

We now know, according to the Medicare actuary in Health and Human Services, that in fact there could be sharp differences in cost among individual people or individual regions, depending on the private sector plans and how this would work. The study that was done by the Medicare actuary studied the proposals calling for private plans to compete against one another and against Medicare's traditional Government-run program. It shows that those in Medicare fee-for-service—traditional Medicare—in States such as North Carolina or Oregon would pay as little as \$58 a month, well below the projected national average of \$107. So they would pay \$58 instead of \$107. But in high-cost States such as New York or Florida—my good friend from New Jersey is here, I would guess New Jersey would fall in that category as well—they would be paying more like \$175 a month for the same benefit. So on one side of the country you would have people paying \$58, on the other side you would have people paying \$175, for the same coverage, for the same kind of care. That is not fair. That is certainly not what we have now.

They went on to indicate that we would even see parts of States where there would be one payment, one cost, versus other parts of the State. So if you live in Marquette, MI, or Ironwood, MI, in the Upper Peninsula, you could pay a very different price for your health care than if you lived in Detroit or Lansing or Grand Rapids. That is not fair. It does not make sense. Why in the world would we go back to that kind of system?

It is for these reasons I urge my colleagues not to agree to any plan that changes Medicare as we know it, that privatizes Medicare, that takes away what overwhelmingly seniors have told us they want. They want prescription drug coverage—yes. But don't take away their Medicare. That is not a good tradeoff. We need to strengthen Medicare, provide a real benefit for prescription drugs, and do it right.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 9 minutes.

#### INTELLIGENCE LEAK INVESTIGATION

Mr. HARKIN. Mr. President, more than 83 days have passed since the Central Intelligence Agency filed a report and inquiry to the FBI in July regarding a leak by senior administration officials of an undercover CIA agent. This investigation was originally stymied by foot-dragging and delay and has continued to be stymied by foot-dragging and delay.

It took at least 53 days for the Justice Department to officially launch an investigation. It took 4 days after that for Justice to officially notify the White House about the investigation and tell them to preserve any and all materials related to it.

More recently, the investigation has been stymied by kind of a "don't ask, don't tell" approach by the President and by the appearance of a conflict of interest by the Attorney General. Attorney General Ashcroft, a good friend of the Bush administration and its senior advisers, a very partisan Republican for most of his life, is still overseeing the investigation. In fact, one of his top aides said yesterday that Ashcroft has been regularly briefed on key details in the investigation, including the identities of those being questioned by the FBI.

Talk about a chilling effect. President Bush has joked and made light about it.

I would like to bring to the attention of Senators an article by Knight Ridder, published in the newspaper, the Milwaukee Journal Sentinel on Sunday. The headline was "CIA Leak May Have Caused More Damage. Work of Others Using Front Company Name May Be at Risk." This revealed why this leak is no laughing matter; it is a deadly serious matter of national security. This is what the article said:

Training agents . . . costs millions of dollars and requires the time-consuming establishment of elaborate fictions, called "legends," including in this case the creation of a CIA front company that helped lend plausibility to her trips overseas. . . . Compounding the damage, the front company, Brewster-Jennings & Associates . . . apparently was also used by other CIA officers whose works could now be at risk, according to Vince Cannistraro, former CIA chief of counterterrorism operations and analysis. . . . Now, [Valerie] Plame's career as a covert operations officer in the CIA's Directorate of Operations is over. Those she dealt with—on business or not—may be in danger . . . and Plame's exposure may make it harder for American spies to persuade foreigners to share important secrets with them, U.S. intelligence officials said.

Other former CIA officials agree—including Larry Johnson, a former classmate of Plame's and former CIA and State Department official. He predicted that when the internal damage assessment is finished:

. . . at the end of the day, the [harm] will be huge and some people potentially may have lost their lives.

Another former CIA officer, Jim Marcinkowski said:

This is not just another leak. This is a unprecedented exposing of an agent's identity.

So, again, this is no laughing matter. The President should not treat it as such.

Here are some quotes from some in his own administration. Attorney General Ashcroft said:

Leaks of classified information do substantial damage to the security interests of the nation.

Secretary of Defense Rumsfeld earlier this year, March—February of this year:

I think leaks are disgraceful, they are unprofessional, they are dangerous. They put people's lives at risk.

