the period

of morning business, the Senate will begin consideration of the conference report to accompany the partial-birth abortion ban bill. Under that agreement, there will be up to 4 hours of debate, and therefore a vote on adoption of the conference report will occur sometime tomorrow afternoon. The vote on the conference report will be the first vote of the day.

Following that vote, the Senate will resume consideration of the motion to proceed to S. 1751, the class action reform bill.

As a reminder, cloture was filed on the motion to proceed to the bill just a few moments ago. That cloture vote will occur on Wednesday. Senators obviously will be notified when that vote is scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:36 p.m., adjourned until Tuesday, October 21, 2003, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October 20, 2003:

THE JUDICIARY

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