Ari Fleischer, White House spokesman, in June:

The President does have very deep concerns about anything that would be inappropriately leaked that could in any way endanger America's ability to gather intelligence information.

From his own administration, people say how bad it is to have these kinds of leaks to endanger national security.

Let me give a quick recap of the timeline. It started with the President's deception in his State of the Union Address in January. In his remarks, Mr. Bush stated Iraq tried to buy uranium from Niger. A few months later, in July, former Ambassador Joseph Wilson's op-ed appears in the New York Times, questioning the President's assertion.

Then in order to discredit Wilson and "seek revenge" on Wilson, senior administration officials leaked to the press the identity of Wilson's wife and the fact she was a CIA operative, thereby undercutting our national security and clearly violating Federal law.

This happened in early July. Let's see what happened since.

On July 24, Senator SCHUMER calls on the FBI Director to open a criminal investigation into the leak of a CIA operative based on that column.

In late July, the FBI notified Senator SCHUMER that they had done an inquiry into the CIA.

Then it appears nothing happened for 2 months.

On September 23, the Attorney General says he and CIA Director Tenet sent a memo to the FBI requesting an investigation.

On September 26, the Department of Justice officially launches its investigation.

Interestingly, it took 4 days after that "official" launch for the Justice Department to call White House Counsel Gonzales and notify him of the official investigation. Gonzalez then asked for an extra day before the Justice Department gave the White House the official notice, which means all documents and records must be preserved.

A recent letter was sent to the President from Senators DASCHLE, SCHUMER, LEVIN, and BIDEN which also expresses concern about this break from regular procedure.

They wrote:

Every former prosecutor with whom we have spoken has said that the first step in such an investigation would be to ensure all potentially relevant evidence is preserved, yet the Justice Department waited four days before making a formal request for documents.

Interestingly, the letter goes on:

When the Justice Department finally asked the White House to order employees to preserve documents, White House Counsel Alberto Gonzales asked for permission to delay transmitting the order to preserve evidence until morning. The request for a delay was granted. Again, every former prosecutor with whom we have spoken has said that such a delay is a significant departure from standard practice.

That is what has been happening—departure from standard practice.

I am also troubled that the White House Counsel's Office is serving as

“gatekeeper” for all the documents the Justice Department has requested from the White House. Mr. Gonzales’ office said he would not rule out seeking to withhold documents under a claim of executive privilege or national security.

What kind of a zoo is this outfit?

Mr. Gonzales says he can withhold these documents from this investigation on the basis of national security.

Wait a minute. It is our national security that has been breached by this leak. Now we are going to have an invocation of protecting national security to protect who leaked it, I guess.

I believe this matter could have been resolved very quickly. President Bush could have called his senior staff members into the Oval Office and asked them one by one if they were involved. He could have them sign a document stating they were not involved in this leak. He could have each of them sign a release to any reporter to release anything they have ever said to a reporter thereby exempting the reporters.

There has been coverup after coverup after coverup on this CIA leak, and it is not going to go away. People of America will demand that we get to the bottom of it.

The PRESIDING OFFICER. The Senator from Georgia.

#### UNDERCOVER AGENT INVESTIGATION

Mr. CHAMBLISS. Mr. President, as I sat here and listened to my friend from Iowa once again bring up an issue to which we are all very sensitive, I can’t help but respond that I have an entirely different outlook and opinion about what is going on with respect to this issue. Those of us who have been involved in the intelligence community, and as a member of the Intelligence Committee, I, too, am somewhat outraged that we have the so-called “leak” or disclosure of a CIA individual that occurred not too long ago. We have a process whereby this is to be handled. That process is working the way the process is designed to work.

The White House was outraged about this, and the White House is moving very favorably and very aggressively towards resolving this issue. They are going to resolve the issue. The Justice Department is moving independent of the White House to get to the bottom of this. At some point in time a report is going to be made back to the Congress and to the American people, and we will find out what did happen.

Again, there is a process to be followed under law. That process is going to allow us to get to the bottom of this in the way it should be. We don’t need to be here banging political heads against the wall when the legal heads are the ones that need to be banged against the wall, and that is taking place.

#### CLASS ACTION FAIRNESS ACT OF 2003

Mr. CHAMBLISS. Mr. President, I rise in support of the Class Action Fairness Act of 2003. Today we are going to have a cloture vote to determine whether or not we move forward with this bill. I hope we obtain the 60 votes to move forward.

To a great extent, the bulk of the tort reform—that is needed in this country needs to be handled at the State level. States have their own ideas about what kind of tort reform ought to take place. I hope that is where tort reform—that each State decides it needs in and of itself—does take place. However, as the tort system now stands, there are about a handful of State court jurisdictions in the United States where a tremendously disproportionate number of class action lawsuits are filed. That is just not right. People have referred to these jurisdictions as “magnet courts” because they draw in class action suits with their soft juries and pro-plaintiff judges.

Under the Class Action Fairness Act, businesses can break loose from these magnet State courts and get a fair trial in Federal court.

Over the last 2 days of debate on class action reform, my colleagues have been dispelling a lot of myths about the Class Action Fairness Act that have been spread around by the opponents of the bill. I would like to take some time to address one of these myths about which I feel very strongly; that is, that some critics of the Class Action Fairness Act have argued that the bill is an affront to federalism because it would move more cases involving State law claims to Federal court.

But when it comes to federalism, this bill is actually the solution and not the problem. Right now, magnet State courts are trampling over the laws of other States in their zeal to certify nationwide class actions and help enrich, frankly, the plaintiffs’ trial bar. The Class Action Fairness Act actually promotes federalism concerns by helping ensure that magnet State court judges stop dictating national policies from their local courthouse steps. It will allow those cases that are truly justified class action lawsuits filed by trial lawyers who are filing them with the right intention to move forward and to obtain justice for their clients.

This is why, when it comes to federalism, critics of this bill have it backwards.

First, the bill does not change State substantive law. If an interstate class action based on violations of State law is removed to Federal court, the Federal court will simply apply the State law to resolve the case, just as the Federal courts do today in all “diversity” cases in the Federal court system. Critics attempting to argue that the bill is an affront to federalism are doing nothing more than attacking the fundamental concept of diversity jurisdiction, a concept enshrined in article II of the Constitution.

Second, the cases that would be affected by the legislation are truly interstate in nature. They have a real Federal implication. When the Framers of the Constitution created the Federal courts, they thought that large interstate cases should be heard in Federal court. Interstate class actions often involve thousands of plaintiffs nationwide and multiple defendants from many States. They require the application of the laws of several States and seek hundreds of millions or even billions of dollars. It is hard to imagine a better case for diversity jurisdiction.

Third, this legislation has a narrow scope. Smaller cases that are truly local and cases involving State government defendants will all remain in State court.

Fourth, the bill will stop magnet State courts from trampling on federalism principles by trying to dictate the substantive laws of other States in nationwide class actions. Too often magnet State courts take it upon themselves to decide important commercial issues for the entire country regardless of whether other States have reached different conclusions on the same issue. By allowing these cases to be heard in Federal court where the judges have been much more sensitive to differences in State laws and the need to balance various States’ interests in a controversy, the Class Action Fairness Act will put an end to this troubling practice.

Is this a perfect bill? It certainly isn’t. It is not perfect but it does deal with a very complex issue. That is why it is difficult to reach out and obtain a perfect bill.

However, by allowing this to move forward, the amendments that have now been filed, and other amendments that are being contemplated—and I have a couple of amendments myself that I may file to try to improve this bill—at the end of the day we need to make sure that lawyers representing individuals who have been damaged and are part of a class have the opportunity to seek justice; they have the opportunity to seek a fair result in their particular claim, whatever that claim may have arisen from.

By the same token, the business community should have the opportunity also to expect fairness and to expect that at the end of the day their particular defense to the cause that has been filed will be justly dealt with.

In sum, we have a bill with bipartisan support. Despite the misinformation being spread around, actually this bill will promote the proper assignment of class action cases between State court and Federal court dockets as was originally intended by the Framers.

There is one other issue that has been raised that needs to be addressed. That is the issue relative to the potential this bill has to clog the Federal judicial system. That may be the case in some jurisdictions. As a member of the Judiciary Committee, if we see that